NOTES

For Women Scotland Ltd v. The Scottish Ministers: An Ignorance of the U.K. Supreme Court's Constitutional Duty and the Urgent Need for Parliamentary Action

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I. OVERVIEW

The extent to which gender identity should be recognized as a protected characteristic under the law has become one of the most prominent social debates in many major states around the world, including and especially in the United Kingdom.[1] Much of the debate in the U.K. has centered around the extent to which transgender women should be encompassed in the greater movement for women's equality under the law, with some feminist activists arguing that the inclusion of transgender women within the broader feminist movement poses a threat to the rights and safety of cisgender women in areas such as participation in sports and access to private spaces such as restrooms.[2] In spite of the growing backlash to the transgender rights movement, and with the goal of increasing gender equality within government roles, Scottish Parliament passed a law in 2018 mandating that the boards of Scottish public authorities strive to ensure that at least fifty percent of their board seats are occupied by women, with the definition of "women" specified

1. All major political parties in the 2024 U.K. general election made policies on transgender individuals a centerpiece of their campaigns. *See* Equality Network, *U.K. Election 2024—Comparing the Manifestos* (2024), https://www.equality-network.org/our-work/policy-team/uk-election-2024/uk-manifestos-2024/#:~:text=forward%20LGBTI+%20equality.-,The%20Liberal%20Democrat%20manifesto%20says.

2. *See* Craig McLean, *The Growth of the Anti-Transgender Movement in the United Kingdom. The Silent Radicalization of the British Electorate*, 51 INT'L J. OF SOCIO. 473, 476 (2021).

to encompass transgender women who identify as women or have undergone gender reassignment surgery.[3]

For Women Scotland, a gender-critical feminist organization, filed a challenge in court, claiming that the resolution exceeded Scotland's devolved powers by redefining the term "woman" as it is understood in the U.K. Equality Act 2010 (EA 2010), arguing authority over such matters is a reserved power of U.K. Parliament and that the Act conveys a purely biological understanding of the term.[4] After a series of appeals, the case made its way to the U.K. Supreme Court on the narrow question of the legal definition of "woman" as it appears in the EA 2010.[5] The U.K. Supreme Court *held* that for the purposes of sex-based discrimination under the EA 2010, the term "woman" only encompasses biological women,[6] and transgender women, including those who have fully transitioned via gender reassignment surgery, will be considered their biological sex at birth under U.K. law. *For Women Scotland Ltd v. The Scottish Ministers* [2025] 2 WLR 879 (UKSC) [888] (appeal taken from Scot.).

II. BACKGROUND

For the past several years in the U.K., transgender rights activists and feminist groups have often clashed over the inclusion of transgender women in the greater women's rights movement.[7] For instance, For Women Scotland, the organization at the heart of the noted case, states on its website that it is motivated by "growing unease about how women's rights would be affected by the Scottish Government's plans to allow for self-declaration of sex."[8] The organization would eventually manifest these concerns in the form of a lawsuit against the Scottish government.

In 2018, Scottish Parliament passed the Gender Representation on Public Boards Act (the 2018 Act), which required the boards of Scottish public authorities to work toward filling at least fifty percent of the non-executive seats on their boards with women.[9] The Act defined "women" to encompass biological women as well as

3. Gender Representation on Public Boards (Scotland) Act 2018, (ASP 4) §2.

4. For Women Scotland Ltd v. The Scottish Ministers [2025] UKSC 16, [2025] 2 WLR 879 (appeal taken from Scot.).

5. *Id.*; Equality Act 2010, c. 15 (UK).

6. To clarify, references herein to "biological women" denote cisgender women.

7. *See* McLean, *supra* note 2.

8. For Women Scotland, *About*, https://forwomen.scot/about/ (last updated 2022).

9. Gender Representation on Public Boards (Scotland) Act 2018, (ASP 4) §1, ¶1.

> a person who has the protected characteristic of gender reassignment (within the meaning of section 7 of the [Equality Act] 2010) if, and only if, the person is living as a woman and is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of becoming female.[10]

This definition prompted For Women Scotland to file its initial legal challenge.[11] In this first suit, the organization challenged the definition as being both an imposition upon a reserved power of U.K. Parliament[12] and in violation of the EA 2010, arguing that transgender women are not protected under the term "woman" as understood by the Act for the purposes of sex discrimination.[13] On appeal, the Second Division of the Inner House of the Court of Session agreed, holding that one's acquired gender is not a protected characteristic under the Act, and that this matter fell under the area of "equal opportunities."[14] Therefore, the court held that Scottish Parliament's redefinition of "woman" within the EA 2010 was an imposition into a reserved power, and thus invalidated the definition contained in the 2018 Act.[15]

