

Publication: 1997-II, no. 35
Title: X, Y and Z v. The United Kingdom
Application No: 21830/93
Respondent: The United Kingdom
Referred by: Commission
Date of reference by Commission: 13-09-1995
Date of reference by State:
Date of Judgment: 22-04-1997
Articles: 8 **Conclusion:** No violation of article 8
14 Not necessary to examine article 14
Keywords: RESPECT FOR FAMILY LIFE / PRIVACY

Summary:

The first applicant, "X" is a female-to-male transsexual and will be referred to throughout this judgment using the male personal pronouns "he", "him" and "his". Since 1979 he has lived in a permanent and stable union with the second applicant, "Y", a woman born in 1959. The third applicant, "Z", was born in 1992 to the second applicant as a result of artificial insemination by donor ("AID"). Y has subsequently given birth to a second child by the same method. X was born with a female body. However, from the age of four he felt himself to be a sexual misfit and was drawn to "masculine" roles of behaviour. This discrepancy caused him to suffer suicidal depression during adolescence. In 1975, he started to take hormone treatment and to live and work as a man. In 1979, he began living with Y and later that year he underwent gender reassignment surgery, having been accepted for treatment after counselling and psychological testing. In 1990, X and Y applied through their general practitioner ("GP") for AID. They were interviewed by a specialist in January 1991 with a view to obtaining treatment and their application was referred to a hospital ethics committee, supported by two references and a letter from their GP. It was, however, refused. They appealed, making representations which included reference to a research study in which it was reported that in a study of thirty-seven children raised by transsexual or homosexual parents or carers, there was no evidence of abnormal sexual orientation or any other adverse effect. In November 1991, the hospital ethics committee agreed to provide treatment as requested by the applicants. They asked X to acknowledge himself to be the father of the child within the meaning of the Human Fertility and Embryology Act 1990. On 30 January 1992, Y was impregnated through AID treatment with sperm from an anonymous donor. X was present throughout the process. Z was born on 13 October 1992. In February 1992, X had enquired of the Registrar General whether there was an objection to his being registered as the father of Y's child. In a reply dated 4 June 1992 to X's Member of Parliament, the Minister of Health replied that, having taken legal advice, the Registrar General was of the view that only a biological man could be regarded as a father for the purposes of registration. It was pointed out that the child could lawfully bear X's surname and, subject to the relevant conditions, X would be entitled to an additional personal tax

allowance if he could show that he provided financial support to the child. Nonetheless, following Z's birth, X and Y attempted to register the child in their joint names as mother and father. However, X was not permitted to be registered as the child's father and that part of the register was left blank. Z was given X's surname in the register. In November 1995, X's existing job contract came to an end and he applied for approximately thirty posts. The only job offer which he received was from a university in Botswana. The conditions of service included accommodation and free education for the dependants of the employee. However, X decided not to accept the job when he was informed by a Botswanan official that only spouses and biological or adopted children would qualify as "dependants". The Court recalls that the notion of "family life" in Article 8 is not confined solely to families based on marriage and may encompass other de facto relationships. When deciding whether a relationship can be said to amount to "family life", a number of factors may be relevant, including whether the couple live together, the length of their relationship and whether they have demonstrated their commitment to each other by having children together or by any other means. In the present case, the Court notes that X is a transsexual who has undergone gender reassignment surgery. He has lived with Y, to all appearances as her male partner, since 1979. The couple applied jointly for, and were granted, treatment by AID to allow Y to have a child. X was involved throughout that process and has acted as Z's "father" in every respect since the birth. In these circumstances, the Court considers that de facto family ties link the three applicants. The Court reiterates that, although the essential object of Article 8 is to protect the individual against arbitrary interferences by the public authorities, there may in addition be positive obligations inherent in an effective respect for private or family life. The boundaries between the State's positive and negative obligations under this provision do not always lend themselves to precise definition; nonetheless, the applicable principles are similar. In both contexts, regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole, and in both cases the State enjoys a certain margin of appreciation. The present case is distinguishable from the previous cases concerning **transsexuals** which have been brought before the Court, because here the applicants' complaint is not that the domestic law makes no provision for the recognition of the transsexual's change of identity, but rather that it is not possible for such a person to be registered as the father of a child; indeed, it is for this reason that the Court is examining this case in relation to family, rather than private, life. It is true that the Court has held in the past that where the existence of a family tie with a child has been established, the State must act in a manner calculated to enable that tie to be developed and legal safeguards must be established that render possible, from the moment of birth or as soon as practicable thereafter, the child's integration in his family. However, hitherto in this context it has been called upon to consider only family ties existing between biological parents and their offspring. The present case raises different issues, since Z was conceived by AID and is not related, in the biological sense, to X, who is a transsexual. The Court observes that there is no common European standard with regard to the granting of parental rights to **transsexuals**. In addition, it has not been

