



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



Ref: CommHR/SG/sf 118-2012

Ms Joan BURTON, TD
Minister for Social Protection

Strasbourg, 16 November 2012

Dear Minister,

I would like to thank you for arranging a useful meeting with members of your office during my visit to Ireland last month and hope that we will have an opportunity to meet in person on the next occasion. Following up on the meeting, I would like to share with you some observations relating to the legislation on legal recognition of transgender persons that is currently being drafted in Ireland.

It is of concern that Ireland does not yet allow for legal recognition of transgender persons, despite a High Court ruling in the case of Ms Lydia Foy of October 2007, which stated that this situation was incompatible with Ireland's obligations under the European Convention on Human Rights (ECHR). Dr Lydia Foy, whom I met during my participation in the ILGA Europe Annual Conference held in Dublin last month, is still not able to obtain a birth certificate in her preferred gender as the required legislative change has not yet taken place. I note, nevertheless, that a Gender Recognition Advisory Group was established in May 2010 and that it carried out a public consultation on the matter and published its report in July 2011.

It is encouraging that you are committed to proceeding with the necessary legislation and intend to send the draft Heads of the Bill to the *Oireachtas* Committee on Jobs, Social Protection and Education for discussion. However, I am concerned that there is no timeline as to when the draft will be sent to the Committee.

I am aware of the complexity of the issue, including from the perspective of its interaction with the Irish Constitution. Relevant questions related to marriage, civil partnership and controversial medical classifications, such as that of Gender Identity Disorder, will have to be resolved. Yet, I believe that five years of non-implementation of the High Court's judgment finding Ireland in breach of the ECHR sends a very negative message to society at large.

I understand that you are still awaiting legal advice from the Office of the Attorney General on the issues to be resolved. It is my position that legal recognition of the preferred gender should not require infertility or compulsory medical treatment which may seriously impair the autonomy, health or well-being of the individuals concerned. Any requirement of a medical diagnosis should be reviewed with a view to eliminating obstacles to the effective enjoyment by transgender persons of their human rights, including the right to self-determination. Moreover, divorce should not be a necessary condition for gender recognition as it can have a disproportionate effect on the right to family life. The report "Discrimination on grounds of sexual orientation and gender identity in Europe" published by my Office in 2011 and enclosed to this letter, provides further guidance and recommendations on the matter.

I strongly encourage you to proceed with the preparation of this long outstanding draft legislation and would very much appreciate to be informed about the progress achieved in this direction. I look forward to a continuing constructive dialogue with you.

Yours sincerely,

Nils Muižnieks