

Press release issued by the Registrar

CHAMBER JUDGMENT
GRANT v. THE UNITED KINGDOM

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Grant v. the United Kingdom* (application no. 32570/03).

The Court held, unanimously, that there had been a **violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 1,700 euros (EUR) for pecuniary damage and EUR 28,149 for costs and expenses. (The judgment is available only in English.)

1. Principal facts

The applicant, Linda Grant, is a 68-year-old British national who lives in St Albans (the United Kingdom). She is a post-operative male-to-female transsexual.

Ms Grant's birth certificate showed her as male. She served in the army for three years from age 17 and then worked as a police officer. Aged 24, she gave up attempting to live as a man, and had gender reassignment surgery two years later. She has presented as a woman since 1963, was identified as a woman on her National Insurance card and paid contributions to the National Insurance scheme at a female rate (until 1975, when the difference in rates was abolished). In 1972 she became self-employed and started paying into a private pension fund.

The applicant applied for a State pension to start on 22 December 1997, her 60th birthday. On 31 October 1997 her application was refused on the ground that she would only be entitled to a State pension when she reached 65, the retirement age applicable to men. She appealed unsuccessfully.

On 12 July 2002 the applicant requested that her case be reopened in the light of the European Court of Human Rights' Grand Chamber judgments of 11 July 2002, *Christine Goodwin v. the United Kingdom* (application no. 28975/95) and *I. v. the United Kingdom* (no. 25680/94). In those two cases the Court found the United Kingdom Government's continuing failure to take effective steps to effect the legal recognition of the change of gender of post-operative transsexuals to be in breach of Article 8 of the Convention. On 14 August 2002 the applicant was informed that she had been granted leave to appeal to the Court of Appeal. However, on legal advice, she decided not to pursue her appeal.

On 5 September 2002, the Department for Work and Pensions refused to award the applicant a State pension in light of the *Christine Goodwin* judgment.

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

On 22 December 2002, the applicant reached the age of 65 and her pension payments began.

On 26 April 2005 the applicant was issued with a gender recognition certificate, following her application under the Gender Recognition Act 2004, which had come into force on 1 July 2004. From the date of the grant of such a certificate, which is prospective in effect, an individual is afforded legal recognition in their acquired gender. In particular, social security benefits and the state retirement pension are paid according to the acquired gender.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 8 October 2003 and declared partly admissible on 19 May 2005.

Judgment was given by a Chamber of seven judges, composed as follows:

Josep **Casadevall** (Andorran), *President*,
Nicolas **Bratza** (British),
Giovanni **Bonello** (Maltese),
Matti **Pellonpää** (Finnish),
Kristaq **Traja** (Albanian),
Ljiljana **Mijović** (citizen of Bosnia and Herzegovina),
Ján **Šikuta** (Slovakian), *judges*,

and also Michael **O'Boyle**, *Section Registrar*.

3. Summary of the judgment¹

Complaints

The applicant complained about the lack of legal recognition of her change of gender and the refusal to pay her a retirement pension at the age applicable to other women (60). She relied on Articles 8 and 14 and Article 1 of Protocol No. 1.

Decision of the Court

Article 8

The Court observed that Ms Grant was in an identical situation to the applicant in the *Christine Goodwin* case; as a post-operative male-to-female transsexual, Ms Grant might claim to be a victim of a breach of her right to respect for her private life contrary to Article 8, due to the lack of legal recognition of her change of gender.

The Court noted that, while it was true that the Government had had to take steps to comply with the *Christine Goodwin* judgment, which had involved drafting, and passing in Parliament, new legislation, which they had achieved with laudable expedition, it was not the case that that process could be regarded as in any way suspending the applicant's victim status. Following the Court's judgment in *Christine Goodwin*, there was no longer any justification for failing to recognise the change of gender of post-operative transsexuals. The applicant, as such a transsexual, did not have at that time any possibility of obtaining such recognition and could claim to be prejudiced from that moment. The applicant's victim status came to an end when the Gender Recognition Act 2004 came into force, thereby providing her with the means on a domestic level to obtain legal recognition. Consequently, in so far as the applicant complained about the refusal to accord her the pension rights applicable to women of biological origin, she might claim to be a victim of that aspect of the lack of

¹ This summary by the Registry does not bind the Court.

legal recognition from the moment, after the *Christine Goodwin* judgment, when the authorities refused to give effect to her claim, namely, from 5 September 2002.

The Court therefore found that there had been a breach of the applicant's right to respect for private life contrary to Article 8.

Article 1 of Protocol No. 1 and Article 14

The Court noted that, under domestic law as it stood at the relevant time, the applicant had no right to be paid a state pension at age 60 and, on the same basis, it might well be that no proprietary right arose capable of engaging Article 1 of Protocol No. 1 taken alone. The Court did not consider it necessary however to decide on that point.

Assuming that issues relating to the eligibility for a state pension fell within the scope of Article 1 of Protocol No. 1 for the purposes of Article 14, the Court observed that any failure by the domestic authorities to accord the applicant her pension at the age applicable to women had to be regarded, at the time of the first refusal in 1997, as within the Government's margin of appreciation. In so far as her pension was again refused after the *Christine Goodwin* judgment, the Court recalled that the applicant had already made that complaint under Article 8. The Court considered that it was essentially an Article 8 matter and that no separate issue arose for the purposes of Article 1 of Protocol No. 1 either taken alone or in conjunction with Article 14.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.