GenIUS

RIVISTA DI STUDI GIURIDICI
SULL'ORIENTAMENTO SESSUALE E L'IDENTITÀ DI GENERE

SAM CHOLLET

'Sex/Gender' and the Mirage of Non-Binary Identities in the European Court of Human Rights' Case Law

PUBBLICAZIONE TELEMATICA SEMESTRALE REGISTRATA PRESSO IL TRIBUNALE DI BOLOGNA · ISSN 2384-9495

online first

19 febbraio 2025

*Sam Chollet**

‘Sex/Gender’ and the Mirage of Non-Binary Identities in the European Court of Human Rights’ Case Law

Summary

Abstract

Negli ultimi vent’anni, la concezione di sesso e genere della Corte Europea dei Diritti dell’Uomo ha continuato ad evolversi. Difatti, recentemente, la Corte ha iniziato a usare i termini “sesso/genere”, suggerendo un cambiamento nella sua visione in tema di “sesso naturale” rispetto al “genere socialmente costruito”. "Questo articolo si chiede se questo potenziale spostamento verso una posizione di ‘iper-costruttivismo’ possa migliorare la protezione dei diritti umani per le persone non binarie. Tuttavia, nonostante gli sforzi compiuti per combattere gli stereotipi, la Corte mantiene una visione medicalizzata del processo di transizione che rafforza le identità binarie e nega l’autodeterminazione alle persone intersex, non binarie e dei genitori trans*. Sebbene le sentenze appaiano meno incentrate su una visione di genere in termini esclusivamente binari, la Corte continua a riferirsi al genere deli ricorrenti, titolari dei diritti umani, secondo una linea binaria, non riconoscendo le identità non binarie—un miraggio nella giurisprudenza della Corte.

For the last twenty years, the European Court of Human Rights’s conception of sex and gender has kept evolving. Recently, the Court’s use of the expression “sex/gender” suggests a change in its understanding of ‘natural sex’ versus ‘socially constructed gender.’ This article wonders whether this potential shift toward ‘hyperconstructivism’ might enhance human rights protection for non-binary people. However, the analysis of the most recent decisions shows that, despite efforts to challenge stereotypes, the Court retains a medicalised view of transitioning that reinforces binary identities and

* PhD Candidate and Teaching Assistant in International Human Rights Law at the VIP Research Centre of Université-Versailles-Saint-Quentin (UVSQ), Université Paris-Saclay (France), and a visiting scholar at Durham University (United Kingdom). This article was first presented at the 2024 Law and Global Justice seminar and among the members of the ‘Gender and Law at Durham’ (GLAD) research group of Durham University. Many thanks to the organisers and attendants to these events for their encouragements and valuable feedback – and in particular to Rüya Tuna Toparlak, University of Lucerne (Switzerland), for her careful reading and precious comments. Double-blind peer reviewed contribution.

denies self-determination to intersex, non-binary people, and trans parents. Although rulings appear less gendered, they are still gendering human rights holders alongside a binary line, leaving non-binary identities unacknowledged—a mirage in the Court's case law.*

1. Introduction

Today, most societies recognise only two identities, man and woman[1]. More specifically, sex and gender are generally conceived along the lines of both *binarity* and *dualism*. On the one hand, the binary implies that there exists two and only two sexes – male and female – and two genders – masculine and feminine. On the other hand, dualism conveys an opposition between what is natural and what is the result of a social construct. Following a 'nature/nurture' divide, it distinguishes between 'biological' sex and 'socially constructed' gender.

While this dualism has not always been endorsed by institutions and international organisations for the protection of human rights, it has become widely accepted in human rights law—most instruments established for the protection of human rights acknowledge a distinction between sex and gender. From a legal perspective, the main consequence of this distinction is the possibility to obtain the modification of one's identity documentation so that it reflects one's gender identity. In the European context, this possibility has mostly been obtained through litigation before the European Court of Human Rights (hereafter 'the ECtHR' or 'the Court').

After years of legal battles, the ECtHR delivered a landmark decision in 2002, in the case of *Christine Goodwin v. the United Kingdom*[2]. The court ruled that denying trans* people[3] who had undergone "sex-reassignment surgery" the right to obtain identity documents reflecting their "acquired" gender was a violation of their right to private life under Article 8 of the European Convention on Human Rights (hereafter 'the Convention'). This decision was a major turning point. By accepting that the gender marker should be detached from the chromosomal sex of individuals, the Court embraced an *anatomical* conception of gender, since people's official gender marker was to depend on the appearance of the genital organs of the person concerned once the surgical operation had been carried out. Only fifteen years later did the Court abandon this automatic link between sexual characteristics and gender. In *A.P., Garçon and Nicot v. France*[4], the Court ruled that making gender recognition conditional on a surgical operation leading to, or very likely to lead to, the sterilisation of the individual against their will constituted an infringement of their right to respect for private life. In so doing, European judges drew a further distinction between sex and gender. They moved towards a *psychiatric* model, in which gender no longer depended on anatomical sex, but on the identity of the person

1 However, this binary is far from being universal. See: C.G. Costello, « Beyond Binary Sex and Gender Ideology », in N. Boero et K. Mason, *The Oxford Handbook of the Sociology of Body and Embodiment*, Oxford, Oxford University Press, Incorporated, 2020. The author shows that European colonialists have imposed binary gender on colonialised territories in the name of civilisation, and spread the belief in the virtues of the medical science, leading to surgically eliminate such variations.

2 ECtHR 11 July 2002, *Christine Goodwin v. the United Kingdom*, No. 28957/95.

3 Throughout this article, the expression 'trans* people' will be used to encompass all people whose identity does not correspond to the sex they were assigned at birth. This term will be favoured over other expressions, such as 'transsexual', which carries a heavy medical background, and 'transgender', used in activists' groups.

4 ECtHR 6 April 2017, *A.P., Garçon and Nicot v. France*, No. 79885/12, 52471/13 and 52596/13.

concerned—understood in pathological terms[5].

These cases acknowledged the *constructed nature* of gender. But one feature was not questioned—its *binary nature*. Indeed, one downfall of opposing sex to gender is the reification of sex as natural, permanent, and irremediably binary. However, since the 1970s, multiple scholars have argued that sex is, as much as gender, a constructed concept. In that regard, Christine Delphy stands amongst the pioneers. Using a materialist lens to analyse women's oppression, she has upheld that gender, as the hierarchical division of humanity, transforms anatomical variations into defined and rigid social positions[6]. Following in her steps, Judith Butler advanced the constructed nature of the concept of 'sex', which is culturally produced by our gendered perceptions[7]. Since then, various scientists[8] agree in stating that the binarity of the sexes is more ideological than natural[9]. However, this so-called 'queer' conception of sex and gender has not yet been endorsed by international organisations and institutions.

