



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

FIRST SECTION

DECISION

Application no. 66078/17
Á.CS. and Others
against Hungary

The European Court of Human Rights (First Section), sitting on 13 February 2024 as a Committee composed of:

Alena Poláčková, *President*,

Péter Paczolay,

Gilberto Felici, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 66078/17) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 1 September 2017 by the applicants listed in the appended table (“the applicants”) who were represented by Ms Pelle, a lawyer practising in Budapest;

the decision to give notice of the application to the Hungarian Government (“the Government”), represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice;

the decision not to have the applicants’ names disclosed;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by Ordo Iuris – Institute for Legal Culture, which was granted leave to intervene by the President of the Section;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicants are transgender persons who requested to have their “sex/gender marker” on their birth certificates changed to match their gender identity.

2. Á.Cs. was registered as a girl at birth, with a clearly female name. Since 2015 he has been living as a man. On 15 December 2016 he lodged a

request with the Office of Immigration and Nationality to have his name and the sex/gender marker on his birth certificate corrected. On 4 July 2017 he received a response stating that since he had lodged his request after the suspension on issuing expert medical opinions, there was no possibility of him being provided with the requisite opinion. He was informed that his request otherwise complied with the preconditions and that he would be informed of the rules of the new procedure. On 18 January 2018 the Budapest Governmental Office granted Á.Cs.'s request for the legal recognition of his gender.

3. K.F.M. was born male. She has been living as a woman since 2016. On 24 November 2016 she lodged a request with the Office of Immigration and Nationality seeking the correction of her name and sex/gender marker. On 19 May 2017 she received a response informing her of the suspension of the proceedings. By a letter dated 17 August 2020, K.F.M.'s representative informed the Court that she had lost contact with her client.

4. N.H. was registered as a girl at birth, but since 2016 has been living as a man. On 8 March 2017 he lodged a request with the Budapest Government Office for the correction of his name and sex/gender marker in his birth certificate. On 13 July 2017 he received a response from the Ministry of Human Capacities through the Governmental Office that the issuance of expert medical opinions had been suspended, and that his request otherwise complied with the preconditions. On 24 January 2018 the Budapest Governmental Office granted N.H.'s request for the legal recognition of his gender.

5. K.Gy. was born male but has been living as a woman since 2015. On 26 May 2017 she lodged a request with the Budapest Government Office seeking the correction of her name and sex/gender marker in her birth certificate. On 19 August 2017 she was informed by the Ministry of Human Resources through the Budapest Government Office that the Ministry had suspended issuing expert medical opinions, that her request otherwise complied with the preconditions and that she would be informed of the new regulations. On 24 January 2018 the Budapest Governmental Office granted K.Gy.'s request for the legal recognition of her gender.

6. M.D. was registered as a girl at birth but has been living as a man since he was eighteen. On 16 January 2017 he lodged a request for legal gender recognition with the Budapest Government Office. On 10 June 2017 he was informed of the suspension on issuing expert medical opinions. On 18 January 2018 the Budapest Governmental Office granted M.D.'s request for the legal recognition of his gender.

7. The applicants complained under Article 8 of the Convention of the lack of a regulatory framework for the legal recognition of their gender identity.

THE COURT'S ASSESSMENT

A. Striking out the application in respect of K.F.M.

8. On 17 August 2020 K.F.M.'s representative informed the Court that she had lost contact with her client. The Court notes that the representative did not insist that the Court nonetheless continue the examination of the application in respect of K.F.M. (contrast *V.M. and Others v. Belgium* (striking out) [GC], no. 60125/11, § 32, 17 November 2016).

9. In the light of the foregoing, and in the absence of any special circumstances regarding respect for the rights guaranteed by the Convention and the Protocols thereto, the Court, in accordance with Article 37 § 1 (a) of the Convention, considers that it is no longer justified to continue the examination of the application lodged by K.F.M.

10. In view of the above, it is appropriate to strike the part of the application concerning K.F.M. out of its list of cases.

B. Alleged violation of Article 8 of the Convention

11. The Government submitted that in January 2018 the requests for the legal recognition of the gender reassignment had been granted in the case of Á.Cs., M.D., K.Gy., and N.H. Thus, they could not be considered victims of the alleged violation. In the alternative, the Government averred that the application was inadmissible for being manifestly ill-founded. Furthermore, the applicants had failed to exhaust domestic remedies in that they had not sought judicial review of the decisions and/or omissions of the administrative authorities or had failed to pursue their requests before the domestic authorities. Moreover, it had been open to them to file a constitutional complaint under section 26(1) or 27 of the Act on the Constitutional Court following the judicial review proceedings.

