



## Goodwin v. United Kingdom

App. No. 28957/95, 35 Eur. H.R. Rep. 18 (2002).

**Country:** United Kingdom

**Region:** Europe

**Year:** 2002

**Court:** European Court of Human Rights European Court of Human Rights

**Health Topics:** Health care and health services, Mental health, Sexual and reproductive health

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

### Facts

The applicant, a United Kingdom citizen had always enjoyed dressing as a woman since her young age and had the impression that her body did not fit her mind. Thus she started treatment with a psychiatrist and underwent gender re-assignment surgery. After the procedure, she experienced problems at work such as harassment allegedly because of her transexuality despite having changed jobs. Further, she was refused the right to state pension at the age of 60 and was told that she had to contribute until the age of 65, being the age of entitlement for men. Further, the Department of Social Security had marked her files as "sensitive", meaning that the applicant could not handle queries over the phone, she had to make special appointments for any matters, even trivial. Her record continues to state her sex as male. In a number of instances, the applicant is considered to be a man such as the obligation to pay the higher motor insurance premiums applicable to men.

The applicant claimed that the discriminatory and humiliating experiences she suffered everyday and the refusal to grant her retirement pension at the age of 60 were in breach of Article 8 (right to private life) of the European Convention on Human Rights. Further, the applicant argued that the impossibility to marry a man because she was considered as a man only on reliance on biological criteria constituted a violation of Article 12 (right to marry) of the Convention. The applicant also alleged that the State had breach Article 13 (right to effective remedy) of the Convention by not providing her with an effective remedy. Finally, the applicant claim that she suffered from discrimination because of the lack of recognition of her gender, in breach of Article 14 (freedom from discrimination) of the Convention.

### Decision and Reasoning

The Court found that a serious interference with her private life arose as the State's refusal to recognize the applicant's true personal identity created "discordance" between social reality and her status under the law in breach of Article 8 of the Convention. Further, the Court held that 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. The State could no longer claim that the matter fell within their margin of appreciation and that the fair balance now tilted decisively in favour of the applicant.

On similar grounds, the Court found that the State was in interference of the applicant's rights under Article 12 as there was no justification for barring transsexuals from enjoying the right to marry under any circumstances.

The Court found that no separate issue arose under Article 14.

Lastly, the Court found no violation of Article 13 as the UK was not required to have incorporated the Convention into its domestic law at the time of the applicant's complaints. Article 13 could not be interpreted as requiring a remedy or impose upon States a requirement to incorporate the Convention. As no remedy existed in domestic law prior to October 2000 when the Human Rights Act 1998 took effect, the applicant's complaint under Article 13 was rejected.

### Decision Excerpts

"77. It must also be recognised that serious interference with private life can arise where the state of domestic law conflicts with an important aspect of personal identity (see, *mutatis mutandis*, *Dudgeon v. the United Kingdom* judgment of 22 October 1981, Series A no. 45, ¶ 41). 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 which refuses to recognise the change of gender cannot, in the Court's view, be regarded as

a minor inconvenience arising from a formality. A conflict between social reality and law arises which places the transsexual in an anomalous position, in which he or she may experience feelings of vulnerability, humiliation and anxiety.

78. In this case, as in many others, the applicant's gender re-assignment was carried out by the national health service, which recognises the condition of gender dysphoria and provides, inter alia, re-assignment by surgery, with a view to achieving as close an assimilation as possible to the gender in which the transsexual perceives that he or she properly belongs. The Court is struck by the fact that nonetheless the gender re-assignment which is lawfully provided is not met with full recognition in law, which might be regarded as the final and culminating step in the long and difficult process of transformation which the transsexual has undergone. The coherence of the administrative and legal practices within the domestic system must be regarded as an important factor in the assessment carried out under Article 8 of the Convention. Where a State has authorised the treatment and surgery alleviating the condition of a transsexual, financed or assisted in financing the operations and indeed permits the artificial insemination of a woman living with a female-to-male transsexual (as demonstrated in the case of X., Y. and Z. v. the United Kingdom, cited above), it appears illogical to refuse to recognise the legal implications of the result to which the treatment leads." Page 23.

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