The ECtHR's dualist current conception of sex and gender may be explained by the types of cases it was confronted to. Up until *A.P., Garçon and Nicot*, applicants to the Court had always belonged – at least in front of the Court – to defined categories of men or women. Moreover, most claimants argued for an incongruence between their sexual characteristics and their gender identity, thereby leading the Court to distinguish the two, and only allowing for a 'switch' from one sex category to another. Nevertheless, the *A.P., Garçon and Nicot* decision does seem to have triggered a change in the Court's approach. For the first time, the expression "sex/gender" was used[10]. While it resulted from a third-party intervention and was not a phrasing of the Court *per se*, judges did use it in later decisions. The terminological choice has been identified by Giovanna Gilleri as the endorsement by the Court of a "hyperconstructivist" conception of gender[11], according to which *both* sex and gender are culturally constructed. Thus, for the Court to embrace such a conception would mean that, sex being a construct, there is no binary nature it should correspond to. In other words, this shift could signal the Court's departure from mandatory binarity regarding sex and gender.

Such a conceptual change could have a tremendous impact on the rights of intersex and non-binary people. Intersex people are persons "who cannot be classified according to the medical norms

5 The distinction between anatomical and psychiatric conceptions of gender is further developed – and critiqued – in: D.A. González-Salzberg, « An Improved Protection for the (Mentally Ill) Trans Parent: A Queer Reading of *AP, Garçon and Nicot v France* », *The Modern Law Review*, vol. 81, n° 3, 2018, pp. 526-538.

6 See, *e.g.*, C. Delphy, *Close to Home: A Materialist Analysis of Women's Oppression*, Hutchinson, 1984.

7 J. Butler, *Gender Trouble: Feminism and the Subversion of Identity*, Paris, Routledge, 1990. See in particular pp. 10-11: "If the immutable character of sex is contested, perhaps this construct called 'sex' is as culturally constructed as gender; indeed, perhaps it was always already gender, with the consequence that the distinction between sex and gender turns out to be no distinction at all… This production of sex as the prediscursive ought to be understood as the effect of the apparatus of cultural construction designated by gender".

8 See, e.g., A. Fausto-Sterling, *Sexing the Body: Gender Politics and the Construction of Sexuality*, New York, Basic Books, 2e éd., 2020.

9 While I do think that the distinction between sex and gender has rich analytical value, in the following lines, I will use sex and gender interchangeably. Indeed, the difference loses its meanings when considering people's identity recognition, especially since the *A.P., Garçon and Nicot* decision, since an anatomical change is not necessary to obtain a legal identity change – the 'sex marker' on identity documents does not necessarily reflect their anatomy anymore. When referring specifically to anatomical features, I will use the phrase "sexual characteristics".

10 *A.P., Garçon and Nicot*, *ivi*, p. 2, para. 81.

11 G. Gilleri, « Gender as a Hyperconstruct in (Rare) Regional Human Rights Case-Law », *European Journal of Legal Studies*, n° 2, 30 novembre 2020, pp. 25-42, https://doi.org/10.2924/EJLS.2019.031.

of so-called male and female bodies with regard to their chromosomal, gonadal or anatomical sex"[12]. Upon birth, intersex babies have long been subjected to surgeries to make their bodies artificially 'fit' their assigned sex. Most of the time, they did not consent to these treatments, which were not justified by medical reasons either. Some intersex people then sought reparation for the harm caused, and a growing number of them is turning to Courts. Besides, non-binary people, persons who do not identify exclusively as a man or a woman, but "as being both a man and a woman, somewhere in between, or as falling completely outside these categories"[13], increasingly started seeking the legal recognition of their identity. They contested the legal sex which had been imposed on them upon birth and looked either for a third option to write on official documents, or for a non-gendered way of identifying them. If the latest case law signals a departure from binary and dualist genders, it could finally be the occasion to acknowledge the existence of non-binary identities, and the need to protect their human rights, including the right to gender self-determination.

Wishing to put this hypothesis to a test, this contribution seeks to analyse manifestations of the binary in the most recent case law of the Court, interrogate its perpetuation and question its consequences on the Court's decisions, their consistency and the definition of gender they convey. The objective is to understand how unquestioned principles – in this case, the gender binary – affect judicial decisions and perpetuate injustice and discrimination in access to human rights. For this purpose, fourteen decisions, delivered after *A.P., Garçon and Nicot* and dealing with the legal gender recognition (LGR) of trans* and intersex people, have been studied[14]. Through a thorough analysis of the Court's vocabulary and expectations towards the applicants, the analysis carried out concludes that, far from distancing itself from a mandatory binary gender, the Court has in fact reinforced its binary conception of gender. Instead of reflecting a genuine shift towards a more open conception of gender, the 'sex/gender' terminology in the Court's rulings depicts non-binary identities as a mirage: they seem visible from a distance, but vanish upon closer examination. The first section of this paper outlines the progressive disappearance of explicitly gendered and binary norms, picturing the gender binary as a vanishing ghost. The second section is concerned with the remaining consequences of the ideological belief in the gender binary. The last part concludes that the relationship between sex and gender in the eyes of the Court is blurrier than ever.

2. The Vanishing Binary: Progressive Disappearance of Explicitly Binary Norms

The Court's progressive erasure of explicit binary gender norms is manifest in form and substance. First, on a formal level, the Court engaged in efforts to neutralise gendered statements (2.1.); second, on a substantial level, it also thrived to lower its expectations regarding trans* people's right to self-determination (2.2.). However, it maintains a medical conception of trans* identities which confines them to a stereotypical pathway (2.3.).

12 Council of Europe Commissioner for Human Rights, "Human rights and intersex people", 2015. It is important to also note that these norms of femininity and masculinity are also influenced by social expectations.

13 Human Rights Campaign, "What does it mean to be non-binary?", n.d, https://www.hrc.org/resources/transgender-and-non-binary-faq.

14 All decisions are listed in the appendix to this article. Two cases involving intersex people have been left out – *Semenya v Switzerland*, and *M v France (dec.)*. While they are of utmost importance, they do not concern the legal gender recognition and their direct consequence *per se*, but about the protection of intersex people's physical integrity and dignity.

