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A Landmark Win

Why our Daughters can at Last be Our Bridesmaids

by Stephen Whittle, edited from the Online Times of London. The author is a reader in law at Manchester Metropolitan University, U.K.
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Stephen Whittle, reader in law at Manchester Metropolitan University, U.K.

Britain's 5,000 transsexuals are to win legal rights after the landmark European Court of Human Rights (E.C.H.R.) ruling. The decision two weeks ago, in a case brought by Christine Goodwin, comes not before time. It is thirty-two years since Lord Justice Ormrod in *Corbett v Corbett* in 1970 effectively dealt a blow against transsexuals, removing the mechanisms that existed for transsexual people to have their birth certificates amended to reflect their new gender, and enabled them to marry.

Transsexual people in the U.K. have proved themselves capable of great staying power, personal bravery and organisation in this fight.

When the judge decided that the (male-to-female) transsexual April Ashley's marriage was void, his ruling condemned transsexuals always to be of the sex that had been written on their birth certificates - sentencing them to a life of secrets, constant fear and a position in law that left them unable to safeguard their partners and families - financially and socially.

The decision in Goodwin marks the end of a long battle to reverse Ormrod's ruling. Mark Rees, a female-to-male transsexual, took the first case to Strasbourg in 1979. His was to be the first of a series of five brought by transsexual people over the past twenty-three years. At the time he said: "There are others waiting in the wings ... they will carry on the

fight", as indeed, they have done.

In parallel with the cases taken to Strasbourg, challenges have been made in Britain and the European Court of Justice. Although far more cases have been lost by transsexuals than won, the wins have been significant, ensuring job protection (*P v S* and *Cornwall County Council v. E.C.J.* 1996) and access to gender reassignment treatment on the National Health Service (*A, D & G v North West Lancashire Area Health Authority, C.A.*, 1999).

But the latest ruling (Goodwin and I) will make a vital difference to the daily lives of transsexuals. It means that they can rely on the principle that they are afforded privacy rights under the convention. Similarly, they could now get married and argue that they have not committed perjury by declaring themselves to be of their new gender. The marriages may still be open to question as to their validity, but if a couple do separate and seek a divorce or if a pension company refuses to pass on benefits on death on the basis that the marriage is void, then the transsexual person and partner can rely on the Goodwin decision.

Older transsexual women facing retirement should be able to claim their state pension. The Inland Revenue has recently used its discretionary powers to award pension rights at sixty to a transsexual woman who was born in New Zealand, as she had been able to change her birth certificate to reflect her new gender. Several transsexual women, who were forced to give up work at sixty or face disclosure of their past, yet who received only social security benefits rather than a pension, could now make a claim for the lost income and hurt they suffered.

In families such as ours where a transsexual man has been refused permission to register as the father of his partner's children by donor insemination, the couple could now marry and jointly adopt the children. Those starting families in the future should be able to register as the father of the child.

The decision in Goodwin is not however, the culmination of the campaign, though it could be said to be the beginning of the end. The bureaucratic mess will continue until the law is clarified to ensure that transsexual people in the U.K. can have their birth certificates amended to reflect a change of sex, and that the change is valid for all legal purposes.

Without that, the courts may not regard a new birth certificate as final, leaving the sex of transsexual people open to further challenge. This has happened in the U.S., where some transsexual people have found that new birth certificates were not recognised in court. The E.C.H.R.'s decision means that it is time for the Government to make a clear commitment to legislate for change. The reconstituted inter-departmental working group on transsexuals would do well to make sure it uses the transsexual community's expertise in ensuring that the sort of half-cocked legal mess that exists in the U.S. is not created here.

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In the past ten years they have created a climate in which legal change in these areas was bound to come. In the meantime, as a transsexual man in an unmarried yet successful relationship of twenty-four years, I have to debate whether to risk it all by getting married. Perhaps marriage would lead to an early divorce. Yet, it would provide pension benefits to my partner and security to our children.

Perhaps we should just sneak off to the Registry Office in order not to tempt fate. But our three daughters would kill us; they are desperate to be bridesmaids.

**Corte Europea dei Diritti Umani
Caso Christine Goodwin versus Regno Unito
Sentenza dell'11 luglio 2002**

366 - 11.7.2002

Press release issued by the Registrar

**Grand Chamber judgement in the case of
Christine Goodwin versus The United Kingdom**

In a judgement delivered at Strasbourg on 11th July 2002 in the case of Christine Goodwin v the United Kingdom (application no. 28957/95), the European Court of Human Rights 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;
- there had been a violation of Article 12 (right to marry and to found a family);
- no separate issue had arisen under Article 14 (prohibition of discrimination);
- there had been no violation of Article 13 (right to an effective remedy).

