

CO/746/2005

Neutral Citation Number: [2005] EWHC 1910 (Admin)  
IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
THE ADMINISTRATIVE COURT

Royal Courts of Justice  
Strand  
London WC2

Monday, 27th June 2005

B E F O R E:

**MR JUSTICE SULLIVAN**

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**THE QUEEN ON THE APPLICATION OF ALLMAN**

**(CLAIMANT)**

-v-

**SECRETARY OF STATE FOR CONSTITUTIONAL AFFAIRS**

**(DEFENDANT)**

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Computer-Aided Transcript of the Stenograph Notes of  
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(Official Shorthand Writers to the Court)

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**DR MICHAEL ARNHEIM** (instructed by Chambers of Dr Michael Arnheim) appeared on behalf of the CLAIMANT

**MR TIM WARD** (instructed by Treasury Solicitor) appeared on behalf of the DEFENDANT

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J U D G M E N T  
(As Approved by the Court)

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1. MR JUSTICE SULLIVAN: This is a renewed application for permission to apply for Judicial Review in respect of the Gender Recognition Act 2004. At the time when proceedings were instituted, the Act had not been brought into force and the claim sought, amongst other things, a prohibiting order to stop the implementation of the Act. As from 4th April 2005, the Act has been brought into force and so the application is now for a declaration of incompatibility pursuant to Section 4 of the Human Rights Act 1998.
2. It is contended that those provisions of the Act, principally Section 10 in conjunction with Schedule 3, which enable transsexuals to obtain a new birth certificate in their acquired gender, is incompatible with the claimant's rights under Articles 8, 9 and 10 of the Convention.
3. In refusing permission on the papers, Richards J observed:

"The claim is unarguable. 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. Moreover, for reasons given in the Secretary of State's summary grounds for contesting the claim, the Act does not give rise to any arguable breach of the claimant's Convention rights. Either there is no interference of such rights or any interference is justified as a proportionate means for protecting the rights of transsexual persons.

"I think it unnecessary to reach any decision on the defendant's further intention that the claimant is not even entitled to bring these proceedings since he is not in any relevant respect a victim."
4. In very brief summary, the claimant contends that the Act violates his rights under the Convention because he is a committed Christian male "who is in mortal fear of having a sexual relationship with someone who is biologically male by birth." The statement of facts relied upon in support of the claim says:

"The applicant's strict religious beliefs require him to be quite certain beforehand that the birth gender of anyone who he marries or with whom he has a sexual relationship is female. The applicant's very strong personal aesthetic preference as touching his own private life also require him to know beforehand that the birth gender of anyone who he marries or with whom he enters into a sexual relationship is female."
5. It is contended in Dr Arnheim's skeleton argument on behalf of the claimant that:

"Falsifying transsexuals' birth certificates in the way the Act does deprives heterosexuals of the right to rely on a public document to verify the true birth gender of a prospective sexual or marriage partner."
6. In my judgment it is unnecessary to enter into a consideration of issues of proportionality or indeed of any wider question than the simple one: can it be said that

there is any breach of the claimant's rights under Articles 8, 9, and 10? In my judgment, on any common sense basis, there is no arguable infringement of the claimant's rights. Article 8 deals with respect for the claimant's private and family life; Article 9 with his right to freedom of thought, conscience and religion; and Article 10 with his right to freedom of expression. It cannot sensibly be said that the Act infringes his rights under any of those articles. He is perfectly free to marry whomsoever he chooses, to pursue whatsoever religious belief he chooses and indeed to express whatever views he wishes to express about the rightness or wrongness of the Gender Recognition Act and the position of transsexuals in general.

7. The proposition underlying this claim, that the claimant might in some way be deceived into marrying someone whose birth gender was not female by what he would regard as a false birth certificate is, in my judgment, so farfetched that he is not within any measurable distance of being a victim for Convention purposes. The defendant's acknowledgment of service points out that the danger against which the claimant seeks to guard is a highly remote one. It cannot sensibly be said to be a real and immediate danger, and the court has made it plain in Klass v Germany [1978] 2 EHRR 214, paragraph 33, that individuals are not entitled to pursue:

"... a kind of actio popularis for the interpretation of the Convention; it does not permit individuals to complain against a law in abstracto simply because they feel it contravenes the Convention. In principle, it does not suffice for an individual applicant to claim that the mere existence of a law violates his rights under the Convention; it is necessary that the law should have been applied to his detriment."

Although Dr Arnheim referred to the decisions of Norris and Sutherland, in both of those cases homosexuals were subject to the criminal law of the land, in the one case the Republic of Ireland, and in the other case the United Kingdom. It is readily understandable, therefore, that even though they had not actually been prosecuted and even if, in the case of Norris, the police had adopted a sympathetic attitude, they could fairly describe themselves as victims. However, the proposition that the claimant might be misled by a birth certificate into marrying someone who was not female by birth is fairly described as remote in the extreme. A measure of common sense might perhaps be usefully applied when considering the extent to which those wishing to marry rely upon the birth certificates of their partners, as opposed to other means of finding out information about them, including questioning them, their family and their friends. This is of course on the assumption that, as a deeply religious Christian, the claimant would not wish to engage in any sort of sexual relations before marriage. Were he to do so, of course, one might have thought that any deception would be readily revealed. In truth, this claim is no more than a vehicle for the claimant to express his disapproval of the rights conferred on transsexuals by the Gender Recognition Act. The claimant is perfectly entitled to hold those views, but what he is not entitled to do is to contend that, in any real sense, either he or anyone else, will be misled by the birth certificates that can be issued under this act. With due respect to the claimant's views, the underlying proposition - that heterosexuals would be deprived of the right to rely on a public document to verify the true birth gender of a prospective marriage partner - is, in the real world, simply fanciful.

8. For these reasons, the claim does not get over the first hurdle and it is unnecessary to consider questions of proportionality and all the other matters raised in the defendant's acknowledgment of service and skeleton argument. This renewed application must be dismissed.
9. MR WARD: My Lord, I would ask for the costs of the Secretary of State in preparing the acknowledgment of service.
10. MR JUSTICE SULLIVAN: What are those costs?
11. MR WARD: £1,444.09. Summary assessment was served last week.
12. MR JUSTICE SULLIVAN: Do you have anything to say about that, Dr Arnheim?
13. DR ARNHEIM: No, my Lord, but may I ask for permission to appeal?
14. MR JUSTICE SULLIVAN: You may indeed, but I refuse you permission to appeal. I do not consider that the case is arguable. The renewed application is dismissed, the costs are summary assessed, so the claimant is to pay the Secretary of State's costs of preparing the acknowledgment of service of today's hearing. Those costs are summary assessed in the sum of £1,444.09.