



June 2016

This factsheet does not bind the Court and is not exhaustive

## Sexual orientation issues

See also the factsheets on ["Homosexuality: criminal aspects"](#) and ["Gender identity issues"](#).

### **Article 14 (prohibition of discrimination) of the [European Convention on Human Rights](#):**

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

### Prohibition of inhuman or degrading treatment (Article 3 of the European Convention on Human Rights)

#### Allegations of ill-treatment by the police or by private individuals

**[Identoba and Others v. Georgia](#)** (see also below, under "Freedom of assembly and association" (Article 11 of the Convention) »)

12 May 2015

This case concerned a peaceful demonstration organised by a non-governmental organisation (NGO) – the first applicant – in Tbilisi in May 2012 to mark the International Day against Homophobia, which was violently disrupted by counter-demonstrators outnumbering the marchers. The 13 applicants who had participated in the march complained in particular that the Georgian authorities had failed to protect them from the violent attacks of the counter-demonstrators and to effectively investigate the incident by establishing, in particular, the discriminatory motive behind the attacks.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) **taken in conjunction with Article 14** (prohibition of discrimination) of the Convention with respect to the 13 applicants who had participated in the march. Firstly, having regard to various reports on the situation of lesbian, gay, bisexual and transgender people in Georgia – in particular, by the [Commissioner for Human Rights](#) of the Council of Europe –, it observed that negative attitudes against members of the community were widespread in some parts of Georgian society. Against that background, the discriminatory overtones of the attacks against the participants of the march in May 2012 were particularly clear. The Court further found that, surrounded by an angry mob of people who outnumbered them, uttered serious threats and randomly used physical violence, the applicants must have felt fear, anguish and insecurity which were not compatible with respect for their human dignity. Moreover, the authorities, who knew or ought to have known of the risks surrounding the demonstration, had therefore been under an obligation – but had failed – to provide adequate protection. Lastly, noting that Georgian criminal

law provided that discrimination on the grounds of sexual orientation and gender identity should be treated as an aggravating circumstance in the commission of an offence, the Court found that it would have been essential for the authorities to conduct the investigation in that specific context, which they had failed to do. They had accordingly failed to conduct a proper investigation into the 13 applicants' allegations of ill-treatment.

### **M.C. and C.A. v. Romania (application no. 12060/12)**

12 April 2016<sup>1</sup>

In June 2006 the applicants participated in the annual gay march in Bucharest. On their way home in the metro, they were attacked by a group of six young men and a woman. The attackers punched and kicked them and shouted homophobic abuse at them. The applicants complained that the investigation into the attack against them had been inadequate. They alleged in particular that the authorities had not taken into account the fact that the offences against them had been motivated by hatred against homosexuals.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) **read together with Article 14** (prohibition of discrimination) of the Convention, finding that the investigations into the applicants' allegations of ill-treatment had been ineffective as they had lasted too long, had been marred by serious shortcomings, and had failed to take into account possible discriminatory motives.

### **Pending applications**

#### **Aghdgomelashvili and Japaridze v. Georgia (no. 7224/11)**

Application communicated to the Georgian Government on 3 December 2013

This case concerns the complaint by two staff members of a NGO promoting LGBT rights of a police raid of the organisation's office, during which they were allegedly ill-treated and unlawfully searched. They further complain about the lack of an effective investigation. Finally, they allege that their ill-treatment, the interference with their private lives and the lack of an effective investigation into the alleged police abuse was due to the authorities' discriminatory attitudes towards the applicants' actual or perceived sexual orientation and/or their activities for the NGO.

The Court gave notice of the application to the Georgian Government and put questions to the parties under Articles 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for private life) and 14 (prohibition of discrimination) read in conjunction with Articles 3 and 8 of the Convention, and under Article 1 (general prohibition of discrimination) of Protocol No. 12 to the Convention.

#### **Sabalić v. Croatia (no. 50231/13)**

Application communicated to the Croatian Government on 7 January 2014

The applicant, who was attacked in a bar by a man to whom she had disclosed her homosexual orientation, complains in particular of the lack of an appropriate procedural response of the domestic authorities to an act of violence by a private party motivated by her sexual orientation. She further complains that she did not have an effective domestic remedy concerning her complaints and that she was discriminated against on the basis of her sexual orientation.

The Court gave notice of the application to the Croatian Government and put questions to the parties under Articles 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for private life), 13 (right to an effective remedy), and 14 (prohibition of discrimination) read in conjunction with Articles 3 and 8 of the Convention.

