

TRANSSEXUALISM, BIRTH REGISTRATION AND THE RIGHT TO MARRY:

SCHEDULE OF LEGISLATIVE AND CASE LAW DEVELOPMENTS IN EUROPE

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INTRODUCTION

The following schedule represents a summary of the 'official' position in Europe as at hand on February 7th, 1986. The principal informants have been the relevant Embassies, the Ministries of Justice of the responding countries and, in certain cases, individuals acting in a legal capacity for their respective governments.

The 'unofficial' position may be very different. Thus there are many transsexuals who have gone through ceremonies of marriage either with or without their partners' knowledge of their former status. There are many, too, who have effected a change of birth registration either by fraud or with the informal co-operation of the relevant authorities. Perhaps more still, having obtained the medical assistance they sought, see no reason either for marriage or for altered birth registration.

The inter-relations between the 'official' and 'unofficial' positions need researching as they play a major role in the emergence of the various formulations of sex changing that develop at different times in different places. In Britain, for instance, marked changes in medical, legal and administrative theorisations and practices occurred in the 1950's in part as a result of the furore surrounding the expose of Roberta Cowell by, inter alia, the Sunday Pictorial in 1954. Dave King has drawn our attention to the importance of these events for the position of transsexuals in Britain today.

It might be noted, too, how different the position is elsewhere. On information presently available, all states in the U.S.A. appear to allow marriage in the altered sex, subject to surgery and disclosure. Twenty-two states issue a new birth certificate; 28 issue an amended birth certificate; and 2 states do not do anything.

Further information on any of the matters referred to in the schedule would be gratefully received by:

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MARK REES - RESEARCH - EUROPE

QUESTIONS

ALBANIA

AUSTRIA

BELGIUM

1. Under the law in your Country is the transsexual's altered state recognised?

No Information

No Information

1. There are no express legal provisions, but case law suggests that can rectify birth certificate if an error made at birth.

2. Is it recognised for all purposes or only for certain purposes? If so, what are they?

3. Are changes planned in the law as it affects transsexuals?

4. Specifically, is an individual's birth certificate altered if he or she changes sex?

5. Are the birth registers open to the public ie can anyone obtain information about someone else's birth details?

6. In your Country, is a transsexual permitted to marry persons of the opposite sex to the sex that the transsexual has become? Would our client for example be permitted to marry a woman?

7. What evidence of change of sex has to be provided to secure legal recognition in your Country?

8. Please let us know what documents are issued in the new sex for example how are passports, driving licence and identity cards affected?

QUESTIONS

BULGARIA

CZECHOSLOVAKIA

DENMARK

- |   |         |  |   |
|---|---------|--|---|
| 1. Under the law in your Country is the transsexual's altered state recognised?   | No Info | 1. Yes   | 1. Practice set out in Circular Letter 11 Nov. '76 from Ministry of Ecclesiastical Affairs permit amendment of Register due to change of sex. |
| 2. Is it recognised for all purposes or only for certain purposes? If so, what are they?  |         | 2. For all purposes  |   |
| 3. Are changes planned in the law as it affects transsexuals?   |         | 3. No  |   |
| 4. Specifically, is an individual's birth certificate altered if he or she changes sex?   |         | 4. Yes, if change is proved  |   |
| 5. Are the birth registers open to the public ie can anyone obtain information about someone else's birth details?  |         | 5. No - birth certificates that are issued contain limited information.  |   |
| 6. In your Country, is a transsexual permitted to marry persons of the opposite sex to the sex that the transsexual has become? Would our client for example be permitted to marry a woman? |         | 6. There are no restrictions   |   |
| 7. What evidence of change of sex has to be provided to secure legal recognition in your Country?   |         | 7. Only evidence of change of sex is the official certificate issued by the State Health Institution. The internal procedure for issue is not known. |   |
| 8. Please let us know what documents are issued in the new sex for example how are passports, driving licence and identity cards affected?  |         | 8. All documents   |   |