2.1. Neutralising Statements: Objectifying Requests

One notable development in the ECtHR's case law concerns the decreasing emphasis placed on the applicants' gender expression, *i.e.*, the way in which individuals manifest their gender through their physical appearance. For a long time, as if to underline the legitimacy of their demand, the Court would mention that the individuals had adopted a masculine demeanour, or even a feminine appearance. For example, the Court outlined that one applicant had "started to behave like a boy in his way of dressing"[15]; in another that their "physical appearance and social identity had long been female"[16], in yet another that the applicant's "social and family identity had already been male for a long time"[17]. These descriptions perpetuate traditional gender norms, placing trans* people into 'normal' and easily understandable categories[18].

Furthermore, this practice seemed incoherent with the Court's declared will to combat gender stereotypes. Indeed, in the landmark *Konstantin Markin* ruling – where a military man was refused a paternal leave – the Court held that "States may not impose traditional gender roles and gender stereotypes"[19]. This decision was the occasion for the Court to acknowledge the harmful nature of gender stereotyping, which it identified to be at the core of gender inequalities, However, Strasbourg judges have long failed to reciprocate this reasoning to non-cisgender individuals[20]. A positive development should therefore be read in *A.M. and others v. Russia*[21], where the Court found a violation of Article 14 combined to Article 8 in the treatment reserved to the applicant. The case dealt with the refusal of a woman's parental rights and her deprivation of contact with her children on the grounds of her trans* identity. The ECtHR called out the domestic courts for predominantly relying on psychiatric findings, despite the absence of any supporting scientific research on transgender parenthood and demonstrable harm to children. It therefore showed its willingness to address evident gender stereotypes affecting trans* people and questioning their right to family life based on their identity.

Similarly, the latest rulings point to the decline of stereotypes on the Court's side, as it seems to have less and less recourse to the physical description of the trans* people who come before it. In the two latest decisions studied, *R.K. v. Hungary*[22] and *W.W. v. Poland*[23], the Court did not refer once to the appearance nor behaviour of the applicant. This evolution should be welcomed, as it dismisses the applicants' physical traits as non-relevant for the purpose of their claims. It could be key in allowing gender non-conforming people to obtain LGR without having to conform to social expectations. However, this change is most likely due to these cases raising a new category of legal issues. Indeed, the first one dealt with the lack of clarity of the procedure to obtain legal gender recognition, and the second with the impossibility of a trans* woman to access hormonal treatment in jail. They were there-

15 ECtHR, 19 January 2021, *X and Y v. Romania*, No. 2145/16 and 20607/16, para.4; para.34.

16 ECtHR, 11 October 2018, *S.V. v. Italy*, No. 55216/08, para. 70.

17 ECtHR, 4 July 2024, *Y.T. v. Bulgaria*, No. 41701/16, para. 71.

18 R. Sandland, « Crossing and Not Crossing: Gender, Sexuality and Melancholy in the European Court of Human Rights. *Christine Goodwin v. United Kingdom* », *Feminist Legal Studies*, vol. 11, n° 2, 1 mai 2003, pp. 191-209.

19 ECtHR, 22 March 2012, *Konstantin Markin v. Russia*, No. 30078/06.

20 For a further discussion on this issue, see: C. Hansen, « Dismantling or Perpetuating Gender Stereotypes. The Case of Trans Rights in the European Court of Human Rights' Jurisprudence », *The Age of Human Rights Journal*, n° 18, 23 juin 2022, pp. 143-161, https://doi.org/10.17561/tahrj.v18.7022.

21 ECtHR, 6 July 2021, *A.M. and others v. Russia*, No. 47220/19.

22 ECtHR, 22 June 2023, *R.K. v. Hungary*, No. 54006/20.

23 ECtHR, 11 July 2024, *W.W. v. Poland*, No. 31842/20.

fore not explicitly concerned with the requirements expected from trans* people to be legal recognised in their gender, but rather focused on the State's procedural failures, perhaps explaining the lack of description of the applicants.

2.2. Proceduralising Complaints: Closing the 'In-Between' Door

This procedural focus leads the Court to expect the national gender recognition process to be "quick, transparent and accessible". These criteria stem from a Recommendation addressed by the Council of Europe Committee of Ministers to Contracting States in 2010[24]. In *X v. the former Yugoslav Republic of Macedonia*[25], they were explicitly mentioned in a third-party intervention and endorsed in the Court's ruling. While this is a positive development enhancing the effectiveness of LGRs, the reasons behind it are highly deceptive. What prompts the Court to declare a violation is the *intermediate* situation in which the applicants are placed, having undergone a gender transition without their gender being legally recognised. The Court uses the standard set up in *Goodwin*, according to which States cannot put the applicant "in an anomalous position, in which he or she may experience feelings of vulnerability, humiliation and anxiety"[26]. Nowadays, judges repeatedly mention the situation of "distressing uncertainty"[27] experienced by the applicants, who are "placed […] for an unreasonable length of time in an anomalous position" being the source of a "permanent sense of being inadequate, and of anxiety and embarrassment"[28]. Therefore, positive obligations of transparency and efficiency mostly are not commanded by the applicant's dignity, or the need for consistency between their identity and their legal documents, but rather serve as a way of preventing people from being "in between" sexes for too long.

In *X and Y v. Romania*, the Court admitted that, although the applicant had eventually obtained a positive decision in another country, the fact that he had suffered from the effects of a refusal to legally recognise his gender for more than five years constituted a breach of the Convention, which neither the subsequent favourable decision nor the measures taken by the domestic authorities expressly acknowledged[29]. However, when a similar situation arose in *Y.T. v. Bulgaria*, the Court made it clear that one should personally suffer from the State's deficient legislation to meet the 'victim' condition set by Article 34. Indeed, in a revision of the case in 2024, the Court finally decided to declare the application inadmissible because of the later discovery that the applicant had, in parallel to his application to the ECtHR, obtained recognition of his gender in Bulgaria[30]. Therefore, the Court considered him not to be affected by the lack of Bulgarian legislation.

The reasons that support the need for quick, transparent and accessible procedures uphold the idea of the need to escape the incongruous situation of having started a transition journey before being granted LGR. The cause for the violation is not so much the non-existence or lack of clarity of the legislation, *i.e.* the technical impossibility of legally transitioning, but the supposedly intense suffering that

24 CM, *Recommendation CM/Rec(2010)5 of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity*, 31 March 2010.

25 ECtHR, 17 January 2019, *X v. the former Yugoslav Republic of Macedonia*, No. 29683/16.

26 ECtHR, *Christine Goodwin v. the UK, ivi* p. 2, para. 77.

27 *Ibid*., para. 70.