Following this decision, in April of 2022 the Scottish government issued an updated guidance for the definition of "woman" as it appears in the 2018 Act, stating:

> "Woman" in the Act has the meaning under section 11 and section 212(1) of the Equality Act 2010. In addition, in terms of section 9(1) of the Gender Recognition Act 2004, where a full gender recognition certificate has been issued to a person that their acquired gender is female, the person's sex is that of a woman, and where a full gender recognition certificate has been issued to a person that their acquired gender is male, the person's sex becomes that of a man.[16]

Under the Gender Recognition Act of 2004 (GRA 2004), any individual in the U.K. that is at least eighteen years old can apply for a full

10. *Id.* at § 2.

11. For Women Scotland Ltd v. The Lord Advocate [2022] CSIH 4 [1] (Scot.).

12. There are certain legislative matters that are reserved to only be within the power of U.K. Parliament and are therefore outside of the competence of Scottish Parliament. According to Section L2 of Schedule 5 to the Scotland Act 1998, "equal opportunities" is one such area. Scotland Act 1998, c. 46, sch. 5, § L2 (UK).

13. *For Women Scotland Ltd*, [2022] CSIH 4 [1]; Equality Act 2010, c. 15 § 7 (UK).

14. *For Women Scotland Ltd*, [2022] CSIH 4 [40].

15. *Id.*

16. Gender Representation on Public Boards (Scotland) Act 2018: Statutory Guidance (pub. Apr. 19, 2022), https://www.gov.scot/publications/gender-representation-public-boards-scotland-act-2018-statutory-guidance-2/.

gender recognition certificate (GRC) that, if issued, will change that individual's recognized sex to their preferred gender, provided they have been diagnosed with gender dysphoria and have been living as their acquired gender for at least two years.[17] Therefore, the Scottish government's 2022 updated guidance stated that a transgender woman with a full GRC is treated by the EA 2010 as having the acquired sex of a woman and therefore is a "woman" for the purposes of sex discrimination under the Act.[18]

Based on the updated guidance, For Women Scotland brought a new suit, claiming that the clarification remained in violation of the definition of "woman" according to the EA 2010, arguing the Act's definition conveys a solely biological understanding of the term, necessitating that only biological women should be legally recognized as women.[19] The Outer House of the Court of Session rejected this argument, holding that the GRA 2004 has the effect that a full GRC changes a person's sex in the eyes of the law, stating that the language of the GRA 2004 "could scarcely be clearer" in its assertion that, once in possession of a full GRC, one's acquired gender becomes their sex "for all purposes," including legal.[20] The court also held that the EA 2010 was "drafted in full awareness" of the GRA 2004, and that, as a result, "sex" in the EA 2010 is not confined to biological sex, but includes the acquired sex of those who possess a full GRC obtained under the GRA 2004.[21] Therefore, the court held that the revised guidance provided by the Scottish government was lawful.[22]

On appeal, the Second Division of the Inner House of the Court of Session affirmed the Outer House's decision, holding that the GRA 2004 creates a pathway for an individual to change his or her sex in the eyes of the law.[23] The court also affirmed the Outer House's holding that the term "woman" within the EA 2010 could have a biological meaning, or could bear a wider meaning in accordance with the GRA 2004 such that a transgender woman would be entitled to protection against discrimination on the basis of her acquired gender.[24] The court did acknowledge that certain provisions within the EA 2010, such as the prohibition on discrimination on the basis of pregnancy, would necessitate a biological

17. Gender Recognition Act 2004, c. 7, § 2 (UK).

18. Gender Representation on Public Boards (Scotland) Act 2018: Statutory Guidance, *supra* note 16.

19. For Women Scotland Ltd v. The Scottish Ministers [2022] CSOH 90 [4] (Scot.).

20. *Id.* ¶ 45, 47.

21. *Id.* ¶ 50.

22. *Id.* ¶ 54.

