

CASE OF L. V. LITHUANIA - Application no. 27527/03 (2007)

In the Chamber's judgment in the case of **CASE OF L. V. LITHUANIA (2007)** the European Court of Human Rights held:

- **by six votes to one that there has been no violation of Article 3 (prohibition of degrading treatment) of the Convention;**
- **by six votes to one, that there had been a violation of Article 8 (right to respect for private life) of the Convention.**

I. Principal Facts

The case concerned an application brought by a Lithuanian national, Mr L. At birth he was registered as a girl, with a name clearly identifiable as female. However, from an early age, he submits that he felt his gender was male rather than female.

Although he was diagnosed as a transsexual his doctor initially refused to prescribe hormone therapy in view of uncertainty as to whether or not full gender reassignment could be legally carried out. He was therefore forced to follow the hormone treatment unofficially. Following the adoption of the new Civil Code in 2000, which for the first time introduced a right to gender-reassignment surgery in Lithuanian law, the applicant underwent partial reassignment surgery. However, he agreed with the doctors to defer any further surgical steps pending the introduction of implementing legislation on the conditions and procedure for gender reassignment.

The implementing legislation has not yet been enacted following strong opposition to the bill in the Parliament. The applicant remained a female under domestic law and although he was eventually permitted to change his name to one that was not gender sensitive, his personal code on his new birth certificate and passport and on his university diploma continued to identify his gender as female. He thus faced considerable embarrassment and difficulties in daily life and found himself ostracised to the point where he had become suicidal.

II. Complaints and procedure

Relying on Articles 3, 8, 12 and 14 (prohibition of discrimination), Mr L. complained about the lack of legislation allowing him to complete gender reassignment surgery and pursue his life as a person of male gender. He alleged, in particular, that the State's inaction in adopting that legislation was a concession to the negative attitude of the majority of the population towards a transsexual minority.

III. Decision of the Court

An examination of the facts had shown that the applicant had suffered understandable distress and frustration but not circumstances of such an intense degree as to warrant considering his complaint under Article 3. The Court found it more appropriate to analyse that aspect of the applicant's complaint under Article 8. Consequently, the Court held that there had been no violation of Article 3.

The Court observed that Lithuanian law had recognised transsexuals' right to change not only their gender but also their civil status. However, there was a gap in the relevant legislation: the law regulating full gender-reassignment surgery, although drafted, had yet to be adopted. In the meantime, no suitable medical facilities are reasonably accessible in Lithuania.

That legislative gap had left the applicant in a situation of distressing uncertainty as to his private life and the recognition of his true identity. Budgetary restraints in the public health service might have justified some initial delays in implementing the rights of transsexuals under the Civil Code but not a delay of over four years, since 1 July 2003 when the relevant provisions had come into force. Given that only about 50 people (according to unofficial estimates) had been concerned, the budgetary burden on the State would not have been expected to be unduly heavy. Consequently, the Court considered that a fair balance had not been struck between the public interest and the rights of the applicant. The Court therefore concluded that there had been a violation of Article 8.

The Court observed that the applicant's complaint under Article 12 was premature, in that, should he complete full gender-reassignment surgery, his status as a man would be recognised together with the right to marry a woman. The key issue was that of the legislative gap which had already been analysed under Article 8. It further observed that the applicant's complaint concerning discrimination was essentially the same as considered under Articles 3 and 8. The Court therefore held by six votes to one that there was no need to examine separately Mr L.'s complaints under Articles 12 and 14.

IV. Just satisfaction

The State could satisfy the applicant's claim for pecuniary damage by the adoption of the requisite subsidiary legislation. Failing that, it was to pay the applicant 40,000 (EUR) towards the cost of having the final stages of the necessary surgery performed abroad. The applicant was also awarded 5,000 (EUR) for non-pecuniary damage.

V. Dissenting Opinion

The applicant's only argument was founded on a legal gap in the national legal system, stemming either from a failure of the government to pass subsidiary legislation or to introduce a bill to that end. However, there was, and still is, under Lithuanian law primary

legislation which unequivocally meets the applicant's aspirations. Alleging the ineffectiveness of domestic remedies, without any attempt to turn to the domestic judiciary, the applicant apparently relies on the idea that the courts would somehow be unwilling to find in his favour despite the existence of a clear legal provision in the Civil Code.

The position of the parties is as follows: the applicant failed to exhaust domestic remedies, preferring merely to allege their ineffectiveness, although he was unable to substantiate that allegation, whereas the Government relied on the evolution of the domestic case-law concerning remedies. The dissent agree with the Government's preliminary objection of non-exhaustion of domestic remedies, and consider the application premature and, therefore, inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention.