Selected Legislation and Jurisprudence

European Court of Human Rights

ECHR 2019/6 *Case of Milićević v. Montenegro*, 6 November 2018, no. 27821/16
(Second Section)

The Facts¹

In February 2013 an individual, X, attacked the applicant, born in 1966, inside his coffee bar with a hammer. He was taken to hospital with a head injury. X was arrested, prosecuted for violent behaviour against the applicant, and ordered to have mandatory psychiatric treatment in a hospital. At the same time he was found guilty of stabbing another man, V.J., causing him light bodily injuries, four months before the attack on the applicant.

The applicant instituted civil proceedings for compensation, submitting that he had reported X to the police for threatening him a few days before the attack, and that he had already attacked others. The courts ruled against him in 2015, finding that the police had acted as required and that the State was not liable for any damage.

During the proceedings, it transpired that X suffered from schizophrenia and was a long-term psychiatric patient. The courts noted that he had a history of violent behaviour, which included attacking his neighbours and setting his

¹ These summaries are based on the provisional text of the judgements of the European Court of Human Rights. These judgments are still subject to editorial revision before their reproduction in Reports of Judgments and Decisions. For the full provisional text, see: www.echr.coe.int.

flat on fire. A policeman also confirmed in court that he “knew that X always carried a knife” and that the police had often received complaints about him.

X was allowed to start outpatient treatment in November 2015. Since April 2016 he has been having regular monthly check-ups with a specialist.

The Law

Alleged Violation of Article 8 of the Convention

The applicant complained under Article 2 (right to life) that by failing to undertake necessary measures, the State had failed to prevent an attack on him by a mentally ill person, a risk of which the police had been aware. The Court considers that the complaint falls to be examined under Article 8 (right to respect for private life).

While the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, there may in addition be positive obligations inherent in effective respect for private life, which may involve the adoption of measures in the sphere of relations between individuals. The Court will therefore examine whether the respondent State, in handling the applicant's case, has been in breach of its positive obligation under Article 8.

The Court appreciates that the competent bodies did intervene after X had attacked the applicant: he was arrested, prosecuted and ordered to undergo mandatory inpatient psychiatric treatment. It is also clear that as of 18 April 2016 he was medically monitored on a regular basis. The Court cannot, however, overlook the fact that it was the domestic authorities' inactivity and failure to ensure that the applicant was protected after X had threatened him, or to ensure that X was duly provided with psychiatric treatment after he had stabbed VJ., which led to his threat against the applicant materialising. It was only after the applicant had been attacked by X that the State intervened. In this connection, the Court reiterates that the domestic authorities were under a duty to take reasonable preventive measures where they “knew or ought to have known at the time of the existence of a real and immediate risk” to the life or bodily integrity of an identifiable individual.

It is undisputed in the present case that the applicant had notified the police that X had threatened him. Although the threat in itself may not have sounded too ominous, it was coupled with a few other facts. Firstly, less than four months prior to threatening and attacking the applicant, X had left the hospital even though the doctor in charge had considered that he needed to

continue hospital treatment. Secondly, at the time when the applicant complained to the police about X's threats, the police were well aware that X had already attacked others, given that they had often received reports to that effect. The latest such attack had been six days after he had left the hospital contrary to the doctor's recommendation, when he had stabbed V.J. for no reason, inflicting light bodily injuries on him. There is no evidence in the case file that after that attack and before attacking the applicant, X had been taken to any medical centre for an assessment as to whether he represented a danger to others. Although an indictment had been issued against him in that regard, it was not processed until after the attack against the applicant, when the two indictments were processed jointly. Thirdly, the police, on their own admission, also knew that X always carried a knife or some other similar weapon. Nevertheless, the only measure undertaken by the domestic authorities was by the police, who kept an eye open for X around the neighbourhood.

The Court thus notes that: (a) the authorities were aware of the fact that X was a long-term psychiatric patient, that he had a history of violent behaviour, which included attacking his neighbours, setting his flat on fire, and causing a flood in a neighbour's flat, and that he always carried a knife or some other similar weapon; they were also aware of X's previous criminal record and that during those proceedings the domestic courts had established a causal link between X's mental state and the offences he had committed; (b) four months prior to attacking the applicant X had left the hospital of his own will and contrary to the doctor's recommendation; (c) a few days after he had left the hospital he had stabbed V.J. without any reason; (d) there is no evidence that X was medically checked after attacking V.J. in order to ensure that he was taking his medication, which indicates a lack of cooperation between the police and the medical services; (e) the indictment for that attack had been issued but it had not been processed for more than three months, that is until after X attacked the applicant; and (f) the authorities were aware of X's threatening the applicant as the latter reported it to the police. The Court considers that in these circumstances the authorities ought to have been aware of the real and imminent risk of violence against the applicant.

