

Analysis of the judgment of the CJEU

The right to rectification of data as a protection of the identity of transgender

About IDEAS



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The judgment of the Court of Justice of the European Union (CJEU) in Case C-247/23 represents a crucial turning point in the protection of the rights of transgender individuals within the EU. The decision not only affirms the right of a transgender refugee to the rectification of their gender marker in official registers but also sets a clear precedent that the realisation of this right, based on the General Data Protection Regulation (GDPR), cannot be conditioned on surgical intervention. This analysis examines the Court's legal reasoning, places the judgment in the context of restrictive Hungarian legislation, and assesses its broader implications for transgender rights and the application of the GDPR in the European Union and its candidate countries.

Introduction

In its judgment of 13 March 2025, the Court of Justice of the European Union delivered a decision in the case concerning V.P., an Iranian national who was granted refugee status by Hungary in 2014. His status was recognised based on evidence of his transgender identity, including testimonies from psychiatrists and gynaecologists. Despite this, the Hungarian authorities



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registered him in the national register of persons granted international protection under the female gender assigned to him at birth. In 2022, invoking Article 16 of the GDPR, which guarantees the right to the rectification of inaccurate personal data, V.P. submitted a request to the competent authority seeking the amendment of his gender marker. The request was denied on the grounds that he had not provided proof of having undergone gender-affirming surgery, leading V.P. to file an action for the annulment of this decision. In these circumstances, the Budapest-Capital Regional Court decided to stay the proceedings and refer three questions to the CJEU:

1. Is the competent asylum authority, in accordance with the GDPR, obliged to rectify inaccurate data concerning a person's gender that it had previously recorded?
2. May a Member State require a person to provide evidence justifying a request for such rectification?
3. Is the person required to prove that they have undergone gender-affirming surgery?

The Court's Reasoning

The response of the CJEU was unequivocal. The Court recalled that the GDPR guarantees every individual the right to the rectification of inaccurate personal data "without undue delay." The crucial part of the argumentation lies in the interpretation of "inaccuracy." The Court determined that the accuracy of data must be assessed in relation to the purpose of its processing. Given that the data in the register serves to identify the person, it must reflect their actual, "lived gender identity," and not necessarily the biological sex assigned at birth.

Furthermore, the Court emphasised that Member States cannot use shortcomings in their national legislation, such as the absence of a procedure for legal gender recognition, as a justification for failing to comply with obligations arising from EU law.

The most significant part of the judgment pertains to the rejection of the requirement for surgical intervention. Although the Court acknowledged that authorities may request "relevant and sufficient" evidence of the data's inaccuracy, conditioning rectification on proof of surgery was deemed a measure that "undermines the very essence of fundamental rights," particularly the right to physical integrity and the right to private life, protected by the Charter of Fundamental Rights of the EU. According to the Court, medical certificates confirming a person's transgender identity constitute sufficient proof, and requiring surgery would be "unnecessary and disproportionate."

A Challenge for Hungary and a Standard for Europe

This judgment has profound implications, primarily for Hungary. In 2020, the government adopted a law that effectively prohibits transgender and intersex people from legally changing their gender. The CJEU's decision directly contradicts this policy and reinforces a 2018 ruling by the Hungarian Constitutional Court, which recognised the right to a name and identity in accordance with one's gender as part of human dignity. The legal support provided to V.P. by organisations such as the Hungarian Helsinki Committee demonstrates the crucial role of civil society in defending the rule of law.

On a broader, European level, the judgment sets a clear standard. For the first time, it has been explicitly confirmed that the right to rectification of data under Article 16 of the GDPR also encompasses the rectification of gender identity. The Court stressed that gender identity constitutes "one of the most intimate aspects of private life," thereby minimising the scope for Member States to restrict this right.

The decision establishes a binding principle for all Member States: the processing of data concerning the gender of transgender refugees must be consistent with the right to self-determination. The right to rectification may be conditioned on appropriate evidence, such as a medical report, but it must never be linked to an irreversible medical intervention. This represents a significant step towards the depathologisation of trans identities.

Although the judgment is not directly binding on Serbia as a candidate country, its impact is substantial. For transgender refugees and asylum seekers residing in Serbia who face the same problem of discrepancies between their documents and their lived identity, this decision provides a precedent and a powerful legal argument. It defines the European standard for humane and dignified treatment. In practice, this means that legal representatives of asylum seekers and refugees can now refer to the CJEU's reasoning to demand that Serbian authorities allow for the rectification of data in registers without disproportionate evidentiary requirements. For the individual, correct identification within the asylum system is crucial for safety in reception centres, access to adequate healthcare, and, ultimately, the preservation of personal dignity throughout the process of seeking protection. The judgment thus sets a clear path for aligning Serbian practice with the highest standards of human rights protection in Europe.



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