12. The applicants claimed that Hungary had failed to comply with its positive obligation to ensure respect for their private life. They argued that at the time of lodging their requests, Hungarian law had lacked clear rules, guarantees, allocation of jurisdiction and powers to allow for the legal recognition of their gender change. They submitted that for a couple of weeks the Budapest Governmental Office had adopted the practice of issuing permissions of legal gender recognition, due to which their requests had been granted in January 2018. However, their requests had not been processed for several months, in the absence of procedural rules.

13. The third-party intervener submitted that it could not be inferred from the Court's case-law that States were obliged to legally recognise the gender of a person who had not completed the hormonal and surgical reassignment process.

14. For the relevant domestic law and practice concerning gender recognition in Hungary at the material time, see *R.K. v. Hungary* (no. 54006/20, §§ 18-31, 22 June 2023).

15. The relevant Convention principles have been summarised in the Court’s judgment in the case of *Hämäläinen v. Finland* ([GC], no. 37359/09, §§ 65-67, ECHR 2014). The Court is particularly mindful of its previous finding that the “conflict between social reality and law places the transsexual in an anomalous position, in which he or she may experience feelings of vulnerability, humiliation and anxiety” (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 77, ECHR 2002-VI).

16. The Court has frequently found a violation of Article 8 on the grounds that the lack of a clear legal framework for gender recognition were at odds with the States’ positive obligation to provide quick, transparent and accessible procedures for legal gender recognition (see, among others, *Y.T. v. Bulgaria*, no. 41701/16, 9 July 2020; *A.D. and Others v. Georgia*, nos. 57864/17 and 2 others, 1 December 2022; and *X v. the former Yugoslav Republic of Macedonia*, no. 29683/16, 17 January 2019).

17. The Court notes that in cases arising from individual petitions its task is not to review the relevant legislation in the abstract. Instead, it must confine itself, as far as possible, to examining the issues raised by the case before it (see, among many other authorities, *N.C. v. Italy* [GC], no. 24952/94, § 56, ECHR 2002-X). In the present case, therefore, the Court’s role is not to rule *in abstracto* on the compatibility with the Convention of the relevant national legislation and practice, but only to ascertain, *in concreto*, what effect these had on the applicants’ right to respect for their private life under Article 8 of the Convention.

18. The Court observes that the applicants lodged a request for the legal recognition of their gender reassignment in late 2016 and early 2017 and that their requests were granted in January 2018 due to what appears to be a brief change in the practice of the relevant authorities. Thus, their cases have been decided on the merits and the applicants were able to obtain the legal recognition of their gender reassignment.

19. Furthermore, the Court considers that a period of less than a year, or in the case of Á.Cs. thirteen months, of waiting time while the domestic authorities processed the applicants’ requests for gender reassignment cannot be considered as continuous and unreasonable, leaving them in a situation of distressing uncertainty *vis-à-vis* their private life and the recognition of their identity (compare and contrast, *Y.T. v. Bulgaria*, § 72, and *X. v. the former Yugoslav Republic of Macedonia*, §§ 68-69, both cited above).

20. It follows that the present complaint is inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4.

21. In view of this conclusion, the Court considers it unnecessary to rule on the Government’s preliminary objections relating to victim status and

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exhaustion of domestic remedies (see, *mutatis mutandis*, *Kurt v. Austria* [GC], no. 62903/15, § 213, 15 June 2021).

For these reasons, the Court, unanimously,

Decides to strike the part of the application concerning K.F.M. out of its list of cases;

Declares the remainder of the application inadmissible.

Done in English and notified in writing on 7 March 2024.

Liv Tigerstedt
Deputy Registrar

Alena Poláčková
President

Appendix

List of applicants

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Á.Cs.	1996	Hungarian	Budapest
2.	M.D.	1983	Hungarian	Budapest
3.	K.GY.	1979	Hungarian	Budapest
4.	N.H.	1989	Hungarian	Budapest
5.	K.F.M.	1974	Hungarian	Budapest