The Court finds that the lack of sufficient measures taken by the authorities in reaction to X's behaviour amounted to a breach of the State's positive obligations under Article 8 of the Convention to secure respect for the applicant's private life.

For these reasons, the Court, unanimously, holds that there has been a violation of Article 8 of the Convention.

ECHR 2019/7 *Case of A.T. v. Estonia*, 13 November 2018, no. 23183/15 (Second Section)

The Facts

The applicant, born in 1977, has been serving a life sentence in prison since 2008. In November 2010 and October 2011, he was taken to hospital for medical examinations. After a risk assessment, the prison authorities decided that he had to wear handcuffs and ankle cuffs. He stated that prison officers remained in the examination room with him, that they could overhear his conversation with medical staff and that he had not been allowed to wear his own clothes.

He was also taken to visit his seriously ill newborn daughter in hospital in January 2012, which included the same security measures. He states that he was prevented from touching his child and the officers remained with him all the time, being able to overhear his conversation with his daughter's doctors.

The applicant complained about the security arrangements for the visits but in January 2013 the administrative court dismissed his complaint in full. His appeal was rejected.

The Law

Alleged Violation of Articles 3 and 8 of the Convention as Regards the Security Requirements of Hospital Visits for Medical Examination of the Applicant

The applicant complained that the conditions resulting from the security requirements of his hospital visits had violated his rights under the Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private and family life).

The Court notes that in situations which concern the medical treatment of prisoners, the State authorities have, on the one hand, an obligation to provide detainees with the requisite medical assistance to secure their health and well-being. On the other hand, the States have an obligation under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention and that this, taken together with Article 3, requires States to take measures designed to ensure that individuals are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals.

The Court acknowledges that there might be situations where a prisoner has to be taken to a medical facility outside prison to receive such treatment which the prison itself does not or cannot provide. However, such situations may inevitably entail a risk of the prisoner absconding or posing danger either to themselves or anyone else (for example medical personnel or other patients). The Court is also mindful of the fact that medical staff in ordinary public hospitals cannot be expected to have the same level of preparedness and training as prison officers to deal with possible risks posed by prisoners' unpredictable or violent behaviour. It is in that light that the obligation of securing to everyone the rights and freedoms defined in the Convention must be underlined. The State authorities must be particularly vigilant when they have sufficient prior knowledge about the possible danger the prisoner might pose (for example previous attempts of escaping or violent behaviour).

In the present case, the Court notes first that the use of prison clothing, the use of handcuffs and ankle cuffs and the requirement to observe the applicant throughout his visits had a basis in domestic law. There is no dispute that such measures served the legitimate aim of preventing him escaping or harming and posing a danger to other people. In the context of Article 8, they can thus be seen to have had the aim of ensuring public safety and protecting the rights and freedoms of others.

The Court will assess next, for the purposes of both Articles 3 and 8, whether the combined use of security measures can be reasonably considered necessary in the light of the above-mentioned objectives. The Court will lay particular emphasis on whether the application of such measures was adapted to the needs of the situation and took into account the specific personality of the applicant.

The Court notes that when authorising the applicant's visits to the hospitals and drawing up the escort plans, the prison authorities took into account his criminal history – observing that his crimes had become more serious over time – as well as his behaviour in prison. They provided a thorough risk profile, stressing that the applicant did not respect to the prison regime, and was aggressive and capable of attacking others as well as of self-harm. The risk of escaping when escorted outside prison was also highlighted. Against that background, the prison director decided that the applicant had to wear handcuffs and ankle cuffs during the visits and had to be accompanied. The Government submitted further corroborating information, according to which the applicant could be considered to be impulsive, manipulative and violent.