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<sup>1</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the [European Convention on Human Rights](#).

## Conditions of detention

### Stasi v. France

20 October 2011

The applicant complained that he had been the victim of ill-treatment by other inmates during his imprisonment, in particular because of his homosexuality, and he alleged that the authorities had not taken the necessary measures to ensure his protection.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It found that, in the circumstances of the case, and taking into account the facts that had been brought to their attention, the authorities had taken all the measures that could reasonably be expected of them to protect the applicant from physical harm.

### X. v. Turkey (no. 24626/09)

9 October 2012

This case concerned a homosexual prisoner who, after complaining about acts of intimidation and bullying by his fellow inmates, was placed in solitary confinement for over 8 months in total.

The Court took the view that these detention conditions had caused the applicant mental and physical suffering, together with a feeling that he had been stripped of his dignity, thus representing “inhuman or degrading **treatment**” in breach of **Article 3** (prohibition of inhuman or degrading treatment) of the Convention. The Court further found that the main reason for the applicant’s solitary confinement had not been his protection but rather his sexual orientation. It thus concluded that there had been **discriminatory treatment in breach of Article 14** (prohibition of discrimination) of the Convention.

## Risk arising from the return of homosexuals to their country of origin

### I.I.N. v. the Netherlands (no. 2035/04)

9 December 2004 (decision on the admissibility)

This case concerned the alleged risk of treatment in breach of Article 3 (prohibition of inhuman or degrading treatment) of the Convention faced by a homosexual man in the event of his being returned to Iran.

The Court declared the application **inadmissible** as being manifestly ill-founded. It found that the applicant has not established in his case that there were substantial grounds for believing that he would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention on grounds of his homosexuality.

See also: **F. v. the United Kingdom (no. 17341/03)**, decision on the admissibility of 22 June 2004.

### A.S.B. v. the Netherlands (no. 4854/12)

10 July 2012 (strike-out decision)

The applicant complained that if expelled to Jamaica he would face a real and personal risk of treatment in violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention due to his homosexuality.

The Court decided to **strike** the application **out** of its list of cases in accordance with Article 37 (striking out applications) of the Convention. It noted in particular that the applicant had been granted asylum in the Netherlands and found that, consequently, there was no longer any risk of his expulsion to Jamaica.

### **M.K.N. v. Sweden (no. 72413/10)**

27 June 2013

The applicant complained that he had had to leave Mosul (Iraq) because he was being persecuted on account of his Christian beliefs. He further alleged that, if returned to Iraq, he would be at risk of persecution for having had a homosexual relationship, the Mujahedin having already killed his partner.

The Court held that the implementation of the **deportation order** against the applicant **would not give rise to a violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It found that, if removed to Iraq, the applicant would not be at risk as a result of the general situation in the country which was slowly improving. Furthermore, although there was evidence to show that his belonging to a vulnerable minority would expose him to a real risk to inhuman or degrading treatment if removed, the Court held that the applicant could reasonably relocate to other regions in Iraq such as Kurdistan in the north. Lastly, the Court considered that the applicant's claim concerning the homosexual relationship was not credible.

### **M.E. v. Sweden (no. 71398/12)**

8 April 2015 (Grand Chamber)

The applicant, an asylum seeker, submitted in particular that, if he were forced to return to Libya to apply for family reunion from there, he would be at real risk of persecution and ill-treatment, primarily because of his homosexuality but also due to previous problems with the Libyan military authorities following his arrest for smuggling illegal weapons.

The Court noted that the applicant had been granted a residence permit by the Migration Board on 17 December 2014, which effectively repealed the expulsion order against him. The Board found that the security situation in Libya had deteriorated since the summer of 2014 and that the applicant, if expelled to his home country, would be at risk of persecution since he lived openly as a homosexual and could be expected to continue doing so on his return. He was therefore in need of protection in Sweden. Although there was no friendly settlement between the parties, the Court considered that the potential violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention had now been removed and that the case had thus been resolved at national level. Nor did the Court accept the applicant's argument that it should continue to examine his case as it raised serious issues of fundamental importance relating to homosexuals' rights and how to assess those rights in asylum cases all over Europe, as the Migration Court had taken into account the applicant's sexual orientation in its decision of 17 December 2014. The Court held that it was therefore **appropriate to strike the application out of its list of cases**.

### **A.E. v. Finland (no. 30953/11)**

22 September 2015 (decision – strike out)

This case concerned the alleged risk of treatment in breach of Article 3 (prohibition of torture and inhuman or degrading treatment) of the Convention faced by a homosexual man in the event of his being returned to Iran.

