





ECHR: Commission's Final ruling on admissibility of the case of Kristina Sheffield


January 1996

AS TO THE ADMISSIBILITY OF

Application No. 22985/93
by Kristina SHEFFIELD
against the United Kingdom

The European Commission of Human Rights sitting in private on 19 January 1996, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
C.L. ROZAKIS
E. BUSUTTIL
A. WEITZEL
H.G. SCHERMERS
Mrs. G.H. THUNE
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONP  
B. MARXER
J. MUCHA
D. SV  BY
A. PERENIC
C. B  RSAN
P. LORENZEN
K. HERNDL

Mr. H.C. KR  GER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 4 August 1993 by Kristina SHEFFIELD against the United Kingdom and registered on 22 November 1993 under file No. 22985/93;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;
- the observations submitted by the respondent Government on 16 December 1994 and the observations in reply submitted by the applicant on 24 April 1995;
- the material submitted by the Government on 8 December 1995 and by the applicant on 15 January 1996;
- the observations submitted by the parties at the oral hearing

held on 19 January 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen born in 1946 and resident in London. She is represented before the Commission by Henri Brandman & Co., solicitors practising in London. The facts as submitted by the parties may be summarised as follows.

A. Particular circumstances of the case

The applicant at birth in 1946 was registered as being of the male sex. In 1986, the applicant began treatment at a gender identity clinic and on a date unspecified, underwent sex re-assignment surgery and treatment. She changed her name. This change of name was recorded on her passport and driving licence. Her birth certificate continues to record her original name and gender.

The applicant was divorced from her spouse at or around that time. She states that she was informed that she was required to obtain a divorce as a pre-condition to surgery being carried out. Following the divorce, the applicant's ex-wife applied to the court to terminate the applicant's access to her daughter. The applicant states that the judge granted the application on the basis that contact with a transsexual would not be in the child's interests. The applicant has not seen her daughter since then, a period of more than eight years.

On 7 and 16 April 1992, the applicant attended court to stand surety in the sum of £ 2000 for a friend. On both occasions she was required to disclose to the court her previous name.

In June 1992, the applicant was arrested for breach of fire-arms regulations. The charges were dropped when it was established that the pistol was a replica. Following comments of police officers indicating that they were aware that the applicant had undergone a sex-change operation, the applicant sought to discover whether these personal details were held on police computer files. She discovered that the official request for information made under the data protection provisions required her to state her sex and other names. She did not pursue the enquiry.

On 20 December 1992, the applicant entered into an insurance contract in respect of her car. The form which she was required to fill in as the basis of the contract required her to state her sex. As under United Kingdom law she continues to be regarded a male she was obliged to give her sex as male.

B. Relevant domestic law and practice

Names

Under United Kingdom law, a person is entitled to adopt such first names or surname as he or she wishes. Such names are valid for purposes of identification and may be used in passports, driving licences, medical and insurance cards etc.

Marriage

Pursuant to United Kingdom law, marriage is defined as the voluntary union between a man and a woman, sex for that purpose being determined by biological criteria (chromosomal, gonadal and genital, without regard to any surgical intervention): Corbett v. Corbett [1971] P 83.

Birth certificates

Registration of births is governed by the Births and Deaths Registration Act 1953 which requires that the birth of every child be registered by the Registrar of Births and Deaths for the area in which the child is born. An entry is regarded as record of the facts at the time of birth. A birth certificate accordingly constitutes a document revealing not current identity but historical facts.

The criteria for determining the sex of a child at birth are not defined in the Act. The practice of the Registrar is to use exclusively the biological criteria (chromosomal, gonadal and genital).

The 1953 Act provides for the correction by the Registrar of clerical errors or factual errors, but an amendment may only be made if the error occurred when the birth was registered. The fact that it may become evident later in a person's life that his or her "psychological" sex is in conflict with the biological criteria is not considered to imply that the initial entry at birth was a factual error. Only in cases where the apparent and genital sex of a child was wrongly identified or where the biological criteria were not congruent can a change in the initial entry be made and it is necessary for that purpose to adduce medical evidence that the initial entry was incorrect.

Social security, employment and pensions

A transsexual continues to be recorded for social security, national insurance and employment purposes as being of the sex recorded at birth. A male to female transsexual will accordingly only be entitled to a State pension at the state retirement age of 65 and not the age of 60 which is applicable to women.

COMPLAINTS

The applicant complains that the State refuses to recognise her as a woman and requires her to declare herself to be a man when, for example, entering into contracts or appearing in a court of law. She complains that these matters disclose a lack of respect for her private and family life contrary to Article 8 of the Convention.

The applicant complains of being unable to change her birth certificate. She submits that procedures to do this existed for transsexuals in the United Kingdom until dicta from the case CORBETT v. CORBETT (1971 Probate R. 83) were used to alter its administrative practice and to accept only biological criteria in determining legal sex, which continues to be the case in disregard of current medical and scientific findings concerning the transsexualism.