23. For Women Scotland Ltd v. The Scottish Ministers [2023] CSIH 37 [36] (Scot.).

24. *Id.*

understanding of gender, but concluded that outside of these specific provisions, a biological interpretation of the term "woman" within the Act as a whole is too narrow.[25] Therefore, the court concluded that the updated guidance from the Scottish government was lawful because an individual with a full GRC in the female gender is a woman for the overall purposes of the EA 2010.[26]

For Women Scotland then appealed the decision to the U.K. Supreme Court (Supreme Court), which granted the appeal on the issue of the definition of "woman" under the EA 2010, specifically on the question of whether the definition encompasses individuals with a full GRC in the female sex or solely biological women.[27]

III. THE COURT'S DECISION

In the noted case, the Supreme Court reversed the rulings of the Outer and Inner Houses of the Court of Session, unanimously ruling in favor of For Women Scotland.[28] The Court relied on a plain meaning approach to the statutory interpretation of both the EA 2010 and the Sex Discrimination Act of 1975 (SDA 1975) to conclude that the language of both mandates a biological understanding of "man" and "woman" and that transgender individuals will therefore be considered their biological sex at birth under the law.[29] The Court also acknowledged the decision of the European Court of Human Rights (ECtHR) in *Goodwin v. The United Kingdom*, which stated that the lack of legal recognition within the U.K. for an individual's acquired gender was a violation of the right to respect for private life under Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the "European Convention"),[30] but reasoned that because the GRA 2004 (enacted in response to that ruling) provides "formal recognition" for one's acquired gender once they obtain a full GRC, the law satisfies the recommendations made by the ECtHR in that decision.[31] Finally, the Court relied on a 2023 letter prepared by the Equality and Human Rights

25. *Id.* ¶ 62.

26. *Id.*

27. For Women Scotland Ltd v. The Scottish Ministers [2025] UKSC 16, [2025] 2 WLR 949-950 (appeal taken from Scot.).

28. *Id.*

29. *Id.* at 895, 921-922.

30. Goodwin v. The United Kingdom, App. No. 28957/95, ¶ 93 (2002), https://hudoc.echr.coe.int/eng?i=001-60596; European Convention for the Protection of Human Rights and Fundamental Freedoms art. 8, Nov. 4, 1950, 213 U.N.T.S. 221.

31. *For Women Scotland Ltd*, [2025] 2 WLR 898, 900.

Commission (a public equality enforcement body created by the EA 2010)[32] which stated that specifying the definition of sex under the EA 2010 to only denote biological sex would bring greater legal clarity for treatment of transgender individuals in several areas such as participation in sports and access to medical care.[33]

Primarily, the Court stated that its approach to statutory interpretation has been clearly established by past precedent, most notably in *R (O) v. Secretary of State for the Home Department*, to be an objective assessment of the plain meaning of the words of the statute within the wider context of the law as a whole.[34] Using this approach, the Court first examined the language of the SDA 1975, while also taking into account the lack of legal protections that existed at the time of its drafting for transgender individuals, to conclude that the U.K. Parliament intended the terms "man" and "woman" in the Act to only have a biological meaning.[35] The Court then highlighted that even after the passage of the GRA 2004, seemingly no alteration was made to the general definition of the terms "man" and "woman" in the SDA 1975, and therefore this was still the understanding contained in the Act at the time of the drafting of the EA 2010.[36]

Second, the Court turned to examining the plain language of the EA 2010, concluding that the understanding of the terms "man" and "woman" in the Act is similarly binary.[37] Primarily, the Court highlighted that the EA 2010 states that "in this Act 'woman' means a female of any age," as well as the previous provisions in sections 5(2) and 82 of the SDA 1975 which state "'woman' includes a female of any age."[38] The Court then highlighted the EA 2010's repeated references to protections for "pregnant women" and women who are breastfeeding to further its conclusion that the Act clearly conveys a biological understanding of the term "woman."[39] Ultimately on this point, the Court summarized: "[The provisions of the Act] are all incoherent and unworkable unless woman and man have their biological meaning."[40]

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32. Equality and Human Rights Commission, *About Us: Who We Are*, https://www.equalityhumanrights.com/about-us/who-we-are (last updated 2021).

33. *For Women Scotland Ltd*, [2025] 2 WLR 944.

34. *Id.* at 885; R (O) v. Secretary of State for the Home Department [2022] UKSC 3 [31] (appeal taken from Eng.).

35. *For Women Scotland Ltd*, [2025] 2 WLR 895.

36. *Id.* at 902, 921.

37. *Id.* at 921.

38. *Id.* at 922.

39. *Id.* at 923.

