



## Muhamad Juzaili Bin Mohd Khamis, et al. v. State Government of Negeri Sembilan, et al.

Civil Appeal No. 01-498-11/2012

**Country:** Malaysia

**Region:** Asia

**Year:** 2015

**Court:** Court of Appeal

**Health Topics:** Sexual and reproductive health

**Human Rights:** Freedom from discrimination, Freedom of expression, Freedom of movement and residence, Right to liberty and security of person, Right to life, Right to work

### Facts

Section 66 of the Syariah Criminal Enactment of 1992 made it an offence for Muslim males to wear women's attire or to pose as a woman in a public place. Conviction resulted in a fine or imprisonment not exceeding six months or both.

The Appellants were Muslim men with Gender Identity Disorder (GID) who expressed themselves as women. Their diagnosis was confirmed by psychological testing, medical, and sociological evidence. The Appellants had been repeatedly detained, arrested and prosecuted by the religious authority action pursuant to Section 66.

They brought a case alleging that Section 66 was inconsistent with the Malaysian Constitution. The High Court dismissed the case, and the Appellants appealed to the Court of Appeal.

### Decision and Reasoning

The Court of Appeal held that Section 66 was invalid and unconstitutional. Specifically, the Court held that Section 66 was inconsistent with the following articles of the Constitution:

Article 5(1), which provides that no person shall be deprived of his life and personal liberty other than in accordance with law, because "Section 66 directly affected the appellants' right to live with dignity by depriving them of their value and worth as members of our society." Moreover, the Court reasoned that Article 5(1) encompasses the right to work, which Section 66 infringed upon because the appellants would never be able to leave their homes, cross-dressed, to go to work.

Article 8(1), which provides that all persons are equal before the law, because the State ignored GID sufferers and unfairly subjected them to the law.

Article 8(2), prohibiting discrimination on the basis of gender, because Section 66 only applied to male Muslims.

Article 9(2), which protects the right to move freely, because Section 66 denied the appellants and all sufferers of GID the right to move freely in public places.

Article 10 (1)(a), which protects the right to freedom of speech and expression, because a person's dress is a form of expression, and Section 66 restricted the ability to dress freely.

### Decision Excerpts

"A more disturbing effect of section 66 is that it builds insecurity and vulnerability into the lives of the

appellants and other Muslim male persons with GID. The existence of a law that punishes the gender expression of transsexuals, degrades and devalues persons with GID in our society. As such, section 66 directly affects the appellants'™ right to live with dignity, guaranteed by Art. 5(1), by depriving them of their value and worth as members of our society.â€• Pages 20-21.

â€œThe appellants submit that section 66 has the inevitable effect of rendering their right to livelihood/work illusory, for they will never be able to leave their homes, cross-dressed, to go to their respective places of work without being exposed to being arrested and punished under section 66. Section 66 is therefore inconsistent with Art. 5(1).â€• Page 23.

â€œBeing unequals, the appellants should not be treated similarly as the normal male Muslims. Yet section 66 provides for equal treatment. It does not provide for any exception for sufferers of GID like the appellants. The State, although does not dispute the existence of sufferers of GID among male Muslims such as the appellants, yet does not explain for such a serious legislative omission. In other words, the State and the impugned section simply ignore GID sufferers such as the appellants, and unfairly subject them to the enforcement of the law. As a consequence, section 66 places the GID sufferers in an untenable and horrible situation. They could not dress in public in the way that is natural to them. They will commit the crime of offending section 66 the very moment they leave their homes to attend to the basic needs of life, to earn a living, or to socialize; 25 and be liable to arrest, detention and prosecution. This is degrading, oppressive and inhuman. Thus the inclusion of persons suffering from GID in the section 66 prohibition discriminates against them. Therefore, section 66 is inconsistent with Art. 8(1) of the Federal Constitution as it is discriminatory and oppressive, and denies the appellants the equal protection of the law.â€• Page 24.

Copyright © 2015 [www.GlobalHealthRights.org](http://www.GlobalHealthRights.org)