The Court finds that the prison authorities, who were in daily contact with the applicant and who were well aware of the risk he might pose, decided to order the use of above-mentioned security measures after careful

consideration and gave sound reasons for their decisions. The applicant did not challenge the relevant risk assessment, but argued that since he had never tried to escape, less restrictive measures could have been used. However, the aim of the security measures was not only to avoid a possible escape, but also to avoid potential harm to other people as well as to the applicant himself. Against that background, the Court finds that the security measures were directly linked to the applicant's specific behaviour and, as such, did not exceed what could be reasonably considered necessary.

Furthermore, the Court notes that in the instant case no health-related reasons could be ascertained that would cast doubt on the use of measures of restraint – the applicant was a young man without any particular health concerns – that could have rendered the use of cuffing excessive or contraindicated. Although the handcuffs and ankle cuffs left pressure marks, abrasions and redness on the applicant's skin, it cannot be concluded from this that excessive force was used when applying them.

The Court is mindful of the confidentiality concern and the distress caused by the presence of the prison officers during the hospital visits. Prisoners have, in the context of the right to private life, the right to medical confidentiality, which should not be encroached upon unless it is necessary in the specific circumstances of the case. Although there is no dispute in the present case that the prison officers accompanied the applicant during the visits, including during his examinations, the parties disagree as to whether there was a screen between the prison officers and the applicant during his medical examinations and whether the prison officers were able to overhear his conversations with the doctors. However, the Court does not find it necessary to determine the exact details of the applicant's visits to hospitals as it considers that – given the particular circumstances of the instant case – the interference with the applicant's private life can be considered justified for the same reasons as already indicated above.

In conclusion, the Court finds that the application of those measures did not exceed what could reasonably be considered necessary and thus did not lead to a violation of Article 3. The Court also considers that such measures were necessary for ensuring public safety and protecting the rights and freedoms of others. Accordingly, there has been no violation of 8 of the Convention.

***Alleged Violation of Articles 6 and 8 of the Convention as Regards
Certain Aspects of the Applicant's Visit to See His Daughter***

The applicant complained that the circumstances of his visit to a hospital to see his seriously ill daughter had violated his rights under Article 8 and added, relying on Article 6 § 1 (right to a fair hearing by a tribunal), that this matter

had not been addressed by the domestic courts. The Court considers that the complaint raised by the applicant under Article 6 § 1 is closely linked to his complaint under Article 8 and may accordingly be examined as part of the latter complaint in view of the State's positive obligations in the sphere of private and family life.

Even though the applicant clearly raised his complaint about the circumstances of the visit to see his daughter in hospital before the domestic courts and the administrative court and the court of appeal also referred to such a complaint in the “facts and proceedings” parts of their respective judgments, neither of the courts addressed this issue on the merits.

It was the role of the domestic courts, in view of the positive obligations arising from Article 8, not only to pay due regard to the private and family life considerations arising from the applicant's complaint, but also to elucidate the relevant facts necessary to reach a decision and to give reasons when dismissing complaint.

Given that the applicant's complaint was dismissed without any reasons being given for such a decision, the Court concludes that the domestic courts' handling of the applicant's complaint fell short of the State's positive obligation. Accordingly, it finds that there has been a violation of Article 8 of the Convention.

For these reasons, the Court, unanimously, holds that there has been no violation of Articles 3 and 8 of the Convention concerning the security measures during the applicant's visits to hospital and that there has been a violation of the State's positive obligation under Article 8 of the Convention concerning the applicant's visit to see his daughter in hospital.

ECHR 2019/8 *Case of Ilınseher v. Germany*, 4 December 2018, nos. 10211/12 and 27505 (*Grand Chamber*)

The Facts

The applicant, born in 1978, is currently detained in a centre for persons in preventive detention on the premises of Straubing Prison (Germany). He has been in preventive detention since 2008, when he finished a ten-year juvenile sentence for having murdered, at the age of 19, a woman in 1997 while she was out jogging. The crime was sexually motivated. His detention was subsequently

extended by court orders, based upon psychiatric assessments which revealed a high risk that he could commit similar serious crimes of a sexual and violent nature if released.

On 4 May 2011, the Federal Constitutional Court granted the applicant's constitutional complaint and quashed the order for his subsequently extended preventive detention and remitted the case to the regional court. On 6 May 2011, the regional court, however, once again ordered his provisional preventive detention. The applicant was mainly detained in the preventive detention wing of Straubing Prison.