40. *Id.* at 927.

In this same vein, the Court then turned to the 2023 letter prepared by the Equality and Human Rights Commission to further support this conclusion that a non-biological understanding of sex within the EA 2010 would incite legal confusion.[41] The Court focused in particular on the letter's assertions that in recent times, it "has not been straightforward for service-providers and employers to apply the law, including in areas such as sport and health services," and therefore if sex were to be defined as biological sex for the purposes of the EA 2010, "this would bring greater legal clarity."[42] Finally, the Court supported its conclusion that a biological understanding of sex under the law would not disadvantage a transgender woman wishing to bring a claim for sex discrimination under the EA 2010, as she would still be able to bring the claim "because she is perceived as a woman and can compare her treatment with that of a person not perceived to be a woman (whether that is a biological male or a trans man perceived to be male). There is no need for her to declare her true biological sex."[43]

Therefore, the Court reversed the decisions of both the Outer and Inner Houses of the Court of Session, finding that a non-biological or even variable understanding of sex under the Act (such as the one suggested by the Inner House) would be invalid, due to the fact that this would not be "clear, constant nor predictable," and because this would violate its interpreted plain meaning of the EA 2010.[44] As such, the Court concluded that for the purposes of sex discrimination under the EA 2010, the term "woman" can only be understood to encompass biological women, and therefore transgender women, even those with a full GRC, will be recognized as their biological sex at birth under U.K. law.[45]

IV. ANALYSIS

For the reasons set out below, the Supreme Court's decision in the noted case was inherently incorrect, representing an ignorance of both the Court's constitutional duties under the Human Rights Act 1998 (HRA 1998) and relevant ECtHR decisions regarding legal protections for transgender individuals. The Court reached its conclusion in the noted case whilst declining to exercise its interpretive duty under the HRA 1998, which renders the Court's decision an incorrect interpretation of the EA 2010 inconsistent with the Court's constitutional duties. Article 3(1) of

41. *For Women Scotland Ltd*, [2025] 2 WLR 944.
42. *Id.*
43. *Id.* at 946.
44. *Id.* at 928.
45. *Id.* at 949-50.

the HRA 1998 states that: "so far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the [European Convention's articulated] rights."[46] Therefore, when the courts of the U.K. (including and especially the Supreme Court) are interpreting a piece of U.K. legislation, they must do so in a way that is compatible with the European Convention.[47] Section 6(1) goes on to clarify that: "it is unlawful for a public authority to act in a way which is incompatible with a [European] Convention right."[48] As such, the HRA 1998 establishes a clear constitutional duty for courts of the United Kingdom to interpret legislation in a manner which does not conflict with the European Convention; despite this, nowhere in the Court's decision in the noted case is this interpretive duty under the HRA 1998 mentioned, nor is it exercised.[49]

Because the Court declined to even acknowledge its duty under the HRA 1998, it is difficult to postulate a reason as to why it was ignored. The most likely reason is the Court's employment of a plain meaning interpretation of the EA 2010, which the Court may have felt prevented it from utilizing outside interpretations of outside sources such as the European Convention to determine the meaning of the statutory language.[50] However, U.K. courts have already clearly established that courts' interpretive duties under the HRA 1998 require a departure from the plain meaning of the language of a statute if such meaning would be incompatible with the European Convention.[51] In *Ghadain v. Ghodin-Mendoza*, the House of Lords held that "[Section 3(1) of the HRA 1998] may require a court to depart from the unambiguous meaning the legislation would otherwise bear. [Section 3(1)] may require the court to depart from [Parliament's] legislative intention."[52] Therefore, even if the Court's decision to utilize a plain meaning interpretation of the EA 2010 was correct, this should not have been used as an excuse to ignore its obligation to interpret the legislation in accordance with the European Convention.

Perhaps the Court's duty under the HRA 1998 was ignored because the Court's decision to recognize transgender individuals as their

46. Human Rights Act 1998, c. 42 § 3(1) (UK).

47. Aileen Kavanaugh, *Introduction: Aims, Structure and Themes, in* CONSTITUTIONAL REVIEW UNDER THE UK HUMAN RIGHTS ACT 1, 5 (2009).

48. Human Rights Act 1998, c. 42 at § 6(1) (UK).

49. The HRA 1998 itself is mentioned once, but the Court does not acknowledge its duty under it, nor does it undertake this duty. *See For Women Scotland Ltd*, [2025] 2 WLR 899.

