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## IN THIS ISSUE

- **HUNGARIAN CONSTITUTIONAL COURT REPEALES ANTI GAY/LESBIAN LEGISLATION**
- **NEW PROTECTION AGAINST WORKPLACE DISCRIMINATION**
- **NEW BOOK ON TRANSSEXUAL AND TRANSGENDER RIGHTS**

## **HUNGARIAN CONSTITUTIONAL COURT REPEALS ANTI GAY/LESBIAN LEGISLATION**

*ILGA-Europe press release*  
Brussels, 5 September

ILGA-Europe welcomes the decision of the Hungarian Constitutional Court that Hungary's discriminatory age of consent law violates the Hungarian Constitution. Paragraph 199 of the Hungarian Penal Code sets an age of consent of 18 for sexual relations between persons of the same sex, and 14 for those between persons of the opposite sex. The Court's decision results in the immediate repeal of Paragraph 199.

However, ILGA-Europe notes that, as a result of an earlier (1996) decision by the Court, lesbians, gays and bisexuals below the age of 18 are denied the right to join organisations which campaign for their rights. It calls upon the Hungarian government to introduce legislation to eliminate this restriction on their freedom of association.

The Constitutional Court's age of consent decision follows a long campaign at national level, and more recently, at European level, for the repeal of the law. In September 1993 three organisations, Lambda Budapest Gay Society, Homeros Society, and the Hungarian Jewish Lesbian and Gay Group addressed a petition to the Constitutional Court challenging the constitutionality of the law. This was followed by further petitions in 1996 and in 1998, and three cases since 1998 which judges referred to the Constitutional Court, questioning their constitutionality. However the Constitutional Court repeatedly postponed reaching a decision.

In 2000 the issue was taken up at European level, when the Parliamentary Assembly of the Council of Europe passed a Recommendation calling *inter alia* for the repeal of remaining discriminatory age of consent laws in Europe, and citing Hungary amongst the countries which still maintained such laws.

In June 2001 ILGA-Europe and its member organisations in the accession countries provided a report to the Intergroup for Gay and Lesbian Rights of the European Parliament and to the European Commission's Enlargement Commissioner drawing their attention to discriminatory laws in countries seeking to join the European Union. The report argued that these laws were contrary to the minimum human rights standards required for accession to the EU.

In September 2001 the European Parliament commented adversely on paragraph 199 in its annual report on Hungary's accession, as did the European Commission in its annual report published in November of that year. In June 2002 the European Parliament again drew attention to paragraph 199.

The Hungarian Court's ruling follows the repeal of laws discriminating on the basis of sexual orientation in Lithuania (2000 - although the new law has still to come into force), Estonia (2001), and Romania (2001). In June 2002 Cyprus introduced an equal age of consent for homosexual and heterosexual behaviour, but left in place a number of other discriminatory laws. In Bulgaria, the last remaining accession country with a discriminatory age of consent law, the Parliament is due to debate repeal of this, and other discriminatory laws, later this month.

Ailsa Spindler, ILGA-Europe's Executive Director, commented: "the Constitutional Court's ruling is a great and long overdue victory for Hungary's LGBT movement. The Hungarian government must now go the final step in accepting European human rights standards, and eliminate its restrictions on the freedom of association of young lesbians, gays and bisexuals."

Adrian Coman, ILGA-Europe Board Member and former Director of the Romanian LGBT Organisation ACCEPT, added "this decision of the Hungarian Constitutional Court really puts the pressure on Bulgaria. A failure to repeal its discriminatory laws in the parliamentary debate later this month will single out Bulgaria as willfully flouting the EU's human rights standards".

### **Constitutional Court decision – repeal of § 199 and § 200**

*By Bea Sandor*

The Hungarian Constitutional Court announced its decision about the discriminatory definition of ages of consent regarding heterosexual and same-sex sexual relationships on 3rd September 2002.

The decision immediately repeals § 199 of the Penal Code, which punishes any adult (older than 18) person who „commits lewdness” with someone of the same sex who is younger than 18 years old, with up to three years in prison, while the age of consent for heterosexual relationships is 14.

