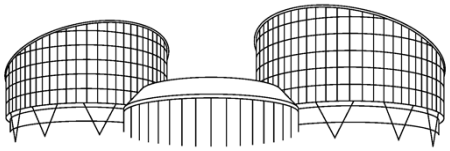

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF S.V. v. ITALY

(Application no. 55216/08)

JUDGMENT

STRASBOURG

11 October 2018

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of S.V. v. Italy,

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

Linos-Alexandre Sicilianos, *President,*
Kristina Pardalos,
Guido Raimondi,
Aleš Pejchal,
Ksenija Turković,
Armen Harutyunyan,
Pauliine Koskelo, *judges,*
and Abel Campos, *Section Registrar,*

Having deliberated in private on 18 September 2018,

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

PROCEDURE

1. The case originated in an application (no. 55216/08) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Italian national, Ms S.V. ("the applicant"), on 13 November 2008. The President of the Section acceded to the applicant's request not to have her identity disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicant was represented by Mr M. De Stefano and Mr G. Guercio, lawyers practising in Rome. The Italian Government ("the Government") were represented by their Agent, Ms E. Spatafora.

3. On 20 March 2016 the Government were given notice of the application.

4. On 19 September 2016 the non-governmental organisations Alliance Defending Freedom and *Unione Giuristi Cattolici Italiani* were given leave to intervene jointly in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965 and lives in Ostia Lido.

6. At birth, the applicant was entered in the civil-status registers as male and was given the forename L. However, the applicant stated that she had

always identified as female and lived in society as a woman under the forename S. For instance, her work colleagues (the applicant has worked as a civil servant since 1999) had always called her S., and in the photograph on her identity card issued in August 2000 her appearance was that of a woman.

7. In 1999 S.V. began treatment with feminising hormones as part of the gender transition process.

8. On 9 November 2000 she applied to the Rome District Court on the basis of section 3 of Law no. 164 of 1982, stating that she wished to complete the transition process by permanently changing her primary sexual characteristics, and sought authorisation to undergo gender reassignment surgery.

9. In a judgment of 10 May 2001 the District Court found that the applicant had embarked on the gender transition process after careful consideration. Having taken note of her determination the court authorised her to undergo surgery in order to adapt her primary sexual characteristics to match her female gender identity.

10. On 30 May 2001 the applicant, while awaiting the surgery authorised by the District Court, applied to the prefect of Rome for a change of forename under Article 89 of Presidential Decree no. 396 of 2000. She argued that, given that she had been undergoing a gender transition process for several years, and in view of her physical appearance, the fact that her identity papers indicated a male forename was a constant source of humiliation and embarrassment. She also asserted that the waiting period for surgery was approximately four years.

11. In a decision of 4 July 2001 the prefect refused the applicant's request on the grounds that, under Presidential Decree no. 396 of 2000, a person's forename had to correspond to his or her gender. In the prefect's view, in the absence of a final court ruling ordering the change to her legal gender status for the purposes of Law no. 164 of 1982, the applicant's forename could not be changed.

12. The applicant appealed against that decision to the Lazio Regional Administrative Court and also requested a stay of execution of the prefect's decision.

13. On 23 July 2001 the applicant underwent mammoplasty. On 6 September 2001 she was placed on a waiting list at Trieste University Hospital for surgery to alter her primary sexual characteristics.

14. On 21 February 2002 the Regional Administrative Court refused to grant a stay of execution of the prefect's decision.

15. On 3 February 2003, while the proceedings before the Regional Administrative Court were still pending on the merits, the applicant underwent an operation to change her sexual characteristics from male to female. She subsequently applied to the Rome District Court, on an

unspecified date, for legal recognition of her gender reassignment under section 3 of Law no. 164 of 1982.

16. In a judgment of 10 October 2003 the Rome District Court granted the applicant's request and ordered the Savona municipal authorities to alter the indication of the applicant's gender from male to female and to change the forename L. to S.