50. *Id.* at 885.

51. *See* Ghadain v. Ghodin-Mendoza [2004] UKHL 30 [30] (appeal taken from Eng.).

52. *Id.* ¶¶ 30-32.

biological sex rather than their acquired gender under the law is squarely at odds with established ECtHR interpretation of the European Convention.[53] As acknowledged by the ECtHR in the *Goodwin* decision, Article 8 of the European Convention's conveyance of the right to respect for private life encompasses the right to legal recognition of one's acquired gender.[54] Article 8 states that:

> 1. Everyone has the right to respect for his private life and family life, his home and correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.[55]

In *Goodwin*, the ECtHR clarified that Article 8 must be applied in a way which "renders its rights practical and effective, not theoretical and illusory."[56] Utilizing this standard, the ECtHR concluded that the U.K.'s lack of formal legal recognition at the time for one's acquired gender was in violation of the Article 8 rights of transgender individuals, holding that "serious interference with private life can arise where the state of domestic law conflicts with an important aspect of personal identity."[57] The Court summarized its conclusion by stating: "the stress and alienation arising from a discordance between the position in society assumed by a post-operative [transgender individual][58] and the status imposed by law which refuses to [recognize] the change of gender cannot, in the Court's view, be regarded as a minor inconvenience arising from a formality."[59]

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53. Goodwin v. The United Kingdom, App. No. 28957/95, ¶¶ 92, 100 (July 11, 2002), https://hudoc.echr.coe.int/eng?i=001-60596; *see also* A.P., Garçon and Nicot v. France, App. Nos. 79885/12, 52471/13 and 52596/13, at 44 (Apr. 6, 2017), https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-172913%22 (holding that requiring transgender individuals to undergo sterilization/sterilizing medical treatment to legally change their gender violates Article 8 of the European Convention's guarantee of the right to respect for private life); T.H. v. Czech, App. No. 33037/22, at 20 (June 12, 2025), https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-243567%22 (also holding that requiring transgender individuals to undergo sterilization in order to legally change their gender is a violation of the right to private life under Article 8).

54. *Goodwin*, App. No. 28957/95, ¶ 92.

55. Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 30.

56. *Goodwin*, App. No. 28957/95, ¶ 74.

57. *Id.* ¶ 77.

58. Outdated terminology edited.

59. *Goodwin*, App. No. 28957/95, ¶ 77.

Therefore, the Court's choice to base its decision in the noted case partially upon the fact that a lack of legal recognition for a transgender individual's acquired sex "should make no difference" for such individuals in consequential areas like sex-based discrimination suggests a view that fundamental changes to transgender individuals' lives resulting from this decision, including the inability to file a sex discrimination claim based on their acquired gender, can be regarded as mere formalities, directly conflicting with the judgement of the ECtHR.[60]

The *Goodwin* decision also clarified that biological factors "can no longer be decisive in denying legal recognition [to transgender individuals]" and that gender identity alone (in whatever form) should be sufficient to acquire the legal recognition of one's preferred gender.[61] Therefore, for the reasons set out above, the Court's ruling, that because the EA 2010 requires a biological interpretation of the term "woman" for the purposes of sex discrimination, transgender women are not entitled to legal recognition as women, is directly in contrast with the *Goodwin* decision, and therefore invalid under the HRA 1998.[62]

The Court's interpretation is also incompatible with other decisions of the ECtHR. In 2023, a transgender man living in Hungary submitted an appeal to the ECtHR on the grounds that Hungary's lack of legal framework for providing recognition under the law of his acquired gender denied him his Article 8 right to the respect for his private life, as this was preventing him from exercising his true identity at school and from receiving medical care as his preferred gender.[63] In its decision in *R.K. v. Hungary*, the ECtHR held that Article 8 "imposes on States a positive obligation to secure to their citizens the right to effective respect for their physical and psychological integrity."[64] Therefore, the Court concluded that because the state of Hungary did not provide "quick, transparent and accessible procedures" for the legal recognition of one's acquired gender, this was a violation of Article 8 that left transgender individuals in Hungary "in a situation of distressing uncertainty vis-à-vis their private life and the recognition of [their] identity."[65]

60. *For Women Scotland Ltd v. The Scottish Ministers* [2025] UKSC 16 [247] (appeal taken from Scot.); *Goodwin*, App. No. 28957/95, ¶ 77.

61. *Goodwin*, App. No. 28957/95, ¶ 100.

