

July 2002

Christine Goodwin v. the United Kingdom [GC] - 28957/95

Judgment 11.7.2002 [GC]

Article 8

Article 8-1

Respect for private life

Absence of legal recognition of change of sex: *violation*

Article 12

Marry

Impossibility for transsexual to marry: *violation*

Facts: The applicant, who was registered at birth as male, lived as a woman from 1985 and in 1990 underwent gender reassignment surgery, provided and paid for by the National Health Service. She complains of the lack of legal recognition of her change of sex. In particular, she alleges that her employer was able to trace her identity because the Department of Social Security refused to give her a new National Insurance number, that the department's records still show her sex as male and that her file is marked "sensitive", causing her practical difficulties. She further complains that she did not become ineligible for a State pension at the age of 60, the age of entitlement for women. Finally, she claims that she has had to forgo certain advantages because she did not wish to present her birth certificate, which records sex at the time of registration.

Law: Article 8 – The Court had previously held that the refusal of the respondent Government to alter the register of births or to issue modified birth certificates could not be considered an interference with the right to respect for private life and that there was no positive obligation to alter the existing system or to permit annotations to the register of births. However, the Court had signalled its consciousness of the serious problems facing transsexuals and stressed the importance of keeping the need for appropriate legal measures under review and therefore decided to assess what was the appropriate interpretation and application of the Convention "in the light of present-day conditions". In the present case, despite having undergone gender reassignment surgery, the applicant remained, for legal purposes, a male, with consequent effects on her life where sex was of legal relevance. The stress and alienation arising from a discordance between the position in society assumed by a post-operative transsexual and the status imposed by law could not be regarded as a minor inconvenience arising from a formality. The applicant's gender reassignment was carried out by the National Health Service and it appeared illogical to refuse to recognise the legal implications of the result. As to countervailing arguments of a public interest nature, the Court was not persuaded that the state of medical science or scientific knowledge provided any determining argument as regards the legal recognition of transsexuals. It also attached less importance to the lack of evidence of a common European approach to the matter than to the clear and uncontested evidence of a continuing international trend in favour not only of

increased social acceptance of transsexuals but of legal recognition of the new sexual identity of post-operative transsexuals. As to the historical nature of the birth registration system, exceptions were already made in the cases of legitimation and adoption and making a further exception in the case of transsexuals would not pose a threat to the whole system or create any real prospect of prejudice to third parties. Moreover, the Government had made proposals for reform which would allow ongoing amendment to civil status data. While the level of daily interference suffered by the applicant was not as great as in other cases, the very essence of the Convention is respect for human dignity and freedom and 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 not be regarded as a matter of controversy requiring the lapse of time to cast clearer light on the issues involved. In short, the unsatisfactory situation in which post-operative transsexuals lived in an intermediate zone was no longer sustainable. The difficulties posed by any major change in the system were not insuperable if confined to post-operative transsexuals. No concrete or substantial hardship or detriment to the public interest had been demonstrated as likely to flow from any change to the status of transsexuals and, as regards other possible consequences, society could 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. The Government could no longer claim that the matter fell within the margin of appreciation and the fair balance inherent in the Convention tilted decisively in favour of the applicant.

Conclusion: violation (unanimously).

Article 12 – While the first sentence of this provision refers in express terms to the right of a man and woman to marry, the Court was not persuaded that it could still be assumed that those terms had to refer to a determination of gender by 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 under Article 8 that a test of congruent biological factors could no longer be decisive in denying legal recognition to a change of gender. However, the right under Article 8 did not subsume all the issues under Article 12, where conditions imposed by national laws are accorded a specific mention, and the Court therefore considered whether in the present case 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 that regard, it was artificial to assert that post-operative transsexuals had not been deprived of the right to marry because they remained able to marry a person of their former opposite sex. The applicant lived as a woman and would only wish to marry a man but had no possibility of doing so and could therefore claim that the very essence of her right to marry had been infringed. While it was for the Contracting State to determine the conditions in which it could be established that gender reassignment had been properly effected or in which past marriages ceased to be valid and the formalities applicable to future marriages, there was no justification for barring the transsexual from enjoying the right to marry under any circumstances.

Conclusion: violation (unanimously).

Article 14 – The issues had been examined under Article 8 and no separate issue arose under Article 14.

Conclusion: no separate issue (unanimously).

Article 13 – In so far as no remedy existed in domestic law prior to the Human Rights Act 1998 taking effect, Article 13 cannot be interpreted as requiring a remedy against the state of domestic law. Following that date, it would have been possible for the applicant to raise her complaints before the domestic courts.

Conclusion: no violation (unanimously).

Article 41 – The Court considered that the finding of a violation in itself constituted sufficient just satisfaction in respect of any non-pecuniary damage. It made an award in respect of costs and expenses.

(This case raised issues similar to those in *I. v. the United Kingdom*, no. 25680/94, 11 July 2002.)

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