
INTERNATIONAL ISSUES

TRANSGEN 96, FRIDAY, 5 JULY, 1996

REPORT FROM THE WORKSHOP, INTERNATIONAL ISSUES

Firstly, I must thank the other members of the workshop panel who contributed to the information contained in this report - they were; Deborah Brady LPN President of the High Risk Project society in British Columbia, Canada, Clare Cahill from Australia and Micheline Montreuil from Quebec in Canada.

Firstly, it must be recognized that in many parts of the world the law is in a state of flux. This is partly as a result of 2 specific things:

- 1) Increased Campaigning, and
- 2) The adjustments of Political Constitutions in a politically changing world.

And, also, I suspect :

An increased understanding of the issues by the general public, and

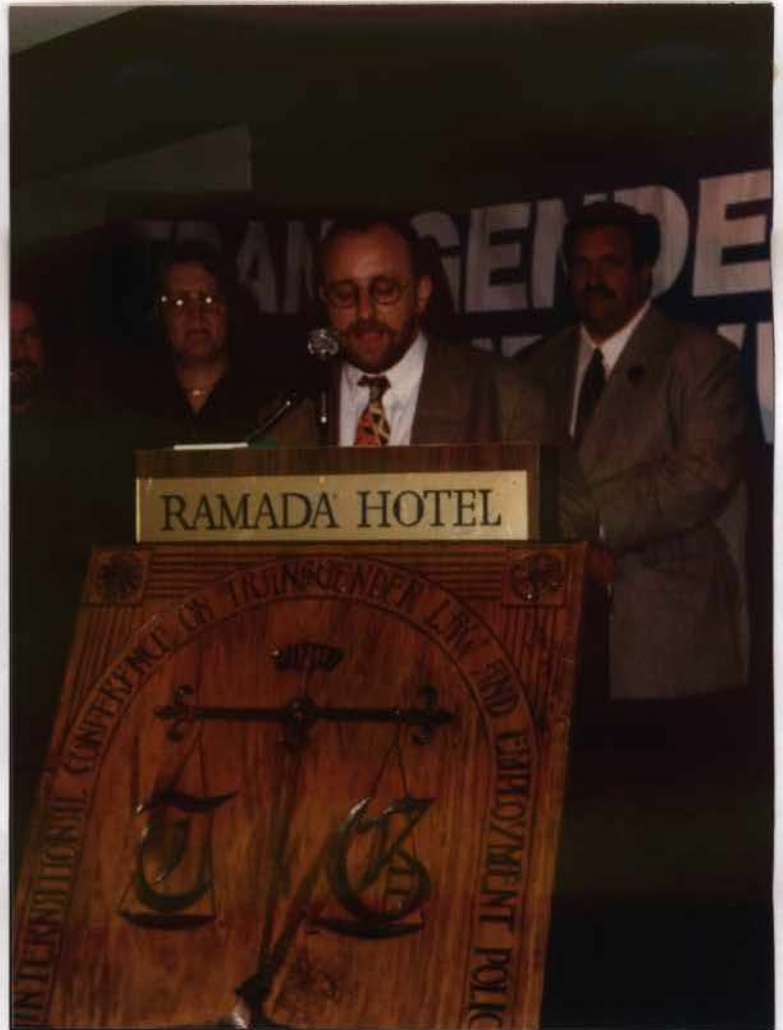
An increased public stance by trans people.

I am going to summarize the changes that have taken place this year and the new knowledge we have gained (if anyone wishes to have information concerning other nations, or past history, then they need to look at previous ICTLEP reports, or the book 'Transvestism, Transsexualism and the Law' available from Press For Change (1).

Much of the information below, covering countries outside of the UK was gained after a recent survey by myself which asked Ministries of Justice what was the current situation in their country.

Europe: DISCRIMINATION PROTECTION

One of the biggest changes seen this year has been the achievement of Employment Protection for all transsexual people throughout the countries of the European Economic Community. The case of Press For Change activist P who had been dismissed from her senior education post after disclosing her intention to undergo gen-



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der reassignment, was referred to the European Court of Justice (ECJ) by a local UK Industrial Tribunal on the question as to whether discrimination on the grounds of sex as outlawed in the EEC's Equal Treatment Directive 76/207 (ETD) covered discrimination because a person was transsexual (2).