The Court held, unanimously, that the finding of violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant and awarded the applicant €39,000 for costs and expenses.

1. Principal facts

The applicant, Christine Goodwin, a United Kingdom national born in 1937, is a post-operative male-to-female transsexual. The applicant claimed that she had problems and faced sexual harassment at work during and following her gender re-assignment. Most recently, she experienced difficulties concerning her national insurance (N.I.) contributions. As legally she is still a man, she has to continue to pay N.I. contributions until the age of 65. If she had been recognised as a woman, she would have ceased to be liable at the age of 60 in April 1997. She has had to make special arrangements to continue paying her N.I. contributions directly herself to avoid questions being raised by her employers about the anomaly. She also alleged that the fact that she keeps the same N.I. number has meant that her employer has been able to discover that she previously worked for them under another name and gender, with resulting embarrassment and humiliation.

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 5th June 1995 and declared admissible on 1st December 1997. The case was transmitted to the European Court of Human Rights on 1st November 1998. On 11th September 2001 a Chamber of the Court (Third Section) relinquished the case to the Grand Chamber and a hearing was held on 20th March 2002.

judgement was given by a Grand Chamber of 17 judges, composed as follows: Luzius Wildhaber (Swiss), President, Jean-Paul Costa (French), Nicolas Bratza (British), Elisabeth Palm (Swedish), Lucius Caflisch (Swiss), Riza Türmen (Turkish), Françoise Tulkens (Belgian), Karel Jungwiert (Czech), Marc Fischbach (Luxemburger), Volodymyr Butkevych (Ukrainian), Nina Vajic (Croatian), John Hedigan (Irish), Hanne Sophie Greve (Norwegian), András Baka (Hungarian), Kristaq Traja (Albanian), Mindia Ugrekhelidze (Georgian), Antonella Mularoni (San Marinese), judges, and also Paul Mahoney, Registrar.

3. Summary of the judgement

Complaints

The applicant complained about the lack of legal recognition of her post-operative sex and about the legal status of transsexuals in the United Kingdom. She complained, in particular, about her treatment in relation to employment, social security and pensions and her inability to marry. She relied on Articles 8, 12, 13 and 14 of the Convention.

Decision of the Court

Article 8

Although the applicant had undergone gender re-assignment surgery provided by the national health service and lived in society as a female, she remained for legal purposes a male. This had effects on her life where sex was of legal relevance, such as in the area of pensions, retirement age etc. A serious interference with private life also arose from the conflict between social reality and law which placed the transsexuals in an anomalous position in which they could experience feelings of vulnerability, humiliation and anxiety. Though there were no conclusive findings as to the cause of transsexualism, the Court

considered it more significant that the condition had a wide international recognition for which treatment was provided. It was not convinced that the inability of the transsexual to acquire all the biological characteristics took on decisive importance. There was clear and uncontested evidence of a continuing international trend in favour of not only increased social acceptance of transsexuals but also of legal recognition of the new sexual identity of post-operative transsexuals. There was no material before the Court to show that third parties would suffer any material prejudice from any possible changes to the birth register system that might flow from allowing recognition of the gender re-assignment and it was noted that the Government were currently discussing proposals for reform of the registration system in order to allow ongoing amendment of civil status data.

While the difficulties and anomalies of the applicant's situation as a post-operative transsexual did not attain the level of daily interference suffered by the applicant in *B. v. France* (judgement of 25th March 1992, Series A no. 232), the Court emphasised that the very essence of the Convention was respect for human dignity and human freedom. Under Article 8 of the Convention in particular, where the notion of personal autonomy was an important principle underlying the interpretation of its guarantees, protection was given to the personal sphere of each individual, including the right to establish details of their identity as individual human beings. In the twenty-first century the right of transsexuals to personal development and to physical and moral security in the full sense enjoyed by others in society could no longer be regarded as a matter of controversy requiring the lapse of time to cast clearer light on the issues involved. Domestic recognition of this evaluation could be found in the report of the Interdepartmental Working Group on Transsexual People and the Court of Appeal's judgement of *Bellinger v. Bellinger* (*E.W.C.A. Civ. 1140* [2001]).

