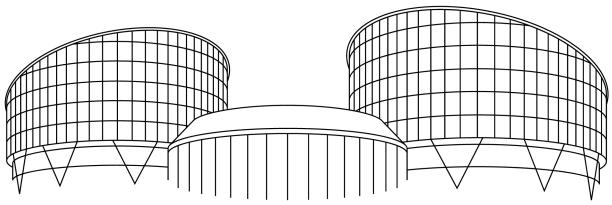

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF H. v. FINLAND

(Application no. 37359/09)

JUDGMENT

STRASBOURG

13 November 2012

Referral to the Grand Chamber

29/04/2013

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of H. v. Finland,

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

Lech Garlicki, *President,*
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 23 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 37359/09) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Finnish national, Ms H. ("the applicant"), on 8 July 2009. The President of the Section acceded to the applicant's request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Mr Kari Uoti, a lawyer practising in Helsinki. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. The applicant alleged, in particular, under Articles 8 and 14 of the Convention that her right to private and family life had been violated when the full recognition of her new gender was made conditional on the transformation of her marriage into a civil partnership.

4. On 23 March 2010 the application was communicated in respect of Articles 8 and 14 of the Convention to the Government. The Court decided *ex officio* to communicate the application also under Article 12 of the Convention. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963 and lives in Helsinki.

6. The applicant was born male. She always felt that she was a female in a male body but decided to cope with the situation. In 1996 she married a woman and in 2002 they had a child.

7. The applicant started feeling worse in 2004, and decided in 2005 to seek medical help. In April 2006 she was diagnosed as transgender. Since that time, she has lived as a woman. On 29 September 2009 she underwent gender re-assignment surgery.

8. On 7 June 2006 the applicant changed her first names and renewed her passport and driver's licence but she could not have her identity number changed. The identity number still indicates that she is male, as does her passport.

A. Proceedings concerning the changing of the identity number

9. On 12 June 2007 the applicant requested the local Register Office (*maistraatti, magistraten*) to confirm her as being female and to change her male identity number to a female one as it no longer corresponded to reality.

10. On 19 June 2007 the local Register Office refused the applicant's request. It found that, according to sections 1 and 2 of the Act on Confirmation of the Gender of a Transsexual (*laki transseksuaalin sukupuolen vahvistamisesta, lagen om fastställande av transsexuella personers könstillhörighet*), the confirmation required that the person was not married or that the spouse gave his or her consent. As the applicant's wife did not give her consent to the transformation of their marriage into a civil partnership (*rekisteröity parisuhde, registrerat partnerskap*), the applicant's new gender could not be introduced in the population register.

11. On 6 July 2007 the applicant appealed to the Helsinki Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*) complaining, *inter alia*, that her wife's decision not to give consent, to which she was perfectly entitled as they both preferred to remain married, meant that the applicant could not be registered as a female. A divorce would be against their religious convictions. A civil partnership did not provide the same security as a marriage and this would mean, among other things, that their child would be put into a different situation *vis-à-vis* children born within wedlock.

12. On 5 May 2008 the Helsinki Administrative Court rejected the applicant's appeal on the same grounds as the local Register Office. Moreover it found, *inter alia*, that the impugned decision of 19 June 2007 was not contrary to Article 6 of the Constitution as same-sex partners had a possibility, by registering their relationship, to benefit from family law protection in a manner partially comparable to a marriage. Similarly, Sections 1 and 2 of the Act on Confirmation of the Gender of a Transsexual did not violate the constitutional rights of the applicant's child.

13. On 8 May 2008 the applicant appealed to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltnings-domstolen)*, reiterating the grounds presented before the local Register

Office and the Administrative Court. She also asked the court to make a request for a preliminary ruling to the Court of Justice of the European Communities, in particular on the interpretation of Article 8 of the European Convention on Human Rights. Referring to Articles 8 and 14 of the Convention, the applicant claimed that the State should not tell her that a civil partnership was appropriate for her, especially when it required that her wife become a lesbian. Their sexual identity was a private matter which could not be a condition for the confirmation of gender. Transgenderism was a medical condition falling within the scope of private life. The State was violating her right to privacy every time the male identity number revealed her to be transgender. Moreover, she claimed that if her marriage were turned into a civil partnership, it would mean that she could no longer be a legal father to her child nor his mother, as a child could not have two mothers.

