

## *W.W. v. Poland: The European Court of Human Rights Addresses the Right to Hormone Therapy Treatment in Polish Prisons*

I. OVERVIEW .....	13
II. BACKGROUND .....	14
III. THE COURT’S DECISION .....	19
IV. ANALYSIS .....	21
V. CONCLUSION .....	24

### I. OVERVIEW

When the applicant was transferred to Siedlce prison, she did not know she would be deprived of essential hormone therapy medication for two weeks.<sup>1</sup> The applicant is a transgender person who served several terms of imprisonment at different Polish prisons.<sup>2</sup> Shortly after the transfer to Siedlce Prison, the governor of the prison stopped her treatment stating there was insufficient expert opinions to support the continuance of hormone therapy.<sup>3</sup> An endocrinologist’s opinion was required, however, because of COVID-19 restrictions the applicant was unable to be seen.<sup>4</sup> The applicant provided opinions from a psychiatrist-sexologist and an endocrinologist-sexologist that treatment was necessary to protect the stability of the applicant’s mental health and necessary to the applicant’s process in undergoing gender reassignment surgery.

The applicant filed a complaint alleging that Siedlce Prison violated multiple different Articles of the European Convention on Human Rights.<sup>5</sup> Before the court decided the noted case, the applicant’s

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1. *W.W. v. Poland*, App. No. 31842/20, ¶ 18 (July 11, 2023), <https://hudoc.echr.coe.int/eng?i=002-14358>.

2. *Id.* at ¶ 1.

3. *Id.* at ¶ 13.

4. *Id.* at ¶ 14.

5. *Id.* at ¶ 2; For an explanation on how a case reaches the European Court of Human Rights, see *The European Court of Human Rights*, THE DANISH FOR HUMAN RIGHTS, <https://www.humanrights.dk/research/about-human-rights/human-rights-europe/european-court-human-rights#:~:text=Complaints%20may%20not%20be%20brought,ECHR%20it%20must%20be%20described> (last visited Sept. 25, 2024) (An individual presents their case to the European Court of Human Rights by submitting a description which includes: a presentation of the

representative requested an interim measure under Rule 39 of the Rules of Court for the court to order the continuance of the applicant's hormone therapy.<sup>6</sup> After the interim measure was ordered, the applicant had the required consultation with an endocrinologist who agreed with other medical professionals that hormone therapy should be continued.<sup>7</sup>

In a separate domestic proceeding, the Olsztyn Regional Court issued a judgment based on Article 189 of the Code of Civil Procedure that granted the applicant's request to obtain legal gender recognition.<sup>8</sup> Before the European Court for Human Rights issued its conclusions, the Government alleged that the applicant failed to exhaust her domestic remedies in multiple ways. First, the Government claimed that the applicant failed to file an interlocutory appeal in Poland with the post-sentencing court in response to the governor's decision.<sup>9</sup> Secondly, the Government alleged that the applicant should have pursued a domestic civil remedy to her claims instead of the European Court for Human Rights. The court dismissed the Government's allegations, stating that there was no evidence produced to show that the applicant had not exhausted her remedies.<sup>10</sup> The European Court of Human Rights *held* that withholding hormone therapy treatment from the applicant was a violation of Article 8 of the European Convention on Human Rights. *W.W. v. Poland*, App. No. 31842/20, ¶ 97 (July 11, 2023), <https://hudoc.echr.coe.int/eng?i=002-14358>.

## II. BACKGROUND

The court considered the principles and findings outlined in specific international material relevant to the facts of the noted case. The United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CPT) addressed the healthcare policies in place for transgender people.<sup>11</sup> In the 2015 annual report, the subcommittee called upon states "to develop and implement public health policies aimed at providing gender-appropriate care . . . to the satisfaction of the highly particular needs of transgender women and men and of intersex persons."<sup>12</sup> The Committee of Ministers promoted

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complaint, citation of the rights and/or freedoms allegedly violated, and a list of the rulings filed by the national authorities on the case).

6. *Id.* at ¶ 22.

7. *Id.* at ¶ 19.