17. By a judgment of 6 March 2008, deposited with the registry on 17 May 2008, the Regional Administrative Court dismissed the applicant's appeal against the prefect's decision of 4 July 2001. The court held that Article 89 of Presidential Decree no. 396 of 2000 concerning changes of forename was not applicable in the present case, which actually came within the scope of Law no. 164 of 1982 concerning changes to legal gender status. The court stressed in that regard that, under the terms of the latter, the amendment of the civil-status records of a transgender person had to be ordered by the court ruling on his or her gender reassignment. It therefore considered that the prefect had correctly refused the applicant's request.

The applicant did not appeal against that judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Law no. 164 of 1982

18. Law No. 164 of 1982 lays down rules on changes to legal gender status (*rettificazione di attribuzione di sesso*). Under that Law as in force at the material time, a person's legal gender status could be changed on the basis of a final judgment of the court recognising a change of gender from that indicated in the person's birth certificate, following the alteration of his or her sexual characteristics (section 1). If necessary, the court could order an expert opinion to assess the physical and psychological state of the person making the request. In the judgment granting the request, the court ordered the municipality with which the birth certificate was registered to amend the civil-status register (section 2).

19. Section 3 of the Law provided as follows:

> "Where it is necessary to adapt the person's sexual characteristics by means of medical or surgical treatment, the court shall deliver a judgment authorising such treatment. In such cases the court, [sitting] in private, shall order the change of legal gender status after verifying that the treatment has been carried out."

20. Section 3 was subsequently amended by Article 31 § 4 of Legislative Decree no. 150 of 2011. A second decision given in private is now no longer required in order to obtain a change of legal gender status.

Article 31 § 4 reads as follows:

"Where it is necessary to adapt the person's sexual characteristics by means of medical or surgical treatment, the court shall deliver a judgment authorising such treatment."

B. Presidential Decree no. 396 of 2000 and Royal Decree no. 1238 of 1939

21. Under Article 35 of Presidential Decree No. 396 of 3 November 2000, the forename given to a child must correspond to the child's gender. According to Article 89 of the same decree, without prejudice to the provisions applicable to the correction of the civil-status records, persons seeking to change their forename or to add another forename to the existing one, or to change their surname because of its shameful or ridiculous nature or because it reveals their biological descent, must submit a request, giving reasons, to the competent prefect.

22. Prior to the entry into force of Presidential Decree No. 396, responsibility for dealing with applications for a change of surname or first name, governed at that time by Articles 158 et seq. of Royal Decree no. 1238 of 1939, lay with the public prosecutor.

23. By decision no. 18 of 12 April 1999, the public prosecutor at the Rome Court of Appeal granted a request for a change of name made by M.U., a transgender person who had not undergone surgery, under Article 158 of Royal Decree no. 1238. The person concerned, who was male, told the public prosecutor that he had always had a typically female mindset and behaviour, and alleged that having a male forename made it difficult for him to integrate socially and caused him immense personal suffering. The prosecutor declared M.U.'s request admissible and authorised the change of forename.

C. The Court of Cassation's case-law

24. In judgment no. 15138 of 20 July 2015, referring *inter alia* to the principles set out in the Court's case-law, the Court of Cassation ruled that section 3 of Law No. 164 of 1982 could not be construed as requiring a transgender person to have recourse to surgery in order to obtain recognition of his or her gender identity, since a match between sexual orientation and physical appearance could be achieved through psychological and medical treatment which respected the person's physical integrity. The Court of Cassation thus brought to an end the divergence of interpretation in this regard that had existed between the lower courts.

D. The Constitutional Court's case-law

25. By judgment no. 221 of 20 October 2015 the Constitutional Court rejected a plea of unconstitutionality with regard to sections 1 and 3 of Law no. 164 of 1982. Referring, *inter alia*, to Court of Cassation decision no. 15138, it stated first of all that the legislative provisions in question were the result of cultural and legal change aimed at recognising gender identity as a component of the right to personal identity. Interpreting the absence of an explicit indication of the means of altering a person's sexual characteristics in the light of fundamental human rights, it added that such absence meant that surgical treatment was not a requirement for the purpose of obtaining a change of legal gender status, as it was only one of the possible treatments that could be used in order to alter a person's appearance.