14. On 3 February 2009 the Supreme Administrative Court refused the applicant's request for a preliminary ruling and rejected her appeal. It found that by adopting the Act on Confirmation of the Gender of a Transsexual the legislator did not mean to change the fact that only a man and a woman could marry and that same-sex partners could have their relationship judicially confirmed by registering it. The European Court had found under Article 12 of the Convention that there were no acceptable grounds to deny transgender persons their right to marry but that the margin of appreciation in this respect was large. It was not possible under Finnish law for persons of the same sex to marry but, in such a case, it was a question of a civil partnership. As to its juridical and economic consequences, a civil partnership was essentially comparable to a marriage. The question of transforming the marriage institution into a gender-neutral one was connected to significant ethical and religious values and it was to be solved by an act enacted by Parliament. The current state of law was within the margin of appreciation given to the State by the European Convention.

15. On 29 October 2009 the applicant lodged an extraordinary appeal with the Supreme Administrative Court, requesting it to annul its previous decision of 3 February 2009. She stated that she had undergone gender reassignment surgery on 29 September 2009 and that she could no longer prove that she had been male, as indicated by her identity number and passport. Even though, for marriage purposes, she would still be considered as male, the fact remained that she should not be discriminated against due to her gender.

16. On 18 August 2010 the Supreme Administrative Court refused the extraordinary appeal.

B. Proceedings concerning reimbursement of medical costs

17. On 29 August 2007 the applicant applied for reimbursement of the costs of some hormonal medicine which was part of her treatment.

18. On 5 October 2007 the Social Insurance Institution (*Kansaneläkelaitos, Folkpensionsanstalten*) refused her application as she was deemed to be entitled to the reimbursement only once she had been given a new identity number.

19. By letter dated 11 October 2007 the applicant appealed to the Social Security Appeal Board (*Sosiaaliturvan muutoksenhakulautakunta*, *Besvärsnämnden för social trygghet*) claiming, *inter alia*, that she had been discriminated against.

20. On 21 January 2010 the Social Security Appeal Board accepted the applicant's appeal and changed the decision of 5 October 2007 by the Social Insurance Institution, finding that the applicant was entitled to reimbursement.

21. As no appeal was made against this decision, it became final.

C. Other proceedings

22. On an unspecified date the applicant also filed a complaint with the Ombudsman for Equality (*Tasa-arvovaltuutettu, Jämställdhets-ombudsmannen*), complaining about the wrong identity number as well as the reimbursement of medical costs.

23. On 30 September 2008 the Ombudsman for Equality stated that she could not take a stand on the identity number issue as the matter had already been dealt with by the Administrative Court and the Ombudsman was not competent to supervise the courts. Moreover, the matter was pending before the Supreme Administrative Court. As to the reimbursement of medical costs, the Ombudsman found that the fact that the reimbursement was conditional on the identity number and not on medical grounds placed transgender persons in a different position to other persons receiving the same treatment. She recommended that the Social Insurance Institution change its practice in this respect in order to prevent discrimination against transgender persons.

II. RELEVANT DOMESTIC LAW

24. Article 6 of the Constitution (*Suomen perustuslaki, Finlands grundlag*; Act no. 731/1999) provides the following:

> "Everyone is equal before the law.
>
> No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person. Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development.

Equality of the sexes is promoted in societal activity and working life, especially in the determination of pay and the other terms of employment, as provided in more detail by an Act."

25. Section 1 of the Act on Confirmation of the Gender of a Transsexual (*laki transseksuaalin sukupuolen vahvistamisesta, lagen om fastställande av transsexuella personers könstillhörighet;* Act no. 563/2002) provides that it shall be established that a person belongs to the opposite gender to the one noted in the population register if he or she:

"1) provides medical clarifications that he or she permanently feels that he or she belongs to the opposite gender and lives in the corresponding gender role as well as that he or she has been sterilised or is for some other reason incapable of reproducing;

2) is above 18 years of age;

3) is not married or in a civil partnership; and

4) is a Finnish citizen or has residence in Finland."