8. *Id.* at ¶ 21.

9. *Id.* at ¶ 50.

10. *Id.* at ¶ 60.

11. *Id.* at ¶ 35 and 36.

12. *Id.* at ¶ 35.

provisions to protect against discrimination on the grounds of sexual orientation including that member states should create measures “so as to adequately protect and respect the gender identity of transgender persons.”<sup>13</sup>

The Council of Europe Commissioner for Human Rights discussed prisoners’ ability to access hormone treatment and gender-affirming care.<sup>14</sup> The court selected passages relevant to the facts of the noted case, which identified that lack of access in prisons to proper healthcare “may result in a long time without treatment and may cause serious health problems.”<sup>15</sup> This inadequacy is particularly difficult for transgender people because they “frequently face difficulties in accessing assessment, hormone therapies, or surgery.”<sup>16</sup> The European CPT published findings in 2014 based on visits to prisons across the Council of Europe’s member states and highlighted the difficulties in accessing gender-affirming care in Austria.<sup>17</sup> The CPT’s report issued to the Greek government highlighted the need “to develop a clear framework for the treatment of transgender persons who are detained in prison” so as to create clear protocols for their healthcare needs.<sup>18</sup>

There are multiple sources of domestic law that pertain to prisoners asserting claims and complaints against prison authorities. The Civil Code of Poland outlines a non-exhaustive list of “personal rights” that includes “personal rights of an individual, such as, in particular, health, liberty, honour, freedom of conscience.”<sup>19</sup> The Code of Execution of Criminal Sentences contains Articles relevant to the context of the noted case. According to Article 6 of the Code of Execution of Criminal Sentences, a convicted person is entitled to file complaints with the authorities enforcing the individual’s prison sentence.<sup>20</sup> Article 7 entitles a convicted person to challenge a decision by a governor of a prison, a judge, or a prison judge before a court.<sup>21</sup> Article 115 concerns medical care in prison and detention facilities and provides that the governor of a prison may allow the prisoner to be treated by a doctor of their choice at their own expense.<sup>22</sup> Article 24 provides methods for redress when a personal right

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13. *Id.* at ¶ 38.

14. *Id.* at ¶ 41.

15. *Id.*

16. *Id.*

17. *Id.* at ¶ 43.

18. *Id.* at ¶ 44.

19. *Id.* at ¶ 30.

20. *Id.* at ¶ 25.

21. *Id.* at ¶ 26.

22. *Id.* at ¶ 29.

has been infringed on.<sup>23</sup> Relevant medical related legislation allows for patients to raise objections to medical decisions that affect the patient's rights.<sup>24</sup>

Poland only recently changed its policy on the legal recognition of same-sex marriage as a result of the European Court of Human Rights decision in *Przybysewska v. Poland*.<sup>25</sup> The case involved five same-sex couples who complained about the lack of legal recognition and protection for same-sex relationships.<sup>26</sup> The court answered the question of whether Poland fulfilled its positive obligation to provide a legal framework that awards adequate recognition and protection of the couples' relationships.<sup>27</sup> Poland's legal recognition and protection extended only to marriages as stated in Article 18 of the Constitution which included only unions between a man and a woman.<sup>28</sup> The court held that there was a violation of Article 8 of the Convention under both the "private life" and "family life" elements.<sup>29</sup> Specifically, the court noted that "States have a more extensive margin of appreciation in determining the exact nature of the legal regime to be made available to same-sex couples," however, Poland overstepped the margin by failing to uphold its positive obligation.<sup>30</sup> The court reasons that same-sex couples are "unable to regulate fundamental aspects of their life" in the absence of official recognition.<sup>31</sup> The court identified that there are differing views on what type of union constitutes a marriage, which impacts perception on what treatment each should receive.<sup>32</sup> However, the court reasons that "securing rights to same-sex couples does not itself entail weakening the rights secured to other people or other couples."<sup>33</sup>

In *Przybysewska*, the court addressed the existing socio-political landscape of Poland's treatment of the LGBTQ+ community. The court notes that there has been a rise of homophobic violence, prejudice, and intolerance towards the LGBTQ+ community in Europe.<sup>34</sup> There was an increase in hate-motivated violence against members of the LGBTQ+

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23. *Id.* at ¶ 31.