III. INTERNATIONAL LAW

A. United Nations

26. In her report of 17 November 2011 to the Human Rights Council on discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity (A/HRC/19/41), the United Nations High Commissioner for Human Rights noted in particular that the regulations in countries that recognised changes in gender often required, implicitly or explicitly, that applicants undergo sterilisation surgery as a condition of recognition (§ 72). She recommended, among other things, that Member States (§ 84 (h)):

> "[f]acilitate legal recognition of the preferred gender of transgender persons and establish arrangements to permit relevant identity documents to be reissued reflecting preferred gender and name, without infringements of other human rights."

B. The Committee of Ministers and Parliamentary Assembly of the Council of Europe

27. On 31 March 2010 the Committee of Ministers of the Council of Europe adopted Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity. The recommendation states in particular that "[m]ember states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to

key documents, such as educational or work certificates" (Appendix, point 21).

28. In Resolution 1728 (2010), adopted on 29 April 2010, on discrimination on the basis of sexual orientation and gender identity, the Parliamentary Assembly of the Council of Europe called on States to "address the specific discrimination and human rights violations faced by transgender persons and, in particular, ensure in legislation and in practice [the right of transgender persons] to ... official documents that reflect an individual's preferred gender identity, without any prior obligation to undergo sterilisation or other medical procedures such as sex reassignment surgery and hormonal therapy" (point 16.11.2).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

29. The applicant alleged that the refusal of her request to change her forename, on the grounds that her gender reassignment surgery had not yet been performed, infringed her right to respect for her private life under Article 8 of the Convention, which provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 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."

30. The applicant also relied on Article 3 of the Convention, which reads as follows:

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

31. As master of the characterisation to be given in law to the facts of the case, the Court considers it appropriate to examine the applicant's allegations from the standpoint of Article 8 of the Convention alone (see *A.P., Garçon and Nicot v. France*, nos. 79885/12 and 2 others, § 149, 6 April 2017 (extracts), and *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018).

A. Admissibility

1. The applicant's victim status

32. The applicant submitted that she continued to be the victim of the alleged violation despite having been given permission to change her name by the Rome District Court's judgment of 10 October 2003.

33. Although the Government did not raise any objection regarding the applicant's victim status, the Court is not prevented from examining the issue of its own motion, in so far as it goes to its jurisdiction (see, for instance, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 70, 5 July 2016, and *Orlandi and Others v. Italy*, nos. 26431/12 and 3 others, § 117, 14 December 2017).

34. The Court reiterates that a decision or measure favourable to the applicant is not, in principle, sufficient to deprive him or her of his or her status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see, for example, *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 179-80, ECHR 2006-V; and *Gäfgen v. Germany* [GC], no. 22978/05, § 115, ECHR 2010). Only where both these conditions have been satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of the application (see *Eckle*, cited above, §§ 69 et seq.).

35. In the present case it is true that the national authorities adopted a decision favourable to the applicant in giving her permission to change her name as she had requested. However, the Court cannot overlook the fact that the situation which gave rise to the present application, namely the applicant's inability to obtain a change of name owing to the refusal of the judicial authorities, lasted for over two and a half years. The Court considers that the applicant's private life was directly affected by the courts' refusal during this period (see *Y.Y. v. Turkey*, no. 14793/08, § 53, ECHR 2015 (extracts)). Furthermore, neither the judgment of 10 October 2003 nor the other domestic decisions in the applicant's case contained any express acknowledgement of a violation of the applicant's Convention rights. Hence, the authorisation granted to the applicant cannot be interpreted as acknowledging in substance a violation of her right to respect for her private life (ibid., § 53).