26. Section 2 of the same Act provides for exceptions from the marital status requirement. A marriage or a civil partnership does not prevent the confirmation of gender if the spouse or the partner personally gives his or her consent to it before a local Register Office. When belonging to the opposite gender is confirmed, a marriage is turned *ex lege* into a civil partnership and a civil partnership into a marriage. This modification shall be noted in the population register.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 8 AND 12 OF THE CONVENTION

27. The applicant complained under Article 8 of the Convention that her right to private and family life had been violated when the full recognition of her new gender was made conditional on the transformation of her marriage into a civil partnership.

28. Article 8 of the Convention reads as follows:

"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."

29. Article 12 of the Convention reads as follows:

"Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

30. The Government contested that argument.

A. Admissibility

31. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

32. The applicant noted that there had been an interference with her right to respect for her private and family life, and agreed that this interference had a basis in national law. The issue was whether this interference had been necessary in a democratic society.

33. The applicant argued that in essence the question was whether it was necessary to force a married couple to end their marriage in order to protect the privacy of a transgender spouse. Had the applicant not been married, this problem would not have arisen. The applicant had been legally married since 1996 and nothing had changed since. Her marriage could not be a legitimate ground to invalidate her right to privacy guaranteed under Article 8 of the Convention. There were no justifiable grounds to make the applicant divorce in order to protect her privacy. Attitudes towards same-sex marriages were changing and they were allowed both in Sweden and Norway, Finland's neighbouring countries. As the legal frameworks for marriage and civil partnership were so similar, there was no major public interest involved but the matter should be left to the private sphere.

34. The Government agreed that there had been an interference with the applicant's right to respect for her private and family life in that she had not been granted a new identity number. The impugned measures had a basis in national law, especially in section 2, subsection 1, of the Act on Confirmation of the Gender of a Transsexual, and were thus "in accordance with law". That legislation was aimed at protecting the "health and morals" and the "rights and freedoms" of others.

35. As to the necessity, the Government noted that, according to Finnish law, only a man and a woman could conclude a marriage whereas same-sex partners could register their partnership. The applicant was entitled to have her identity number changed if her spouse consented to turning their marriage into a civil partnership. As soon as her new identity number was registered, their marriage turned *ex lege* into a civil partnership. There was

no need to divorce unless the spouse did not consent and the applicant still wished to have her new gender confirmed. It was not disproportionate to require the spouse's consent in order for the applicant to obtain a new identity number. There was thus no violation of Article 8 of the Convention.

36. The Government argued that Article 12 did not protect the applicant's wish to remain married to her female spouse after the confirmation of her female gender. The legal effects of civil partnership were largely similar to those of a marriage. Between spouses the legal effects were exactly the same but in relation to children there were some differences. The Paternity Act and the Adoption Act were not applicable to civil partnerships if parenthood had not been established earlier. Presumed or established paternity did not change when a man became a woman, nor had the reassignment any legal effects on the person's liability for care, custody or maintenance of a child. The applicant's rights or obligations arising either from the partnership or parenthood would therefore not be altered. There was thus no violation of Article 12 of the Convention.

2. The Court's assessment

(a) Relevant principles

37. The Court would emphasise the positive obligation upon States to ensure respect for private life under Article 8 of the Convention, including respect for human dignity and the quality of life in certain respects (see, *mutatis mutandis*, *Pretty v. the United Kingdom*, no. 2346/02, § 65, ECHR 2002-III). It has examined several cases involving the problems faced by transgender persons in the light of present-day conditions, and has noted and endorsed the evolving improvement of State measures to ensure their recognition and protection under Article 8 of the Convention (see, for example, *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, ECHR 2002-VI; *Van Kück v. Germany*, no. 35968/97, ECHR 2003-VII; *Grant v. the United Kingdom*, no. 32570/03, ECHR 2006-VII; and *L. v. Lithuania*, no. 27527/03, § 56, ECHR 2007-IV). Whilst affording a certain margin of appreciation to States in this field, the Court has nevertheless held that States are required, by their positive obligation under Article 8, to implement the recognition of the gender change in post-operative transgender persons through, *inter alia*, amendments to their civil-status data, with its ensuing consequences (see, for example, *Christine Goodwin v. the United Kingdom* [GC], cited above, §§ 71-93; and *Grant v. the United Kingdom*, cited above, §§ 39-44).