Though the Court did not underestimate the important repercussions which any major change in the system would inevitably have, not only in the field of birth registration, but also for example in the areas of access to records, family law, affiliation, inheritance, social security and insurance, these problems were far from insuperable, as shown by the Working Group's proposals. No concrete or substantial hardship or detriment to the public interest had indeed been demonstrated as likely to flow from any change to the status of transsexuals and, as regards other possible consequences, the Court considered that society might reasonably be expected to tolerate a certain inconvenience to enable individuals to live in dignity and worth in accordance with the sexual identity chosen by them at great personal cost. Despite the Court's reiteration since 1986 and most recently in 1998 of the importance of keeping the need for appropriate legal measures under review having regard to scientific and societal developments, nothing had effectively been done by the respondent Government. Having regard to the above considerations, the Court found that the respondent Government could no longer claim that the matter fell within their margin of appreciation, save as regards the appropriate means of achieving recognition of the right protected under the Convention. It concluded that the fair balance that was inherent in the Convention now tilted decisively in favour of the applicant. There had, accordingly, been a failure to respect her right to private life in breach of Article 8.

Article 12

While it was true that Article 12 referred in express terms to the right of a man and woman to marry, the Court was not persuaded that at the date of this case these terms restricted the determination of gender to purely biological criteria. There had been major social changes in the institution of marriage since the adoption of the Convention as well as dramatic changes brought about by developments in medicine and science in the field of transsexuality. The Court had found above, under Article 8 of the Convention, that a test of congruent biological factors could no longer be decisive in denying legal recognition to the change of gender of a post-operative transsexual. There were other important factors – the acceptance of the condition of gender identity disorder by the medical professions and health authorities within Contracting States, the provision of treatment including surgery to assimilate the individual as closely as possible to the gender in which they perceived that they properly belonged and the assumption by the transsexual of the social role of the assigned gender.

As the right under Article 8 to respect for private life did not however subsume all the issues under Article 12, where conditions imposed by national laws are accorded a specific mention, the Court went on to consider whether the allocation of sex in national law to that registered at birth was a limitation impairing the very essence of the right to marry in this case. In that regard, it found that it was artificial to assert that post-operative transsexuals had not been deprived of the right to marry as, according to law, they remained able to marry a person of their former opposite sex. The applicant in this case lived as a woman and would only wish to marry a man. As she had no possibility of doing so, she could therefore claim that the very essence of her right to marry had been infringed. Though fewer countries permitted the marriage of transsexuals in their assigned gender than recognised the change of gender itself, the Court did not find that this supported an argument for leaving the matter entirely within the Contracting States' margin of appreciation. This would be tantamount to finding that the range of options open to a Contracting State included an effective bar on any exercise of the right to marry. The margin of appreciation could not extend so far. While it was for the Contracting State to determine *inter alia* the conditions under which a person claiming legal recognition as a transsexual established that gender re-assignment has been properly effected and the formalities applicable to future marriages (including, for example, the information to be furnished to intended spouses), the Court found no justification for barring the transsexual from enjoying the right to marry under any circumstances. It concluded that there had been a breach of Article 12.

Article 14

The Court considered that the lack of legal recognition of the change of gender of a post-operative transsexual lay at the heart of the applicant's complaints under Article 14 of the Convention. These issues had been examined under Article 8 and resulted in the finding of a violation of that provision. In the circumstances, the Court found that no separate issue arose under Article 14 and made no separate finding.

Article 13

The case law of the Convention institutions indicated that Article 13 could not be interpreted as requiring a remedy against the state of domestic law, as otherwise the Court would be imposing on Contracting States a requirement to incorporate the Convention. Insofar therefore as no remedy existed in domestic law prior to 2nd October 2000 when the Human Rights Act 1998 took effect, the applicant's complaints fell foul of this principle. Following that date, it would have been possible for the

applicant to raise her complaints before the domestic courts, which would have had a range of possible redress available to them. In the circumstances no breach of Article 13 arose.

Stephen Whittle

Edited from Wikipedia:  Professor Stephen Whittle (O.B.E.) was born in 1955 in Manchester, United Kingdom. He was the middle child of the five children in his family and suffered from rickets in early childhood. In 1966 his mother, being concerned at how different he was from his sisters, entered him in the examination for Withington Girl's School. Being one of the highest scorers in the city in the exam that year, he received a scholarship to attend. It was during his time at Withington Girl's School that he started reading medical books. He knew that he was romantically attached to other girls at school – he never told them, and so his love was not reciprocated – but he also knew that he was sexually attracted to men. On top of that was a strong desire to be a man, to grow a beard and to have a hairy chest. He had read articles about people like Della Aleksander and April Ashley who had had a sex change. In 1972, at the age of sixteen, whilst visiting his doctor about a sore throat he read about a female to male transsexual person.