The decision also immediately repeals §200 of the Penal Code, which named a type of punishable act differently than the same act among persons of different sex, but set the same punishment – in this way, § 198 will refer to the same act, irrespective of the sex of the victim.

The decision, however, refuses to change the old wording of the laws which refer to “sexual morals” and name certain sexual acts as “unnatural lewdness”.

With the repeal of § 199 and § 200, all the sexual crimes defined in the Hungarian Penal Code can only be pursued by the police (and are punishable) if the victim makes a complaint.

The reasoning of the resolution refers to the petitions of Hungarian gay and lesbian and human rights NGOs, legal cases that judges referred to the Constitutional Court without making a decision, and the resolutions and decisions of the European Human Rights Commission, the Parliamentary Assembly of the Council of Europe, and the European Court of Human Rights.

The resolution declares that § 199 and § 200 violates § 70/A of the Hungarian Constitution, as they arbitrarily discriminate between people based on their sexual orientation, and this cannot be objectively justified.

The resolution declares that it is the legislators’ task and responsibility to judge whether the laws of the Penal Code defend young people to the necessary extent – thus to define the age of consent, which should be the same for both heterosexual and same sex sexual relationships. It is also the legislators’ competence to decide whether sexual crimes should only be pursued by the police (and be punishable) if the victim makes a complaint, but laws should not differentiate based on the sex of the victim. We do not have news about changes planned regarding these questions.

## **NEW PROTECTION AGAINST WORKPLACE DISCRIMINATION**

*By ILGA-Europe*

In 1996, the European Court of Justice delivered a historic judgment in the case *P v S and Cornwall County Council*. It decided that the dismissal of a woman as a consequence of her decision to undergo gender reassignment was unlawful sex discrimination contrary to the 1976 Equal Treatment Directive (207/76). Al-

though more than five years have passed since this judgment, few member states have amended their gender equality laws to provide explicitly for the protection of transgender people against discrimination. However, an opportunity for progress in this area is presented by the adoption by the European Parliament and Council in June 2002 of a package of amendments to the Equal Treatment Directive.

The decision to revise this directive was a consequence of the directives adopted in 2000 under Article 13 EC. These provided higher standards of protection against discrimination and it was necessary to make similar changes to EU gender equality laws. Following the Court’s decision in the *P* case, the new measures will also protect individuals facing discrimination related to gender reassignment. There are three aspects of particular significance in the revised directive.

First, there is a clear ban on harassment “related to the sex of a person”. Employers are encouraged to take preventative steps to combat harassment at work. This should also include unwanted conduct (verbal or physical) linked to gender reassignment. Second, organisations working to promote equal treatment are entitled to bring cases “on behalf or in support of” a victim of discrimination, with his or her agreement. This means NGOs working on behalf of transgender persons could assist them in challenging discrimination in employment. Finally, member states must create bodies for the promotion of equal treatment, which shall provide “independent assistance to victims of discrimination”. This could include legal advice or even assistance with the financial costs of bringing a case.

The directive should be published in the EU Official Journal in September 2002, and national authorities will have three years from that date in which to bring their laws into line with the standards in the new directive. It is crucial that the implementation process is carefully monitored to ensure express reference to the protection of transgender people in national laws. ILGA-Europe will be producing a guide to the new directive and the key issues to lobby for with national governments. This directive only concerns employment discrimination. The EU Commission will now propose a further directive on gender discrimination in other areas, such as education and healthcare. ILGA-Europe is actively campaigning to ensure this includes protection against discrimination based on gender identity.

## **NEW BOOK ON TRANSEXUAL AND TRANSGENDER RIGHTS**

*By Robert Wintemute*

September 2002: publication of a new book - "**Respect and Equality: Transsexual and Transgender Rights**", written by Stephen Whittle, Vice-President of Press For Change, the UK's lobby group campaigning for respect and equality for transgender people.

This 300 page book argues that current law does not adequately provide for transgender people and calls for respect and equality before the law. Theoretical discussions of sex, sexuality, gender and law, are combined to provide an insightful analysis into the inadequacies of current law. The book will be essential reading for legislators and legal practitioners working to enhance the rights and social acceptance of transgender people, also transgender campaigners, as well as those researching and studying within the field.