After a series of appeals the courts ultimately found that his preventive detention had been necessary, as a comprehensive assessment of the applicant, his offence and his development during the enforcement of the sentence revealed that there was a high risk that he could commit serious crimes of a violent and sexual nature, similar to the one he had been found guilty of, if released. The applicant's appeals against the preventive detention order to the Federal Court of Justice and the Federal Constitutional Court were dismissed.

Since 20 June 2013, the applicant has been detained in a newly-built preventive detention centre at Straubing Prison. He took up one-to-one psychotherapy from June 2015 until June 2017. The proceedings for review of his provisional preventive detention lasted in total 11 months and one day over three levels of jurisdiction, of which eight months and 22 days were before the Federal Constitutional Court.

The Law

This summary is restricted to the issues raised under Article 5 § 1 of the Convention.

Alleged Violation of Article 5 § 1 of the Convention

The applicant complained that his "retrospectively" ordered preventive detention executed on the basis of the regional court's 3 August 2012 judgment from 20 June 2013 onwards in the Straubing preventive detention centre had been in breach of his right to liberty, as provided in Article 5 § 1.

Grounds for the Deprivation of Liberty

The Court will examine whether the applicant's detention can be justified as detention of a person of unsound mind for the purposes of Article 5 § 1 (e). This requires that, at the relevant time of the decision ordering his preventive

detention on 3 August 2012, the applicant was reliably shown to be of unsound mind, that is, a true mental disorder must have been established before a competent authority on the basis of objective medical expertise.

The Court observes that the regional court, which had consulted two external psychiatric experts, was convinced that the applicant suffered from a sexual preference disorder, namely sexual sadism, as described by the relevant tool for the classification of diseases, the International Statistical Classification of Diseases and Related Health Problems in its current version (ICD-10). The court was satisfied that the applicant has had fantasies of sexual violence entailing attacks on the neck and the strangulation of women and masturbation on their inanimate bodies. That sexual sadism was of a serious nature and had affected the applicant's development since his adolescence. The mental disorder had caused and been manifested in his brutal offence and still persisted. The applicant therefore suffered from a mental disorder for the purposes of the Therapy Detention Act.

The Court reminds that the notion of "persons of unsound mind" ("*aliéné*" in the French version) in Article 5 § 1 (e) of the Convention might be more restrictive than the notion of "mental disorder" ("*psychische Störung*") referred to in the Therapy Detention Act. However, the Convention does not require that the notions used in domestic law, and in particular the notion of mental disorder for the purposes of the Therapy Detention Act, be defined or interpreted in the same manner as terms used in the Convention. What is decisive is whether the domestic courts have established a disorder which can be said to amount to a true mental disorder as defined by this Court's case-law. In this context, the Court again stresses the need to interpret the permissible grounds for deprivation of liberty narrowly.

In the present case, the domestic courts, as detailed above, found the applicant to suffer from a form of sexual sadism which must be considered as being of a serious nature. The applicant's condition necessitated comprehensive therapy, to be provided either in the preventive detention centre or in a psychiatric hospital. The Court is therefore satisfied that the condition with which the applicant was diagnosed amounted to a true mental disorder for the purposes of Article 5 § 1 (e). Furthermore, the Court is satisfied that the regional court's finding, confirmed on appeal, was based on objective medical expertise.

As to whether the domestic courts "established" that the applicant suffered from a true mental disorder for the purposes of Article 5 § 1 (e), the Court notes that the regional court, in the impugned judgment of 3 August 2012, thoroughly scrutinised the findings made in the reports of the two psychiatric experts

it had consulted, as well as the findings of numerous medical experts who had previously examined the applicant since his arrest following his offence, and decided on that basis that the applicant suffered from sexual sadism.

The Court does not overlook in this context the fact that the regional court concluded that the applicant suffered from this serious mental disorder, whereas the trial court had not considered that the applicant had suffered from a severe mental disorder and had therefore found that he had acted with full criminal responsibility when committing his offence in 1997. This does not, however, suffice to cast any doubt on the establishment of the facts by the domestic courts concerning the applicant's mental condition.

Finally, the validity of the applicant's continued confinement depended upon the persistence of his mental disorder. In accordance with the German Criminal Code, the domestic courts could order the continuation of his preventive detention in the subsequent periodical judicial review proceedings only if, and as long as, there was a high risk that he would reoffend as a result of that disorder if released. Nothing in the file indicates that this risk had ceased to exist during the period of time at issue in the present case.

