

# Lydia Foy and the Struggle for Transgender Rights in Ireland



In March 1993 transgender woman Lydia Foy wrote to the Irish Registrar of Births seeking a new birth certificate in her female gender. Nearly 21 years later she is still waiting.

Ireland is now the only state in the European Union that does not have any procedure for the legal recognition of transgender persons. And Lydia Foy is still fighting for the right to be officially recognised in the gender she has been living in for the last 21 years.

## Taking a legal challenge

After four years of fruitless correspondence with the Registrar's office, Lydia, represented by legal human rights group Free Legal Advice Centres Ireland (FLAC), issued legal proceedings in the Irish High Court in April 1997.

It was a hard and painful struggle. Lydia's marriage had broken up under the strain of her transition to her female gender. She had lost her home, her family and her job as a health service dentist.

*"I was completely alone ...I had one door after another closed in my face. Even those who sympathised with my case felt they could do nothing to help – they certainly couldn't support me in public".*

The Court hearing lasted for 14 days with a distressing and intrusive scrutiny of Lydia's personal life and sensational media coverage. At the end, in July 2002, the Judge rejected Lydia's claim. He was sympathetic but he could not find anything in Irish law that would allow her to change the gender in which she had originally been registered.

Then, two days later, the European Court of Human Rights in Strasbourg, dealing with a case from Britain, held that the UK Government had violated the rights of transgender woman *Christine Goodwin* by refusing to recognise her female gender. The UK law was the same as the Irish law under which Lydia's claim had been rejected.

## Appealing the decision

The disappointment of the High Court decision was balanced by the Strasbourg judgment and there were other rays of hope as well. The Judge in Lydia Foy's case had acknowledged the suffering of transgender persons and their families caused by the lack of official recognition and called on the Irish Government "to urgently review the matter". Not all the media coverage had been hostile and the case had raised awareness of transgender, or 'trans', rights and had put the issue on the map.

The *Goodwin* decision by the Court of Human Rights had clearly established that trans persons had a right to recognition in their preferred gender and the UK Government had brought in a Gender Recognition Act within two years of the judgment. And in Ireland, the European Convention on Human Rights (ECHR) Act – the equivalent of the UK Human Rights Act - had been passed in 2003 to bring the European Convention into Irish law.

And meanwhile things had been changing rapidly in Europe with more and more countries recognising trans rights and with further favourable decisions coming from the Court of Human Rights and the EU Court as well.

Lydia Foy, still represented by FLAC, appealed the High Court decision, relying strongly on the decisions of the Strasbourg Court.

For technical reasons the case came back before the High Court in 2007 and was heard by the same Judge who had heard it the first time round. The State had done nothing in response to the Judge's plea in 2002 for urgent action on the transgender issue and they fought the case tooth and nail but Lydia's legal team were able to produce the *Goodwin* decision by the Strasbourg Court, subsequent decisions by that Court and the EU Court, and positive decisions in a number of common law countries as well.

## Winning the case

The Judge was greatly influenced by the widespread trend towards transgender recognition and the enactment of the ECHR Act gave him a new remedy that he could apply. He gave his judgment in October 2007 and held that Lydia Foy's rights under the ECHR had been violated by the refusal to supply her with a new birth certificate. He was not able to strike down the law in question but he issued a declaration that it was incompatible with the ECHR – the first declaration of incompatibility to be made under the Irish legislation.



*Lydia Foy at the press conference to announce her High Court victory with FLAC's Catherine Hickey*

And he was scathing about the Irish Government's failure to respond to his 2002 call to recognise transgender rights, saying:

*"[I]t is very difficult to see how this Court ... could now exercise further restraint, grant even more indulgence, and afford yet more tolerance to this State, some five years after both the decision in*

*Goodwin and the July 2002 judgment ... in my humble opinion this Court cannot, with any degree of integrity, so do..."*

This was a major victory for Lydia Foy and the whole trans community in Ireland. They thought their struggle was nearly over, but their euphoria was short-lived. The Government appealed to the Supreme Court and the struggle began again.

## **International support**

The State's appeal was a serious disappointment. But by now international human rights organisations were taking an interest. In April 2008, Council of Europe Human Rights Commissioner Thomas Hammarberg welcomed the Foy decision and urged the Irish Government to issue trans persons with birth certificates "*reflecting their actual gender*". Three months later the UN Human Rights Committee also called for recognition for trans persons in Ireland.

International pressure mounted and in June 2010 the Irish Government dropped its appeal and finally promised to introduce Gender Recognition legislation. It set up a working group to advise on the legislation but its report was disappointing. Trans persons would require a diagnosis of psychiatric disorder (increasingly criticised in other countries), married trans persons would have to divorce so they would not introduce same-sex marriage into Ireland, and there was no provision for young people under 18.

By now there was an active and effective trans NGO, Transgender Equality Network Ireland (TENI), and the trans and LGBT communities in Ireland and in Europe had become involved in the campaign for trans rights and there was a lot of criticism of the working group report.



*Lydia Foy with her legal advisor, FLAC Senior Solicitor Michael Farrell (centre) and Nils Muiznieks, Council of Europe Commissioner for Human Rights*

## **Waiting for legislation; and a new legal case**

A new Government was elected in February 2011 and promised to bring in Gender Recognition legislation as a priority; by now Ireland was the only state in the EU that had no provision for recognising trans persons. However, more than a year later there was still no sign of legislation being produced and the trans community, whose hopes had been raised, were becoming frustrated.

Nils Muiznieks, the new Council of Europe Human Rights Commissioner wrote to the Government in November

2012, calling for speedy legal change. He said:

*"[F]ive years of non-implementation of the High Court's judgment finding Ireland in breach of the ECHR send a very negative message to society at large"*.

When nothing had happened by the start of 2013, 20 years after Lydia Foy first requested a new birth certificate and 5<sup>1/2</sup> years since her High Court success, she reluctantly issued new legal proceedings, once again represented by FLAC. This time she is seeking to enforce the judgment given in 2007 or have the Court declare that the ECHR Act, 2003, which was intended to incorporate the European Convention into Irish law, simply does not work.

## The last lap?

After two Private Members' Bills had been proposed in the Irish Parliament, the Government finally published draft Heads of a Gender Recognition Bill in late July 2013. It is still controversial and sections have been criticised by the trans community. And the Government's legislative programme published in late September says that a full Bill is not expected until mid-2014, with no guarantee that it will be enacted before the end of that year or even within the lifetime of this Government.



*Lydia Foy with the President of Ireland, Michael D Higgins in December 2012*

Lydia Foy's long and painful struggle for legal recognition for herself and the whole trans community in Ireland is not over yet.

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### More information?

Lydia is represented in her legal case by FLAC – the Free Legal Advice Centres.



FLAC is a human rights organisation which promotes equal access to justice for all.

- You can read more about the case at FLAC's website at [www.flac.ie](http://www.flac.ie)
- A full briefing note on Lydia's case is at [bit.ly/foyleb2013](http://bit.ly/foyleb2013)
- TENI – Transgender Equality Network Ireland is a body that seeks to improve conditions and advance the rights and equality of trans people and their families. You can read more about its work at [www.teni.ie](http://www.teni.ie)

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