24. *Id.* at ¶ 33.

25. *Przybysewska and Others v. Poland*, App. No. 11454/17, ¶ 125 (Dec. 12, 2023), <https://hudoc.echr.coe.int/?i=001-229391>.

26. *Id.* at ¶ 1.

27. *Id.*

28. *Id.* at ¶ 12.

29. *Id.* at ¶ 123.

30. *Id.* at ¶ 121.

31. *Id.* at ¶ 114.

32. *Id.* at ¶ 120.

33. *Id.*

34. *Id.* at ¶ 117.

community in Europe from 11% in 2019 to 14% in 2023.<sup>35</sup> The EU's Fundamental Rights Agency found that harassment of LGBTQ+ members across Europe increased from 37% in 2019 to 55% in 2023.<sup>36</sup>

The socio-political situation in Poland is marked by a long period of intolerance toward the LGBTQ+ community.<sup>37</sup> During the 2010s migration crisis, homophobic rhetoric in Poland was part of a plan to assert a clear and exclusive national identity because of the fear for open borders.<sup>38</sup> Poland's parliament was led by the conservative Law and Justice party (PiS) until the October 2023 parliamentary elections where the Civic Coalition formed a government with the Third Way and The Left parties.<sup>39</sup> PiS was known for its conservative stronghold on the nation's judiciary, state enterprises in sectors such as the media outlets, and policies restricting women's rights.<sup>40</sup> The government controlled media outlets disseminated homophobic information including populist propaganda about the LGBTQ+ community across broadcasting stations.<sup>41</sup> The PiS government openly and officially restricted the rights of the LGBTQ+ community through formal legislation that created "LGBT-free zones."<sup>42</sup> The "LGBT-free zones" represent a largely symbolic and unenforceable movement started by municipalities that declared themselves free of the "LGBT ideology."<sup>43</sup> The term "LGBT ideology" became popular by right-wing politician Andrzej Duda to

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35. Louise Guillot & Giovanna Coi, *Violence Against LGBTQ+ People on the Rise in Europe, Report Says*, POLITICO (May 15, 2024, 1:15 PM), <https://www.politico.eu/article/violence-lgbtq-rights-rise-europe-report/>.

36. *Id.*

37. See *Poland Anti-LGBTI Hate Timeline*, IGLA EUROPE <https://www.ilga-europe.org/report/poland-anti-lgbti-hate-timeline/> (last visited Sept. 20, 2024).

38. Mark Gevisser, *How Globalization Has Transformed the Fight for LGBTQ+ Rights*, THE GUARDIAN (June 16, 2020 1:00AM), <https://www.theguardian.com/world/2020/jun/16/how-globalisation-has-transformed-the-fight-for-lgbtq-rights>.

39. Judy Dempsey, *A New Start for Poland*, CARNEGIE ENDOWMENT (Oct. 17, 2023), <https://carnegieendowment.org/europe/strategic-europe/2023/10/a-new-start-for-poland?lang=en>.

40. *Id.*

41. Zuzanna Kuffel, *Woman Shot with BB Gun in Suspected Homophobic Attack in Olsztyn*, WYBORCZA.PL (May 26, 2023, 12:23 PM), <https://wyborcza.pl/7,173236,29802607,woman-shot-with-bb-gun-in-suspected-homophobic-attack.html>; See Trudy Ring, *Polish State TV Host: Our Anti-LGBTQ+ Rhetoric Was Shameful*, ADVOCATE (Feb. 13, 2024, 8:09 PM), <https://www.advocate.com/news/poland-tv-host-apologizes-homophobia#toggle-gdpr>. (state run Polish television network apologizes for the homophobia it broadcasted).