The applicant complains that as a transsexual she is prohibited from marrying a man contrary to Article 12 of the Convention.

The applicant further complains that she is open to discrimination both at work and in public as a transsexual. She states

that she is under a constant threat of abuse and physical violence and that there is no protection in law for transsexuals against discrimination. She invokes Article 14 of the Convention in this respect.

The applicant submits in addition that she has no effective remedy for her complaints as required by Article 13 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 4 August 1993 and registered on 22 November 1993.

On 4 July 1994, the Commission decided to communicate the application to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure.

The Government's written observations were submitted on 16 December 1994 after two extensions of the time-limit fixed for that purpose. The applicant replied on 24 April 1995, also after an extension of the time-limit.

On 20 January 1995, the Commission granted the applicant legal aid.

On 4 September 1995, the Commission decided to invite the parties to an oral hearing concerning the applicant's complaints relating to the lack of respect for her private life, inability to marry, discrimination and failure to provide an effective remedy, such hearing to be joined for that purpose to Application No. 23390/94. The Commission declared inadmissible the remainder of the applicant's complaints.

The Government submitted documents on 8 December 1995 and the applicant further material on 15 January 1996.

At the hearing, which was held on 19 January 1996, the parties were represented as follows.

For the Government

Ms. Dickson	Agent, Foreign and Commonwealth Office
Mr. Pannick, Q.C.	counsel
Mr. Singh	counsel
Ms. Jenn	adviser, Department of Health
Mr. Jenkins	adviser, Office of Population, Censuses and Surveys

For the applicants

Mr. Duffy	counsel
Mr. McFarlane	counsel
Mr. Heim	counsel
Mr. Brandman	solicitor
Professor Gooren	adviser

Both applicants attended.

THE LAW

The applicant complains that the State refuses to recognise her

status as a woman contrary to her right to respect for private life, that as a male-to-female transsexual, she is unable to marry a man under United Kingdom law, that she suffers discrimination and that she has no effective remedy for these complaints.

She invokes the following provisions of the Convention.

Article 8 (Art. 8) of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 12 (Art. 12) of the Convention

"Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

Article 14 (Art. 14) of the Convention

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 13 (Art. 13) of the Convention

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Government submit that Article 8 (Art. 8) does not require a Contracting State to recognise for legal purposes the new sexual identity of a person who has undergone gender re-assignment surgery. They refer to the wide margin of appreciation to be accorded to States in this area where difficult medical and moral questions arise on which there is not yet any international consensus (see Eur. Court H.R. Rees judgment of 17 October 1986 Series A no. 106; Cossey judgment of 27 September 1990, Series A no. 184 and B. v. France judgment of 25 March 1992 Series A no. 232-C). The Government submit that the applicant has not established a degree of practical detriment which would amount to a denial of her right to respect for her private life. Under Article 12 (Art. 12) of the Convention, there is no interference, since the Court and Commission have recognised that marriage may legitimately be restricted under national laws to union between a man and woman of biological origin.

As regards the alleged discrimination, the Government consider that the applicant receives the same treatment as all persons in her position who have undergone gender re-assignment surgery. She cannot, in their submission, seek to compare herself with the category of

persons who obtain rectification of the birth register as a result of a mistake made at the time of registration.

The applicant complains that the failure of the United Kingdom law to recognise her gender re-assignment constitutes a lack of respect for her private life guaranteed under Article 8 (Art. 8) of the Convention. For legal purposes, such as appearance in court and documents (eg. insurance and contractual documents), a transsexual is required to indicate birth gender and, on occasion, previous name and in official records (National Insurance and social security) and in the employment context, a transsexual continues to be regarded as being of the sex recorded at birth. The allocation of sex in United Kingdom law and practice by reference to biological indicators existing at the time of birth is not justified socially, medically or scientifically. Accordingly the applicant submits that she is subject to serious, distressing and unnecessary interferences. The applicant complain also of a violation of her right to marry under Article 12 (Art. 12), since her change of gender is not taken into account and having been recorded at birth as being of the male sex, marriage to another person of the male sex is prohibited. Under Article 14 (Art. 14) of the Convention, the applicant complains that she is subject to discrimination as regards the inconsistency in practice of rectification of birth certificates as carried out by the United Kingdom authorities. The applicant submits that legal, societal and scientific developments mean that the previous case-law of the Court requires re-examination. She refers in particular to new scientific research into the brain structure of transsexual persons.

The Commission has had regard to the observations submitted by the parties. It considers that these complaints raise serious and complex issues of law and fact under the Convention, the determination of which should depend upon an examination on the merits. The Commission therefore concludes that the remainder of the application is not manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Commission, by a majority,

DECLARES ADMISSIBLE, without prejudging the merits, the remainder of the application.

Secretary to the Commission

President of the Commission

(H.C. KRÖGER)

(S. TRECHSEL)