38. The Court reiterates that Article 12 of the Convention is the *lex specialis* for the right to marry. It secures the fundamental right of a man and woman to marry and to found a family. Article 12 expressly provides for regulation of marriage by national law. The Court points out that Article 12 of the Convention enshrines the traditional concept of marriage as being

between a man and a woman (*Rees v. the United Kingdom*, 17 October 1986, § 49, Series A no. 106). While it is true that some Contracting States have extended marriage to same-sex partners, this reflects their own vision of the role of marriage in their societies and does not flow from an interpretation of the fundamental right as laid down by the Contracting States in the Convention in 1950 (see *Parry v. the United Kingdom* (dec.), no. 42971/05, 28 November 2006; *R. and F. v. the United Kingdom* (dec.), no. 35748/05, 28 November 2006; and *Schalk and Kopf v. Austria*, no. 30141/04, § 58, ECHR 2010).

(b) Application of these principles

i. Applicability of Article 8 of the Convention

39. The Court notes that it is not disputed between the parties that Article 8 is applicable.

40. In this connection the Court notes that the applicant sought to have her identity number changed from a male to a female one as, having undergone gender re-assignment surgery from male to female, her old male identity number no longer corresponded to reality.

41. The Court has held on numerous occasions that an applicant who is post-operative transgender may claim to be a victim of a breach of his or her right to respect for private life contrary to Article 8 of the Convention due to the lack of legal recognition of his or her change of gender (see for example *Grant v. the United Kingdom*, cited above, § 40; and *L. v. Lithuania*, cited above, § 59). The fact that the present case also involves issues which may have implications for the applicant's family life, does not prevent the Court from examining the main issue raised by the applicant, namely the inability to obtain a female identity number, under the "private life" limb of Article 8 of the Convention.

42. Accordingly, the facts of the case fall within the ambit of Article 8 of the Convention and within the scope of the concept of "private life".

ii. Whether the case involves a positive obligation or an interference

43. The Court recalls that the boundaries between the State's positive and negative obligations under Article 8 of the Convention do not lend themselves to precise definition. The applicable principles are nonetheless similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see *Keegan v. Ireland*, 26 May 1994, § 49, Series A no. 290).

44. The Court observes that it is common ground between the parties that there has been an interference with the applicant's right to respect for her private life in that she was not granted a new female identity number.

The Court finds no reason to conclude otherwise. The Court will therefore examine whether this interference was justified by Article 8 § 2 of the Convention.

iii. Whether the interference was "in accordance with the law" and pursued a legitimate aim

45. The Court notes that both the applicant and the Government also agree that the interference had a basis in national law, namely in section 2, subsection 1, of the Act on Confirmation of the Gender of a Transsexual, and that it was thus "in accordance with law". The Court considers that the interference also pursued the legitimate aim of protecting the "health and morals" and the "rights and freedoms" of others, as argued by the Government.

iv. Whether a fair balance was struck

46. The Court observes that it is on the question of necessity in a democratic society and the proportionality of the impugned measures that the parties' views differ. The applicant claims in essence that there were no justifiable grounds to require her to divorce in order to protect her privacy. The Government, on the other hand, argue in essence that the applicant had a possibility, without divorcing, to obtain a female identity number and that the system in place was not disproportionate.

47. The Court notes that the applicant and her spouse were lawfully married under domestic law and that they wished to remain married. In domestic law marriage is only permitted between persons of opposite gender and same-sex marriages are not permitted. The applicant could obtain a new identity number as a woman only if her spouse consented to their marriage being turned into a civil partnership. If no such consent was obtained, the applicant had a choice between remaining married and tolerating the inconvenience caused by the male identity number, or divorcing her spouse.