The Court **struck the application out of its list of cases**, in accordance with Article 37 (striking out applications) of the Convention, noting in particular that the applicant had been granted a continuous residence permit in Finland valid for a period of one year with a possibility of renewal and that he was thus no longer subject to an expulsion order. The Court therefore considered that the matter giving rise to the complaints in the case had been resolved.

### **A.N. v. France (no. 12956/15)**

19 April 2016 (decision on the admissibility)

This case concerned the alleged risk of treatment in breach of Article 3 (prohibition of torture and inhuman or degrading treatment) of the Convention faced by a homosexual man in the event of his being returned to Senegal.

The Court declared the application **inadmissible** as being manifestly ill-founded. It found that the applicant had not established that he would face a real risk of being subjected to treatment contrary to Article 3 of the Convention in the event of his being returned to Senegal.

#### **Pending applications**

### **A.T. v. Sweden (no. 78701/14)**

Application communicated to the Swedish Government on 22 January 2015

The applicant, an Iranian national, complains that his expulsion from Sweden to Iran would expose him to a real risk of being sentenced to death or subjected to torture or ill-treatment because of his sexual orientation.

The Court gave notice of the application to the Swedish Government and put questions to the parties under Article 2 (right to life) and Article 3 (prohibition of torture and inhuman or degrading treatment) of the Convention.

### **M.B. v. Spain (no. 15109/15)**

Application communicated to the Spanish Government on 31 August 2015

The applicant, a Cameroonian national, complains in particular that, if removed to Cameroon, her life and physical integrity would be at risk because of her sexual orientation.

The Court gave notice of the application to the Spanish Government and put questions to the parties under Article 2 (right to life), Article 3 (prohibition of torture and inhuman or degrading treatment) and Article 13 (right to an effective remedy) of the Convention.

## Right to liberty and security (Article 5 of the Convention)

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#### **Pending application**

### **O.M. v. Hungary (no. 9912/15)**

Application communicated to the Hungarian Government on 16 June 2015

This case concerns the detention of an Iranian homosexual asylum-seeker.

The Court gave notice of the application to the Hungarian Government and put questions to the parties under Article 5 § 1 (right to liberty and security) of the Convention.

## Right to respect for private and family life (Article 8 of the Convention)

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### Adoption

#### **Fretté v. France**

26 February 2002

The applicant, a homosexual man, complained that the decision dismissing his request for authorisation to adopt a child amounted to arbitrary interference with his private and family life because it was based exclusively on unfavourable prejudice about his sexual orientation. He further complained that he had not been summoned to the hearing on his case held by the *Conseil d'État*.

The Court held that there had been **no violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for private life) of the Convention. It found that the national authorities had been legitimately and reasonably entitled to consider that the right to be able to adopt, on which the applicant had relied, was limited by the interests of children eligible for adoption, notwithstanding the applicant's legitimate aspirations and without calling his personal choices into question. The Court further held that there had been a **violation of Article 6** (right to a fair hearing) of the Convention, the applicant having been denied a fair hearing of his case in adversarial proceedings.

#### **E.B. v. France (no. 43546/02)**

22 January 2008 (Grand Chamber)

This case concerned the refusal to grant approval for the purposes of adoption, on the ground of the applicant's life-style as a lesbian living with another woman. The applicant alleged that at every stage of her application for authorisation to adopt a child she had suffered discriminatory treatment that had been based on her sexual orientation and had interfered with her right to respect for her private life.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) taken **in conjunction with Article 8** (right to respect for private and family life) of the Convention. It observed in particular that the applicant's homosexuality had been a determining factor in refusing her request, whereas French law allowed single persons to adopt a child, thereby opening up the possibility of adoption by a single homosexual.

#### **Gas and Dubois v. France**

15 March 2012

The applicants were two cohabiting women. The case concerned the refusal of the first applicant's application for a simple adoption order<sup>2</sup> in respect of the second applicant's child. They maintained that this decision had infringed their right to private and family life in a discriminatory manner

The Court held that there had been **no violation of Article 14** (prohibition of discrimination) taken **in conjunction with Article 8** (right to respect for private and family life) of the Convention. It considered in particular that the applicants' legal situation could not be said to be comparable to that of married couples when it came to adoption by the second parent. It further saw no evidence of a difference in treatment based on the applicants' sexual orientation, as opposite-sex couples who had entered into a civil partnership were likewise prohibited from obtaining a simple adoption order. In reply to the applicants' argument that opposite-sex couples in a civil partnership could circumvent the aforementioned prohibition by marrying, the Court reiterated its findings regarding access to marriage for same-sex couples (*Schalk and Kopf v. Austria* judgment, see below, under "Right to marry").