28 ECtHR, *Y.T. v. Bulgaria, ivi* p. 5, para. 51 (translation my own).

29 ECtHR, *X and Y v. Romania, ivi* p. 4, para. 168.

30 ECtHR, 4 July 2024, *Y.T. v. Bulgaria (revision)*, No. 41701/16.

the applicants experience due to the discrepancy between their identity and their official documentation. While some authors saw the mention of this in-between state as the Court's implicit validation of queer lives[31], this contribution rather considers it to reflect the Court's view that the very idea of being *in between two sexes* is a source of humiliation, anxiety and shame – something one should want to escape.

2.2. Pathologising Transitions: Medical Gatekeeping

Two major legal battles have been fought before the ECtHR to facilitate LGR processes in Europe. The first concerns the lack of necessity to undergo sex reassignment surgery. Since *A.P., Garçon and Nicot*, the Court estimates that making people go through potentially sterilising treatments is placing them in front of an impossible dilemma, asking them to choose between their gender identity and their physical integrity – it therefore amounts to a violation of Article 8. More recently, *Y. v. the ex-Yugoslavian Republic of Macedonia*[32], *X and Y v. Romania*[33], and *A.D. and others v. Georgia*[34] made it clear that such a requirement is also a violation of the Convention when it stems from the lack of clarity of the legislation. This is undeniably a significant advancement for the right of any trans* and/or gender non-conforming person, since it recognises the diverse ways individuals experience and express their gender. Non-binary people then have greater control over their bodies and can opt for the procedures that make them feel most comfortable – if any – without external pressure. On a practical level, removing this obligation also enhances access to legal transitions, since medical operations can be very costly and prevent people from engaging in the LGR process.

However, even if not mandatory, sex reassignment surgery is still thought of as the ultimate goal of the transition – as putting an end to it[35]. In the Court's paradigm, transition is conceived as a two-stage process (pre-op/post-op), and judges refer to the distinction between 'pre-operative transgender people' and 'post-operative transsexual people'[36]. This is consistent with the Court's pathological approach to transness, where physical surgeries and hormonal treatment are seen as a 'cure' to gender dysphoria[37]. For example, in *Y.T. v. Bulgaria*, the Court referred to a report which confirmed the applicant as presenting "the characteristics of a true transsexualism", with a conscious and permanent identification with the male sex"[38].

The second major challenge faced by trans* applicants, and especially those who do not conform to typical representations of masculinity and femininity is the requirement of a psychological or psy-

31 D.A. González-Salzberg, *Sexuality and Transsexuality under the European Convention on Human Rights: A Queer Reading of Human Rights Law*, Oxford London New York New Delhi Sydney, Hart, 2019, p. 37.

32 ECtHR, *Y v. the ex-Yugoslavian Republic of Macedonia*, *ivi* p. 6.

33 ECtHR, *X and Y v. Romania, ivi* p. 4.

34 ECtHR, 1 December 2022, *A.D. and others v. Georgia*, No. 57864/17, 79087/17 and 55353/19.

35 This is evident in *S.V. v. Italy, ivi* p. 5, para. 75: "the gender reassignment process had not yet been *concluded* by means of gender reassignment surgery".

36 However, the decisions which are only available in French do consistently use the word "transsexual", regardless of whether they underwent genital surgery. Similarly, they mention "sexual identity" and not "gender identity" (cf. *Y.T. v. Bulgaria*, *ivi* p. 5, para. 51: « le requérant, qui s'identifie comme un transsexuel »).

37 P. Cannoot, « The pathologisation of trans* persons in the ECtHR's case law on legal gender recognition », *Netherlands Quarterly of Human Rights*, vol. 37, n° 1, 2019, pp. 14-35, https://doi.org/10.1177/0924051918820984.

38 ECtHR, *Y.T. v. Bulgaria*, *ivi* p. 5., para. 8.

chiatric diagnosis. Indeed, although the Court does not require a psychological diagnosis *per se* anymore, it still tolerates that States do[39]. Therefore, many States still include mental health diagnoses as part of the LGR process[40]. The diagnosis often amounts to expecting trans* people to experience "gender dysphoria", according to which a contradiction exists within the individual between a gendered psychic identity and the sexed body, one not being "coherent" with the other[41]. Therefore, diagnosis and surgery requirements are means of ensuring that the applicants are "really" trans*, and that the legal recognition of their gender is *justified*. Moreover, the reality of this medically imposed condition is assessed within a binary framework. This is obvious in the arguments of the States, which admit that assessing the psychological state of the trans* applicant is "a means of ensuring that people who are not really transgender" do not engage in a process of transition in an ill-considered manner[42]. These fears are embedded in the belief that there exists 'true' and 'false' trans* people, which has been upheld by the Strasbourg judges for a long time[43]. They are nowadays backed up by State's concerns over the principle of the unavailability of the civil status, the guarantee of its reliability and consistency and, more broadly, the requirement of legal certainty, which justify the introduction of rigorous procedures aimed at verifying the underlying reasons for a request for a legal change of identity[44].

In fact, the very requirement that trans* identity be "true" or "authentic" is contradictory to the possibility of recognising non-binary identities, as these are considered unstable and unauthentic. States' reluctance to let go of the diagnosis requirement betrays their wish to avoid granting LGR to people who are, in fact, *neither a man nor a woman*. This was explicitly outlined by the defending State in *A.D. and others v. Georgia*, where the domestic court contended that "one of the medical opinions diagnosed the applicant as exhibiting psychological traits of *both* a man and a woman"[45], which served as a basis for refusing to grant the applicant with a new legal identity. Therefore, the medical approach to gender identity "forces [people] to rigidly conform themselves to medical providers' opinions about what 'real masculinity' and 'real femininity' are"[46], and establishes "clear boundaries between 'legitimate' and 'illegitimate' positions for transgender persons as human rights holders"[47], where there is no room for in-between or beyond identities.

However, the issue of medical expertise and gender transitioning, while putting the Court and

39 The last applicant's claim in, *Garçon and Nicot* (*ivi*, p. 2, para. 154) concerning the obligation to undergo a traumatic medical examination was rejected, as this medical diagnosis was considered to not be a breach of Article 8, since the State struck a fair balance between competing interests – namely, the necessity to evaluate the *need* to transition and the rights of the individual.

40 The non-governmental organisation Transgender Europe establishes that 25 European countries still do. See: Trans rights map, n.d., available online: https://transrightsmap.tgeu.org (last accessed May 5th, 2024).

