Regina (on the application of John Allman)
v
The Secretary of State for Constitutional Affairs

Grounds for Judicial Review

SECTION 5 Detailed statement of grounds

The Gender Recognition Act 2004 ("GRA") violates my human rights as a heterosexual Christian male in selecting a sexual or marriage partner, in particular by allowing the falsification of the birth certificates of "trans persons". The GRA goes out of its way to prevent me from ascertaining the true birth gender of a prospective sexual or marriage partner, which is of vital importance to me as a Christian male who is in mortal fear of having a sexual relationship with someone who is biologically male by birth. The lengths to which the GRA goes in protecting "trans persons" are also disproportionate and indeed irrational to the point of *Wednesbury* unreasonableness, as the whole of the GRA is predicated upon unproven medical theories of dubious authority. Therefore, any decision to bring the GRA into force will likewise be disproportionate and unreasonable.

In sum, I am a victim within section 7(1) and (7) of the Human Rights Act 1998 of any decision to bring the GRA into effect.

The detailed grounds of my claim are as follows:

A. Violation of my "right to freedom of thought, conscience and religion" under Article 9 of the European Convention of Human Rights: The GRA infringes my right as a heterosexual Christian male to choose as a sexual or marriage

partner only someone who is biologically female and who has been so since birth. By allowing the issue of birth certificates showing the acquired gender of transsexuals as their gender at birth the GRA leads not only to the falsification of historical fact but also makes it very difficult for a potential marriage partner to ascertain the true birth gender of a "trans person".
The relevant sections of the GRA are:

* section 1, which lays down eligibility to apply for a "gender recognition certificate" and gives effect to Schedule 1.

* Schedule 1, which makes provision for "Gender Recognition Panels" to decide the outcome of applications for "gender recognition certificates".

* section 4, which stipulates that where a "Gender Recognition Panel" has granted an application, it must issue a "gender recognition certificate" to the applicant.

* section 9, subsection (1) of which provides that "Where a full gender recognition certificate is issued to a person, the person's gender becomes for all purposes the acquired gender (so that, if the acquired gender is the male gender, the person's sex becomes that of a woman)."

* section 10, which establishes the mechanisms by which "a person to whom a full gender recognition certificate is issued" is entered on a "Gender Recognition Register" ("GRR") which is not open to public inspection or search and which gives effect to Schedule 3.

* Schedule 3, which obliges the Registrar General to make an entry in the GRR for everyone with a gender recognition certificate and to mark the original birth entry of the trans person concerned to show that the original entry has been superseded. If an applicant for a birth certificate of such a person refers to the person by the name recorded on the GRR (i.e. the name in the acquired gender that the trans person has assumed), they will receive a birth certificate compiled from the entry in the GRR, i.e. a falsified birth certificate.

* section 11, which gives effect to Schedule 4, paragraphs 4 to 6 of which amend the Matrimonial Causes Act 1973 to allow the unwitting marriage partner of someone with a "gender recognition certificate" to seek the annulment of the marriage. This is no solution to the problem, which would not have arisen in the first place in the absence of the GRA. It is really an attempt to slam the stable door after the horse has bolted.

* Schedule 4, paragraph 3, which amends the Marriage Act 1949 by inserting a provision (as section 5B) that:
"A clergyman is not obliged to solemnise the marriage of a person if the clergyman reasonably believes that the person's gender has become the acquired gender under the Gender Recognition Act 2004."
This is no solution, in view of section 22 (see below).

* section 22, which makes it a criminal "offence for a person who has acquired protected information in an official capacity to disclose the information to any other person", the "protected information" in question being information relating to the true birth gender of a "trans person". So a clergyman would be guilty of a criminal offence if he revealed this information to the unwitting prospective marriage partner of a "trans person".

B. Violation of my right under Article 8 of the European Convention on Human Rights, which provides that "Everyone has the right to respect for his private and family life, his home and his correspondence".

"Private and family life" covers (inter alia) personal, sexual and marital relationships. The GRA interferes with my free choice in these areas by perpetrating a fraud on the veracity of official documents, including birth certificates, which purport to record historical facts. The relevant sections of the GRA are the same as those cited under (A), above.

C. Violation of my right to "freedom of expression" under Article 10 of the European Convention of Human Rights, which includes "freedom to hold

opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers".

The GRA violates in particular my right to receive true and accurate information regarding the birth gender of a prospective sexual or marriage partner. The relevant sections of the GRA are the same as those cited under (A), above.