QUESTIONS

WEST GERMANY

GREECE

HOLLAND

- |  |   |                |   |
|--|---|----------------|---|
| <p>1. Under the law in your Country is the transsexual's altered state recognised?</p>   | <p>1. "1980 Transsexuellengesetz" permits court proceedings leading to alteration of first name if 25 years old and has lived as member of other sex for 3 years. Permits alteration of sex designation if 25 years old, lacks reproductive capacity and has undergone surgery.</p> | <p>No Info</p> | <p>1. If Application granted</p>  |
| <p>2. Is it recognised for all purposes or only for certain purposes? If so, what are they?</p>  |   |                | <p>2. All legal purposes</p>  |
| <p>3. Are changes planned in the law as it affects transsexuals?</p>   |   |                |   |
| <p>4. Specifically, is an individual's birth certificate altered if he or she changes sex?</p>   |   |                | <p>4. Yes, if application granted</p>   |
| <p>5. Are the birth registers open to the public ie can anyone obtain information about someone else's birth details?</p>  |   |                | <p>5. Yes</p>   |
| <p>6. In your Country, is a transsexual permitted to marry persons of the opposite sex to the sex that the transsexual has become? Would our client for example be permitted to marry a woman?</p> |   |                | <p>6. Yes, if application granted</p>   |
| <p>7. What evidence of change of sex has to be provided to secure legal recognition in your Country?</p>   |   |                | <p>7. (a) confirmation of commitment<br/>(b) extent of physical change<br/>(c) declaration of inability to bear or father a child</p> |
| <p>8. Please let us know what documents are issued in the new sex for example how are passports, driving licence and identity cards affected?</p>  |   |                | <p>8. All documents specifying sex.</p>   |

QUESTIONS

HUNGARY

No Info

IRELAND

No Info

ITALY

1. Under the law in your Country is the transsexual's altered state recognised?
2. Is it recognised for all purposes or only for certain purposes? If so, what are they?
3. Are changes planned in the law as it affects transsexuals?
4. Specifically, is an individual's birth certificate altered if he or she changes sex?
5. Are the birth registers open to the public ie can anyone obtain information about someone else's birth details?
6. In your Country, is a transsexual permitted to marry persons of the opposite sex to the sex that the transsexual has become? Would our client for example be permitted to marry a woman?
7. What evidence of change of sex has to be provided to secure legal recognition in your Country?
8. Please let us know what documents are issued in the new sex for example how are passports, driving licence and identity cards affected?

1. Bill pending permitting court proceeding leading to a Declaration of change of sex and subsequent rectification of birth certificate. (This was the 198 position)

MARK REES - RESEARCH - EUROPE

QUESTIONS

POLAND

PORTUGAL

RUMANIA

- |   |  |   |         |
|---|--|---|---------|
| 1. Under the law in your Country is the transsexual's altered state recognised?   | 1. There is no legal regulation treating transsexuals in a detailed way. Change of sex remains a purely medical problem.   | 1. Not specifically legislated for but recent decisions suggest voluntary change of sex is lawful | No Info |
| 2. Is it recognised for all purposes or only for certain purposes? If so, what are they?  | 2. Yes, providing change of sex is legally approved by modification of birth certificate, issuing of new birth certificate or pronouncement that the old is a nullity.   | 2. Altered state will be recognised for all purposes  |         |
| 3. Are changes planned in the law as it affects transsexuals?   | 3. A new law on documents of civil status is planned but not likely to change law re: transsexuals.  | 3. No but see Civil Code Article 10 - (allows development of the existing law)                    |         |
| 4. Specifically, is an individual's birth certificate altered if he or she changes sex?   | 4. Judicial proceedings must first be instituted on request of person concerned to show inconsistency with reality. Subject to the above the chief of the competent office of the civil status will issue new documents. | 4. Yes after a judicial process   |         |
| 5. Are the birth registers open to the public ie can anyone obtain information about someone else's birth details?  | 5. Not to the public in general, only state agencies, next of kin and legal representatives.   | 5. Yes  |         |
| 6. In your Country, is a transsexual permitted to marry persons of the opposite sex to the sex that the transsexual has become? Would our client for example be permitted to marry a woman? | 6. If a transsexual is granted a new legally valid birth certificate there are no impeachments on matrimony providing other person is of opposite sex.   | 6. In theory yes, but not believed to have happened in Portugal                                   |         |
| 7. What evidence of change of sex has to be provided to secure legal recognition in your Country?   | 7. No new documents are issued apart from new birth certificate.   | 7. Medical certificate<br>(?)   |         |
| 8. Please let us know what documents are issued in the new sex for example how are passports, driving licence and identity cards affected?  | 8. All such documents are issued on the basis of the birth certificate.  | 8. All I.D. providing birth certificate adjusted  |         |