The Court therefore concludes that the applicant was a person of unsound mind for the purposes of Article 5 § 1 (e).

“Lawful” Detention “in Accordance with a Procedure Prescribed by Law”

As for the lawfulness of the applicant's detention, the Court notes that the detention was ordered in a judgment of the regional court of 3 August 2012, and confirmed on appeal, under the Juvenile Courts Act, read in conjunction with the Federal Constitutional Court's judgment of 4 May 2011.

The lawfulness of the applicant's detention under Article 5 § 1 (e) further requires the detention to have been effected in an appropriate institution for mental-health patients. During the period from 20 June 2013 until 18 September 2014, the applicant was detained in the newly-established Straubing preventive detention centre.

The Court notes that there had been a change in the medical and therapeutic care provided for him in that centre, compared to the conditions prevailing in Straubing Prison. The Court observes that a total of 71 members of staff are in charge of a maximum of 84 detainees in the Straubing preventive detention centre. In particular, one psychiatrist, seven psychologists, one physician and four nurses are entrusted with providing medical and therapeutic treatment.

A broad range of treatment is provided for persons suffering from mental disorders, such as treatment programmes for violent or sexual offenders, individual therapy tailored to the detainee's needs, group social therapy and individual social pedagogical support, if necessary involving external therapists.

The applicant was offered, in particular one-to-one or group social therapy, an intensive treatment programme for sexual offenders and therapy administered by an external psychiatrist.

The Court takes note of the applicant's argument that, despite these elements, the preventive detention centre was not an appropriate institution for mental health patients as the majority of the persons placed in the centre had not been found to suffer from a mental disorder. However, as mentioned above, the applicant is being provided with an individualised therapy programme tailored to his needs and his mental condition. The Court is satisfied that the applicant was offered the therapeutic environment appropriate for a person remanded as a mental health patient and was thus detained in an institution suitable for the purposes of Article 5 § 1 (e).

Given that in the circumstances of the instant case the domestic courts, with the help of expert advice, established a considerable danger for the individuals concerned of becoming the victims of one of the most serious offences punishable under the German Criminal Code, the Court is satisfied that the applicant's deprivation of liberty had also been shown to have been necessary in the circumstances.

For these reasons, the Court holds, by fifteen votes to two, that there has been no violation of Article 5 § 1 of the Convention.

Dissenting opinion of Judge Pinto de Albuquerque joined by Judge Dedov stating that "the retrospective conversion of a time-limited punitive security measure into a potentially life-long pseudo-medical confinement measure imposed on convicted offenders with *ex nunc* established 'mental disorders' is an historically and dogmatically unreasonable, let us say it, abusive interpretation that not only goes beyond the nature and purpose of the measure of preventive detention, but circumvents the prohibition of *nulla poena sine lege praevia* guaranteed in a State governed by the rule of law."

ECHR 2019/9 *Case of X v. the former Yugoslav Republic of Macedonia*, 17 January 2019, no. 29683/16 (*First Section*)

The Facts

At birth (in 1987) the applicant, X, was registered as a girl, with a clearly female name. From an early age X became aware that he was male rather than female. In 2010 X went to a specialist clinic in Belgrade, where a psychologist

and sexologist diagnosed him with “transsexuality”. X started taking hormones to increase his testosterone levels, as recommended by the clinic. In June 2011 X applied for a change of his first and family name. The Ministry of the Interior allowed that application, registering X under a clearly male forename and issued X with a new identity card. However, the sex/gender marker and numerical personal code remained the same, identifying X as a female. In July 2011 X requested to have the sex/gender marker and the numerical personal code on his birth certificate corrected to indicate that he was male. However, the Ministry of Justice (“the Ministry”) dismissed X’s application on the grounds that there was no official document showing the applicant had changed gender.

X appealed to the Ministry, alleging that there was no statutory provision that regulated the matter. Sex reassignment surgery was unavailable in his home country and unjustified in his case. Furthermore, such a requirement would subject him to unwanted medical treatment and sterilisation. He argued that he had already been diagnosed as transsexual, which was sufficient to obtain legal gender recognition. In October 2011 the Ministry dismissed the appeal, but in February 2013 the administrative court quashed the Ministry’s decision.

In June 2013 X underwent a double mastectomy (breast removal) and continued his hormone therapy. In the resumed proceedings, the authorities instructed the Forensic Institute to examine X and it found that he should be provided with a document attesting to his new sex.

