

## Mandatory Surgery for Transsexuals

# Austrian Supreme Court Reprimands Ministry of Interior

**Rechtskomitee LAMBDA: "Misuse of power must lead to consequences"**

In a sensationally speedy decision the Austrian Administrative Supreme Court quashed as unlawful a decision by the Ministry of Interior, which – despite constant case-law to the contrary – required a transsexual woman to remove her genitals. *Rechtskomitee LAMBDA (RKL)*, Austria's civil rights organisation for homo- and bisexual as well as transgender women and men, calls for the misuse of power committed in the Ministry of Interior to lead to consequences.

Last year the Administrative Supreme Court repeatedly found mandatory surgery as required by the Ministry of Interior against the law (VwGH 27.02.2009, 2008/17/0054; VwGH 15.09.2009, 2008/06/0032; now similarly the Constitutional Court: VfGH 03.12.2009, B 1973/08).

The Ministry of Interior however insisted on mandatory surgery and again refused recognition in her new gender to the transsexual woman who has won the two cases in the Administrative Supreme Court. It did so again solely on the ground that she still has male genitals and despite the fact that the law obliges the Ministry to implement the judgments of the Administrative Supreme Court.

The woman had again to file complaints to the Administrative Supreme Court and to the Constitutional Court. In a record-breaking speedy judgment (only two months after filing of the complaints) the Administrative Supreme Court reprimanded the Ministry of Interior.

### **Court points to binding effect**

In its judgment of 17 February it is recalling its constant case-law which found mandatory surgery against the law and to the binding effect of its judgments. The only decisive factors are that the applicant is transsexual and that she has been living and working in the appearance of a woman for years (VwGH 17.02.2010, 2009/17/0263).

The applicant 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.

### **Like an illegal immigrant within her own country**

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 resistance the Ministry of Interior exerted against the case-law of the Administrative Supreme Court was arbitrary and coerced the woman to again address the high courts, which is not only costly but also subjects her to continued degrading discrepancy between her real

gender and her legal gender. Each time she faces police-officers she turns to the other side of the road in fear of degrading police controls: like an illegal immigrant, in her own country.

### **Prosecution: officers did not know what they have done**

The woman reported the misuse of power committed in the Ministry of Interior to the State Prosecutor Office for Corruption Offences, which however has dropped the case immediately. The officers would not have been aware that they misused their power. The Prosecutor Office has not even interrogated the officers or engaged any other investigations. The victim applied to the court. The Regional Court for Criminal Affairs of Vienna now has to decide whether the Prosecutor Office has to initiate investigations or not.

“The Ministry of Interior must now speedily recognize the new gender of my client”, says *Dr. Helmut Graupner*, president of *Rechtskomitee LAMBDA (RKL)* and counsel of the applicant, “and the perpetrators in the Ministry of Interior must be held liable for their flagrant misuse of power”.

*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>). Since 2010 RKL is a member of the Fundamental Rights Platform of the European Union Agency for Fundamental Rights ([www.fra.europa.eu](http://www.fra.europa.eu)).*

More information: Rechtskomitee LAMBDA, (+43/1/876 30 61), [office@RKLambda.at](mailto:office@RKLambda.at); [www.RKLambda.at](http://www.RKLambda.at)

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