42. *Id.*

43. Lucy Ash, *Inside Poland's 'LGBT-free Zones'*, BBC (Sept. 20, 2020), <https://www.bbc.com/news/stories-54191344>.

describe the LGBTQ+ community in Poland as purely a belief system responsible for the erosion of traditional family values.<sup>44</sup>

Moreover, members of the LGBTQ+ community in Poland were directly impacted by the inaction of Polish authorities to protect their right to gather and when people tried to report the violence or harassment.<sup>45</sup> For example, when the people of Bialystok held their first LGBTQ+ equality march in 2019, the participants were met with flash bombs, rocks, and glass bottles by numerous opposition groups.<sup>46</sup> A woman participating in the equality march held in Olsztyn in 2023 was shot in the head with a BB gun while holding a pride flag.<sup>47</sup>

The EU responded to these developments and disputes with PiS government on anti-LGBT resolutions by blocking more than \$100 billion in funding.<sup>48</sup> The European Commission recently ended the Article 7 proceedings that it had initiated against the nation during the PiS government because the commission no longer believes the rule of law is a threat in Poland under the new coalition.<sup>49</sup> The new coalition has promised to end the corruption within state institutions and bring back EU funding.<sup>50</sup>

The applicant included multiple previous European of Court of Human Rights cases supporting her allegation that there was an Article 8 violation.<sup>51</sup> The court's precedent highlights how it is within the court's

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44. Simon Ostrovsky, 'Anti-LGBT Ideology Zones' Are Being Enacted in Polish Towns, PBS (Aug. 29, 2021, 2:45PM), <https://www.pbs.org/newshour/show/anti-lgbt-ideology-zones-are-being-enacted-in-polish-towns>.

45. *Poland: Authorities Must Stop Hateful Rhetoric Against LGBTI People and Act to Protect Them from Violence and Discrimination*, AMNESTY (July 20, 2022), <https://www.amnesty.org/en/latest/news/2022/07/poland-authorities-must-stop-hateful-rhetoric-against-lgbti-people-and-act-to-protect-them-from-violence-and-discrimination/>.

46. Tara John & Muhammad Darwish, *Polish City Holds First LGBTQ Pride Parade Despite Far-Right Violence*, CNN WORLD (July 21, 2019, 5:49 AM), <https://www.cnn.com/2019/07/21/europe/bialystok-polish-lgbtq-pride-intl/index.html>.

47. John & Darwish, *supra* note 46.

48. Rob Schmitz, *Poland's New Government Deprograms Its Once Far-Right Public Media*, NPR (Feb. 19, 2024, 5:09 AM), <https://www.npr.org/2024/02/19/1230673951/poland-new-government-polish-news-media>.

49. *EU Closes Article 7 Rule-Of-Law Proceedings Against Poland After Seven Years*, NOTES FROM POLAND (May 29, 2024), <https://notesfrompoland.com/2024/05/29/eu-closes-article-7-rule-of-law-proceedings-against-poland-after-seven-years/>.

50. Monika Scislowska & Vanessa Gera, *Poland's Voters Reject Their Right-Wing Government, but Many Challenges Lie Ahead*, AP NEWS (Oct. 17, 2023, 7:47 PM), <https://apnews.com/article/poland-election-government-tuskc83032bf51c7017caf7dfbe2c90f1ba1>; See Paul J. Angelo & Dominic Bocci, *The Changing Landscape of Global LGBTQ+ Rights*, COUNCIL ON FOREIGN RELATIONS (Jan. 29, 2021, 10:20 AM), <https://www.cfr.org/article/changing-landscape-global-lgbtq-rights>.

51. *W.W.*, App. No. 31842/20 at ¶ 69.

power to interfere in situations when there is infringement to private life.<sup>52</sup> The facts of the noted case are situated in existing precedent with the connection between individual gender identity and self-determination.<sup>53</sup> The court points to the *Pretty v. United Kingdom* case, which reasoned that personal autonomy as outlined in Article 8 of the Convention posits that self-determination includes defining one's sexual identity.<sup>54</sup> Additionally, the court in *Van Kück v. Germany* and *Schlumpf v. Switzerland* discussed the importance of transgender health issues and costs associated with gender reassignment surgery.<sup>55</sup>