41 É. Lépinard et M. Lieber, *Les théories en études de genre*, Paris, la Découverte, 2020, p. 92 (translation my own).

42 ECtHR, *Y.T. v. Bulgaria, ivi* p. 5, para. 191.

43 See, *e.g.*, the dissenting opinion in ECtHR 25 March 1992, *B. v. France*, No. 13343/87, where six judges (Matscher, Pinheiro Farinha, Pettiti, Valticos, Loizou et Morenilla) critiqued the majority's lack of distinction between 'true' and 'false' transsexuals.

44 See ECtHR, *S.V. v. Italy*, *ivi* p. 5, para. 69; ECtHR, *Y.T. v. Bulgaria, ivi p. 5*, para. 70; ECtHR, *X and Y v. Romania, ivi* p. 4, para. 158.

45 ECtHR, *A.D. and others v. Georgia*, *ivi* p. 7, para. 31 (italics my own).

46 D. Spade, « Resisting Medicine, Re/Modeling Gender », *Berkeley Women's Law Journal*, vol. 18, n° 1, 2003, pp. 15-39., pp. 27-28, https://digitalcommons.law.seattleu.edu/faculty/592/.

47 F.R. Ammaturo, *European Sexual Citizenship: Human Rights, Bodies and Identities*, London, Springer International Publishing, 2017, p. 75.

medical experts in a paternalistic position, should not be overly simplified. Indeed, it remains important for many trans* people that their medical transition, including hormonal treatment and/or surgery, be recognised by the State, as this often guarantees coverage by their social insurance. Nevertheless, it is important that the 'wrong body' narrative is not the only one mentioned before the judges, so that different stories of transitioning are heard and become valid. There are people whose identity does not correspond to the sex they were assigned at birth, regardless of their bodies. Besides, decorrelating gender transitioning from medical treatment is not incompatible with providing free access to gender-affirming care, since most people who benefit from gender-affriming care are actually cisgender people[48]. But parallels between cisgender and trans* people rarely take place in front of the Court, since judges almost systematically dismiss applicants' discrimination claims to focus on the 'impossible dilemma' created by medical expectations[49]. This further diminishes the possibilities to obtain a right to gender self-determination, as the Court claims to support. Such a right is actually incompatible with any checking procedure, especially for those who do not match expected behaviour and appearance.

The Court's latest decisions manifest its endeavours to *de-gender* its case law. Indeed, it has neutralised statements which were previously *explicitly* binary. Applicants are not expected to adopt a stereotypical behaviour, the obligations laying on States are merely procedural and the pathologisation of trans* journeys is less intense as to allow different bodies to access LGR. However, gender binarity is still haunting the decisions, and non-binary identities are conceived as anomalous situations. On the applicants' side, transitions are thought of being a source of suffering, thereby leading to positive procedural obligations imposed on States in order to avoid a lengthy indeterminate situation. On the States' side, trans* identities are considered a source of uncertainty and as a threat to national stability, thereby legitimising procedures made at ensuring their authenticity – *i.e.*, their binary gender.

The Court's polished vocabulary and the progressive vanishing of explicitly binary norms do not allow for a conceptualisation of sex and gender beyond the binary. Moreover, it leads to very concrete consequences on trans* and intersex people's rights, which the Court seems to have reinforced in its latest decisions.

3. The Consequent Binary: 'Sex/Gender' as a Mirage

The progressive erasure of gendered references in the Court's decisions does not prevent it from reinforcing the consequences attached to the gender binary. This movement can be witnessed in two series of unprecedented cases: the first one concerning the recognition of a neutral gender in civil status (3.1.) and the second one dealing with trans* people's parental rights (3.2.).

3.1. Refusing a Third Gender

The most direct consequence of the upholding of the binary by the Court is its refusal to allow the

48 See: T.E. Schall et J.D. Moses, « Gender-Affirming Care for Cisgender People », *Hastings Center Report*, vol. 53, n° 3, 2023, pp. 15-24, https://doi.org/10.1002/hast.1486.

49 Rachel Moss, "No XI Chromosome? Europe's Tumultuous Relationship with Gender Difference Laid Bare in *X and Y v Romania*", *Australian International Law Journal*, 2021, No. 28, pp. 219-227, at. p. 226.

recognition of a so-called "third gender". This refusal is enshrined in the *Y v. France* case[50], which was the first opportunity for the Court to rule on the question of the obligation of States Parties to allow the registration of gender beyond male/female. The applicant was an intersex person who requested that their gender in civil status be changed from "male" to "neutral" and considered that the domestic courts' refusal to allow this change was a breach of Article 8. They framed their request in terms of a negative obligation on the part of the State, which had illegally interfered in their right to private life. However, domestic courts rejected their claim, mentioning, *inter alia*, the difficulty of answering an issue raising such "sensitive biological, moral or ethical questions". In particular, the French *Cour de cassation* outlined that the "recognition by the courts of a 'neutral sex' would have far-reaching repercussions on the rules of French law, which are based on the binarity of the sexes, and would require numerous legislative amendments to coordinate them"[51].

The ECtHR followed the domestic courts in considering that the case raised the question of whether a third gender marker should be created in French law *in general*. It therefore analysed the situation from a 'positive obligation' angle, which led to, *inter alia*, granting a wider margin of appreciation to the State, giving greater weight to its arguments. In particular, the Court referred explicitly, and on numerous occasions, to one of the main arguments put forward by the French representative, the principle of a "binarity of the sexes". This decision has been criticised as displaying the Court's biases[52] as well as a "reversed logic"[53], since the desired results were obtained through a twisting of the reasoning.

In relation to the gender binary, the most puzzling aspect of the case is its relationship with the ECtHR's case law on trans* people. Indeed, while trans* and intersex people's claims are not similar, they are interrelated. They are concerned with the right to physical integrity—whether to be granted access to them, or to forbid unconsented surgeries—and the right to self-determination of their gender—be it independently from their anatomy, or in relation to their biological features. Therefore, when confronted to such claims, the Court is asked to evaluate the weight of biology in people's identification, *i.e.,* the determining aspect of a supposed natural binarity of the sexes in the identification of individuals. Whereas, in *Y v. France*, the Court itself started by noting that the case "does not concern the question of gender self-determination"[54], throughout the decision, judges kept drawing parallels between the two categories of claims[55]. The Court's position is therefore highly ambiguous.

