

TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS  
SOUDNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ  
DE EUROPÆISKE FÆLLESSKABERS DOMSTOL  
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN  
EUROOPA ÜHENDUSTE KOHUS  
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ  
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COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES  
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH  
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HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN  
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TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPELAS  
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EUROOPAN YHTEISÖJEN TUOMIOISTUIN  
EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

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Judgment of the Court of Justice in Case C-423/04

*Sarah Margaret Richards v. Secretary of State for Work and Pensions*

**THE REFUSAL TO GRANT A PENSION TO A MALE-TO-FEMALE  
TRANSSEXUAL AT THE SAME AGE AS A WOMAN IS CONTRARY TO  
COMMUNITY LAW**

*Such a refusal constitutes discrimination contrary to a Community directive on equal treatment in the field of social security.*

Under UK law prior to April 2005, the sex of a person under the rules applicable to social security is that stated on his or her birth certificate. A birth certificate can be changed only to rectify clerical or factual errors. As a result, transsexuals who have undergone gender reassignment surgery cannot change the sex on their birth certificate.

The Gender Recognition Act 2004, which came into force on 4 April 2005, allows for the issue of gender recognition certificates to transsexuals under certain conditions. The issue of a gender recognition certificate changes the sex of the person concerned for most official purposes but has no retroactive effect.

In the UK men are entitled to a retirement pension at the age of 65 and women at the age of 60.

Sarah Margaret Richards was registered as male at the time of her birth in 1942. Having been diagnosed with gender dysphoria, she underwent gender reassignment surgery in May 2001. In February 2002 she applied for a retirement pension to be paid from her 60th birthday.

Her application was refused by the Secretary of State for Work and Pensions on the ground that it had been made more than four months before the applicant's 65th birthday. Ms Richards appealed against that decision and the Social Security Commissioner, hearing the case on appeal from the Social Security Appeal Tribunal, has asked the Court of Justice of

the European Communities whether such a refusal is contrary to the Community directive on equal treatment in the field of social security.<sup>1</sup>

First of all, the Court observes that the right not to be discriminated against **on grounds of sex** is one of the fundamental human rights the observance of which the Court has a duty to ensure. The scope of Directive 79/7 cannot thus be confined simply to discrimination based on the fact that a person is of one or other sex. The directive is also intended to apply to discrimination arising from the gender reassignment of the person concerned.

Secondly, the Court finds that the unequal treatment in this case is based on Ms Richards' inability to have the new gender which she acquired following surgery recognised. Unlike women whose gender is not the result of such surgery and who may receive a retirement pension at the age of 60, Ms Richards is not able to fulfil one of the conditions of eligibility for that pension, in this case that relating to retirement age. As it arises from her gender reassignment, **that unequal treatment must thus be regarded as discrimination which is prohibited by Directive 79/7.**

The Court rejects the United Kingdom's argument that those circumstances are covered by a derogation from the Directive permitting a Member State to prescribe different pensionable ages for men and women. It finds that that derogation, which must be interpreted strictly, does not cover the matter at issue in this case.

In those circumstances, the Court finds that **Directive 79/7 precludes legislation which denies a person who has undergone male-to-female gender reassignment entitlement to a pension on the ground that she has not reached the age of 65, when she would have been entitled to such a pension at the age of 60 had she been held to be a woman as a matter of national law.**

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: CS, DE, EN, ES, EL, FR, HU, IT, NL, PL, SK*

*The full text of the judgment may be found on the Court's internet site*

*<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-423/04>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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<sup>1</sup> Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ 1979 L 6, p. 24).