### III. THE COURT'S DECISION

In the noted case, the European Court of Human Rights analyzed the issue of whether the Polish prison authorities violated the applicant's rights to "private life" enshrined in Article 8 of the European Convention on Human Rights.<sup>56</sup> The court decided to not hear the applicant's other Article violation issues and instead only provided judgment on the Article 8 claim.<sup>57</sup> The court concluded that the prison authorities did not secure a balance between the respective interests so as to protect the applicant's health and her interest in continuing hormone treatment.<sup>58</sup> Therefore, the court found that the applicant was entitled to damages related to non-pecuniary damages and legal costs incurred as a result of the process.<sup>59</sup>

The court examined the applicant's claims in consideration of existing precedent on gender identity and held that there was a violation of Article 8 of the European Convention on Human Rights.<sup>60</sup> The court analyzed the right to "private life and family" protection enshrined in Article 8.<sup>61</sup> The applicant suffered from gender dysphoria since childhood and had experienced significant pain and suffering because she was denied hormone treatment.<sup>62</sup> The court examined the case law that referenced the positive obligation for prisons to ensure proper healthcare remedies are available to transgender prisoners.<sup>63</sup> The court noted that the

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52. *Id.* at ¶ 87.

53. *Id.* at ¶ 91.

54. *Id.* at ¶ 83.

55. *Id.* at ¶ 85.

56. *Id.* at ¶ 97.

57. *Id.* at ¶ 4.

58. *Id.* at ¶ 96.

59. *Id.* at ¶ 108.

60. *Id.* at ¶ 9.

61. *Id.* at ¶ 82.

62. *Id.* at ¶ 92.

63. *Id.* at ¶ 69.

applicant was not complaining of inaction on the part of Poland in general, but instead intentional prevention of treatment by Siedlce prison authorities.<sup>64</sup>

A violation of an individual's Article 8 rights is justified when "in accordance with the law," pursuing one or more of the legitimate aims listed therein are "necessary in a democratic society" in order to achieve the aim or aims concerned."<sup>65</sup> Here, the court found no justification for the prison to interfere in the applicant's medical treatment.<sup>66</sup> The court found that hormone therapy "touched upon the applicant's freedom to define her gender identity, one of the most basic essentials of self-determination."<sup>67</sup> The deliberate prevention by Siedlce prison authorities to allow the applicant to continue hormone treatment impacts her right to sexual self-determination.<sup>68</sup> Moreover, the court concluded that the applicant's decision was not "arbitrary or capricious" because of the applicant's strong conviction of self-determination even in light of the pain and costs attributed to gender reassignment surgery.<sup>69</sup>

Further, the court found that because a violation occurred, the applicant is entitled to damages as compensation.<sup>70</sup> The court awarded the applicant non-pecuniary damages and reimbursement for the legal costs accrued.<sup>71</sup> The damages were limited to the court's precedent, which states that reimbursement of the costs is limited to only within reason.<sup>72</sup> The court incorporated the applicants approval for legal aid into its expenses calculations to equal 2,153 euros.<sup>73</sup>

In the noted case, Judge Wojtyczek dissented from the majority's holding disagreeing with the finding that there was an Article 8 violation.<sup>74</sup> Judge Wojtyczek rested his diverging opinion on three major points. First, Judge Wojtyczek stated that this case required expert testimony in order to provide a judgment, which he believed was not present.<sup>75</sup> Second, Judge Wojtyczek argued that the medical information present in this case "expressed divergent views concerning the

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64. *Id.* at ¶ 86.

65. *Id.* at ¶ 88.

66. *Id.* at ¶ 96.

67. *Id.* at ¶ 91.

68. *Id.*

69. *Id.*

70. *Article 41 of the European Convention on Human Rights*, COUNCIL OF EUROPE PORTAL, <https://www.coe.int/en/web/execution/article-41> (last visited Sept. 25, 2024).

71. *W.W.*, App. No. 31842/20 at ¶ 106.

72. *Id.* at ¶ 108.

73. *Id.* at ¶ 6 (holding point).