A commonality between the two strands of case law seems to be the Court's wish not to uphold blatant gender stereotypes. However, this concern led to contradictory and paradoxical results. At the domestic level, several courts had relied on the applicant's appearance as well as their marital and parental status – the applicant being married to a woman with whom they had a child – to reject their claim of having an "intersex" gender identity. Refusing to give legal weight to these arguments, the Court insisted that appearance and social behaviour alone should not be the reason one is granted LGR. In making this comment, judges proved their understanding of the differences between sexual

50 ECtHR, 31 January 2023, *Y v. France*, No. 76888/17.

51 *Ibid*., para. 16.

52 O. Bui-Xuan, « L'absence de reconnaissance juridique à l'état civil des personnes intersexes ne viole pas l'article 8 de la Convention européenne des droits de l'homme. La prudence de la Cour européenne des droits de l'homme face au dépassement de la bicatégorisation des mentions de sexe à l'état civil (obs. sous Cour eur. dr. h., arrêt *Y c. France*, 31 janvier 2023) », *Revue trimestrielle des droits de l'Homme*, vol. 136, n° 4, 2023, pp. 1117-1141, p. 1129.

53 J. Mattiussi et B. Moron-Puech, « "Sexe neutre" à la Cour européenne : l'art du syllogisme inversé ? », *La Semaine Juridique*, n° 7, 20 février 2023, https://sexandlaw.hypotheses.org/files/2023/02/Y-c.-France-BMP-JCP.pdf.

54 *Y v. France, ivi* p. 9., para. 44.

55 O. Bui-Xuan, *op. cit.*

orientation, gender expression and gender identity. Even though these characteristics can be interrelated[56], they are far from being irremediably linked. However, one can wonder what exactly, then, should be the criteria for the LGR of intersex people[57]. On the one hand, the Court refused to rely on social perception or outlooks; but on the other, it did not give legal meaning to their biology either. A mysterious difference was made in the treatment of trans* and intersex people—while the former are expected to adapt their social behaviour to their 'claimed' gender, the latter's appearance is deemed irrelevant, while their biological features are also considered meaningless for the purpose of their legal identification.

Another point of contention is the identity loophole in which intersex applicants are placed. The Court outlined that the discrepancy between "the biological identity and the legal identity of the claimant" put them in a situation "likely to cause suffering and anxiety" [58], which is reminiscent of its reasoning in trans* cases. However, it failed to apply the same consequences to this finding as in trans* cases. Thus, while moving *across* the binary is acceptable—in situations of despair, exiting the binary remains unachievable.

Y v. France is therefore hardly understandable without recourse to the gender binary ideology, as it is a clear example of how unquestioned beliefs about the existence of two sexes can influence the outcome of a decision. Indeed, third-party interveners to the case underlined the dangerous potential of the gender binary, by establishing a clear link between binary registration systems and the so-called "normalisation" genital surgeries performed on intersex children, which the Court also seems prepared to classify as acts of torture or inhuman or degrading treatment[59]. Moreover, the documents referred to by the Court repeatedly emphasised the artificial nature of the gender binary[60]. Nevertheless, the ECtHR decided to give meaningful importance to the arguments put forward by the States, in particular "the grounds of respect for the principle of the unavailability of personal status and the need to preserve the consistency and security of civil status records and the social and legal organisation of the French system"[61]. In this decision, rather than answering the question it was asked, the Court seems to have yielded to what might be termed social consequentialism, *i.e.* anticipating the *consequences* of a decision within society to orientate its result. In fact, the Court itself justified its very cautious decision with the sensitivity of the topic: invoking the moral debates that the issue of intersexuation supposedly leads to, judges estimated that they should adopt a "reserved attitude"[62]. This conception of the role of a regional court established for the protection of human rights is decidedly questionable—and definitely not a source of hope for all people whose rights generate no "European consensus".

56 See further: E. Beaubatie, *Transfuges de sexe : passer les frontières du genre*, Paris, La Découverte, 2021. The sociologist notably explains how sexual orientation can evolve following a gender transition.

57 V. A. Boisgontier, « Absence de reconnaissance d'un « sexe neutre » : la Cour européenne des droits l'Homme joue la carte de la prudence », *La Revue des droits de l'homme*, 23 April 2023, https://journals.openedition.org/revdh/17199.

58 *Y v. France, ivi* p. 9., para. 83.

59 D. Alaattinoğlu, « Intersex Interventions as Human Rights Violations: The European Court of Human Rights Sets Out Guiding Principles in *M v France* », *The Modern Law Review*, vol. 86, n° 5, 2023, pp. 1265-1277, https://doi.org/10.1111/1468-2230.12795.

60 For instance, a report by the French independent institution *Défenseur des Droits* noted that, since "some individuals have so-called ambiguous sexual characteristics, and all levels of interaction between these different male or female characteristics are possible, […] knowing the decisive level of masculinity or femininity in an individual can be an endless quest" (para. 21, translation my own).

61 *Y v. France*, *ivi* p. 9, para. 89 (translation my own).

62 *Ibid*., para. 91.

A similar reasoning, as well as an excessive reliance on the consistency of civil status records, can be identified in two later cases, which illustrate the strengthening of the gender binary's consequences on claimants' rights.

3.2. Denying Trans* Parents' Rights

In 2023, in two unprecedented cases, *O.H. and G.H. v. Germany*[63], and *A.H. and others v. Germany*[64], the applicants were a trans* man and a trans* woman. They had been respectively registered as the "mother" and "father" of their biological children, *i.e.*, in contradiction with their gender in the civil status records. However, in both instances, the ECtHR ruled unanimously that these situations did not violate their right to respect for private and family life.

The decisive argument seems to have been the nature of German law on parental roles, which is "based on the procreative function of each parent, according to their biological sex"[65]. The domestic courts, the Government and the ECtHR insisted on the fact that these parental roles are "not interchangeable"[66]. Indeed, German law applies the '*mater semper certa est*' principle, according to which there is an "immutable legal connection between the child and the mother, *i.e.*, the person who gave birth to the child"[67]. This is perhaps the crux of the problem: this conception of parenthood as divided between two opposing and 'complementary' roles is based on gender binarity as much as it reinforces it. Furthermore, while parental responsibilities are conceived as complementary, they are not considered on an equal footing. While the (cis)father can choose whether to recognise the child—regardless of his biological link to them—the mother is not granted this possibility, as she is irrevocably the person who gives birth. This situation amounts to a difference in treatment between women and men, but also between homosexual and heterosexual parents and trans* and cisgender people. Indeed, the applicants in *A.H.*, two women, claimed that the situation amounted to discrimination based on sexual orientation – since a heterosexual couple, even if one of the members were trans*, would have had the opportunity to register the two parents while still respecting their gender identity. But the difference in treatment is once again justified by resorting to nature and biology, as the government simply retorted that "the recognition of maternity is not comparable to that of paternity"[68].

