

European Human Rights Court confirms forced divorce of trans people is legal

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Today, the Grand Chamber of the European Court of Human Rights issued its verdict in *Hämäläinen v Finland* (application no. 37359/09), a case pertaining the necessity for a married trans person to end their marriage before being legally recognized in one's gender identity. The Court rejected the claim that requesting a married trans person to convert their marriage into a registered partnership before being recognized in their gender identity is a violation of the right to private and family life, the right to marry, as well as non-discrimination of the European Convention on Human Rights. TGEU, who has submitted a third party intervention in the case, is highly disappointed that the highest human rights court in Europe missed this opportunity to protect trans persons' human rights.

The details of the case are rather straightforward and could happen in a similar way in 20 European states, where a married trans person requesting legal gender recognition first has to obtain a divorce or dissolution of the marriage. The Applicant, Finnish citizen Heli Hämäläinen, has been happily married to her wife, both Christian believers, for 18 years. Together they have a 12 year-old child. Heli Hämäläinen's wish to be officially recognized as female was rejected by Finnish authorities as she and her wife refused to divorce or convert her marriage in a registered partnership, a pre-condition under Finnish gender recognition law. All domestic remedies as well as the Chamber of the European Court of Human Rights rejected her claims. The consequence for the applicant is that despite being female she will not be issued documents reflecting her gender, a status forcing her to explain her being trans in uncounted every-day life situations and exposing her to a higher risk of discrimination.

Even though the Grand Chamber acknowledges the fact that not having one's gender identity legally recognized leads to "daily situations in which" a trans person faces "inconvenience", the Court is of the opinion that requesting the couple to end their happy marriage does not violate their rights. In the core of the merits, the Grand Chamber argued that forcing the couple to transfer their marriage into a registered partnership which provides "almost identical (...) legal protection" and implies only "minor differences" were not disproportionate. This is regrettable as it means for trans people to give up one human right in exchange for another: the right to be and remain married versus the right to obtain legal gender recognition.

However, TGEU welcomes especially the dissenting opinion by the judges Sajó, Keller and Lemmens who strongly support the protection of trans persons' rights. They underline that it "is highly problematic to pit two human rights (...) against each other", and conclude that therefore they "are unable to agree with the majority's finding that the applicant has several acceptable options", that "the interference with" the applicant's and her wife's rights "is not necessary in a democratic society." The dissenting judges stress several facts of the case the majority of the Grand Chamber ignored or did not consider carefully, e.g. that the applicant and her wife are religious and conversion into a registered partnership is not an option to them, and that one partner seeking legal gender recognition is not to be confused with a couple's sexual orientation.

"Our thoughts are today with Heli Hämäläinen and her family. The Court decided that their rights as a family are inferior to a narrow minded opinion about what a family and marriage should look like. " says Arja Voipio, TGEU Co-Chair from Finland: "The verdict shows that transgender issues at stake are still not properly understood."

"It is a missed chance to bring the practise of the Court in line with the calls from many human rights specialists not to put trans persons in a dilemma to choose between legal gender recognition and other human rights like the right to marry. Today, those European States still forcing trans persons to give up their most

basic rights have been told that their approach is acceptable – what is not acceptable,” adds TGEU Co-chair and lawyer Alecs Recher.

“It is disappointing that the Court did not support the struggle for a Europe where everybody is free to be who they are and enjoys the protection of the fundamental rights enshrined in the Convention. We hope that the Court would decide differently in the case of a couple not being able to enter a registered partnership.”

ENDS

Read the Verdict of the Grand Chamber in *Hämäläinen v Finland* including the dissenting opinions of judges Sajó, Keller and Lemmens:

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145768>

Read this Press Release at:

http://www.tgeu.org/TGEU_PR_European_Human_Rights_Court_confirms_forced_divorce_of_trans_people_is_legal

Transgender Europe is a European human rights NGO working for the human rights and equality of all trans people. More Information: www.tgeu.org

Transgender or **Trans** is an umbrella term for people whose gender identity or expression differs from the sex assigned to them at birth.

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