It is due to be published in September 2002 and is priced at 25 pounds sterling. Please find some information about the book attached at the bottom of this message.

This book will make a substantial contribution to current discussion of transsexual and transgender rights within the transcommunity.

This book can also be ordered through Amazon.co.uk - why not go through the Press For Change website, [www.pfc.org.uk](http://www.pfc.org.uk) and support PFC whilst buying this book

### **RESPECT AND EQUALITY: TRANSEXUAL AND TRANSGENDER RIGHTS**

This book provides everything you would ever want to know about the law relating to transgender issues. Using an extensive range of primary and secondary research materials it provides an insightful and cogent analysis into the inadequacies of current law.

Writing coherently and persuasively, the author uses innovative theoretical discussions of sex, sexuality, gender, and the law to demonstrate the injustices meted out to transgender people. Combining analysis of up-to date national and international statute and case law with practical examples of successful affidavits, this book is a rich, up to date study taking account of the most recent developments in the field. Accurate and well articulated, there is a rigorous critique of areas as diverse and wide

ranging as the medical treatment of teenagers, immigration and asylum, the military, as well as marriage and employment. It is a timely contribution to the knowledge of the law in this area.

The book will become a classic as an investigation of the law's inadequacy in framing sexual citizenship. An ideal text for all levels of higher education, it will appeal to academics and students of sexuality, gender, and human rights. Legislators and legal practitioners working to enhance human rights and social acceptance for transgender people will find in it a wealth of otherwise inaccessible information. Transgender people should ensure they have two copies, one for themselves, and one their lawyer.

Finally, the book will be a fabulous resource for transgender campaigners, because of its vast breadth of coverage of the many pertinent and crucial issues. Each chapter contains extremely useful information about the law's approach and will be readily accessible to anyone involved in seeking information and reform of any particular area within the book's ambit.

### ***Back Cover Copy***

This book is not so much a 'call for rights' as a call for people to be given respect and an equal footing before the law. The first part explores both the historical medico-legal construction of transsexualism as a syndrome, and the socio-legal construction of the transsexual it clarifies the inadequacy of current legal thinking and law in practice. Transsexual and transgender people are given space to discuss their own construction of self in the face of an inadequate legal framework. The book discusses their theoretical and practical approaches to the legal problems faced through new forms of activism, and understandings of what gender is as a means of expression and as a mechanism of oppression.

The remainder of the book concerns the law and the current position as regards transsexual people. The chapters are comprehensive, addressing the 'live' issues that have come before the courts and the justice system. It tackles transgender employment (including a chapter on the employment of trans people as police officers), marriage, parenting, treatment access, the position in European law, and imprisonment. These are given a theoretical and legal perspective but are grounded in the lives of real transsexual people. As such, the book provides a guide to tackling the problems of the

law. Included at the end of the book are examples of affidavits that have been used in practice to illustrate 'how trans people do law'.

This book is the perfect tool for anyone who ever has anything to do with the law as it relates to transgender people, as well as providing an excellent campaigning resource for transgender people themselves.

***Personal Bio***

Stephen Whittle is the Reader in Law at Manchester Metropolitan University, as well as being the Vice-president of Press For Change, which is the UK's lobby group campaigning for respect and equality for all trans people. His background as a transsexual man, led to his legal career. Having suffered prejudice and discrimination throughout the 1970s and 1980s including being dismissed from several jobs, he chose to become a lawyer pursuing a part time degree, Masters, and doctorate. He reckons 10 years of evening classes made him realize how much could be achieved by not watching television.

He has worked with Amnesty International, ILGA Europe, The Harry Benjamin International Gender Dysphoria Association and Liberty to provide amicus briefs in many trans-related cases throughout the world. He and his partner, Sarah, have 4 young children (including twins). It was their fight to protect their children that led them to make their own application to the European Court of Human Rights in 1996 (X, Y and Z v UK Government).

He has many publications, most recently "The Transgender Debate – the current crisis in gender identities", South Street Press: 2000, and "Reclaiming Genders: Transsexual Grammars at the fin de siecle", Cassell: 1999, edited with Kate More. Currently he is working on "50 years of Sex Changing: A Social History of Transformation in the late 20<sup>th</sup> Century" and a "Trans-Studies Reader".