

**Sensational**

# **Austrian Administrative High Court lifts Mandatory Surgery for Transsexuals**

**Rechtskomitee LAMBDA: "A historic decision"**

**As just announced the Austrian Administrative High Court in a landmark judgment of 27 February 2009 declared mandatory sex change surgery for transsexuals unlawful. Rechtskomitee LAMBDA (RKL), Austria's civil rights organisation for homo- and bisexual as well as transgender women and men, speaks of a historic decision.**

Austria, different than other countries (Spain, United Kingdom, Hungary, Sweden and Estonia) only recognized the new gender of (male-to-female-)transsexuals if they let remove their genitals. Not all transsexuals however are able to fulfil this condition, be it for their age, their health or their social situation.

Mandatory sex change surgery today is outdated and not scientific state of the art anymore. On the contrary it is understood as a human rights violation. So the Yogyakarta Principles, elaborated in November 2006 by leading international human-rights-experts say: "No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity." ([www.yogyakartaprinciples.org](http://www.yogyakartaprinciples.org)).

In that sense also the Council of Europe's High Commissioner for Human Rights in his report of 12 December 2007 asks that legal recognition of the new gender be not made contingent upon a sex change surgery (<https://wcd.coe.int/ViewDoc.jsp?id=1225149&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>).

And also the German Constitutional Court said that mandatory genital surgery contradicts today's scientific evidence: "Scientific literature sees no good reasons anymore for discriminative practices, regarding civil status, between transsexuals with or without surgery" (BVerfG, 1 BvL 3/03 vom 6.12.2005, 25, 66).

Finally practice in Austria is also discriminatory on the basis that only male-to-female-transsexuals are required to engage into genital sex change surgery.

## **Constant exposure or danger of pauperization**

The applicant before the Administrative High Court was born as male and, after hormone therapies and cosmetic measures, has been living for long time now as a woman. Nevertheless authorities are refusing a female first name and documents which correspond to her gender identity and her physical appearance. Every time she has to show one of her documents (driver's license, id-card, passport, residential registration form, birth certificate etc.) she has to expose her transsexuality and is coerced into (embarrassing and often degrading) outing.

The only reason for refusing a female first name and gender-identity-corresponding documents is that she has not undergone surgery to remove her genitals.

The applicant however can not engage in such an operation as she certainly would lose her job as a result of longstanding sickness absence following the surgery. The loss of her work would expose her to the eminent risk of social disintegration and pauperization.

The Administrative High Court now took into account these problems and ruled that serious surgery, like the removal of the genitals, is not a prerequisite for the change of the legal sex of transsexual persons (VwGH 27.02.2009, 2008/17/0054).

"Austria now is the sixth country in Europe which abolished mandatory surgery for transsexuals", says Dr. Helmut Graupner, president of Rechtskomitee LAMBDA (RKL) and counsel of the applicant, "We are expressing our deepest respect to the judges for their courageous, humane and historical judgment".

*Rechtskomitee LAMBDA (RKL), founded in 1991, on a supra-partisan and denominational level is working for the implementation of human rights for homo- and bisexual men and women. In its honorary board it convenes so prominent members as former Prime Minister Dr. Alfred Gusenbauer, President of Federal Parliament Mag. Barbara Prammer, former Minister of Justice Mag. Karin Gastinger, the Honorary President of the Parliamentary Assembly of the Council of Europe Peter Schieder, Federal Ombudsman Mag. Terezija Stoisits, former Director of Public Security Dr. Erik Buxbaum, the former President of National Judges Association Dr. Barbara Helige, the Vice-President of the Vienna Bar-Association Dr. Elisabeth Rech, the President of D.A.S.-legal expenses insurance company Dr. Franz Kronsteiner, the President of Weisser Ring Dr. Udo Jesionek, the Secretary General of Amnesty International Austria Mag. Heinz Patzelt and the well-known human-rights experts Dr. Lilian Hofmeister and Univ.-Prof. Dr. Manfred Nowak, the constitutional law professors Univ.-Prof. Dr. Christian Brünner, Univ.-Prof. Dr. Bernd-Christian Funk, Univ.-Prof. Dr. Heinz Mayer and Univ.-Prof. Dr. Ewald Wiederin, famous child- and adolescent psychiatrist Univ.-Prof. Dr. Max Friedrich and the Vienna Child- and Youth-Ombudspersons DSA Monika Pinterits and Dr. Anton Schmid, sexologists Univ.-Prof. Dr. Josef Christian Aigner, Univ.-Prof. Dr. Rotraud Perner and Univ.-Lekt. Mag. Johannes Wahala, theologian Univ.-Prof. Dr. Kurt Lüthi, Life-Ball-Organisator Gery Keszler and many more. October 2<sup>nd</sup>, 2006, RKL's 15 years anniversary has been celebrated in historic Ceremonial Act "Against Sexual Apartheid" in the lower chamber of Austrian federal parliament. This first honouring of an lgbt organisation in a national parliament worldwide took place in attendance of over 500 guests including highest representatives from the judiciary, administration and politics (<http://www.rklambda.at/festakt/index.htm>).*

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