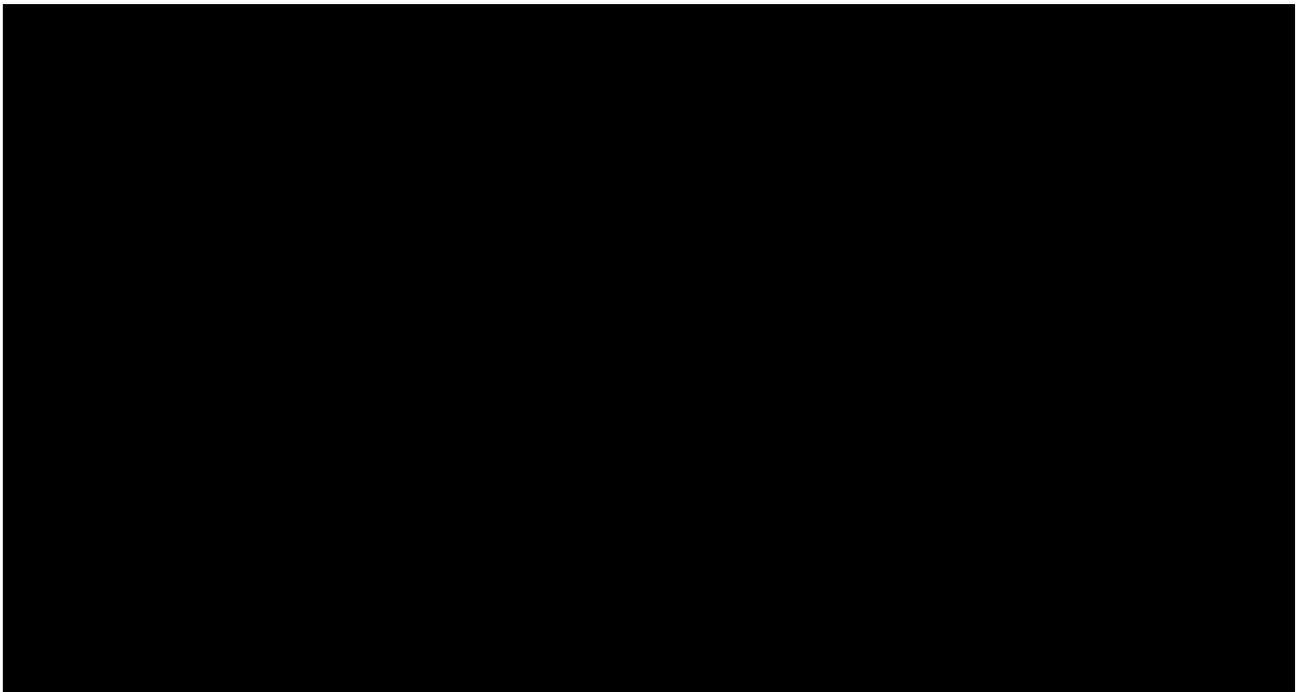
In 1974 Whittle came out as an F.T.M. transman, after returning from a Women's Liberation Conference in Edinburgh, which he attended as a member of the Manchester Lesbian Collective. He began hormone replacement therapy in 1975. He has been active in transsexual and transgender communities since the age of twenty when in 1975 he joined the Manchester TV/TS, the first support group for transsexual people in the United Kingdom. In 1979 he joined a former army officer and then royal sculptor, Judy Couzins, a transwoman in the Self Help Association for Transsexuals (SHAFT). In 1989, he founded the U.K.s F.T.M. Network which he coordinated until November 2007. In 1992, along with Mark Rees, the actress Myka Scott and an airline pilot Krystyna Sheffield, he founded and became vice-president of Press for Change, an organisation that works to change the laws and social attitudes surrounding transgender and transsexual lives. Whittle remains as one of the vice-presidents. Whittle underwent phalloplasty surgeries from 2001 to 2003. The Channel 4 documentary *Make Me a Man* followed his life during the surgeries.

Though unable to marry legally in the United Kingdom until the passing of the Gender Recognition Act 2004. He and his partner (now wife), Sarah Rutherford, have four children by artificial insemination.

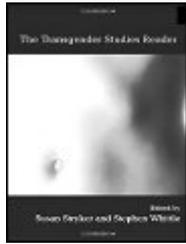
He has written and spoken extensively on his personal journey, his writings have included, among other things, an article on the ground-breaking transsexual employment discrimination case presided over by the European Court of Justice. In 2005 he was awarded The Sylvia Rivera Award for Transgender Studies by the Centre for Lesbian and Gay Studies for the monograph "Respect and Equality". In 2007, along with his co-editor, Susan Stryker, he was awarded a Lambda Literary Award for their annotated collection of fifty key historical and contemporary transgender science, political and theory texts - "The Transgender Studies Reader".

