

Press release issued by the Registrar

**GRAND CHAMBER JUDGMENT IN THE CASE OF
CHRISTINE GOODWIN v. THE UNITED KINGDOM**

In a judgment delivered at Strasbourg on 11 July 2002 in the case of *Christine Goodwin v. the United Kingdom* (application no. 28957/95), the European Court of Human Rights held unanimously that:

- there had been a **violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights;
- there had been a **violation of Article 12** (right to marry and to found a family);
- no separate issue had arisen under Article 14 (prohibition of discrimination);
- there had been **no violation of Article 13** (right to an effective remedy).

The Court held, unanimously, that the finding of violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant and awarded the applicant 39,000 euros for costs and expenses.

1. Principal facts

The applicant, Christine Goodwin, a United Kingdom national born in 1937, is a post-operative male to female transsexual.

The applicant claimed that she had problems and faced sexual harassment at work during and following her gender re-assignment. Most recently, she experienced difficulties concerning her national insurance (NI) contributions. As legally she is still a man, she has to continue to pay NI contributions until the age of 65. If she had been recognised as a woman, she would have ceased to be liable at the age of 60 in April 1997. She has had to make special arrangements to continue paying her NI contributions directly herself to avoid questions being raised by her employers about the anomaly. She also alleged that the fact that she keeps the same NI number has meant that her employer has been able to discover that she previously worked for them under another name and gender, with resulting embarrassment and humiliation.

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 5 June 1995 and declared admissible on 1 December 1997. The case was transmitted to the European Court of Human Rights on 1 November 1998. On 11 September 2001 a Chamber of the Court (Third Section) relinquished the case to the Grand Chamber and a hearing was held on 20 March 2002.

Judgment was given by a Grand Chamber of 17 judges, composed as follows:

Luzius **Wildhaber** (Swiss), *President*,
Jean-Paul **Costa** (French),
Nicolas **Bratza** (British),
Elisabeth **Palm** (Swedish),
Lucius **Caflich**¹ (Swiss),
Riza **Türmen** (Turkish),
Françoise **Tulkens** (Belgian),
Karel **Jungwiert** (Czech),
Marc **Fischbach** (Luxemburger),
Volodymyr **Butkevych** (Ukrainian),
Nina **Vajić** (Croatian),
John **Hedigan** (Irish),
Hanne Sophie **Greve** (Norwegian),
András **Baka** (Hungarian),
Kristaq **Traja** (Albanian),
Mindia **Ugrekhelidze** (Georgian),
Antonella **Mularoni** (San Marinese), *judges*,

and also Paul **Mahoney**, *Registrar*.

3. Summary of the judgment²

Complaints

The applicant complained about the lack of legal recognition of her post-operative sex and about the legal status of transsexuals in the United Kingdom. She complained, in particular, about her treatment in relation to employment, social security and pensions and her inability to marry. She relied on Articles 8, 12, 13 and 14 of the Convention.

Decision of the Court

Article 8

Although the applicant had undergone gender re-assignment surgery provided by the national health service and lived in society as a female, she remained for legal purposes a male. This had effects on her life where sex was of legal relevance, such as in the area of pensions, retirement age etc. A serious interference with private life also arose from the conflict between social reality and law which placed the transsexuals in an anomalous position in which they could experience feelings of vulnerability, humiliation and anxiety. Though there were no conclusive findings as to the cause of transsexualism, the Court considered it more significant that the condition had a wide international recognition for which treatment was provided. It was not convinced that the inability of the transsexual to acquire all the biological characteristics took on decisive importance. There was clear and uncontested evidence of a continuing international trend in favour of not only increased social acceptance of transsexuals but also of legal recognition of the new sexual identity of post-operative transsexuals. There was no material before the Court to show that third parties would suffer

1. Judge elected in respect of Liechtenstein.

2. This summary by the Registry does not bind the Court.

any material prejudice from any possible changes to the birth register system that might flow from allowing recognition of the gender re-assignment and it was noted that the Government were currently discussing proposals for reform of the registration system in order to allow ongoing amendment of civil status data.