The ECJ held that in fact that such discrimination was contrary to the directive. As such the directive provided employment protection to all transsexual people who were employed by 'emanations of the state'. This would include all state employees, but also employees of any organization that has come into existence through state legislation or process e.g. educational establishments who were chartered, or had charitable status, charities, the established church of any state, the health services that were created by statute etc.

The ETD was enacted in 1977, and though as is plainly obvious it was misunderstood until it was expounded in the case of P v S and Cornwall County Council, because of the failure to fully transpose the law as required under the Treaty of Rome, there is reason to believe that any transsexual person discriminated against in employment because they were transsexual (whether transitioned or not) in recruitment, conditions or dismissal, since 1977, could possibly make an 'out of time' claim.

Since the decision in P v S, and English tribunal has held that claims under the 1975 Sex Discrimination Act (SDA) would also now include discrimination because someone was transsexual. This is on the basis that the SDA is the enabling legislation of the ETD. This means that issues of sexual harassment in work are covered, and now ALL employees, not just employees of 'emanations of the state'.

All members of the EEC must have similar enabling legislation so now all transsexual people have full employment protection throughout the EEC. It is worth noting that this is the first court decision IN THE WORLD to afford employment protection to transsexual people, and there is good reason to believe that it will be extended to cover most transgendered people.

Furthermore as the SDA covers not just employment, but also the provision of goods and services such as housing, retail, access to social events, etc., it would now be considered fair legal argument to argue that trans people are covered totally against discrimination on the grounds of the trans status.

Following on from the result in P v S, we have seen some interesting cases develop:

1. A TS voluntary (unpaid: non-employee) worker was reinstated and awarded L30,000 for hurt feelings by a tribunal in October 1996 after her dismissal as a prison visitor. The size of the award was high because the case was brought under the ETD rather than the SDA (where claims are limited to L11,500) as the 'ultimate employer' was held to be the Home Office, a government department, as the voluntary activity took place in prisons.

2. Currently a transsexual woman is suing the West Midlands Police Service for refusing to employ her because 'they could not sort out the issues regarding whom she would be allowed to body search'. A decision is awaited.

3. A transsexual man is suing the Church Of England after being dismissed 14 years ago - this asks the courts to clarify how far back claims can be made.

4. A transsexual woman is suing the RAF after she was dismissed after being diagnosed as being Gender Dysphoric. For some time she was diagnosed as having an 'untreated psychopathic sexual disorder' - for this she was down graded from live arms use. However on clarification that

she was eminently 'treatable' she was instantly dismissed. The case will be heard hopefully before Christmas.

Other issues: A European Update

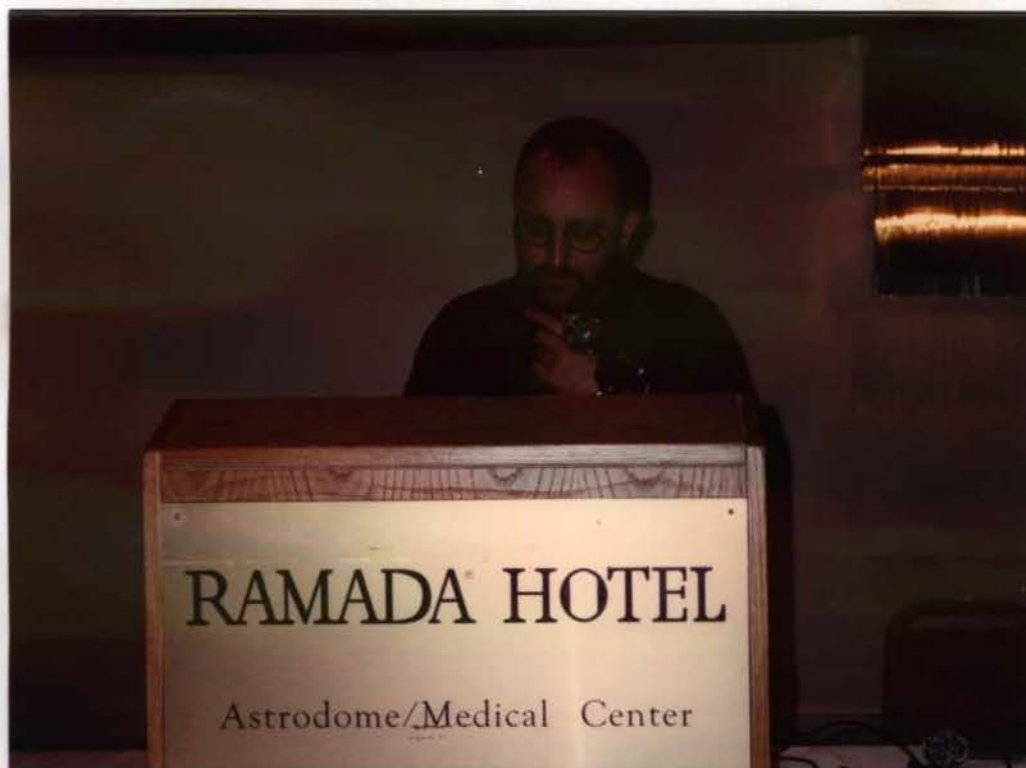
Italy: Transsexuals are currently campaigning to persuade the Italian government that rules regarding gender reassignment surgery should be relaxed, so that people can have their documentation amended at a much earlier stage in the process.

