

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  
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES  
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES  
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH  
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE  
EIROPAS KOPIENU TIESA



EUROPOS BENDRIJŲ TEISINGUMO TEISMAS  
EURÓPAI KÖZÖSSÉGEK BÍRÓSÁGA  
IL-QORTI TAL-ĠUSTIZZJA TAL-KOMUNITAJIET EWROPEJ  
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN  
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TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS  
SÚDNY DVOR EURÓPSKÝCH SPOLOČENSTEV  
SODIŠČE EVROPSKIH SKUPNOSTI  
EUROOPAN YHTEISÖJEN TUOMIOISTUIN  
EUROPEISKA GEMENSKAPERNAS DOMSTOL

## Press and Information

### **PRESS RELEASE No 111/05**

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Advocate General's Opinion in Case C-423/04

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

### **ADVOCATE GENERAL JACOBS CONSIDERS THAT 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 for social security purposes 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 his or her birth certificate.

The Gender Recognition Act 2004, which came into force on 4<sup>th</sup> April 2005, allows for the issuing of gender recognition certificates to transsexuals under certain conditions. The issuing 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 State pension at the age of 65 and women at the age of 60. Between 2010 and 2015 the pensionable age for women will gradually be increased to 65.

Sarah Margaret Richards was born a male 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 60<sup>th</sup> birthday, in line with her acquired female gender.

This application was refused by the Department for Work and Pensions on the ground that it had been made more than four months before the applicants 65<sup>th</sup> birthday – officially Ms Richards was still considered to be male. 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 whether such a refusal is contrary to a Community Directive on equal treatment in the field of social security<sup>1</sup>.

First, Advocate General Jacobs states that by analogy with the existing case-law of the Court, the Directive applies to situations where a person suffers discrimination concerning the duration of entitlement to a statutory old-age pension as a result of undergoing gender reassignment surgery.

Advocate General Jacobs suggests that in that situation the **correct comparator**, that is the person with whom the applicant's situation must be compared, is a **female** person whose identity is not the result of gender reassignment surgery.

In this instance, Ms Richards is denied her pension in circumstances where, had she been registered as female at birth, she would have been entitled to it. The alleged discrimination lies in the United Kingdom's failure to recognise transsexual persons in his or her acquired gender on equal terms with persons recorded as of that gender at birth. The Advocate General is therefore of the opinion that **it is contrary to Community law for a Member State to refuse to grant a retirement pension before the age of 65 to a male-to-female transsexual where that person would have been entitled to a pension at the age of 60 had she been regarded as a woman as a matter of national law.**

Advocate General Jacobs rejects the United Kingdom's argument that the situation was covered by a derogation from the Directive permitting Member States to exclude the determination of pensionable age from its scope. He notes that that derogation covers legislation concerned with determining the different pensionable ages of men and women. It does not cover legislation concerned with determining the sex of the person concerned. It does not therefore cover the question at issue in this case.

Finally, given the relatively few people who would be affected by the judgment, the financial implications of the judgment would not create a risk of serious economic repercussions in the United Kingdom. Considering also that the UK had not requested such a limitation, the Advocate General sees no need for the Court to limit the temporal effects of its judgment.

**IMPORTANT: The Advocate General's Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.**

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<sup>1</sup> Council Directive 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)

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

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

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

*<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>*

*It can usually be consulted after midday (CET) on the day of delivery.*

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*Pictures of the delivery of the Opinion are available on EbS "Europe by Satellite",  
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