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Turkey: sterilisation as a prerequisite to access gender reassignment surgeries contravenes the European Convention of Human Rights

The European Court of Human Rights ruling striking down a sterilisation requirement for transgender individuals who wish to access gender reassignment surgery is an encouraging step towards equality for transgender people in Europe.

On 10 March, in *Y.Y. v Turkey*, the Court found that requiring a transgender man to be permanently incapable of reproduction as a precondition to undergoing gender reassignment surgery violated his right to private and family life (Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms).

Turkish Courts had denied for many years the possibility for Y.Y. to access gender reassignment surgery on the basis that he was not sterilised. The European Court found that the resulting restriction of his private life was not necessary to achieve the aims upheld by domestic Courts, namely the protection of the general interest as well as the physical and moral integrity of the applicant.

According to Turkish law (Article 40 of the Civil Code), a person can “change gender” (*cinsiyet degisikligi*) only upon the fulfilment of specific requirements. These include obtaining a psychiatric diagnosis as well as being single, aged 18 or above and permanently incapable of reproduction. In the case of Y.Y., Turkish Courts interpreted Article 40 as requiring him to be permanently incapable of reproduction as a pre-requisite for accessing gender reassignment surgery.

This is the first case in which the Court found that the sterilisation requirement for the purpose of accessing gender reassignment surgery contravenes the European Convention of Human Rights. However, the judgment did not address the issue of whether requiring transgender people to undergo sterilisation as a prerequisite to obtain *legal gender recognition* contravenes the European Convention.

In as many as 21 European countries including Belgium, Finland, France, Italy, Norway and Turkey, transgender people must be sterilised to obtain legal documents that reflect their gender identity. This violates their rights to be free from inhuman and degrading treatment, to the highest attainable standard of health and to private and family life.

Amnesty International calls on governments to ensure that transgender people can obtain legal recognition of their gender through a simple, quick, transparent and accessible procedure without enforcing unnecessary medical or other discriminatory requirements that violate their human rights.

BACKGROUND

The European Court of Human Rights had previously found that the impossibility for a transgender person to obtain legal gender recognition after having undergone gender reassignment surgery violated Article 8, the right to private and family life (*Goodwin v the United Kingdom*). In July 2014, the Court regrettably found that mandating a change in marital status on transgender people as a precondition to legal recognition, did not violate their right to private and family life (*Hämäläinen v. Finland*)

The European Court has previously held, in other contexts, that coercive sterilisation practices violate Article 3 and 8 of the Convention (*V.G. v Slovakia, I.G and others v Slovakia*).

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