62. For Women Scotland Ltd v. The Scottish Ministers [2025] UKSC 16 [266].

63. R.K. v. Hungary, App. No. 54006/20, ¶ 40 (June 22, 2023), https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-225330%22.

64. *Id.* ¶ 53.

65. *Id.* ¶ 76.

Not only is the Court's decision to deny legal recognition to transgender individuals' acquired genders under the EA 2010 clearly in violation of ECtHR jurisprudence, the consequences that have arisen as a result of the decision also illustrate its further incompatibility with the European Convention. In *R.K.*, the ECtHR clearly stated that creating a sense of legal uncertainty around one's gender identity represents a violation of an individual's Article 8 rights to respect for private life.[66] Since the Court's decision in April, there has been well-documented confusion amongst transgender individuals in the U.K. as to which restrooms they are permitted to use, which sports teams they may join, and whether they even have the ability to file sex discrimination claims, with many stating that they are now living in fear.[67] Several prominent members of Parliament recently echoed this sentiment, describing the current legal landscape for transgender individuals in the U.K. since the decision as "a minefield."[68] Evidently, this court-created uncertainty places the Court's decision squarely at odds with the ECtHR's ruling in *R.K.*, highlighting its incompatibility with established European Convention protections and marking it a clear violation of the Court's duty under the HRA 1998.

The Court's interpretation is incompatible with more recent ECtHR decisions, as well. In June 2025, a transgender woman living in the Czech Republic brought an appeal to the ECtHR on the grounds that the state forcing her to undergo gender reassignment surgery in order to be legally considered a woman, despite the fact that her medical provider acknowledged that, for all purposes, she was living as a woman, was a violation of her Article 8 rights.[69] The Czech Republic argued that while transgender individuals do have an Article 8 right to respect for private life, Czech society's highly binary views of gender logically prevented legal recognition of transgender individuals as their acquired gender unless they had undergone full gender reassignment surgery.[70] In its decision in *T.H. v. The Czech Republic*, the ECtHR held that even in the

66. *Id.*

67. Diego Garcia Blum & Timothy Patrick McCarthy, *Understanding the Implications of the UK Supreme Court's Ruling Defining 'Sex' In the Equality Act*, HARV. KENNEDY SCH. CARR-RYAN CTR. FOR HUM. RTS (Apr. 18, 2025), https://www.hks.harvard.edu/centers/carr-ryan/our-work/carr-ryan-commentary/understanding-implications-uk-supreme-courts-ruling.

68. Peter Walker, *Dozens of Labour MPs Warn of Chaos for Firms over Gender Recognition Advice*, GUARDIAN (Oct. 23, 2025), https://www.theguardian.com/society/2025/oct/23/dozens-of-labour-mps-warn-of-chaos-for-firms-over-gender-recognition-advice.

69. T.H. v. Czech, App. No. 33037/22, ¶¶ 6-7 (June 12, 2025), https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-243567%22.

70. *Id.* ¶ 14.

face of a particular state's binary social views on gender identity, the "continuing international trend" in favor of both increased social acceptance of transgender people and legal recognition of their acquired gender identity renders any denial of legal recognition for transgender individuals on the basis of biological factors incompatible with Article 8 of the European Convention.[71] Therefore, the Court's ruling that the binary social understanding of "man" and "woman" at the time of the drafting of the SDA 1975 and the EA 2010 prevents contemporary legal recognition of one's acquired gender has now been placed even further in opposition of established ECtHR case law and is therefore inherently incorrect.[72]

Even a cursory examination of established interpretation of Article 8 by the ECtHR as it pertains to the rights of transgender individuals renders the Court's decision in the noted case not only an unconstitutional ignorance of its interpretive duties under the HRA 1998, but also one squarely incompatible with the established interpretation of the European Convention's guarantees for the legal recognition of transgender individuals by the ECtHR. While an appeal of the Court's decision has already been filed at the ECtHR by a transgender individual and several activist groups, it is premised on the claim that the applicants were not afforded a fair trial in violation of Article 6 of the European Convention, because the Court refused to consider the supplementary briefs they submitted in reaching its decision but did consider briefs submitted by several gender-critical feminist groups.[73] While this argument may have merit, it comes at a precarious moment: it can take several years before a decision on an appeal to the ECtHR is reached on the merits,[74] and Reform UK (the party which, as of this moment, seems poised to win the next U.K. general election)[75] has promised to withdraw the U.K. from the

71. *Id.* ¶¶ 52, 56.

