



A transgender man's lack of access to a procedure to recognise his gender violated the Convention

In its committee judgment in the case of [Rana v. Hungary](#) (application no. 40888/17) 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 case concerned a transgender man from Iran who had obtained asylum in Hungary but could not legally change his gender and name in that country.

The Court noted that the domestic system for gender recognition had excluded the applicant simply because he did not have a birth certificate from Hungary, a change in the birth register being the way name and gender changes were legally recognised.

The Court concluded that a fair balance had not been struck between the public interest and the applicant's right to respect for his private life owing to the refusal to give him access to the legal gender recognition procedure.

The judgment is final.

Principal facts

The applicant, Jafarizad Barenji Rana, is an Iranian national who was born in 1987 and lives in Budapest.

The applicant was born a female in Iran but has from an early age identified as a male. In 2015 he applied for asylum in Hungary and in December of that year the asylum authority granted his application, finding that he had suffered persecution in Iran owing to his gender identity (transsexuality).

In March 2016 the applicant applied for a gender and name change to the Hungarian Immigration and Citizenship Office given that his Iranian documents identified him as a female.

The Office informed the applicant that gender reassignment was in principle registered by the Office of the Registrar of Births, Marriages and Deaths. In July 2016 the Office issued a formal rejection decision without examining the application on the merits, holding that it did not have jurisdiction to take any further action. As the applicant's birth had not been registered in Hungary, the application could not be forwarded to the registrar.

The Budapest Administrative and Labour Court dismissed an appeal by the applicant in November 2016 and in February of the following year the applicant lodged a constitutional complaint.

The Constitutional Court rejected the complaint in June 2018, finding that the judge of the lower court could not have found differently in the applicant's case given the lack in the law of any statutory basis for the changing the names of non-Hungarian citizens.

However, it emphasised that the right to change one's name was a fundamental one, and that making such a change went hand in hand with changing gender. It found the legislative omission to be disproportionately restrictive and unconstitutional and called on Parliament to find a solution to allow lawfully settled people without Hungarian birth certificates to change their name, for example

by entering the name change on other official documents issued by the Hungarian authorities. The legislative change requested by the Constitutional Court has not yet been carried out.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 29 May 2017.

The applicant complained that the authorities' refusal to change his name and sex marker from "female" to "male" in his identity documents had violated Article 8 (right to respect for private and family) of the European Convention on Human Rights.

Judgment was given by a Committee of three judges, composed as follows:

Branko **Lubarda** (Serbia), *President*,
Carlo **Ranzoni** (Liechtenstein),
Péter **Paczolay** (Hungary),

and also Ilse **Freiwirth**, *Deputy Registrar*.

Decision of the Court

The Court examined the case from the standpoint of the State's positive obligation to secure the applicant's right to respect for his private life, reiterating its case-law on that issue.

The Court did not question the Hungarian authorities' choice to regulate the legal recognition of a gender change as a special kind of name-changing procedure performed by a registrar keeping the register of births. However, in balancing the competing interests at stake, States had limited discretion ("margin of appreciation") when it came to an essential aspect of individuals' intimate identity, such as gender identity in the applicant's case.

It took note of the Constitutional Court's finding of a legislative gap, which excluded all lawfully resident non-Hungarians from accessing the name-change and gender recognition procedure regardless of their circumstances, as a disproportionate restriction of their right to human dignity.

Furthermore, the authorities had rejected the applicant's application on purely formal grounds, without examining his situation, thus not weighing up the competing interests at stake. In particular, they had not taken account of the fact that he had been given asylum precisely because he was persecuted in his country of origin on the grounds of his transgenderism. The Court considered that he could not reasonably have been expected to seek recognition of his gender change in Iran.

The Court observed that providing access to a procedure for legal gender recognition to people without Hungarian birth certificates, along with an examination of their claims on the merits, could be an additional administrative burden on the authorities. However, that could not by itself justify an unconditional refusal of the applicant's request. In addition, the positive obligation set out by the Constitutional Court was relatively narrow and the possible impact on the State did not appear to be severe.

The Court considered that a fair balance between the public interest and the applicant's right to respect for his private life had not been struck when he had been denied access to the legal gender recognition procedure. There had therefore been a violation of Article 8.

[Just satisfaction \(Article 41\)](#)

The Court held that Hungary was to pay the applicant 6,500 euros (EUR) in respect of non-pecuniary damage and EUR 1,500 in respect of costs and expenses.

The judgment is available only in English.

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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.