established before the Court that there exists any generally shared approach amongst the High Contracting Parties with regard to the manner in which the social relationship between a child conceived by AID and the person who performs the role of father should be reflected in law. Indeed, according to the information available to the Court, although the technology of medically assisted procreation has been available in Europe for several decades, many of the issues to which it gives rise, particularly with regard to the question of filiation, remain the subject of debate. For example, there is no consensus amongst the member States of the Council of Europe on the question whether the interests of a child conceived in such a way are best served by preserving the anonymity of the donor of the sperm or whether the child should have the right to know the donor's identity. Since the issues in the case, therefore, touch on areas where there is little common ground amongst the member States of the Council of Europe and, generally speaking, the law appears to be in a transitional stage, the respondent State must be afforded a wide margin of appreciation. First, the Court observes that the community as a whole has an interest in maintaining a coherent system of family law which places the best interests of the child at the forefront. In this respect, the Court notes that, whilst it has not been suggested that the amendment to the law sought by the applicants would be harmful to the interests of Z or of children conceived by AID in general, it is not clear that it would necessarily be to the advantage of such children. In these circumstances, the Court considers that the State may justifiably be cautious in changing the law, since it is possible that the amendment sought might have undesirable or unforeseen ramifications for children in Z's position. Furthermore, such an amendment might have implications in other areas of family law. For example, the law might be open to criticism on the ground of inconsistency if a female-to-male transsexual were granted the possibility of becoming a "father" in law while still being treated for other legal purposes as female and capable of contracting marriage to a man. Against these general interests, the Court must weigh the disadvantages suffered by the applicants as a result of the refusal to recognise X in law as Z's "father". The applicants identify a number of legal consequences flowing from this lack of recognition. For example, they point to the fact that if X were to die intestate, Z would have no automatic right of inheritance. The Court notes, however, that the problem could be solved in practice if X were to make a will. No evidence has been adduced to show that X is the beneficiary of any transmissible tenancies of the type referred to; similarly, since Z is a British citizen by birth and can trace connection through her mother in immigration and nationality matters, she will not be disadvantaged in this respect by the lack of a legal relationship with X. The Court considers, therefore, that these legal consequences would be unlikely to cause undue hardship given the facts of the present case. In addition, the applicants claimed that Z might suffer various social or developmental difficulties. Thus, it was argued that she would be caused distress on those occasions when it was necessary to produce her birth certificate. In relation to the absence of X's name on the birth certificate, the Court notes, first, that unless X and Y choose to make such information public, neither the child nor any third party will know that this absence is a consequence of the fact that X was born female. It

follows that the applicants are in a similar position to any other family where, for whatever reason, the person who performs the role of the child's "father" is not registered as such. The Court does not find it established that any particular stigma still attaches to children or families in such circumstances. Secondly, the Court recalls that in the United Kingdom a birth certificate is not in common use for administrative or identification purposes and that there are few occasions when it is necessary to produce a full length certificate. The applicants were also concerned, more generally, that Z's sense of personal identity and security within her family would be affected by the lack of legal recognition of X as father. In this respect, the Court notes that X is not prevented in any way from acting as Z's father in the social sense. Thus, for example, he lives with her, providing emotional and financial support to her and Y, and he is free to describe himself to her and others as her "father" and to give her his surname. Furthermore, together with Y, he could apply for a joint residence order in respect of Z, which would automatically confer on them full parental responsibility for her in English law. It is impossible to predict the extent to which the absence of a legal connection between X and Z will affect the latter's development. As previously mentioned, at the present time there is uncertainty with regard to how the interests of children in Z's position can best be protected and the Court should not adopt or impose any single viewpoint. In conclusion, given that transsexuality raises complex scientific, legal, moral and social issues, in respect of which there is no generally shared approach among the Contracting States, the Court is of the opinion that Article 8 cannot, in this context, be taken to imply an obligation for the respondent State formally to recognise as the father of a child a person who is not the biological father. That being so, the fact that the law of the United Kingdom does not allow special legal recognition of the relationship between X and Z does not amount to a failure to respect family life within the meaning of that provision. It follows that there has been no violation of Article 8 ECHR. In addition, the applicants complained of discrimination contrary to Article 14 ECHR. The Court considers that the complaint under Article 14 is tantamount to a restatement of the complaint under Article 8, and raises no separate issue. In view of its finding in respect of the latter provision, there is no need to examine the issue again in the context of Article 14.