36. Accordingly, the Court finds that the applicant can claim to be a "victim" within the meaning of Article 34 of the Convention.

2. Exhaustion of domestic remedies

37. The Government raised an objection of failure to exhaust domestic remedies on the grounds that the applicant had not appealed against the judgment of the Regional Administrative Court to the *Consiglio di Stato*. They maintained that the highest administrative court might have accepted the applicant's arguments and set aside the prefect's decision.

38. The applicant replied that an appeal to the *Consiglio di Stato* would have had no prospect of success in view of the positive law in force in Italy, which precluded any change of forename before the change of legal gender status had been ordered by the courts. Since the entry into force of Presidential Decree no. 396 of 2000, in other words, since responsibility for taking decisions on requests for a change of name had been devolved to the prefects, no request made by a transgender person during the gender transition process had been granted; that had not been the case under the previous arrangement, when responsibility had lain with the public prosecutor. In her application, the applicant cited in that regard a decision of 12 April 1999 in a similar case to her own. She added that the Government had not demonstrated that an appeal to the *Consiglio di Stato* would have produced a favourable outcome and was therefore a remedy that had to be exercised.

39. The Court observes that the obligation to exhaust domestic remedies requires applicants to have normal recourse to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports of Judgments and Decisions* 1996-IV). Furthermore, the rule on exhaustion of domestic remedies is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case. This means amongst other things that the Court must take realistic account of the general legal and political context in which the remedies operate, as well as the personal circumstances of the applicants (see *Menteş and Others v. Turkey*, 28 November 1997, § 58, *Reports* 1997-VIII, and *Gas and Dubois v. France* (dec.), no. 25951/07, 31 August 2010).

40. The Court further reiterates that, to be effective, a remedy must be capable of remedying directly the impugned state of affairs and offer reasonable prospects of success (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004, and *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II). However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 70, 17 September 2009).

41. Lastly, the Court reiterates that, as regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010, and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 77, 25 March 2014).

42. In the present case the Court observes that the applicant tried to obtain a change of forename by applying to the prefect in accordance with Article 89 of Presidential Decree no. 396 of 2000, which had entered into force seven months earlier. In the proceedings before the Court the applicant maintained, citing an example from the case-law, that prior to the entry into force of that provision the public prosecutor, who at the time had been responsible for such decisions, had regularly granted requests for a change of forename made by transgender persons, even in the absence of a final court ruling ordering the change of legal gender status. By contrast, the applicant stated that she was not aware of any favourable decision taken by a prefect under the new presidential decree (no. 396 of 2000).

43. As to the Government, the Court notes that they merely argued that an appeal to the *Consiglio di Stato* constituted a remedy capable of allowing the applicant to obtain redress for the alleged violation. They did not back up this assertion by reference to established case-law or practice.

44. Consequently, in view of the information available to it, the Court considers that, while the applicant could expect that her request would be granted when she made it in 2001, given the practice existing prior to the entry into force of the new presidential decree (no. 396), she could also legitimately infer from the legal context in 2008 that an appeal to the *Consiglio di Stato* was bound to fail. Accordingly, the Government's objection should be dismissed.

45. The Court further notes that this complaint 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 must therefore be declared admissible.

B. Merits

1. The parties' submissions

46. The applicant submitted that the national authorities' refusal to allow her to change her forename before her gender reassignment surgery had breached her right to respect for her private life.

47. In its judgment of 10 May 2001 the Rome District Court had officially recognised her as being transgender. As a result, her right to respect for her gender identity should have been protected despite the fact that the gender reassignment process had not yet been concluded by means of surgery. In the applicant's view, the Government were wrong to invoke the margin of appreciation available to States in this regard, as the national system had been applied rigidly although Law no. 164 of 1982 made no mention of surgery as one of the conditions in order for transgender persons to obtain recognition of their gender identity. The authorities had interpreted the national legislation restrictively and had thus failed to fulfil the positive obligations inherent in respect for Article 8 of the Convention.

