



March 2012

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Gender Identity Issues

[Rees v. The United Kingdom](#), 17.10.1986

Female-to-male transsexual complained that United Kingdom law did not confer on him a legal status corresponding to his actual condition.

No violation of Article 8 (right to respect for private and family life): the changes demanded by the applicant would involve fundamentally modifying the system for keeping the register of births, which would have important administrative consequences and impose new duties on the rest of the population. Furthermore, the Court attached importance to the fact that the United Kingdom had borne the costs of Mr Rees's medical treatment.

However, the Court was conscious "of the seriousness of the problems affecting transsexuals and of their distress" and recommended "keeping the need for appropriate measures under review, having regard particularly to scientific and societal developments".

No violation of Article 12 (right to marry and found a family): the traditional concept of marriage was based on union between persons of opposite biological sex. States had the power to regulate the right to marry.

[Cossey v. The United Kingdom](#), 27.09.1990

The Court came to similar conclusions as in *Rees v. the United Kingdom* and did not find new facts or particular circumstances that would lead it to depart from the earlier judgment.

No violation of Article 8

The Court reiterated that "gender reassignment surgery did not result in the acquisition of all the biological characteristics of the other sex" (§40). It also noted that an annotation in the birth register would not be an appropriate solution.

No violation of Article 12

Attachment to the traditional concept of marriage provided "sufficient reason for the continued adoption of biological criteria for determining a person's sex for the purposes of marriage" and it was for the States to regulate by national law the exercise of the right to marry.

[X, Y et Z v. The United Kingdom](#), 22.04.1997

Whilst the Court concluded that here had been **no violation of Article 8 (right to respect for private and family life)**, it did nonetheless acknowledge the existence of family life between a transsexual and his partner's child (§ 37: "X has acted as Z's "father" in every respect" since the birth. In these circumstances the Court considers that the [de facto] family ties link the three applicants.")

In [B. v. France](#) (25.03.1992) the Court concluded for the first time that there had been a violation of Article 8 in a case concerning the recognition of transsexuals.

A male-to-female transsexual, Ms B, complained of the refusal of the French authorities to amend the civil-status register in accordance with her wishes.

Violation of Article 8 (right to respect for private and family life)

The Court took into consideration factors distinguishing the case of *B.* from *Rees v. the United Kingdom* and *Cossey v. the United Kingdom*, particularly the differences between the UK and the French civil status systems. Whilst there were major obstacles in the United Kingdom preventing birth certificates from being amended, in France these were intended to be updated throughout the life of the person concerned. The Court observes that in France many official documents reveal “a discrepancy between [the] legal sex and [the] apparent sex of a transsexual” (§ 59), which also appear on social-security documents and payslips.

The Court accordingly held that the refusal to amend the civil status register in her regard placed the applicant “in a daily situation which was not compatible with the respect due to her private life”.

[Sheffield and Horsham v. The United Kingdom](#), 30.07.1998

The Court was not persuaded that it should depart from its *Rees v. the United Kingdom* and *Cossey v. the United Kingdom* judgments: transsexualism continues to raise complex scientific, legal, moral and social issues in respect of which there is no generally shared approach among the Contracting States” (§ 58).

[No violation of Articles 8 \(right to respect of private and family life\), 12 \(right to marry and found a family\) and 14 \(prohibition of discrimination\).](#)

However, “the Court reaffirms that the area needs to be kept under permanent review by the Contracting States” (§ 60), in the context of “increased social acceptance of the phenomenon and increased recognition of the problems which post-operative transsexuals encounter”.

Christine Goodwin case

[Christine Goodwin v. The United Kingdom](#), Grand Chamber, 11.07.2002

The applicant complained of the lack of legal recognition of her changed gender and in particular of her treatment in terms of employment and her social security and pension rights and of her inability to marry.

[Violation of Article 8 \(right to respect for private and family life\)](#) owing to a clear and continuing international trend towards increased social acceptance of transsexuals and towards legal recognition of the new sexual identity of post-operative transsexuals.

“Since there are no significant factors of public interest to weigh against the interest of this individual applicant in obtaining legal recognition of her gender re-assignment, the Court reaches the conclusion that the notion of fair balance inherent in the Convention now tilts decisively in favour of the applicant.”