QUESTIONS

LIECHTENSTEIN

LUXEMBURG

NORWAY

No Info

- |  |   |   |
|--|---|---|
| <p>1. Under the law in your Country is the transsexual's altered state recognised?</p>   | <p>1. No specific laws</p>  | <p>1. No statutory provisions</p>   |
| <p>2. Is it recognised for all purposes or only for certain purposes? If so, what are they?</p>  | <p>2. Tribunals only authorise change when an error made at the time of writing of certificate.</p> |   |
| <p>3. Are changes planned in the law as it affects transsexuals?</p>   | <p>3. No amendment planned</p>  |   |
| <p>4. Specifically, is an individual's birth certificate altered if he or she changes sex?</p>   | <p>4. No</p>  | <p>4. The Central Bureau of Statistics changes the sexual status and registration number.</p> |
| <p>5. Are the birth registers open to the public ie can anyone obtain information about someone else's birth details?</p>  | <p>5. Yes, under certain conditions.</p>  |   |
| <p>6. In your Country, is a transsexual permitted to marry persons of the opposite sex to the sex that the transsexual has become? Would our client for example be permitted to marry a woman?</p> | <p>6. Not applicable because the sex change is not recognised</p>                                   | <p>6. Yes, if other spouse informed of operation.</p>   |
| <p>7. What evidence of change of sex has to be provided to secure legal recognition in your Country?</p>   |   | <p>7. Confirmation that operation has taken place</p>   |
| <p>8. Please let us know what documents are issued in the new sex for example how are passports, driving licence and identity cards affected?</p>  |   | <p>8. Person concerned can then utilise a boy's or girl's name.</p>                           |

MARK REES - RESEARCH - EUROPE

QUESTIONS

SPAIN

SWEDEN

SWITZERLAND

- |   |   |   |   |
|---|---|---|---|
| 1. Under the law in your Country is the transsexual's altered state recognised?   | 1. Civil Register legislation. Annotations to the register can be made. | 1. Yes, providing person (i) since youth experienced belonging to the other gender than that registered in parish records (ii) for a considerable time, assumed behaviour of the opposite sex and will continue to do so in future. | 1. Yes                                    |
| 2. Is it recognised for all purposes or only for certain purposes? If so, what are they?  |   | 2. Person whose new gender has been established can thereafter adopt the role of the opposite sex but may be banned from certain posts on medical grounds.  | 2. For all purposes                       |
| 3. Are changes planned in the law as it affects transsexuals?   | 3. Official circular  | 3. No plans to change present legislation.  | 3. No                                     |
| 4. Specifically, is an individual's birth certificate altered if he or she changes sex?   |   | 4. 2 stages: Social Welfare Board approve change of name. If granted can apply to Registration Office to be officially registered   | 4. No                                     |
| 5. Are the birth registers open to the public ie can anyone obtain information about someone else's birth details?  |   | 5. Information is public but change of sex is not disclosed and new gender becomes official gender  | 5. No                                     |
| 6. In your Country, is a transsexual permitted to marry persons of the opposite sex to the sex that the transsexual has become? Would our client for example be permitted to marry a woman? |   | 6. Marriage is permitted where a person has received a judgment establishing a new gender   | 6. Yes                                    |
| 7. What evidence of change of sex has to be provided to secure legal recognition in your Country?   | 7. Institution of legal proceedings to get a declaration from court     | 7. 1 (i) and (ii) as above must be demonstrated to a committee of the Social Welfare Board  | 7. Medical evidence                       |
| 8. Please let us know what documents are issued in the new sex for example how are passports, driving licence and identity cards affected?  |   | 8. Once name and civic registration number changed the applicant can obtain new documents.  | 8. All documents except birth certificate |

QUESTIONS

YUGOSLAVIA

1. Under the law in your Country is the transsexual's altered state recognised?
2. Is it recognised for all purposes or only for certain purposes? If so, what are they?
3. Are changes planned in the law as it affects transsexuals?
4. Specifically, is an individual's birth certificate altered if he or she changes sex?
5. Are the birth registers open to the public ie can anyone obtain information about someone else's birth details?
6. In your Country, is a transsexual permitted to marry persons of the opposite sex to the sex that the transsexual has become? Would our client for example be permitted to marry a woman?
7. What evidence of change of sex has to be provided to secure legal recognition in your Country?
8. Please let us know what documents are issued in the new sex for example how are passports, driving licence and identity cards affected?

No Info