48. In her observations the applicant also specified that her complaints related solely to the authorities' refusal to allow her to change her forename and did not call into question the decision-making process concerning changes to legal gender status.

49. The Government replied that in seeking a change of forename the applicant's sole aim had been to have her new gender identity recognised without undergoing surgery, in breach of the legislative provisions in force. Italian positive law allowed transgender persons to have their forenames corrected only after the authorities had assessed their true psychological state and their behaviour. The records concerning the applicant's forename and gender had been corrected in 2003 after she had completed the transition process by undergoing the surgery authorised by the District Court. Hence, the authorities had complied with the relevant statutory provisions in force at the relevant time and had enabled the applicant to have her new gender identity recognised.

50. Lastly, the Government argued that Law no. 164 of 1982 laid down a procedure apt to ensure respect for each individual's gender identity, thus enabling transgender persons to have their civil-status records amended. Hence, the present case could not be likened to cases in which States restricted the rights guaranteed by Article 8 of the Convention by refusing to recognise the new gender identity of persons who had undergone gender reassignment surgery.

2. Observations of the third-party interveners

51. The organisations Alliance Defending Freedom and *Unione Giuristi Cattolici Italiani*, third-party interveners, stated that the special rules laid

down by Law no. 164 of 1982 concerning the amendment of the civil-status records of transgender persons did not provide for surgery as a prerequisite, but simply as one of the options that might be advocated in the context of an individual's gender transition. It was therefore for the domestic judicial authorities to determine the issue on a case-by-case basis.

52. In the view of the third-party interveners, the fact of preventing States from establishing objective criteria to be taken into consideration in procedures of this kind amounted to granting individuals powers of self-determination that were incompatible with the interests of others.

53. The Court's case-law concerning the recognition of gender identity focused on the lawfulness of the restrictions placed on it, and the Court had consistently held that it was for States to define the mechanisms for recognition while taking into consideration the different interests at stake. This raised fundamental issues of definition with ramifications in the spheres of ethics, psychology and medical science, and in relation to which States had to be afforded a wide discretion. The response to transgender issues varied from one State to another depending on the specific features of the domestic environment, and each State defined rules aimed at striking a balance between the competing private and public interests within the country. In the third-party interveners' view, this approach was supported by the widely diverging legal options chosen by the member States regarding this issue.

3. The Court's assessment

(a) Applicability of Article 8 of the Convention

54. The Court reiterates that the concept of "private life" is a broad term not susceptible to exhaustive definition. It includes not only a person's physical and psychological integrity, but can sometimes also embrace aspects of an individual's physical and social identity. Elements such as gender identity or identification, names, sexual orientation and sexual life fall within the personal sphere protected by Article 8 of the Convention (see, in particular, *Van Kück v. Germany*, no. 35968/97, § 69, ECHR 2003-VII; *Schlumpf v. Switzerland*, no. 29002/06, § 77, 8 January 2009; and *Y.Y. v. Turkey*, cited above, § 56, and the references cited therein).

55. The Court further reiterates that the notion of personal autonomy is an important principle underlying the interpretation of the guarantees of Article 8 of the Convention (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III). This has led it to recognise, in the context of the application of that provision to transgender persons, that it includes a right to self-determination (see *Van Kück*, § 69, and *Schlumpf*, § 100, both cited above), of which the freedom to define one's sexual identity is one of the most basic essentials (see *Van Kück*, cited above, § 73). It has also found

that the right of transgender persons to personal development and to physical and moral security is guaranteed by Article 8 (see, among other authorities, *Van Kück*, § 69; *Schlumpf*, § 100; and *Y.Y. v. Turkey*, § 58, all cited above).