However, in December 2014 the Ministry again dismissed his request to alter the sex/gender marker in the birth register, as it had still not obtained “evidence of an actual change of sex”. Fresh proceedings before the administrative court are still ongoing. X submitted reports from 2012 and 2016 showing that the protracted procedure on the legal recognition of his gender identity has had negative consequences on his mental health and life.

The Law

Alleged Violation of Article 8 of the Convention

The applicant complained under Article 8 (right to respect for private and family life) of the lack of a regulatory framework for the legal recognition of his gender identity and about the requirement, which had no basis in domestic law, that he undergo genital surgery as a precondition for having his (male) gender identity recognised.

Preliminary Remarks: Whether the Case Concerns Interference or a Positive Obligation

The Court considers that the primary question to be determined is whether or not the respondent State failed to comply with its positive obligation to put in place an effective and accessible procedure, with clearly defined conditions securing the applicant's right to respect for his private life. The answer to that question would be determinative for the other aspect of the applicant's complaint – namely that he was allegedly compelled to undergo complete gender reassignment surgery in order to have his sex/gender marker changed in the birth register. This is so given the fact that that aspect concerns a specific requirement which allegedly was imposed by the authorities to be fulfilled by the applicant, as a pre-operative transsexual who has undergone partial surgery.

Compliance with the State's Positive Obligation

The Court notes that there is no provision in the domestic law that explicitly allows the alteration of a person's sex/gender marker in the civil status register, unlike the right to have a person's personal name changed. Furthermore, the legislation does not impose any terms and conditions to be fulfilled and procedures to be followed. Similarly, no provision clearly specifies the body that has jurisdiction to decide such a request (unlike a request for a change of a personal name).

The Court observes that the registry refused on two occasions to change the applicant's sex/gender marker in the birth register from a female to a male one owing to the absence of documentary evidence attesting to his altered sex. However, the registry did not specify the nature of that evidence. The administrative court referred to that omission in remitting the case for reconsideration. The Court attaches weight to the fact that the Government did not present any evidence that those issues, including the procedure for obtaining the relevant evidence were regulated by law or that there was established judicial practice regarding the matter. In so far as it may be inferred from the Government's submissions that a judicial declaration by the administrative court acknowledging the applicant's new gender identity could be relied upon by the registry in making the change sought, it is to be noted that that court did not decide on the applicant's case on the merits, even though it had examined it on two occasions. Lastly, it is not without relevance that the registry, in its last decision of 28 February 2018 – namely six and a half years after the applicant had initiated the impugned proceedings – declared that it did not have the authority to decide on the applicant's claim.

All the above is sufficient for the Court to conclude that the current regulatory framework in the respondent State on legal gender recognition leaves a number of important questions unanswered. Among them is the existence and nature of any requirement that a claimant needs to fulfil in order to have the sex/gender marker in the official records changed. Furthermore, the Court was not presented with any evidence that there was any (let alone settled) jurisprudence specifying any such requirement. The applicant argued that he had been compelled to undergo complete gender reassignment surgery in order to have the sex/gender marker changed in the birth register. Assuming that the early findings of the administrative authorities may have pointed to such a conclusion, the Court observes that no definitive position was taken on the matter. It is to be noted that the applicant's claim to be granted a new male sex/gender marker was not finally dismissed, and the impugned proceedings are still pending. Accordingly, any conclusion as to whether the applicant, as a pre-operative transsexual who has undergone partial surgery, will be allowed to have his preferred gender legally recognised would veer precariously close to speculation.

The Court finds that the circumstances of the case reveal legislative gaps and serious deficiencies that leave the applicant in a situation of distressing uncertainty *vis-à-vis* his private life and the recognition of his identity. The Court concludes that the current legal framework in the respondent State does not provide "quick, transparent and accessible procedures" for changing on birth certificates the registered sex of transgender people.

For these reasons the Court holds, by five votes to two, that there has been a violation of Article 8 of the Convention on account of the lack of a regulatory framework ensuring the right to respect for the applicant's private life.

Dissenting opinion of Judges Pejchal and Wojtyczek, defending the view that the applicant's request to have the sex marker modified has not been examined within a reasonable time because of procedural mistakes made by the domestic authorities in application of the existing rules, not because of problems with the interpretation or the content of any legal provisions.

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