In 2002, Whittle was diagnosed with multiple sclerosis which has become an increasing problem since late 2005, yet he continues in his fulltime university post, and his fight for the human rights of trans people throughout he world. In recent years, he has collaborated with other members; Paisley Currah, Shannon Minter and Alyson Meiselmann, of the World Professional Association of Transgender Health W.P.A.T.H. on amicus briefs to courts in many jurisdictions. In 2007, he was the first non-medical professional and first trans person to become President of W.P.A.T.H.

He is the recipient of the Human Rights Award by the Civil Rights group Liberty, for his commitment and dedication to ensuring the advancement of rights for transsexual people through judicial means in the United Kingdom, Europe, and around the world; he was appointed Officer of the Order of the British Empire (O.B.E.) for services to Gender Issues; and was awarded the Virginia Prince Lifetime Achievement Award by the U.S.A.s International Federation for Gender Education.



This video is courtesy of the [Equality and Human Rights Commission U.K.](#) and YouTube



A Transgender Studies Reader
Author: Stephen Whittle and Susan Stryker
Publisher: Routledge (2006)
I.S.B.N.-13 978-0415947091.

From Amazon Books: Transgender studies is the latest area of academic inquiry to grow out of the exciting nexus of queer theory, feminist studies, and the history of sexuality. Because transpeople challenge our most fundamental assumptions about the relationship between bodies, desire, and identity, the field is both fascinating and contentious. *The Transgender Studies Reader* puts between two covers, fifty influential texts with new introductions by the editors that, taken together, document the evolution of transgender studies in the English-speaking world. By bringing together the voices and experience of transgender individuals, doctors, psychologists and academically-based theorists, this volume will be a foundational text for the transgender community, transgender studies, and related queer theory.



Respect and Equality: Transsexual and Transgender Rights
Author: Stephen Whittle
Publisher: Routledge-Cavendish (2002)
I.S.B.N.-13 978-1859417430.

From Amazon Books: In this fascinating work, theoretical discussions of sex, sexuality, gender and law, and an extensive range of primary and secondary research materials, are combined to provide an insightful analysis into the inadequacies of current law.



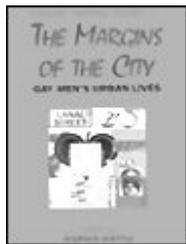
The Transgender Debate: The Crisis Surrounding Gender Identities
Author: Stephen Whittle
Publisher: South Street Press (2000)
I.S.B.N.-13 978-1902932163.

From goodreads: Transgender has become a cultural obsession. From the high camp of RuPaul to the working class transsexual icon, Hayley of Coronation Street, it pervades our lives. Yet for many it remains a freakish interest on the sidelines. For transsexual and transgender people, though, it is a reality bound up in complexities, legal contradictions, family discord, and a desperate need to explain what it means to be a man or a woman, or neither, or both. Addressing the historical, social, legal and medical issues surrounding this new community, this book throws a light onto the complex issues, clarifying them in a way that all those who think they know what they mean, will be called to question the certainties that gender roles are no longer about.



Reclaiming Genders: Transsexual Grammars at the fin de siecle
Author: Stephen Whittle and Kate More
Publisher: Continuum International Publishing Group (1999)
I.S.B.N.-13 978-0304337774.

From Barnes & Noble: An interdisciplinary work bringing together an international group of transgender writers, this text provides a collection of essays that are central to both academia and activism. Based on academic and "street" experiences, the book addresses the practical issues faced in changing the world view of gender while forcing theory a step forward from limitations of "queer", feminism and postmodernism. In a wide-ranging set of contributions, it addresses our engendered places now and what we can aim for in the future. It evaluates the mechanism we can use to galvanize both the micro theories of gender as a personal experience of oppression and the macro theories of gender as a site of social regulation. The collection aims to take identity politics and reclaim identity for the "self".



The Margins of the City: Gay Men's Urban Lives
Author: Stephen Whittle
Publisher: Ashgate Publishing Group (1994)
I.S.B.N.-13 978-1857422023.

From World of Books: Within cities, gay life has always been marginalized in social, political and cultural terms, even although significant gay places have often been geographically centrally placed. This work looks at the physical and spatial development of gay places over the last twenty-five years in a social context.

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The Gender Centre is committed to developing and providing services and activities, which enhance the ability of people with gender issues to make informed choices. We offer a wide range of services to people with gender issues, their partners, family members and friends in New South Wales. We are an accommodation service and also act as an education, support, training and referral resource centre to other organisations and service providers. The Gender Centre is committed to educating the public and service providers about the needs of people with gender issues. We specifically aim to provide a high quality service, which acknowledges human rights and ensures respect and confidentiality.