56. The Court's judgments in this sphere have hitherto concerned legal recognition of the gender identity of transgender persons who had undergone reassignment surgery (see *Rees v. the United Kingdom*, 17 October 1986, Series A no. 106; *Cossey v. the United Kingdom*, 27 September 1990, Series A no. 184; *B. v. France*, 25 March 1992, Series A no. 232-C; *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, ECHR 2002-VI; *I. v. the United Kingdom* [GC], no. 25680/94, 11 July 2002; *Grant v. the United Kingdom*, no. 32570/03, ECHR 2006-VII; and *Hämäläinen v. Finland* [GC], no. 37359/09, ECHR 2014), the conditions of access to such surgery (see *Van Kück*, cited above; *Schlumpf*, cited above; *L. v. Lithuania*, no. 27527/03, ECHR 2007-IV; and *Y.Y. v. Turkey*, cited above), and the legal recognition of the gender identity of transgender persons who had not undergone gender reassignment treatment approved by the authorities, or who did not wish to undergo such treatment (see *A.P., Garçon and Nicot*, cited above).

57. The Court stresses that the present case concerns the inability of a transgender person to obtain a change of forename prior to completion of the gender transition process by means of reassignment surgery. This is an issue potentially facing transgender persons which differs from the issues hitherto examined by the Court.

58. Nevertheless, the right to respect for private life applies fully to this issue, which therefore indisputably falls within the scope of Article 8 of the Convention, as the Court has asserted more broadly in cases concerning the choice of, or changes to, individuals' forenames or surnames (see, among many other authorities, *Golemanova v. Bulgaria*, no. 11369/04, § 37, 17 February 2011, and *Henry Kismoun v. France*, no. 32265/10, § 25, 5 December 2013).

59. Accordingly, the "private life" aspect of Article 8 of the Convention is applicable to the present case; moreover, this was not disputed by the Government.

(b) Compliance with Article 8 of the Convention

60. The Court reiterates that while the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities it does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in effective respect for private or family life. While the boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition, the applicable principles are nonetheless similar. In determining whether or not such an obligation exists,

regard must be had to the fair balance which has to be struck between the general interest and the interests of the individual (see, among other authorities, *Söderman v. Sweden* [GC], no. 5786/08, § 78, ECHR 2013).

61. The Court also observes that, when it comes to laying down the conditions required in order for individuals to obtain a change of name, the Contracting States enjoy a wide margin of appreciation. Whilst recognising that there may exist genuine reasons prompting an individual to wish to change his or her surname or forename, the Court reiterates that legal restrictions on such a possibility may be justified in the public interest, for example in order to ensure accurate population registration or to safeguard the means of personal identification and of linking the bearers of a given name to a family (see *Golemanova*, cited above, § 39, and *Henry Kismoun*, cited above, § 31).

62. However, as regards the balancing of the competing interests, the Court has emphasised the particular importance of matters relating to a most intimate part of an individual's life, namely the right to gender identity, a sphere in which the Contracting States have a narrow margin of appreciation (see *Hämäläinen*, cited above, § 67, and *A.P., Garçon and Nicot*, cited above, § 123).

63. The main question to be addressed in the present case is whether, in view of the margin of appreciation available to it, Italy struck a fair balance between the general interest and the individual interest of the applicant in having a forename that matches her gender identity.

64. The Court observes at the outset that Italian law permits transgender persons to have their gender identity legally recognised by amending their civil-status records in accordance with Law no. 164 of 1982 (see paragraph 18 above).

65. The Court takes note of the position of the applicant, who alleged that she had been unable to obtain permission to change her forename until she had undergone her gender assignment surgery. It also observes that the applicant did not claim that she had been required to undergo the surgery against her will or solely in order to obtain legal recognition of her gender identity. On the contrary, it is apparent from the documents in the domestic proceedings that she sought to have surgery in order for her physical appearance to match her gender identity, and that she was authorised to do so by the District Court. Therefore, in contrast to the case of *A.P., Garçon and Nicot* (cited above, § 135), the present case does not concern interference with the applicant's right to respect for her physical integrity in breach of Article 8 of the Convention.