74. *Id.* at ¶ 1 (Judge Wojtyczek dissenting).

75. *Id.*



appropriate therapy for the applicant.”<sup>76</sup> Thirdly, Judge Wojtyczek disagreed with the interim measures under Rule 39 of the Rules of Court stating that it is potentially harmful to issue such measures without expert consultation.<sup>77</sup> Based on the facts of the noted case, Judge Wojtyczek concluded that because the prison authorities followed medical advice the interruption in medication was not sufficient to hold and an Article 8 violation occurred.<sup>78</sup>

#### IV. ANALYSIS

The European Court of Human Rights bases its decision in an analysis of the concept of the “private life” principle guaranteed under Article 8. The court arrived at its decision in the noted case similar to previous analyses touching on private life.<sup>79</sup> The court reasons that “private life” is a broad concept without an exhaustive definition or requirement.<sup>80</sup> The court emphasizes and repeats the conclusion that the concept of “private life” includes aspects of an individual’s social identity such as “gender identity or identification, names, sexual orientation and sexual life.”<sup>81</sup> This conclusion is reiterated throughout the court’s assessment, as a continuance of precedent, which recognizes that Article 8 not only protects these principles, but also places an obligation on a State to not negatively interfere with them.<sup>82</sup> The court’s policy motivations are centered on an individual’s right to personal autonomy and an individual’s right of self-determination in their private life.

The United States is known as a forum for advocating for LGBTQ+ rights, specifically because of the leadership the U.S. offers for social justice movements on a global scale.<sup>83</sup> The overturning of the Defense of Marriage Act during the Obama administration encouraged the globalization of the LGBTQ+ movement.<sup>84</sup> The U.S. attracted members of the LGBTQ+ community seeking asylum from areas of Central America where they faced persecution and violence.<sup>85</sup> The U.S. position on LGBTQ+ rights shifted during the Trump administration when policies that discriminated against LGBTQ+ people in regards to foster

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76. *Id.*

77. *Id.*

78. *Id.* at ¶ 5 (Judge Wojtyczek dissenting).

79. *See Przybyszewska*, App. No. 11454/17 at ¶ 40.

80. *W.W.*, App. No. 31842/20 at ¶ 82.

81. *Id.*

82. *Id.* at ¶ 83.

83. *See Angelo & Bocci*, *supra* note 50.

84. *Id.*

85. *Id.*

care, adoption, and HIV prevention were adopted.<sup>86</sup> In light of changes to American politics both across individual states and nationally, advancements in LGBTQ+ rights have continued through international legislation.<sup>87</sup>

The landscape in the United States of gender-affirming care for incarcerated transgender people is restrictive because of the limited geographic impact of lawsuits and prohibitory legislation. Incarcerated transgender people are similarly fighting for access to hormone therapy and other forms of gender-affirming care as in Poland. Cristina Nichole Iglesias was the first person to receive gender-affirming surgery while in prison after a settlement was reached with the Bureau of Prisons (BOP) in 2022.<sup>88</sup> Ms. Iglesias was denied basic medical care for treatment of her gender dysphoria while serving her time in male prison facilities.<sup>89</sup> In this settlement agreement BOP agreed to updating resources and trainings for its employees as well as recognizing additional gender-affirming care options such as permanent hair removal.<sup>90</sup>

In Idaho, a federal judge for the District of Idaho granted a preliminary injunction for the transgender incarcerated people who sued the state about House Bill 668.<sup>91</sup> House Bill 668 is a law that “prohibits state funds and facilities from providing gender-affirming care.”<sup>92</sup> The preliminary injunction ensures that incarcerated people have or will be diagnosed with gender dysphoria that receive hormone therapy will not have to comply with the law during the suit.<sup>93</sup> The suit was brought by two transgender women who allege that House Bill 668 violates the Eighth Amendment.<sup>94</sup> The law remains in effect for non-incarcerated people with gender dysphoria.<sup>95</sup>

While the changes in BOP policies and trainings expand the care available to incarcerated transgender people, the limited impact of the

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86. *Id.*

87. *See id.* (Ireland elected its first openly gay prime minister, UN published a report calling for global ban on conversion therapy).