D. Violation of my right under Article 12 of the European Convention on Human Rights: "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".

By allowing the falsification of the birth gender of "trans persons" the GRA infringes my rights under this article as a heterosexual Christian male. The relevant sections of the GRA are the same as those cited under (A), above.

The GRA was passed largely in response to the unanimous decision of the European Court of Human Rights on 11 July 2002 in ***Christine Goodwin v The United Kingdom*** (application number 28957/95), which, by glossing over the phrase "according to the national laws governing the exercise of this right", must be considered to have been wrongly decided. However, the GRA goes considerably further than this judgment, which was concerned only to post-operative transsexuals, whereas the GRA is applicable also to "trans persons" who have not undergone "gender reassignment" surgery, including some who have no intention of so doing.

The Strasbourg court in Christine Goodwin's case admitted that "though there is widespread acceptance of the marriage of transsexuals, fewer countries permit the marriage of transsexuals in their assigned gender than recognise the change of gender itself." But the Court still concluded: "The Court is not persuaded however that this supports an argument for leaving the matter entirely to the Contracting States as being within their margin of appreciation. This would be tantamount to finding that the range of options open to a Contracting State included an effective bar on any exercise of the right to marry. The margin of appreciation cannot extend so far." [Para 103].

E. Discrimination: Article 14 of the European Convention on Human Rights.

Article 14 provides that "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." The GRA discriminates against me on grounds of sex , religion and opinion so as to infringe my rights under Articles 8, 9, 10 and 12. The relevant sections of the GRA are the same as those cited under (A), above.

F. Freedom of Information Act 2000.

The GRA runs clean counter to the whole spirit of the Freedom of Information Act 2000, whose purpose is to make public records more accessible and transparent. As with most other public records, it is a very simple matter to obtain a copy of the genuine birth certificate of anyone, unless that person happens to be the subject of a "gender recognition certificate", in which case the "birth certificate" provided by the Registrar General will contain a false birth gender (unless the applicant happens to know the name of the "trans person" at birth, which is most unlikely to be the case).

G. Proportionality.

It is hard to see how the GRA could possibly succeed in its purpose of preventing discrimination against "trans persons" by falsifying the record so as to hide the fact that the persons concerned had ever been of a gender other than their "acquired" gender. Indeed, implementation of the GRA is likely to result in more extensive discrimination. For, as the GRA will make it virtually impossible to check the relevant documentation relating to birth gender, people will continue to discriminate against those perceived to be transsexuals, whether they are or not.

But, even if the GRA were to succeed in marginally reducing discrimination against "trans persons", the cost would be disproportionate if this could only be achieved at the expense of the veracity of public records coupled with discrimination against those, like the claimant, whose rights would be infringed if they were unable to rely on such records.

H. *Wednesbury* unreasonableness.

If ever there was an irrational decision it would be the decision to implement the GRA. In particular, the decision to bring into being a whole system of fictitious "birth certificates" must qualify as so unreasonable that no reasonable person could ever have reached such a decision, thereby qualifying as *Wednesbury* unreasonable. This unreasonableness can only be exacerbated by the fact that the whole of the GRA is predicated upon unproven medical theories of dubious authority. In the words of Lord Chan, a distinguished paediatrician, in the second reading debate on the GRA in its passage through the House of Lords on 18 December 2003:

"The ruling of the European Court [of Human Rights in Christine Goodwin's case] supports a situation in which personal feelings and beliefs are given precedence over verifiable medical evidence. In support of that are four reports, which I have read, of men who were labelled as transsexual or having a gender identity disorder, but who no longer feel that they are women, and, a few years later, function normally as men. That demonstrates that the condition of some transsexuals is not permanent or lifelong.

.....

[Referring to what is now section 2, on the determination of applications for a gender recognition certificate]: "No mention is made of undergoing reconstructive surgery of the genital organs. It is therefore likely that individuals applying for gender recognition certificates will continue to be men with male sexual organs. About half of male transsexuals have not undergone surgery. If they are then given gender recognition certificates classifying them as females, serious consequences would affect their partners, children and other people, including women who use public toilets.

.....

More medical research is needed into transsexual people in order to provide them with appropriate support. The Gender Recognition Bill assumes that the condition is already a discrete and clearly agreed medical condition, which is not the case. Therefore, I fear that the Bill would infringe the rights of third parties." [Columns 1307-1308, 18 December 2003].