

Summary:

The applicant a transsexual who was registered at birth as being of the male sex. She assumed a woman's name and has since then used that name and adopted a female role for all purposes. She underwent gender reassignment surgery, after which, according to the medical report, she has lived a full life as a female. The applicant wishes to marry, but the United Kingdom authorities have informed her that such a marriage would be void, because English law would treat her as a male. They have also told her that she could not be issued with a birth certificate showing her sex as female. The applicant complained of her inability to claim full recognition of her changed status and alleged a violation of Article 8 (right to respect for private life) and Article 12 (right to marry) of the Convention.

According to the Court the present case was not materially distinguishable on its facts from the Rees case of 17 October 1986, A106. In the interest of legal certainty and orderly development of the case-law, the Court usually follows its own precedents. Nevertheless, this would not prevent the Court from departing from an earlier decision if it was persuaded that there were cogent reasons for doing so. Such a departure might, for example, be warranted in order to ensure that the interpretation of the Convention reflects societal changes and remains in line with present-day conditions. With regards the alleged violation of Article 8 the Court remained the opinion which it expressed in its Rees judgment: refusal to alter the register of births or to issue birth certificates whose contents and nature differ from those of the original entries cannot be considered as an interference with her respect for private life.

What the applicant is arguing is not that the State should abstain from acting but rather that it should take steps to modify its existing system. The question is, therefore, whether an effective respect for the applicant's private life imposes a positive obligation on the United Kingdom in this regard. The notion of "respect" is not clear-cut, especially as far as the positive obligations inherent in that concept are concerned. There should be a fair balance between the general interest of the community and the interests of the individual. The Court recalled the points underlying its judgment in the Rees case that the United Kingdom was not under a positive obligation to modify its birth-registration system. Those points relating inter alia to the public character of the register were equally cogent in the present case. The absence of significant scientific developments since the date of the Rees judgment and notwithstanding the existence of certain developments in the law of some Contracting States but still little common ground between them led the Court to the conclusion that the department from that judgment was not warranted in order to reflect the present-day conditions. The Court held by 10 votes to 8 that there was no violation of Article 8, but since the Convention has to be interpreted in the light of current circumstances, it is important that the need for appropriate legal measures in this area should be kept under review.

With regards the alleged violation of Article 12 of the Convention held that the limitations introduced by national laws must not restrict the right to marry in such a way or to such an extent that its very essence is impaired. The applicant's inability to marry a woman does not stem from any legal impediment. As to her inability to marry a man, the criteria of English law are in conformity with the concept of marriage to which the right guaranteed by Article

12 refers, namely the traditional marriage between persons of opposite biological sex. The developments that have occurred in some Contracting States do not evidence any general abandonment of the traditional concept of marriage. In these circumstances it is not open to the Court to take a new approach to the interpretation of Article 12 on the point at issue. The Court found, furthermore, that attachment to the said concept provides sufficient reason for continued adoption of biological criteria for determining sex for the purposes of marriage. The Court concluded by 14 votes to 4 that there was no violation of Article 12.