88. *In Landmark Settlement, Federal Bureau of Prisons Agrees to Provide First-Ever Gender-Affirming Surgery*, ACLU ILLINOIS (June 1, 2022), <https://www.aclu-il.org/en/press-releases/landmark-settlement-federal-bureau-prisons-agrees-provide-first-ever-gender-affirming>.

89. *Id.*

90. *Id.*

91. Mia Maldonado, *Transgender People in Idaho Department of Correction Custody Can Get Hormone Therapy—For Now*, IDAHO CAPITAL SUN (Sept. 4, 2024, 12:27 PM), <https://idahocapitalsun.com/2024/09/04/transgender-people-in-idaho-department-of-correction-custody-can-get-hormone-therapy-for-now/>.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

settlement to other courts in the United States allows potential challenges for other individuals requesting gender-affirming surgery to persist. The European Court of Human Rights decisions have a binding effect on all of the countries that joined the Council of Europe, which forces those countries to ensure that their domestic policies in offering gender-affirming care to conform to the decision.

GOP members, such as Missouri Attorney General Andrew Bailey, have openly tried to use Sweden, France, Norway, and the UK as support for their proposed laws to restrict or completely ban gender-affirming care for minors.<sup>96</sup> These countries are reassessing current gender-affirming care guidelines offered to minors and increasing research studies on this subject.<sup>97</sup> Some Republicans have characterized the situation in certain European countries as more restrictive than it actually is.<sup>98</sup> In fact, these countries have not banned care to minors, they have only entered into debates and discussions about the guidelines for providing care to minors.<sup>99</sup> For example, France has issued guidelines that urge facilities to approach offering care as a multidisciplinary system.<sup>100</sup> While Sweden has tightened its eligibility criteria, they continue to offer care to minors, however, now with more mental health resources included in the treatment plan.<sup>101</sup>

These developments are relevant to the broader legal discussion of intolerance and harm to the LGBTQ+ community in Europe, especially in countries such as Poland with a history of restrictive policies. Specifically, while the right wing parties' gains in the 2024 European Parliament elections were not as substantial as predicted, this development raises the question of the impact nationalist ideologies will have on LGBTQ+ rights and treatment.<sup>102</sup> The rising violence and intolerance toward the LGBTQ+ population highlighted how imperative it was for the European Court of Human Rights to address this essential medical need for incarcerated transgender people. As a result of the European Court of Human Rights decision in the noted case, the court can continue to address gender based mistreatment and potentially address

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96. Kaja Klapsa, *The Real Story on Europe's Transgender Debate*, POLITICO (Oct. 8, 2023, 7:00 AM), <https://www.politico.com/news/2023/10/06/us-europe-transgender-care-00119106>.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. Amber Laenen, *The 2024 European Elections: A Turning Point for LGBTQ Rights in the EU?*, WASHINGTON BLADE (June 10, 2024), <https://www.washingtonblade.com/2024/06/10/the-2024-european-elections-a-turning-point-for-lgbtq-rights-in-the-eu/>.

gender based hate violence. There is possibility that other issues relevant to a person's right to live freely in their country be brought to the European Court of Human Rights to provide a binding judgment on all the participating countries.

## V. CONCLUSION

The European Court of Human Rights correctly decided the noted case because the issue of hormone therapy is extremely tied to choice and decision-making for one's private life and to allow any unjustifiable hindrance towards this right would be dangerous moving forward. The current trend in judicial proceedings internationally highlights the increased attention devoted to legal questions about self-determination and personal choice. While federal courts in the United States have made progress by ordering the BOP to reconsider its policies, the international framework of the European Court of Human Rights system creates a stronger enforced system of effecting change. The court's decision in the noted case will lay the foundation for additional developments in protecting the rights of LGBTQ+ people to access needed healthcare and live without negative state interference across Europe. While the anti-LGBTQ+ sentiment grows within certain regions of the world, the court's decision in the noted case is essential to challenging the intolerance and inequality.

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