

# Case Number CO/746/2005

**Regina (on the application of John Allman)**

v

**The Secretary of State for Constitutional Affairs**

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## **Grounds for Renewing the Application for Judicial Review**

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### **Form 86B section 3 : statement of grounds**

**In reply to Mr Justice Richards' "Observations":**

1. "It cannot be unlawful or unreasonable for the Secretary of State to bring into force an Act of Parliament which was passed to give effect to a judgment of the Strasbourg Court." Yes it can, if the method by which the Act remedies one infringement of rights is so flawed that a new and avoidable infringement of rights is created. Besides, the Gender Recognition Act (GRA) goes well beyond any judgment of the Strasbourg Court and arguably misinterprets the judgment in question. The GRA not only gives transgendered persons "legal recognition" in their acquired gender. It also *prevents* their original, God-given, natural, biological, *birth* gender from being "recognised" (in a different sense of the verb "to recognise") by prospective spouses and other sexual partners, to the detriment of the latter's private and family lives.
2. "...[T]he Act does not give rise to any arguable breach of the claimant's Convention rights: either there is no interference with such rights or any interference is justified as a proportionate means of protecting the rights of 'transsexual persons.' " The judge's resort to the second of the two alternatives amounts to an admission on his part. He is admitting that he

could not be certain when he compiled his "Observations" that there was not at stake an issue of *balancing* the rights of the claimant against those of "transsexual persons". He appears simply to have *assumed* that any issue of proportionality must have been addressed justly in the GRA. Yet the admitted presence of this issue of proportionality surely cries out for the claimant to be given a fair opportunity to argue in court that it is the GRA itself and not his claim that is disproportionate.

3. Proportionality is indeed relevant here. The claimant will show that it is disproportionate to protect alleged rights of transgendered persons in the way that the GRA does: i.e. by falsifying public records, namely birth certificates, even when these are issued for the purposes of applying for marriage licences.
4. It is perhaps worth reminding the court at this point that a proposed amendment to the Bill was rejected during its passage through the Lords, an amendment whereby a more historically complete and accurate kind of birth certificate would have been needed to obtain a marriage licence (etc) than would be needed when (say) merely applying for an office job. A birth certificate requested explicitly for the purposes of marriage and therefore valid for those purposes would have disclosed the whole truth. An amendment making exceptions for sporting bodies was, however, adopted. Why not for marriage?
5. The claimant is not contending in this court that *no gender recognition Act whatsoever* should have been passed or implemented. He is merely contending that the particular GRA that actually was passed is flawed. It is flawed principally because the particular amendment mentioned at 4 above was not applied to the Bill before the Act was passed. That amendment would have protected the claimant from the risk of marrying a transgendered person unawares, and would have been very likely indeed to have prevented the present claim, because it would have given the claimant a method of

protecting his private and family life from the most serious risks to which the GRA would expose him raised in this claim.

6. The GRA, if implemented, places Jews, Christians, Muslims and others with beliefs similar to those of the claimant at risk of having to choose between (a) most likely remaining sexually inactive for the rest of their lives, and (b) giving up their religious beliefs if they wish to avoid lifelong celibacy, something which they should not (in effect) be *required* by the UK government to do.
7. Moreover, the purported "right" of transsexual persons which is being balanced, for the purposes of *this* claim, against the rights of the claimant is their purported right to conceal their biological gender from prospective and actual spouses and sexual partners, at least until after a "marriage" has been contracted and "consummated", or a sexual relationship otherwise begun. It is contended vigorously by the claimant that the convention confers no such purported right upon the transgendered, a "right" to deceive prospective or actual spouses or sexual partners as to their true gender, and that the Strasbourg judgment concerned nowhere sets out to uphold any such purported right to deceive, or acknowledges the existence of any such right to deceive in this manner.
8. Does the claimant satisfy the "victim" test? This is not addressed in the judge's "Observations". It is certainly arguable on the basis, inter alia, of the case of *Norris v Ireland* (1988) 13 EHRR 186. In *Norris v Ireland*, the successful claimant was a homosexual who merely faced a risk of being prosecuted for practising his preferred sexual practices. That risk to Mr Norris (of prosecution) was *accepted* to be a human rights violation, even though it was a risk that had not materialised.
9. The claimant in the present case is also exposed to a risk, albeit a different risk from that which Mr Norris faced. The risk faced by the claimant is the risk of becoming unable to marry or even (speaking colloquially) "to have a

sex life" without changing his religious beliefs, something which he cannot do, and should not be expected to do. The principle established in Norris was that merely exposing somebody to a risk can infringe their convention rights. The Norris judgment did not depend upon the content of the risk which Mr Norris faced, which happens to be a risk different in content from the risk to which the GRA exposes the claimant.

**10. The claimant is not the only victim of the GRA. The political correctness and unproven science of the GRA lulls those with the "mental illness" of "gender dysphoria" into a false sense of security that a person's gender can be changed, are also victims. (See for example the extract from a speech by Lord Chan in the House of Lords cited in the Grounds submitted with the Claim Form in this case). If the transgendered persons are themselves victims, this rather knocks out the point made by the judge that the GRA is "a proportionate means of protecting the rights of transsexual persons" or indeed that the GRA protects those rights at all but rather betrays them.**

**11. The GRA is also arguably incompatible with the Human Rights Act 1998, and in particular with Arts 8, 9 and 10 of the European Convention on Human Rights.**

**12. "The claim is unarguable." The claim is unarguable only if the court, a public authority within the Human Rights Act, is prepared to set its face against allowing it to be argued, by withholding from the claimant any opportunity to argue the claim, thus infringing the claimant's Article 10 right to freedom of expression, silencing him on the basis of unproven "science", coupled with political correctness.**

The claimant hereby requests an oral hearing, before a different judge, of his application for permission to apply for Judicial Review. Furthermore, he requests that this Form 86B request for an oral hearing should also be considered by a different judge.