

P v. S and Cornwall County Council, Case C-13/94, [1996] IRLR 347

1) Reference Details

Jurisdiction: European Court of Justice

Date of Decision: 30 April 1996

Link to Case:

http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=694|0013

2) Facts

The unnamed applicant, P, was a manager of part of an educational unit operated by Cornwall County Council from 02 April 1991. P claimed that she has suffered from Gender Identity Disorder since birth.

In April 1992, P, a biological male, announced that she was going to undergo gender reassignment. Firstly, P intended to undergo a year-long "life test", where she would live as a woman, and wrote to the respondent, S, who was the principal, chief executive and financial director of the unit, to notify him of this. S informed the governors of the educational establishment.

During the summer of 1992, P had surgical treatment while on sick leave. In September 1992, the applicant was dismissed and given three months notice. However, P was not prohibited from working in her 'female gender role'. The applicant's final gender reassignment surgery was completed before the three months notice of dismissal had expired.

P complained to a tribunal that she had been discriminated against on grounds of sex. An industrial tribunal in Truro rejected the employer's submission that P had been dismissed on grounds of redundancy. The tribunal held:

"[T]hat the reason for dismissal was P's proposal to undergo gender reassignment. The tribunal took the view that the UK Sex Discrimination Act did not apply to these circumstances, in that "within the provisions of the domestic legislation woman means a female and man means a male."

The tribunal believed that the wording of the Equal Treatment Directive was not as narrow as that of the Sex Discrimination Act. Therefore it sought a preliminary ruling on the following questions from the European Court of Justice:

- (1) Having regard to the purpose of Directive 76/207/EEC which is stated in Article 1 to put into effect the principle of equal treatment for men and women as regards access to employment etc ... does the dismissal of a transsexual for a reason related to a gender reassignment constitute a breach of the Directive?
- (2) Whether Article 3 of the Directive which refers to discrimination on grounds of sex prohibits treatment of an employee on the grounds of the employee's transsexual state?

3) Law

National Law

- The Sex Discrimination Act 1975

Regional Law

- Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (“the Equal Treatment Directive”).

Case Law

- Rees v. United Kingdom (2/1985/88/135), Series A, No.106 ECHR
- Defrenne v. Sabena (No.3), 149/77 [1978] ECR 1365 ECJ
- Razzouk and Beydoun v. Commission, joined cases 75/82 and 117/82 [1984] ECR 1509

4) Legal Arguments

The applicant

P claimed that she had only begun to be discriminated against once her employer was told of her true sexual identity. She alleged that this, in itself, was discrimination on the grounds of sex. She argued that the Equal Treatment Directive’s purpose is to “lay down the principle of equal treatment of men and women in the field of employment”. Therefore, there should be “no discrimination whatsoever on the grounds of sex”. Further, she claimed that she was protected when she was a man and there is no reason why she should not continue to be protected as a woman.

The respondent

Cornwall County Council argued P was dismissed due to redundancy and not discrimination on the ground of sex.

The UK Government

The United Kingdom Government contended that the dismissal of P, or any person due to gender reassignment surgery, does not constitute discrimination on the ground of sex under the Directive as the “principle of equal treatment applies only to men and women”. Therefore, the applicant would have been dismissed regardless of her sex at birth. Finally, the Government argued that issues relating to transsexuality are matters of “principle and policy” which “cannot properly be addressed within the context of a Directive designed to secure equal treatment between men and women.”

The European Commission

It was the submission of the European Commission that:

“[T]he purposes of the European Convention of Human Rights and in light of the case law of the European Court of Human Rights, it appears to be accepted that whilst a change of sex by a transsexual is to be recognised, some latitude is afforded the

Member States as to the circumstances in which they decide to recognise that change. In that context, purely social or psychological factors may be regarded as going only to sexual identity rather than to sex in the sense of classification as male or female. Taking those decisions into account, the classification of the applicant as a man from the point of view of English law does not constitute a breach of the European Convention and should not be called in question by the Court. According to the Commission, Directive 76/207/EEC does not cover the situation of a transsexual changing sex.”

5) Decision

Rejecting the arguments of the respondent, the UK Government and the Commission, the European Court of Justice ruled that the scope of the Equal Treatment Directive was not to be narrowly construed:

“The Directive is the expression of the principle of equality, which is one of the fundamental principles of Community law. In view of its purpose and the fundamental nature of the rights which it seeks to safeguard, the scope of the Directive also applies to discrimination based essentially, if not exclusively, on the sex of the person concerned. Where such discrimination arises, as in the present case, from the gender reassignment of the person concerned, he or she is treated unfavourably by comparison with persons of the sex to which he or she was deemed to belong before undergoing gender reassignment. To tolerate such discrimination would be tantamount, as regards such a person, to a failure to respect the dignity and freedom to which he or she is entitled, and which the Court has a duty to safeguard. Therefore, dismissal of a transsexual for a reason related to a gender reassignment must be regarded as contrary to Article 5(1) of the Directive.”