72. For Women Scotland Ltd v. The Scottish Ministers [2025] UKSC 16 [247], [2026] AC 315 (appeal taken from Scot.).

73. Libby Brooks, *UK's First Trans Judge Appeals to European Court of Human Rights over Supreme Court Ruling*, GUARDIAN (Apr. 29, 2025), https://www.theguardian.com/society/2025/apr/29/uks-first-trans-judge-victoria-mccloud-appeals-to-european-court-over-supreme-court-ruling (all of the accepted briefs were submitted by groups opposed to recognizing transgender women under the definition of "women" in the EA 2010).

74. Georgia Harley, *How Long Is Too Long? When Justice Is Delayed, Justice Is Denied*, WORLD BANK BLOGS (Mar. 25, 2015), https://blogs.worldbank.org/en/europeandcentralasia/how-long-too-long-when-justice-delayed-justice-denied.

75. *Voting Intention, 22-23 July, 2026: Ref 23%, Lab 21%, Con 20%, LD 14%, Grn 13%,* YOUGOV (July 24, 2026), https://yougov.co.uk/politics/articles/53059-yougov-mrp-shows-a-reform-uk-government-a-near-certainty-if-an-election-were-held-tomorrow.

ECtHR if elected.[76] Therefore, it seems a more ideal approach for the U.K. Parliament, as the supreme legal authority in the U.K. with the power to overrule Supreme Court decisions,[77] to act now to pass legislation establishing the formal, legal recognition of one's acquired gender in order to ensure the HRA 1998 and respect for established Convention rights are upheld.

V. CONCLUSION

In the noted case, the Supreme Court not only disregarded its constitutional duty under the HRA 1998 to interpret the EA 2010 in a manner which is compatible with the European Convention, but it also reached a conclusion that is demonstrably contradictory to ECtHR jurisprudence concerning protections for transgender individuals.[78] The ECtHR has clearly established that the denial of legal recognition to transgender individuals, specifically on the basis of biological reasoning, represents a violation of those individuals' Article 8 rights.[79] Furthermore, the ECtHR has also established that states have a positive obligation to provide a clear method of legal recognition for one's acquired gender in order to ensure that transgender individuals are not left in a state of uncertainty regarding their ability to live as their preferred gender.[80] Additionally, the decision itself and the consequences it has already had for transgender individuals within the U.K.[81] highlights its clear incompatibility with established interpretation of the European Convention.[82] Therefore, not only was the Court's refusal to exercise its interpretive duty under the HRA 1998 a violation of its constitutional obligations, even if this duty was exercised, the Court's reasoning in no way complies with established interpretation of the European

76. Richard Brant & Lauren Butler, *Reform UK's Plans for 'Getting Tough on Illegal Immigration': From Legal Reset to Sunset*, UK CONST. L. ASS'N (Sep. 15, 2015), https://ukconstitutionallaw.org/2025/09/15/richard-brant-and-lauren-butler-reform-uks-plans-for-getting-tough-on-illegal-immigration-from-legal-reset-to-sunset/.

77. UK Parliament, *Parliament's Authority*, https://www.parliament.uk/about/how/role/sovereignty/ (last visited Oct. 17, 2025).

78. *See* Human Rights Act 1998, c. 42 at § 6(1) (UK); Goodwin v. The United Kingdom, App. No. 28957/95, ¶¶ 92, 100 (July 11, 2002), https://hudoc.echr.coe.int/eng?i=001-60596; R.K. v. Hungary, App. No. 54006/20, ¶ 76 (June 22, 2023), https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-225330%22.

79. *Goodwin*, App. No. 28957/95 at ¶ 92; T.H. v. Czech, App. No. 33037/22, ¶¶ 52, 56 (June 12, 2025), https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-243567%22.

80. R.K. v. Hungary, App. No. 54006/20, ¶ 76.

81. *See* Diego Garcia Blum & Timothy Patrick McCarthy, *supra* note 67.

82. *See id.*

Convention.[83] As such, the Court's decision in the noted case is evidently incorrect and in violation of U.K. law, and Parliament should therefore act quickly to overrule it in the form of legislative protections for gender identity to alleviate the social-legal limbo that transgender individuals in the U.K. now find themselves in.

Annie Cerria*

83. *See* Human Rights Act 1998, c. 42 at § 6(1) (UK).

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