48. The Court considers that in the present case there are two competing rights which need to be balanced against each other, namely the applicant's right to respect for her private life by obtaining a new female identity number and the State's interest to maintain the traditional institution of marriage intact. Obtaining the former while remaining still married would imply a same-sex marriage between the applicant and her spouse, which is not allowed by the current legislation in force in Finland.

49. The Court reiterates that according to its case-law, Article 12 does not impose an obligation on Contracting States to grant same-sex couples access to marriage. Nor can Article 8, a provision of more general purpose and scope, be interpreted as imposing such an obligation (see *Schalk and Kopf v. Austria*, cited above, § 101). The Court has also held that the matter of regulating the effects of the change of gender in the context of marriage

falls within the appreciation of the Contracting State (see *Christine Goodwin v. the United Kingdom* [GC], cited above, § 103). The Court notes that consensus on same-sex marriages is evolving in the European context, and that some Council of Europe Member States have already included such a possibility in their domestic legislation. In Finland, however, this possibility does not exist even though such a possibility is currently being examined by Parliament. On the other hand, the rights of same-sex couples are currently protected by the possibility to register a civil partnership.

50. While it is true that the applicant faces daily situations in which the incorrect identity number creates inconvenience for her, the Court considers that the applicant has a real possibility to change that state of affairs: her marriage can be turned at any time, *ex lege*, into a civil partnership with the consent of her spouse. If no such consent is obtained, the applicant has the possibility to divorce. For the Court it is not disproportionate to require that the spouse give consent to such a change as her rights are also at stake. Nor is it disproportionate that the applicant's marriage be turned into a civil partnership as the latter is a real option which provides legal protection for same-sex couples which is almost identical to that of marriage.

51. Moreover, although there is a child from the marriage, there is no suggestion that this child, or any other individual, would be adversely affected if the applicant's marriage were turned into a civil partnership. As the Government noted, the applicant's rights and obligations arising either from paternity or parenthood would not be altered if her marriage were turned into a civil partnership.

52. Therefore, the Court considers that the effects of the Finnish system have not been shown to be disproportionate and that a fair balance has been struck between the competing interests in the present case. The interference with the applicant's right to respect for her private life was thus justified under the circumstances of the present case. There has accordingly been no violation of Article 8 of the Convention.

v. Article 12 of the Convention

53. The Court observes that the issue at stake in the present case does not as such involve any issue under Article 12 of the Convention which guarantees a right to marry. The applicant has been legally married since 1996. The issue at stake rather concerns the consequences of the applicant's change of gender for the existing marriage between her and her spouse, which question has already been examined above under Article 8 of the Convention. In view of those findings the Court finds it unnecessary to examine the facts of the case separately under Article 12 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

54. The applicant complained under Article 14 of the Convention that by refusing to give her a female identity number, which corresponded to the actual state of affairs, the State was discriminating against her. The fact that she had been denied a female identity number revealed the confidential information of her being transgender because, unlike any other person, she had to explain this difference on every occasion when the identity number was required.

55. Article 14 of the Convention reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

56. The Government contested that argument.

A. Admissibility

57. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

58. The applicant argued that in the present case there was a difference in treatment between her and other persons who were in the same position but were not married. There was no objective and reasonable justification to this difference in treatment and it was not proportionate.

59. The Government accepted that Article 14 of the Convention was applicable in the present case as the case fell within the scope of Articles 8 and 12 of the Convention. The applicant could not have been treated differently on the basis of her being transgender as the impugned procedure was only applicable to transgender persons. The reason for the applicant's discriminatory experiences was the lack of legal recognition of the applicant's changed gender. As this question was examined under Article 8 of the Convention, no separate issue of discrimination arose in the present case.