Turkey: there are still many reports of trans-people being seriously injured and even being killed by the police. This is a scandal that must be addressed by the International trans-community.

Ironically Turkey has legislation allowing birth certificate amendment but what use are these if you get killed after applying for it.

Romania: Gender reassignment surgery is being allowed for the first time, but the law is sadly out of date as regards other issues.

Greece: The Ministry of Justice has for the first time said that a judicial approach is taken which enables trans people to change their documentation and have full recognition of



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their new civil status. As such they would insist on transsexual men of the right age fulfilling their military duties under the conscription regulations.

The Balkan States: Trans people in many parts of the former Yugoslavia are having immense difficulties in accessing hormones, clean needles etc. There is a clear need for some humanitarian help.

United Kingdom: The Criminal High Court has held that a Transsexual woman can now be a rape victim if her 'wholly artificial vagina' is penetrated.

The Netherlands: there has been confirmation that a person would not be refused military service on the grounds of their transsexualism.

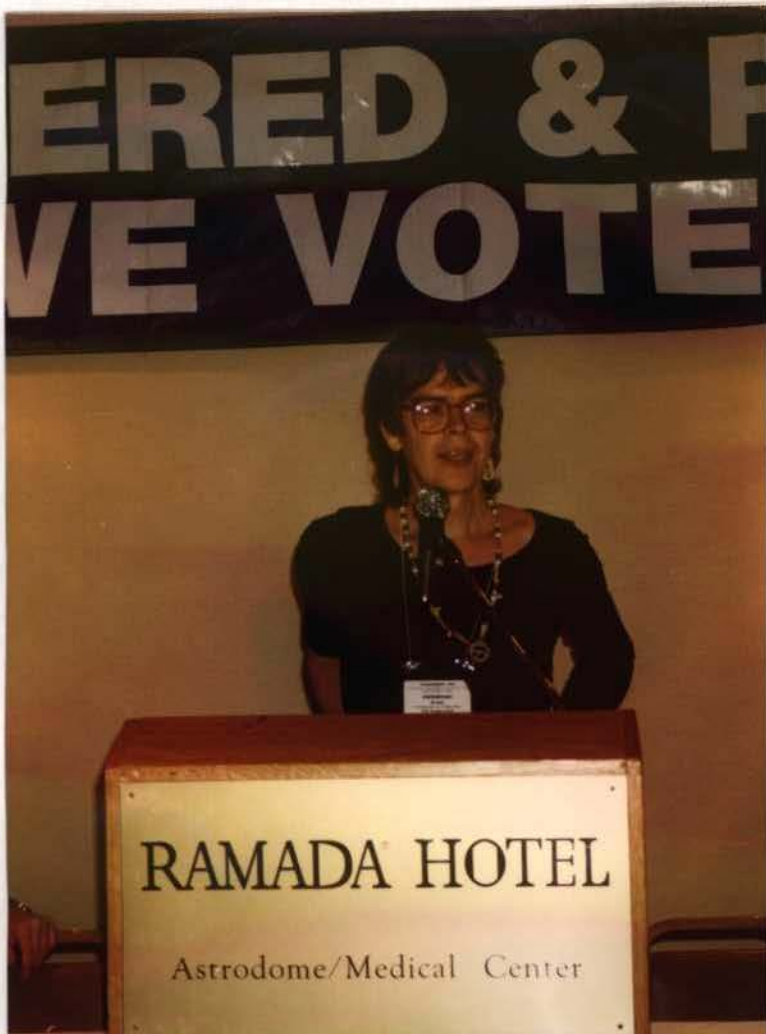
The European Court of Human Rights (The ECHR): The case of X, Y and Z v the UK (3) has been heard in the European Court of Human Rights. Concerning the 'right to family life' contained in Article 8 of the European Convention on Human Rights, the application was made after the UK Government's refusal to allow a transsexual man to register as the father of his partner's children, who were conceived using donor sperm through a licensed fertility treatment clinic. A judgement is expected towards Autumn 1997.

