

European court rules against ban on homosexuals in British armed forces

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29 September 1999

On Monday the European Court of Human Rights ruled that the United Kingdom's ban against homosexuals serving in its armed forces was unlawful. The announcement immediately provoked disquiet in the Blair government and elicited a stream of homophobic statements from senior military personnel and the Conservative Party. Britain is the only country in Europe to maintain such a ban.

The ruling was made following legal action taken by four former military employees: ex-Royal Air Force nurse Jeanette Smith, ex-RAF administrator Graeme Grady, ex-Royal Navy lieutenant-commander Duncan Lustig-Prean and ex-naval rating John Beckett. It was the conclusion of a five-year legal battle supported by Stonewall, the lesbian and gay rights group, and the civil rights organisation Liberty.

The four took their case to the Strasbourg court after it was rejected by the Appeal Court in London.

They told the European court that investigations by the military into their homosexuality and their subsequent sackings violated their human rights. The Ministry of Defence had subjected all four to secret probes into their private lives. At intrusive and demeaning interviews, each had been separately quizzed about intimate details of his or her sex life. In some cases personal items were searched and removed for analysis. After admitting their homosexuality, the four were administratively discharged from the armed forces. About 60 homosexual servicemen are forced to leave the service every year.

The Ministry of Defence's position had been outlined in a 1996 report drawn up under the then-Conservative government by the Homosexuality Policy Assessment Team. The Tories had carried out a strident anti-homosexual policy as part of their right-wing crusade. This included the introduction of Section 28 of the

1988 Local Government Act forbidding schools from "promoting homosexuality." The measure was designed to prevent teachers from raising the issue of homosexuality in class.

The 1996 report concluded that gays in the military were bad for morale and vulnerable to blackmail from foreign intelligence agencies. It claimed that the majority of other members of the armed forces would not perform as effectively if the ban were lifted. Although the then-Defence Secretary Michael Portillo—who recently confessed to having homosexual experiences as a youth—had been warned by defence ministry lawyers that the ban breached the European human rights convention, he ignored their advice.

In its unanimous decision, the European judges said that the views of military personnel outlined in the report "were founded solely on the negative attitudes of heterosexual personnel towards those of homosexual orientation". Such negative attitudes, which had been cited by the Ministry of Defence to justify its ban, could not justify the action, the court ruled, "any more than similar negative attitudes towards those of a different race, origin or colour".

The court ruled that under article eight of the European Convention on Human Rights, which safeguards an individual's right to privacy, the bar on homosexuals serving in the military was illegal. The refusal to hear the case at the Court of Appeal meant that the applicants had also been deprived of an effective remedy in the British courts, in breach of article 13.

Describing the Ministry of Defence's investigations as "exceptionally intrusive", the judgement found that the defence ministry's inquiries had had a "profound effect on the applicants' careers and prospects". Finally, it ruled that the UK government had produced no

"convincing and weighty" reasons to support its policy against homosexuals in the armed forces.

The ruling was long anticipated. Labour had pledged that it would incorporate the European Convention on Human Rights into British law. In addition, sections of the British establishment consider the ban to be outdated.

Nonetheless, the Blair government's response to the ruling was decidedly lukewarm. Whilst UK Defence Secretary Lord Robertson, who is set to become NATO's secretary-general, said that the government accepted the European ruling—and was placing "on hold" all outstanding cases against homosexual personnel in the military—he made clear that any practical action would have to be agreed by Ministry of Defence officials.

The government "had to accept" the ruling, he said, but "the details of this complex judgement and its practical implications are being studied carefully. After consulting the Service chiefs, ministers will be making their recommendations in a timely manner." This means that the ban will effectively remain in place. John Spellar, the armed forces minister, had said earlier that any decision would have to await the next debate on the armed forces bill in 2001.

During its time in office, Labour has tried to face both ways on homosexual rights. Verbally it has spoken against prejudices based on sexual orientation, as part of its claim to be redressing the "democratic deficit" it inherited from the Tories. In practice, Section 28 remains in force and in July the government rejected plans to include protection from harassment for gays and lesbians in the workplace in its Employment Relations Bill. The Labour government, basing itself on the 1996 defence ministry report, contested the four plaintiffs' application to the Strasbourg court. In free votes in parliament held on the issue both Blair and Robertson abstained.

Labour's attitude is not due to the ostensible public prejudices cited by the Ministry of Defence. According to several opinion polls published over the last weeks, the vast majority of British people are in favour of equalising homosexual rights.

The case underlines the fact that, despite its liberal pretensions, the Blair government refuses to seriously challenge the anti-gay sentiment rife within the British establishment. The Ministry of Defence has made clear

it will "fiercely resist" a change in legislation. Former NATO commander, General Sir Anthony Farrar-Hockley, attacked the court's decision as "ridiculous" and said that the court should not interfere in the running of the British military. The military was a "unique institution" and should be allowed to run its own affairs, he said.

Conservative Party defence spokesman Richard Ottaway also attacked the decision. Speaking to BBC Radio 4's *Today* programme, he said, "The armed forces made it quite clear that in their judgement it will have an adverse effect on morale, it will affect operational effectiveness. We believe in our judgement the government should get together with its European partners and consider whether or not the convention could be modified to allow individual countries to have an opt-out."

Colin Hart, director of the Christian Institute, said the ruling infringed the rights of heterosexual males. "If the government simply ends the ban it will mean that heterosexual soldiers will be forced to sleep and shower with men who are sexually attracted to them. This would be an appalling breach of the privacy of heterosexual service personnel," he said.

The government has been given two months to respond to the claims for compensation by the four plaintiffs. The decision not to lift the ban immediately presents Labour with the possibility of having to pay thousands of pounds in compensation to homosexuals forced out of the armed forces.

Partly as a means of addressing this problem, the government suggested that a new "code of conduct" could be introduced earlier for the armed forces. There is speculation that this could follow the so-called "don't ask, don't tell" policy adopted in the United States, after President Clinton retreated from lifting a ban on homosexuals in the military following right-wing protests.



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