



L. v. Lithuania

App. No. 27527/03, 46 Eur. H.R. Rep. 22 (2008).

Country: Lithuania

Region: Europe

Year: 2007

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Health care and health services, Health systems and financing, Sexual and reproductive health

Human Rights: Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Right to bodily integrity, Right to family life, Right to privacy

Facts

The applicant was registered as female at birth in 1978 but regarded himself as a male from an early age. In 1997 he sought medical advice and was diagnosed as transgendered. Lithuania adopted Article 2.27 Å§ 2 of the Civil Code, which provided that unmarried adults had the right to undergo medically endorsed gender reassignment surgery. Following several years of hormonal treatment, L. underwent a partial reassignment surgery, namely a breast removal, however, a delay in implementing the legislation (conditions and procedure for gender-reassignment surgery) following a strong opposition to the Bill in the Parliament meant that L. was not able to complete gender-reassignment surgery. The applicant alleged that this led him to feelings of personal inadequacy and an inability to accept his body, which caused him great anguish and frustration. L. was also unable to successfully change his gender on several documents, including his birth certificate and passport, which identified him as female. He allegedly faced daily embarrassment and difficulties as a result. For example, L. was unable to apply for a job, pay social security contributions, consult a doctor, communicate with the authorities, obtain a bank loan or cross the State border, without disclosing his female sex. He suffered from depression and suicidal inclinations as a result. The applicant claimed violations under Articles 3 (prohibition of torture), 8 (respect for private life), 12 (right to marry) and 14 (prohibition of discrimination) of the European Court of Human Rights (ECHR).

Decision and Reasoning

The Court held that there was no violation of Article 3 of the ECHR. According to the Court, the "understandable distress and frustration" experienced by L. did not amount to circumstances of such intensity such that they fell within the scope of Article 3.

The Court found it more appropriate to assess Article 8 (respect for private life) of the ECHR. The Court found that the legislative gap had left the applicant in a situation of distressing uncertainty with regard to his private life and the recognition of his true identity. According to the Court, budgetary restraints could not justify the legislature's delay of over four years and the Court had, consequently, failed to strike a fair balance between the public interest and the individual applicant.

The Court felt that the issues assessed under Article 8 relieved them of the need to assess Article 12 and 14 of the ECHR. The Court ordered the Lithuanian legislature to adopt the implementation legislation within three months of its judgment.

Decision Excerpts

"59. The Court finds that the circumstances of the case reveal a limited legislative gap in gender-reassignment surgery which leaves the applicant in a situation of distressing uncertainty vis-à-vis his private life and the recognition of his true identity. Whilst budgetary restraints in the public health service might have justified some initial delays in implementing the rights of transsexuals under the Civil Code, over four years have elapsed since the pertinent provisions came into force and the necessary legislation, although drafted, has yet to be adopted (paragraph 30 above). Given the few individuals involved (some 50 people, according to unofficial estimates; paragraph 22 above), the budgetary burden on the State would not be expected to be unduly heavy. Consequently, the Court considers that a fair balance has not been struck between the public interest and the rights of the applicant." Page 12.

