X, Y and Z v United Kingdom (21830/93)

European Court of Human Rights

22 April 1997

Case Analysis

Where Reported

25; Times, April 23, 1997; Independent, April 24, 1997;

Case Digest

Subject: Human rights

Keywords: Birth certificates; Paternity; Right to respect for private
and family life; Transsexualism

Summary: right to family life; transsexualism; birth certificates;
refusal to register transsexual as father of child conceived by
artificial insemination by donor did not violate right to family life

X, a female to male transsexual, had lived with a woman, Y, since
1979 and in 1992 Y gave birth to Z, who had been conceived
through artificial insemination by donor. X was refused permission to
be registered as the father of Z, although Z was given X's surname,
and X, Y and Z applied to the ECHR, claiming that the refusal to
register X as Z's father was an infringement of their right to respect
for family life under the European Convention on Human Rights
1950 Art.8 and was discriminatory, being in breach of Art.14 taken in
conjunction with Art.8.

Held, dismissing the application, that there had been no violation of
Art.8, and that it was not necessary to examine separately the
complaint under Art.14. "Family life" under Art.8 did not relate solely
to families created by marriage and it was clear that X, Y and Z were
linked by de facto family ties. This case differed from others
concerning transsexuals which had come before the court in that it
related to the granting of parental rights and the way the relationship
between a child conceived by artificial insemination by donor and
the person who fulfilled the paternal role should be treated in law.
There was little agreement between the contracting states on these
issues and the law appeared to be in a state of transition, so that the
UK would be afforded a wide margin of appreciation. It was
permissible for the UK to take a cautious approach to changing the
law as, whilst the amendments sought might not be harmful to
children in Z's position, they might not necessarily be to the
children's advantage, as there could be unforeseen implications and
the changes might impact on other areas of family law. Further, the
applicants could take practical steps to counteract many of the
disadvantages suffered as a result of the refusal to register X as Z's
father. As transsexuality raised difficult scientific, moral, legal and
social issues, the UK was not in breach of Art.8 by failing to formally
recognise X as Z's father.

Judge: R Ryssdal (President)

Counsel: For the applicants: Nicholas Blake. For the UK: David
Pannick, Q.C. and Rabinder Singh..

Solicitor: For the applicants: Mr N Penrose.
Related Cases

X, Y and Z v United Kingdom (21830/93)

All Cases Cited

Z v Finland (22009/93)

P v S and Cornwall CC (C13/94)

Kroon v Netherlands (18535/91)

Keegan v Ireland (16969/90)

Boyle v United Kingdom (A/282-B)

Beldjoudi v France (A/234-A)

B v France (A/232-C)

Cossey v United Kingdom (10843/84)

Johnston v Ireland (A/112)

Rees v United Kingdom (A/106)

R. v Tan (Moira)

Van Oosterwijck v Belgium (A/40)
(1981) 3 E.H.R.R. 557; ECHR; 06 November 1980

Marckx v Belgium (A/31)
Corbett v Corbett (otherwise Ashley) (No.1)


Key Cases Citing

Applied

Evans v United Kingdom (6339/05)


Considered

R. v Pearce (Gary James)


All Cases Citing

Mentioned by

B (A Child) (Habitual Residence: Inherent Jurisdiction), Re


Mentioned by

Parrillo v Italy (46470/11)

(2016) 62 E.H.R.R. 8; ECHR; 27 August 2015

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B (A Child) (Habitual Residence: Inherent Jurisdiction), Re

[2015] EWCA Civ 886; [2015] Fam. Law 1339; Times, September 22, 2015; Official Transcript; CA (Civ Div); 06 August 2015

Mentioned by

SAS v France (43835/11)

(2015) 60 E.H.R.R. 11; 36 B.H.R.C. 617; [2014] Eq. L.R. 590; ECHR (Grand Chamber); 01 July 2014

Mentioned by

G (A Child) (Same-sex Relationship: Family Life Declaration), Re


Mentioned by

Secretary of State for the Home Department v Rahman (C-83/11)

Mentioned by
Swift v Secretary of State for Justice
QBD; 18 July 2012

Mentioned by
Van der Heijden v Netherlands (42857/05)
ECHR (Grand Chamber); 03 April 2012

Mentioned by
Hirsi Jamaa v Italy (27765/09)
(2012) 55 E.H.R.R. 21; ECHR; 23 February 2012

Mentioned by
R. (on the application of T) v Chief Constable of Greater Manchester
QBD (Admin); 09 February 2012

Mentioned by
Bayatyan v Armenia (23459/03)
(2012) 54 E.H.R.R. 15; ECHR; 07 July 2011

Mentioned by
Mosley v United Kingdom (48009/08)
B.H.R.C. 409; (2011) 161 N.L.J. 703; Times, May 11, 2011; ECHR;
10 May 2011

