



## The Queen (on the application of JK) v. Registrar General for England and Wales

[2015] EWHC 990 (Admin)

**Country:** United Kingdom

**Region:** Europe

**Year:** 2015

**Court:** High Court of Justice, Queen's Bench Division

**Health Topics:** Sexual and reproductive health

**Human Rights:** Freedom from discrimination, Right to family life, Right to privacy

### Facts

The Claimant was a male-to-female transgendered woman who challenged the requirement that she was recorded as the father on her children's birth certificates. Following the birth of her daughter, but before the birth of her son, the Claimant decided to live as a man and changed her name to a female name. The Claimant was in the process of obtaining a Gender Recognition Certificate ("GRC") before undergoing gender reassignment surgery.

The Claimant asked the birth registrar to amend her daughter's birth certificate to show the Claimant as "parent" rather than father and asked that she be recorded as "parent" or "father/parent" on her son's birth certificate. The registrar refused on the grounds that the law required the Claimant to be registered in both cases as the child's father.

The Claimant argued that the requirement to show her as father was a breach of her and her children's respect to private life under Article 8 of the European Convention on Human Rights ("Convention") and discrimination on the basis of her transgender characteristics in violation of Article 14 of the Convention. In particular, the Claimant argued that the birth registration scheme was unsatisfactory and a similar scheme to that of assisted reproduction, e.g. adoption (where the adopting parties are recorded as "parent" on the birth certificate), should be put in place, there being no justification for the Government's failure to do so.

The Claimant argued that in circumstances where she had to reveal her previous gender (e.g. by disclosing her child's birth certificate for official documents, such as, passports or driver's licences), this would be a serious invasion of her and her children's privacy and would cause great embarrassment and distress.

### Decision and Reasoning

The Court rejected the Claimant's case and held that while there was an interference with the Claimant's Article 8 right to privacy, on balance, the interference was small. Further, insofar as the birth registration scheme interfered with Article 8 rights of a transgendered person, that interference was justified. The Court held that there would be a serious infringement of a child's right to know and have their fundamental identity recognized (i.e. the identity of their father) if a transgendered parent was given the unilateral right to change their birth certificate. This would not be in the best interests of the child.

Moreover, the Court reasoned that if the birth registration scheme allowed amendments to birth certificates where a person had changed gender, this may result in substantial interference with the Article 8 rights and interests of others (including any other parent and the children), contrary to the public interest. The ability to change a child's birth certificate would be contrary to the public interest of coherence of the birth registration scheme which records the details as at the child's birth, and those details cannot be changed.

The Court also noted that there were statutory safeguards in place (such as s.22 of the Gender Recognition Act ("GRA")), which makes it an offence for a person who has obtained "protected information" – including a gender change – in an official capacity to disclose such information to any other person. Moreover, no country in Europe or elsewhere enabled a person to make the Claimant's change without the child's consent. The only case where a change in the birth certificate was allowed was in a Portuguese case where the child, who was over 18 years old, consented to the change.

As regards the Claimant's claim that she was being discriminated against under Article 14 of the Convention, the Court held that that claim did not add anything of substance to the Article 8 claim and therefore held that any discrimination was justified for the same reasons set out in relation to Article 8.

### **Decision Excerpts**

“Simply because, in a particular case, the interests of the particular children would possibly be better served if their birth certificates were amended to show their father as ‘parent’ rather than ‘father’ does not make the scheme unlawful. As a scheme, it must cater for a wide variety of circumstances. It is clear that, in some cases, it will be regarded as in the relevant children's interests to have a birth certificate that reflects their biological parentage. Given the evidence that in most cases of gender change, unlike the case of the Claimant...relationships between the relevant transsexual persons and his or her spouse/partner are fatally disrupted, that is likely to apply to many (if not most) cases. A scheme that may assist the interests of some children, may be substantially damaging or harmful to the interests of others.” Para. 114.

“[The Claimant's representative] did not propose that a mother who underwent a female to male change should have the ability to change the birth certificates...to delete the reference to ‘mother’...he accepted that that would be a step too far in breaching the child's right...If the change of gender of a mother who is the subject of a female to male change is not to be protected by a change in the birth certificates of children, then the protection of a change of gender of a father is, at least, less compelling.” Para. 115(i).

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