[Violation of Article 12 \(right to marry and found a family\)](#)

“The Court is not persuaded that it can still be assumed that [the terms of Article 12] must refer to a determination of gender by purely biological criteria” (§ 100).

The Court held that it was for the State to determine the conditions and formalities of transsexual marriages but that it “finds no justification for barring the transsexual from enjoying the right to marry under any circumstances.”

Following the Grand Chamber judgment in the case of Christine Goodwin, the United Kingdom introduced a system whereby transsexuals could apply for a gender recognition certificate. The two cases below both concerned a transsexual who was married before the sex reassignment surgery and who wanted to make use of this gender recognition procedure.

[Wena and Anita Parry v. the United Kingdom](#) (November 2006)

[R. and F. v. the United Kingdom](#) (November 2006)

The applicants were respectively married and had children. In each case, one of them underwent gender reassignment surgery and remained with his/her spouse as a married couple. Following the introduction of the Gender Recognition Act 2004, the applicants who had undergone gender reassignment surgery made an application for the issue of a Gender Recognition Certificate, which could not be obtained unless they terminated their marriage. The applicants complained in particular under Articles 8 (right for respect to private and family life) and 12 (right to marry) that they had been unable to obtain legal recognition of their acquired gender without terminating their marriage.

[Applications declared inadmissible \(rejected as manifestly ill-founded\):](#)

The applicants were requested to annul their marriage because same-sex marriages were not permitted under English law. The United Kingdom had not failed to give legal recognition to gender re-assignment and the applicants could continue their relationship through a civil partnership which carried almost all the same legal rights and obligations.

The Court observed that, when the new system was introduced following the Christine Goodwin judgment, the legislature was aware of the fact that there were a small number of transsexuals in subsisting marriages but deliberately made no provision for those marriages to continue in the event that one partner made use of the gender recognition procedure. The Court found that it could not be required to make allowances for that small number of marriages.

Recent cases

[Schlumpf v. Switzerland](#), 08.01.2009

[Refusal by the applicant's health insurers to pay the costs of her sex-change operation on the ground that she had not complied with a two-year waiting period before gender reassignment surgery, as required by the case-law as a condition for payment of the costs of such operations](#)

[Violation of Article 8 \(right to respect for private and family life\):](#) the waiting period had been applied mechanically without having regard to the age (67) of the applicant, whose decision to undergo an operation was likely to be affected by that delay, thus impairing her freedom to determine her gender identity.

[P.V. v. Spain](#), French only, 30.11.2010

Male-to-female transsexual who, prior to her gender reassignment, had had a son with his wife in 1998. They separated in 2002 and the applicant complained of the restrictions that had been imposed by the court on the contact arrangements with her son on the ground that her emotional instability after her change of sex entailed a risk of disturbing the child, then aged six.

[No violation of Article 8 in conjunction with Article 14:](#) the restriction on contact had not resulted from discrimination on the ground of the applicant's transsexualism. The decisive ground for the restriction imposed by the Spanish courts, having regard to the applicant's temporary emotional instability, had been the child's well-being. They had therefore made a gradual arrangement that would allow the child to become progressively accustomed to his father's gender reassignment.

[P. v. Portugal \(French only\)](#)

Decision struck out of the list 06.09.2011

At birth, the applicant was registered as male. On reaching adulthood, she underwent gender reassignment treatment followed by surgery. She complains of the lack of legal recognition of her situation, coupled with the alleged absence of any legislation on the

matter. This is the first case of its kind concerning Portugal. Her request for legal recognition to the domestic courts was successful.

Pending cases

[Y. Y. v. Turkey](#), (no. 14793/08)

Communicated in March 2010.

Refusal of the domestic courts to authorise the applicant to undergo gender reassignment surgery on the ground that she did not meet the statutory condition that required her to have been diagnosed as permanently infertile. She relies in particular on Article 8.

[H v. Finland](#) (no. 37359/09)

Communicated in April 2010.

The applicant complains that recognition of her gender change was subject to the transformation of her marriage into a civil partnership. She relies on Articles 8, 12 and 14.

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