A second argument—linked to the former—put forward by the Government and endorsed by the Court is the need to ensure the consistency of identification documents (IDs)[69]. However, this objective leads to absurd consequences, since the parent's gender identity, which is reflected on their ID, is deprived of any useful effect. In other words, while it is mandatory for a State to legally recognise the gender of their citizens, untied to their biological features, these biological features are given particular meaning when it comes to attaching legal consequences to their gender—that a woman be called a mother of her child. Furthermore, the accuracy argument seems biased, since the question of the 'co-

63 ECtHR, 4 April 2023, *O.H. and G.H. v. Germany*, No. 53568/18 and 54741/18.

64 ECtHR, 4 April 2023, *A.H. and others v. Germany*, No. 7246/20.

65 *O.H. and G.H., ivi* p. 11, para. 94; *A.H. and others, ivi* p. 11, para. 98.

66 *Ibid*., para. 121.

67 *Ibid*., para. 98.

68 *Ibid*., para. 139.

69 The Government called to "the coherence of the legal system and the accuracy and completeness of civil-status registers, which have a special evidential value in German law" (*O.H. and G.H., ivi*, p. 11, para. 97; *A.H. and others, ivi*, p. 11, para. 101, translation my own).

herence with what' is not raised. In the case of O.H., who is a single father, where is the consistency when his child's birth certificate indicates the presence of a 'mother'… who does not exist? It seems that the true nature of the argument is, as the applicant points out, "the assumption of an intangible public interest consisting in maintaining the binary legal order based on the duality of the sexes"[70].

From the States' point of view, the main advantage of a rigid and binary gender registration system is its permanency. In endorsing this argument, the Court seems to share States' concerns about the inconsistency inherent to gender transitioning. However, States cannot justify this fear with the administrative processes that LGR entails, as the ECtHR has recalled time and time again that this is not acceptable, notably given the few people who would be concerned[71]. Therefore, Germany invoked another principle—children's well-being and primary interest. According to the German Federal court, the weight given to the biological functions of each parent in parentage law specifically aims at guaranteeing the stability of the parental link, "even in the event [...], more than merely theoretical, that the transgender parent applied to have the gender-change decision set aside"[72]. The Federal Court's reason for refusing to register the applicant as the child's mother reveals its objective of protecting the child from a risk of "de-transition" – or, more accurately, re-transition – of their mother. This argument is based on two considerations. First, on the Court's fear that trans* people might 'regret' their transition. However, what the Court does not mention is that retransitioning – a marginal phenomenon[73] – rather than being a simple change of mind, is mainly caused by hostile reactions from society, family and friends. In a way, by refusing to give effect to the claimants' gender identity, the ECtHR contributes to creating a transphobic environment, thereby leading to retransitions[74]. Second, invoking the child's interest as contrary to their parent's gender identification implies drawing a hierarchy between rights, with the former being superior to the latter. For instance, the consideration of children's rights commands that the parents are registered under the sex they were assigned at birth, but also that their original first names be indicated on the birth certificate. Starting from the presupposition that there is a contradiction between children's rights and the respect for one's name implies not only that the instability of trans* lives is harmful, but also that the knowledge by third parties of a parent's transidentity is an infringement of the child's rights. Opposing the two is therefore yet another strategy to make trans* people's rights unworthy of the same level of protection as other rights.

What does this all have to do with reinforcing the gender binary? In these two judgments, the Court placed parenthood in an inescapable binary, because the two different roles associated with reproduction were linked to two distinct and opposed social roles. It proceeded to a *biologisation of gender*, by attaching social consequences to biological facts. In this case, giving birth was irremediably linked to being a 'mother'. Instead of moving towards a hyperconstructivist approach of "sex/gender", the Court here seems to be returning to an essentialist view of "sex-and-gender" that equates the two at the cost of biological determinism, which feminists have been fighting for decades.

70 ECtHR, *O.H. and G.H., ivi* p. 11, para. 90 (translation my own).

71 In 2002, the Court used the little number of trans* people to undermine the difficulties posed by any major change in the system, which would be "manageable and acceptable if confined to the case of fully achieved and post-operative transsexuals" (*Christine Goodwin, ivi.* p. 2, para. 91).

72 ECtHR, *A.H. and others, ivi* p. 11, para. 127 (translation my own).

73 In *O.H.*, the Federal court even recalled that, between 2011 and 2013, ten people had retransitioned in Berlin alone (para.21). While this is used to outline the existence of such practice, this number sounds insignificant, mostly when compared to the number of people concerned who had previously given birth…

74 M. Mesnil, *Ne suis-je pas un homme ? La filiation des personnes trans devant la CEDH*, in *Dalloz Actualités*, 16 mai 2023, https://www.dalloz-actualite.fr/node/ne-suis-je-pas-un-homme-filiation-des-personnes-trans-devant-cedh.

Moreover, rather than being a mere reflection of gendered practices, the Court's decisions play an active role in how gender, as a political regime, takes effect. They reflect the *gendering* power of the law, or as Joanne Conaghan put it, they allow to see the law as a *gendering practice*, "which constrains and enables conceptions of gendered identity, behaviour, and selfhood, and which fashions and refashions gendered social forms"[75].

4. Conclusion: Blurred Sex and Gender

The reading of the most recent ECtHR cases on LGR leads to the conclusion that the change in terminology, from the distinction between sex and gender to the recurring use of the expression "sex/gender", is far from reflecting a change in the conceptualisation of the relationship between sex and gender. On the contrary, it seems that the Court oscillates between combating harmful stereotypes and reinforcing the consequences attached to gender norms, without a coherent approach being identified, particularly when comparing the principles applied to intersex and trans* people. While *gendered norms* are progressively erased from the Court's vocabulary, *gendering principles* still emerge from the consequences of its rulings and contribute to shaping identities in exclusively binary terms.

Such a rigid position is not a fatality. Other international organisations and jurisdictions have shown a greater understanding and knowledge of queer and gender non-conforming people[76]. Recently, explicit calls to de-naturalise and de-binarise sex/gender have emerged in international human rights law. Other institutions of the Council of Europe, *i.e.*, the Commissioner for Human Rights and the Parliamentary Assembly[77] also advocate for more possibilities than the traditional two[78]. In 2017, the Inter-American Court of Human Rights delivered a groundbreaking advisory opinion, in which it not only clearly acknowledged the existence of identities beyond the binary, but also defined sex as a "biological construction"[79].