Two more cases have been heard by the European Commission On Human Rights and referred to the ECHR: Sheffield v UK, and Horsham V UK; Sheffield challenges the UK government on further privacy issues contrary to Article 8 of the Convention, and Horsham addresses the issues of interstate recognition of partnerships and marriage (Article 12); Horsham being a Dutch and UK citizen. Hearings at the Court are expected in Spring 1997.

REST OF THE WORLD

Australia is making great leaps into the future. For some time there has been legislation in South Australia to provide for birth certificate amendment, but the surgical requirements have been proving problematic. However, 1996 has seen the introduction in New South Wales of an Antidiscrimination amendment which uses the word 'transgender'. In Queensland, the Human Rights Commission has been addressing the issues and their initial report recommends full protection for trans people.

New Zealand : The new Births, Deaths and Marriages legislation which follows the high court decision of December 1994, has been introduced, and this allows documentation to be amended and marriages to be legalized, however we have yet to see what the full affects of the legislation will be.



Deborah Brady, LPN, President, High Risk Project Society, British Columbia, Canada

Namibia: The first Black African state outside of South Africa to acknowledge TS people - the ministry of justice say that there will be full acceptance and change of documents on social acceptance.

Canada: The High Risk Project of British Columbia has made several gains using Charter Challenge monies to address:

Medical provision issues

Legal/Civil Rights issues

They are currently suggesting challenges at the Supreme Court level which could institute Canadian wide changes. The High Risk Project has produced the excellent Transgendered Law Reform Project findings entitled "Finding Our Place"(4).

South Africa: has re-amended the Births and Deaths legislation which allowed amended birth certificates and new status recognition since 1971. This had disappeared with the constitutional changes of 1991, but thankfully they now appear to be back on the statute book.

Brazil: The Brazilian 'travestie' have been having many problems with the police but very recent legislation (October 1996) has meant that the police no longer have the right to pick up travestie just for being on the streets.

India: Hijari can now ask for their ID cards to be changed to recognize their female status.

Singapore: there are proposals currently being considered by the parliament to provide legal recognition of transsexual people's new status.

China: Gender Reassignment surgery is becoming increasingly available through the hospital in Beijing, but there is no provision for any changes to legal documents etc.

Japan: There has been, for the first time, recent publicity about gender reassignment surgery in Japan, and there is now a Japanese FTM group: FTM Nippon, but there are no proposals for legal recognition.

Egypt: the Ministry of Justice has now stated that judicial procedures exist whereby a transsexual person's new status will be recognized after application to the court with appropriate medical evidence.

To Sum Up:

Despite the recent successes seen in many parts of the world much work is still needed to be done before ICTLEP can truly be said to be an INTERNATIONAL organization. In many other parts of the world trans people are literally fighting for their lives - we can only start in small ways, and yes we do need to put our own houses in order first. But then we must find ways of doing outreach work without imposing our own cultural values on others, we must enable people to become empowered at their own local level.

We must:

Use the information we have, make it available to others in easily accessible ways (the Internet is one way) and make it 'user friendly' so that all community members can find something that they can do.

Lawyers need to recognize the potential influence of decisions from other jurisdictions in our own courts - its worth remembering that few judges want to be seen as being reactionary and out of date.

Legal Aid and Pro-Bono work have been instrumental in achieving many of the gains made recently. The USA and the UK both now have Contingency Fee systems(5). and so must other parts of the world. We need to find the time to address how to use the variety of schemes that exist to enable the poor to access the law. Many of our community members are poor, so lets pick and choose our cases and our people so that we not only look for the loopholes and exploit them, but we exploit privacy as a result.

The future is looking increasingly promising, and I look forward to the year to come.

1 L11.50 sterling, from Press For Change, BM Network, London WC1N 3XX

2 P v S and Cornwall County Council, 1996, IRLR

3 X, Y and Z v the United Kingdom, ECHR 21830/93

4 Available from: HRPS, 449 East Hastings St, Vancouver BC, V6A IP5, Canada

5 Commonly known as 'No Win, No fee' systems