66. The Court must therefore determine whether the authorities' refusal to allow the applicant to change her forename during the gender transition process and before the completion of her gender reassignment surgery constituted disproportionate interference with her right to respect for her private life.

67. The Court notes that, following the District Court judgment of 10 May 2001 which authorised the surgery, the applicant was refused permission to change her forename through administrative channels on the grounds that any amendment to the civil-status records of a transgender person had to be ordered by a judge in the proceedings concerning the change of legal gender status. Consequently, the applicant, in accordance with section 3 of Law no. 164 of 2000 as in force at the relevant time, had to wait until the court confirmed that the surgery had been performed and gave a final ruling on her gender identity, which it did only on 10 October 2003.

68. The Court stresses that its task is not to take the place of the competent national authorities in determining the most appropriate policy governing changes of forename for transgender persons, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation.

69. Accordingly, it does not call into question as such the choice of the Italian legislature to entrust decisions on changes to the civil-status register concerning transgender persons to the judicial rather than the administrative authority. Moreover, the Court 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, A.P., Garçon and Nicot*, cited above, § 142).

70. Nevertheless, the Court cannot but note that the refusal of the applicant's request was based on purely formal arguments that took no account of her particular circumstances. For instance, the authorities did not take into consideration the fact that she had been undergoing a gender transition process for a number of years and that her physical appearance and social identity had long been female.

71. In the circumstances of the present case the Court fails to see what reasons in the public interest could have justified a delay of over two and a half years in amending the forename on the applicant's official documents in order to match the reality of her social situation, which had been recognised by the Rome District Court in its judgment of 10 May 2001. In that connection it reaffirms the principle according to which the Convention protects rights that are not theoretical or illusory, but practical and effective.

72. By contrast, the Court observes the rigid nature of the judicial procedure for recognising the gender identity of transgender persons as applicable at the relevant time, which placed the applicant for an unreasonable length of time in an anomalous position in which she was apt to experience feelings of vulnerability, humiliation and anxiety (see, *mutatis mutandis, Christine Goodwin*, cited above, §§ 77-78).

73. The Court refers to Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, in which the Committee of Ministers urged States to make possible the change of name and gender in official documents in a quick, transparent and accessible way (see paragraph 25 above).

74. The Court also observes with interest that Legislative Decree no. 150 of 2011 amended section 3 of Law no. 164 of 1982, with the result that a second court ruling, after surgery, is no longer required in proceedings concerning a change of legal gender status, as the amendment of the civil-status records can be ordered by the judge when giving the decision authorising the surgery (see paragraph 20 above).

75. Accordingly, in view of the foregoing, the Court considers that the applicant's inability to obtain a change of forename over a period of two and a half years, on the grounds that the gender transition process had not been completed by means of gender reassignment surgery, amounts in the circumstances of the present case to a failure on the part of the respondent State to comply with its positive obligation to secure the applicant's right to respect for her private life.

There has therefore been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

76. The applicant alleged a violation of Article 14 read in conjunction with Article 8 of the Convention.

77. 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 74 above), the Court considers it unnecessary to examine whether there has been a violation in the present case of the provision relied on (see *A.P., Garçon and Nicot*, cited above, § 158).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

79. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

80. The Government contested that claim.

81. The Court considers in the circumstances of the present case that its finding of a violation of Article 8 of the Convention constitutes in itself sufficient just satisfaction.

B. Costs and expenses

82. The applicant also claimed EUR 1,200 for the costs and expenses incurred before the domestic courts and EUR 10,000, or such other amount as the Court deemed equitable, for those incurred before the Court.

83. The Government did not submit any observations on this point.

84. 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 and its case-law, the Court considers it reasonable to award the overall sum of EUR 2,500 covering costs under all heads.

C. Default interest

85. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

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 the 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 2,500 (two thousand five hundred 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 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 French, and notified in writing on 11 October 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Linos-Alexandre Sicilianos
President