75 J. Conaghan, *Law and Gender*, Oxford, New York, Oxford University Press, 2013, p. 103.

76 See, *e.g.*, CAT, *General Comment No. 2: Implementation of Article 2 by States Parties*, 2007, para. 21: called on States to ensure that their laws are "in practice applied to all persons, regardless of […] gender, sexual orientation, transgender identity"; Committee on the Rights of Persons with Disabilities, *General Comment No. 5 on living independently and being included in the community*, 2017, para. 23: uses the phrase "all genders"76, suggesting that it applies to people who could identify differently than as a man or as a woman.

77 PACE, Resolution 2048(2015) of 22 April 2015, *Discrimination against transgender people in Europe*, states that States should "consider including a third gender option in identity documents for those who seek it") ; Resolution 2197(2017) of 12 October 2017, *Promoting the human rights of and eliminating discrimination against intersex people*, called on States to "ensure, wherever gender classifications are in use by public authorities, that a range of options are available for all people, including those intersex people who do not identify as either male or female" and "consider making the registration of sex on birth certificates and other identity documents optional for everyone" ; Resolution 2239(2018) of 10 October 2018, *Private and family life: achieving equality regardless of sexual orientation*, asked States to ensure that the gender identity of transgender parents was correctly recorded on their children's birth certificates.

78 Council of Europe's Commissioner for Human Rights, "Human Rights and Intersex People", 2015. He specifically called on States to carry out flexible procedures regarding the assignment and changing of sex/gender in official documents and to offer the possibility of not choosing a specified gender marker, 'masculine' or 'feminine'. He further advised that Member States evaluate the actual need to indicate gender in official documents in general.

79 Inter-American Court of Human Rights, *Opinión Consultiva Solicitada por la República de Costa Rica: Identidad de Género, e*

However, the Strasbourg Court does not seem eager to go in this direction. How long will this denial last? An optimistic view would be to consider that the current situation resembles the pre-*Goodwin* one, and that the Court will take some time before agreeing to take the next step. It has been shown that courts are generally reluctant to make radical changes, and often prefer incremental modifications[80]. For instance, Pieter Cannoot argues that, given the international trend towards full legal depathologisation of trans* identities, the State's narrow margin of appreciation under Article 8, and the status of trans* people as a particularly vulnerable group in society, the ECtHR should soon find all medical conditions for LGR to be a violation of the Convention[81].

A less optimistic view is to interpret the strengthening of this bi-categorisation as a sign that the Court may well have reached its limits, at least in the relatively near future. Indeed, there *is* a "continuing trend" among European States to put an end to the binarity of gender markers in civil status. However, while the ECtHR has, in the past, proved to be a – slow – driver of progress on these issues, it seems to be stalling on this aspect. Moreover, the Court has long been confronted to a "legitimacy crisis", with several Member States not implementing its decisions (*e.g.*, Azerbaijan), threatening to leave the organisation (*e.g.,* the UK) or having been excluded (Russia). This situation forces the Court to make unpopular choices in order to remain relevant as a human rights institution and ensure the implementation of its rulings[82]. At a time where anti-gender rhetoric is on the rise in Europe, the time just does not seem right for the Court to pursue a progressist and deconstructive approach to sex and gender. Legislative changes to come at the European level will likely not stem from compliance with its case law, but from a casuistic advance by the States.

5. Appendix – List of cases studied

Case	App. No.	Date	Issue	Conclusion
S.V. v. Italy	55216/08	11/10/2018	Name change conditional to genital surgery	Violation of Art. 8
X. v. "the former Yugoslav Republic of Macedonia"	29683/16	17/01/2019	Lack of clear framework allowing LGR for trans* people	Violation of Art. 8
P. v. Ukraine	40296/16	11/06/2019	Lack of intersex-specific possibility to obtain LGR	Inadmissible
X. v. Russia	60796/16	15/12/2020	Name change conditional to gender marker modification	Struck out of list
Y.T. v. Bulgaria	41701/16	09/07/2020	Lack of clear framework allowing LGR for trans* people	Violation of Art. 8

Igualdad y No Discriminación a Parejas del Mismo Sexo, PC-24/17, 2017, para. 13.

80 Janneke Gerards, « Margin of Appreciation and Incrementalism in the Case Law of the European Court of Human Rights », *Human Rights Law Review*, vol. 18, n° 3, 1 septembre 2018, pp. 495-515.

81 P. Cannoot, ivi, p. 7.

82 However, note that the latest annual report from the Council of Europe's Committee of Ministers highlights significant progress on implementing rulings from the European Court of Human Rights in 2023. See : https://www.coe.int/en/web/portal/-/latest-annual-report-the-implementation-of-echr-rulings-significant-progress-but-important-challenges-remain.

X. and Y. v. Romania	2145/16 20607/16	19/01/2021	LGR conditional to genital surgery	Violation of Art. 8
A.S. v. Russia	23872/19	26/01/2021	Impossibility to choose a neutral name	Partly struck out of list; partly inadmissible
A.M. and others v. Russia	47220/19	06/07/2021	Restriction of applicant's parental rights and on transness	Violation of Art. 8 Violation of Art. 14+8
Y v. Poland	74131/14	17/02/2022	Impossibility to obtain a full birth certificate without gender reassignment reference	No violation of Art. 8
A.D. and others v. Georgia	57864/17 79087/17 55353/19	01/12/2022	Lack of clear framework conditioning LGR for trans* people to genital surgery	Violation of Art. 8
Y v. France	76888/17	31/01/2023	Non-binary legal gender recognition (intersex person)	No violation of Art. 8
O.H. and G.H. v. Germany	53568/18 54741/18	04/04/2023	Impossibility for a trans* parent to indicate their current gender on their child's birth certificate	No violation of Art. 8
A.H. and others v. Germany	7246/20	04/04/2023	Impossibility for a trans* parent to indicate their current gender on their child's birth certificate	No violation of Art. 8
R.K. v. Hungary	54006/20	22/06/2023	Lack of clear framework allowing LGR for trans* people	Violation of Art. 8
Y.T. v. Bulgaria (revision)	41701/16	04/07/2024	Lack of clear framework allowing LGR for trans* people	Inadmissible
W.W. v. Poland	31842/20	11/07/2024	Lack of access to hormonal treatment in prison	Violation of Art. 8