Mentioned by
DEFK (Cameroon) v Secretary of State for the Home Department
[2011] CSOH 20; 2011 G.W.D. 6-172; Official Transcript;
OH; 01 February 2011

Mentioned by
A v Ireland (25579/05)
ECHR (Grand Chamber); 16 December 2010

Mentioned by
Principal Reporter v K
Times, December 20, 2010; Official Transcript; SC; 15 December
2010

Mentioned by
Serife Yigit v Turkey (3976/05)
(2011) 53 E.H.R.R. 25; ECHR; 02 November 2010
Mentioned by
H v Austria (57813/00)
(2011) 52 E.H.R.R. 6; 28 B.H.R.C. 684; ECHR; 01 April 2010

Mentioned by
R. (on the application of Animal Defenders International) v Secretary of State for Culture, Media and Sport

Mentioned by
McGibbon v McAllister

Mentioned by
Emonet v Switzerland (39051/03)

Mentioned by
Lepojic v Serbia (13909/05)

Mentioned by
R. (on the application of Al-Skeini) v Secretary of State for Defence

Mentioned by
P (A Child) (Adoption: Unmarried Couples), Re
[2007] NICA 20; [2007] N.I. 251; Official Transcript; CA (NI); 04 June 2007

Applied
Evans v United Kingdom (6339/05)

Mentioned by
R. (on the application of Animal Defenders International) v Secretary of State for Culture, Media and Sport
Mentioned by
Grant v United Kingdom (32570/03)

(2007) 44 E.H.R.R. 1; ECHR; 23 May 2006

Mentioned by
J v C (Void Marriage: Status of Children)


Mentioned by
Evans v United Kingdom (6339/05)


Mentioned by
R. (on the application of Axon) v Secretary of State for Health


Mentioned by
Merger v France (68864/01)


Mentioned by
Singh (Pawandeep) v Entry Clearance Officer, New Delhi


Mentioned by
Evans v Amicus Healthcare Ltd


Mentioned by
Chief Constable of West Yorkshire v A

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Mark v Mark


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R (A Child) (IVF: Paternity of Child), Re


Mentioned by

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Mentioned by

Mamatkulov v Turkey (46827/99)

14 B.H.R.C. 149; Times, March 13, 2003; Official Transcript; ECHR; 06 February 2003

Mentioned by

R. (on the application of Rose) v Secretary of State for Health


Mentioned by

Goodwin v United Kingdom (28957/95)


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I v United Kingdom (25680/94)

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X v Y (Parental Rights: Insemination)
2002 S.L.T. (Sh Ct) 161; 2002 Fam. L.R. 58; 2002 G.W.D. 12-344; Sh Ct (Glasgow); 06 March 2002

Mentioned by
Sen v Netherlands (31465/96)

Mentioned by
Bankovic v Belgium (Admissibility) (52207/99)

Considered
R. v Pearce (Gary James)

Mentioned by
Elsholz v Germany (25735/94)

Mentioned by
T v United Kingdom (24724/94)

Mentioned by
X (Children) (Care Proceedings: Parental Responsibility), Re

Mentioned by
Fitzpatrick v Sterling Housing Association Ltd
Mentioned by

Dawson v Wearmouth


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Mentioned by

W (Minors) (Abduction: Father's Rights), Re


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Significant Legislation Cited

ECHR art.8

ECHR art.14

Legislation Cited

Births and Deaths Registration Act 1953 (c.20) s.1(1)
Births and Deaths Registration Act 1953 (c.20) s.10
Children Act 1989 Pt I s. 3
Children Act 1989 Pt I s. 4
Children Act 1989 Pt II s. 8
Children Act 1989 Pt II s. 12(2)
ECHR art.8
ECHR art.14
Family Law Reform Act 1987 (c.42)
Human Fertilisation and Embryology Act 1990 (c.37) s.28(3)

Journal Articles

Parents behaving badly: whether, in the wake of Miller-Jenkins, public policy considerations should play a role in custody decisions
Best interests; Children's welfare; Comparative law; Custody; Public policy; Vermont.
I.J.P.L. & P. 2013, 3(2), 113-140

Irreconcilable differences? Article 8 ECHR and Irish law on non-traditional families
Children's welfare; Constitutional rights; Ireland; Parental rights; Right to respect for private and family life; Same sex partners; Unmarried fathers.

**Int. J.L.P.F. 2012, 26(1), 31-61**

**Gender and parenthood: the case for realignment**

Assisted reproduction; Gender reassignment; Human rights; Parents; Transsexuals.

**Med. L. Rev. 2008, 16(2), 261-283**

**Meet the parents**

Assisted reproduction; Children; Disclosure; Identity; Information; Parents; Paternity; Siblings; Transsexuals.