While the difficulties and anomalies of the applicant's situation as a post-operative transsexual did not attain the level of daily interference suffered by the applicant in *B. v. France* (judgment of 25 March 1992, Series A no. 232), the Court emphasised that the very essence of the Convention was respect for human dignity and human freedom. Under Article 8 of the Convention in particular, where the notion of personal autonomy was an important principle underlying the interpretation of its guarantees, protection was given to the personal sphere of each individual, including the right to establish details of their identity as individual human beings. In the twenty-first century the right of transsexuals to personal development and to physical and moral security in the full sense enjoyed by others in society could no longer be regarded as a matter of controversy requiring the lapse of time to cast clearer light on the issues involved. Domestic recognition of this evaluation could be found in the report of the Interdepartmental Working Group on Transsexual People and the Court of Appeal's judgment of *Bellinger v. Bellinger* (EWCA Civ 1140 [2001]).

Though the Court did not underestimate the important repercussions which any major change in the system would inevitably have, not only in the field of birth registration, but also for example in the areas of access to records, family law, affiliation, inheritance, social security and insurance, these problems were far from insuperable, as shown by the Working Group's proposals. No concrete or substantial hardship or detriment to the public interest had indeed been demonstrated as likely to flow from any change to the status of transsexuals and, as regards other possible consequences, the Court considered that society might reasonably be expected to tolerate a certain inconvenience to enable individuals to live in dignity and worth in accordance with the sexual identity chosen by them at great personal cost. Despite the Court's re-iteration since 1986 and most recently in 1998 of the importance of keeping the need for appropriate legal measures under review having regard to scientific and societal developments, nothing had effectively been done by the respondent Government. Having regard to the above considerations, the Court found that the respondent Government could no longer claim that the matter fell within their margin of appreciation, save as regards the appropriate means of achieving recognition of the right protected under the Convention. It concluded that the fair balance that was inherent in the Convention now tilted decisively in favour of the applicant. There had, accordingly, been a failure to respect her right to private life in breach of Article 8.

Article 12

While it was true that Article 12 referred in express terms to the right of a man and woman to marry, the Court was not persuaded that at the date of this case these terms restricted the determination of gender to purely biological criteria. There had been major social changes in the institution of marriage since the adoption of the Convention as well as dramatic changes brought about by developments in medicine and science in the field of transsexuality. The Court had found above, under Article 8 of the Convention, that a test of congruent biological factors could no longer be decisive in denying legal recognition to the change of gender of a post-operative transsexual. There were other important factors – the acceptance of the condition of gender identity disorder by the medical professions and health authorities within Contracting States, the provision of treatment including surgery to assimilate the individual

as closely as possible to the gender in which they perceived that they properly belonged and the assumption by the transsexual of the social role of the assigned gender.

As the right under Article 8 to respect for private life did not however subsume all the issues under Article 12, where conditions imposed by national laws are accorded a specific mention, the Court went on to consider whether the allocation of sex in national law to that registered at birth was a limitation impairing the very essence of the right to marry in this case. In that regard, it found that it was artificial to assert that post-operative transsexuals had not been deprived of the right to marry as, according to law, they remained able to marry a person of their former opposite sex. The applicant in this case lived as a woman and would only wish to marry a man. As she had no possibility of doing so, she could therefore claim that the very essence of her right to marry had been infringed. Though fewer countries permitted the marriage of transsexuals in their assigned gender than recognised the change of gender itself, the Court did not find that this supported an argument for leaving the matter entirely within the Contracting States' margin of appreciation. This would be tantamount to finding that the range of options open to a Contracting State included an effective bar on any exercise of the right to marry. The margin of appreciation could not extend so far. While it was for the Contracting State to determine *inter alia* the conditions under which a person claiming legal recognition as a transsexual established that gender re-assignment has been properly effected and the formalities applicable to future marriages (including, for example, the information to be furnished to intended spouses), the Court found no justification for barring the transsexual from enjoying the right to marry under any circumstances. It concluded that there had been a breach of Article 12.

Article 14

The Court considered that the lack of legal recognition of the change of gender of a post-operative transsexual lay at the heart of the applicant's complaints under Article 14 of the Convention. These issues had been examined under Article 8 and resulted in the finding of a violation of that provision. In the circumstances, the Court found that no separate issue arose under Article 14 and made no separate finding.

Article 13

The case-law of the Convention institutions indicated that Article 13 could not be interpreted as requiring a remedy against the state of domestic law, as otherwise the Court would be imposing on Contracting States a requirement to incorporate the Convention. Insofar therefore as no remedy existed in domestic law prior to 2 October 2000 when the Human Rights Act 1998 took effect, the applicant's complaints fell foul of this principle. Following that date, it would have been possible for the applicant to raise her complaints before the domestic courts, which would have had a range of possible redress available to them. In the circumstances no breach of Article 13 arose.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.