60. Were the Court to have a different view, the Government argued that the impugned procedure and its consequences had an objective and reasonable justification. The means used were proportionate to the objectives, considering in particular that the legal effects of a civil

partnership were comparable to the legal effects of a marriage. The Finnish legal system provided protection against discrimination based on transgenderism. The requirement to turn a marriage into a civil partnership or vice versa after reassignment guaranteed equality between different couples. There was thus no violation of Article 14 of the Convention.

2. The Court's assessment

61. The Court notes that Article 14 of the Convention complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions, and to this extent it is autonomous, there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see, for instance, *E.B. v. France* [GC], no. 43546/02, § 47, 22 January 2008; *Karner v. Austria*, no. 40016/98, § 32, ECHR 2003-IX; and *Petrovic v. Austria*, 27 March 1998, § 22, *Reports of Judgments and Decisions* 1998-II).

62. It is undisputed in the present case that the applicant's situation falls within the notion of "private life" within the meaning of Article 8 of the Convention. Consequently, Article 14 taken in conjunction with Article 8 of the Convention applies.

63. The Court has established in its case-law that in order for an issue to arise under Article 14 there must be a difference in treatment of persons in relevantly similar situations. Such a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a difference in treatment (see *Burden v. the United Kingdom* [GC], no. 13378/05, § 60, ECHR 2008).

64. On the one hand the Court has held repeatedly that, just like differences based on gender, differences based on sexual orientation require particularly serious reasons by way of justification (see *Karner v. Austria*, cited above, § 37; *L. and V. v. Austria*, nos. 39392/98 and 39829/98, § 45, ECHR 2003-I; and *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 90, ECHR 1999-VI). On the other hand, a wide margin is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy (see, for instance, *Stec and Others v. the United Kingdom* [GC], no. 65731/01, § 52, ECHR 2006-VI). The scope of the margin of appreciation will vary according to the circumstances, the subject matter and its background; in this respect, one of the relevant factors may be the existence or non-existence of common

ground between the laws of the Contracting States (see *Petrovic v. Austria*, cited above, § 38).

65. Turning to the present case, the Court notes that the applicant's complaints under Article 14 relate to the impossibility of obtaining a female identity number. The applicant is comparing her situation to the situation of any other person, including non-transgender persons and unmarried transgender persons. For the Court these situations are not sufficiently similar in order to be compared to each other. The applicant cannot therefore claim to be in the same situation as the other category of persons relied on.

66. Moreover, the Court notes that in essence the problem in the present case is caused by the fact that Finnish law does not allow same-sex marriages. The Court has already noted above (see paragraph 50) that, according to its case-law, Articles 8 and 12 do not impose an obligation on Contracting States to grant same-sex couples access to marriage (see *Schalk and Kopf v. Austria*, cited above, § 101). Nor can Article 14 taken in conjunction with Article 8 be interpreted as imposing an obligation on Contracting States to grant same-sex couples a right to remain married. Therefore, in the light of these findings, it cannot be said that the applicant has been discriminated against vis-à-vis other persons when not being able to obtain a female identity number, even assuming that she could be considered to be in a similar position to them.

67. In conclusion, the Court finds that there has been no violation of Article 14 of the Convention taken in conjunction with Article 8.

III. REMAINDER OF THE APPLICATION

68. The applicant also complained under Article 3 of the Convention that by complicating the juridical side of changing gender the Finnish authorities had made themselves guilty of torture. She also complained under Article 14 of the Convention that she had been discriminated against because she had been denied reimbursement of certain medical costs to which other persons were entitled. She had been treated differently to any other person receiving medical treatment. Moreover, her wife was being placed in an unequal position *vis-à-vis* other spouses. Lastly, the applicant complained under Article 2 of Protocol No. 4 to the Convention that, due to the wrong indication of her gender in her passport, her freedom of movement was compromised.

69. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, this part of the application must be rejected as manifestly ill-founded and declared inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning Articles 8, 12 and 14 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 8 of the Convention;

3. *Holds* that there has been no violation of Article 14 taken in conjunction with Article 8 of the Convention;

4. *Holds* that there is no need to examine the case under Article 12 of the Convention.

Done in English, and notified in writing on 13 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Registrar	Lech Garlicki President