**N.L.J. 2008, 158(7314), 438**

**Policing the margins: rights protection and the European Court of Human Rights**

Derogation in times of emergency; Freedom of expression; Judicial decision making; Margin of appreciation; Morals and law.

**E.H.R.L.R. 2006, 4, 422-444**

**Families old and new - the family and Article 8**

Children; Cohabitation; Families; Legal history; Marital status; Married women; Right to respect for private and family life; Women.

**C.F.L.Q. 2005, 17(4), 487-509**

**Slipping quietly into the crowd - UK transsexuals finally out of exile**

Human rights; Transsexuals.

**M.J.L.S. 2005, 9(1/2), 21-42**

**Under construction: EU family law**

EC law; Family law.

**E.L. Rev. 2004, 29(1), 32-51**

**Recognising acquired gender**

Discrimination; Right to marry; Right to respect for private and family life; Transsexuals.

**N.L.J. 2004, 154(7135), 1018-1019**

**Coming of age? - the principle of "the best interests of the child"**

Childrens rights; Childrens welfare; Human rights; International law.

**E.H.R.L.R. 2003, 2, 205-221**

**European Court of Human Rights: transsexual need not be registered as father of partner's child**

Birth certificates; Paternity; Right to respect for private and family life; Transsexualism.

**C.L.B. 1999, 25(Aut), 1102-1104**

**Right to private and family life.**

Birth certificates; Paternity; Right to respect for private and family life; Transsexualism.
Transsexual need not be registered as father of partner's child
Birth certificates; Paternity; Right to respect for private and family life; Transsexualism.


Donor insemination (transsexual): parentage
Birth certificates; Paternity; Right to respect for private and family life; Transsexualism.

Med. L. Rev. 1998, 6(3), 387-391

Transsexuals in the European Court of Human Rights: X, Y and Z v UK
Birth certificates; Paternity; Right to respect for private and family life; Transsexualism.

N.I.L.Q. 1998, 49(2), 191-201

"Family life" - interference
Birth certificates; Paternity; Right to respect for private and family life; Transsexualism.

B.Y.B.I.L. 1997, 68, 404-405

Perceptions of sex in the legal determination of fatherhood.
Birth certificates; Paternity; Right to respect for private and family life; Transsexualism.

C.F.L.Q. 1997, 9(4), 401-408

Female-to-male transsexual refused permission to register as father of child born to partner following AID treatment - whether violates right to private and family life under European Convention on Human Rights Art. 8
Birth certificates; Paternity; Right to respect for private and family life; Transsexualism.

C.L.B. 1997, 23(3/4), 1158-1161

Sex, gender and fatherhood: does biology really matter?
Birth certificates; Paternity; Right to respect for private and family life; Transsexualism.

C.L.J. 1997, 56(3), 512-515

Right to respect for family life - right to protection from discrimination - margin of appreciation.
Birth certificates; Paternity; Right to respect for private and family life; Transsexualism.

E.H.R.L.R. 1997, 4, 444-446

Human rights.
Birth certificates; Paternity; Right to respect for private and family life; Transsexualism.

Fam. Law 1997, 27(Jun), 448-449

Parentage.
Birth certificates; Paternity; Right to respect for private and family life; Transsexualism.
Child born by AID - post-operative female-to-male transsexual prohibited from registering as father of child

Birth certificates; Paternity; Right to respect for private and family life; Transsexualism.

**Fam. Law 1997, 27(Sep), 605-606**

**Transsexuals and English law: further developments.**

Birth certificates; Paternity; Right to respect for private and family life; Transsexualism.


**Medical law and ethics.**

Birth certificates; Paternity; Right to respect for private and family life; Transsexualism.

**Med. L. Mon. 1997, 4(5), 6-7**

**Margin of appreciation.**

Birth certificates; Paternity; Right to respect for private and family life; Transsexualism.

**N.L.J. 1997, 147(6790), 628**

**Strasbourg opts out - again.**

Birth certificates; Paternity; Right to respect for private and family life; Transsexualism.

**N.L.J. 1997, 147(6807), 1312**

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Chapter: Chapter 16 - Human Rights
Documents: 16-33 Approach to construction

Cross on Local Government Law

Chapter: Chapter 10 - Judicial Control of Local Authorities, Legal Proceedings by and Against Local Authorities and the Human Rights Act 1998
Documents: 10-141

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Chapter: Chapter 10 - Judicial Control of Local Authorities, Legal Proceedings by and Against Local Authorities and the Human Rights Act 1998
Documents: 10-200 "Private life"

Encyclopedia of Local Government Law

Chapter: Human Rights Act 1998
Documents: 3-999.1302

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**Insight**

Right to respect for private and family life: family life