#### **X and Others v. Austria (no. 19010/07)**

19 February 2013 (Grand Chamber)

This case concerned the complaint by two women who live in a stable homosexual relationship about the Austrian courts' refusal to grant one of the partners the right to adopt the son of the other partner without severing the mother's legal ties with the child (second-parent adoption). The applicants submitted that there was no reasonable and objective justification for allowing adoption of one partner's child by the other partner if heterosexual couples were concerned, be they married or unmarried, while prohibiting the adoption of one partner's child by the other partner in the case of homosexual couples.

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<sup>2</sup> Simple adoption enables a second legal parent-child relationship to be established in addition to the original parent-child relationship based on blood ties (as opposed to full adoption, where the new legal relationship replaces the original one).

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) taken **in conjunction with Article 8** (right to respect for private and family life) of the Convention on account of the difference in treatment of the applicants in comparison with unmarried different-sex couples in which one partner wished to adopt the other partner's child. It further held that there had been **no violation of Article 14 taken in conjunction with Article 8** when the applicants' situation was compared with that of a married couple in which one spouse wished to adopt the other spouse's child.

The Court found in particular that the difference in treatment between the applicants and an unmarried heterosexual couple in which one partner sought to adopt the other partner's child had been based on the first and third applicants' sexual orientation. No convincing reasons had been advanced to show that such difference in treatment was necessary for the protection of the family or for the protection of the interests of the child.

At the same time, the Court underlined that the Convention did not oblige States to extend the right to second-parent adoption to unmarried couples. Furthermore, the case was to be distinguished from the case *Gas and Dubois v. France* (see above), in which the Court had found that there was no difference of treatment based on sexual orientation between an unmarried different-sex couple and a same-sex couple as, under French law, second-parent adoption was not open to any unmarried couple, be they homosexual or heterosexual.

## Civil unions

### **Vallianatos and Others v. Greece**

7 November 2013 (Grand Chamber)

This case concerned the "civil unions" in Greece introduced by a law of 2008, entitled "Reforms concerning the family, children and society", which made provision for an official form of partnership, allowing the persons concerned to register their relationship within a more flexible legal framework than that provided by marriage. The applicants – eight Greek nationals (some of them living together as couples, while others are in a relationship but do not live together) and an association – complained that the law in question provided for civil unions only for different-sex couples, thereby automatically excluding same-sex couples from its scope. They complained that the Greek State had introduced a distinction which, in their view, discriminated against them.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **taken together with Article 8** (right to respect for private and family life) of the Convention. It remarked in particular that, of the 19 States parties to the Convention which authorised some form of registered partnership other than marriage, Lithuania and Greece were the only ones to reserve it exclusively to different-sex couples. It found that the Greek State had not shown it to have been necessary, in pursuit of the legitimate aims invoked by the law introducing civil unions, to bar same-sex couples from entering into such unions.

### **Hämäläinen v. Finland**

16 July 2014 (Grand Chamber)

The applicant was born a male and married a woman in 1996. The couple had a child in 2002. In September 2009 the applicant underwent male-to-female gender reassignment surgery. Although she changed her first names in June 2006, she could not have her identity number changed to indicate her female gender in her official documents unless her wife consented to the marriage being turned into a civil partnership, which she refused to do, or unless the couple divorced. Her request to be registered as female at the local registry office was therefore refused. The

applicant complained that she could only obtain full official recognition of her new gender by having her marriage turned into a civil partnership.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. It found that it was not disproportionate to require the conversion of a marriage into a registered partnership as a precondition to legal recognition of an acquired gender as that was a genuine option which provided legal protection for same-sex couples that was almost identical to that of marriage. The minor differences between these two legal concepts were not capable of rendering the current Finnish system deficient from the point of view of the State's positive obligation under Article 8 of the Convention. In addition, such a conversion would not have any implications for the applicant's family life as it would not affect the paternity of the applicant's daughter or the responsibility for the care, custody, or maintenance of the child. The Court further considered that **no separate issue** arose **under Article 12** (right to marry) of the Convention and found that there had been **no violation of Article 14** (prohibition of discrimination) **taken in conjunction with Articles 8 and 12** of the Convention.

### **Oliari and Others v. Italy**

21 July 2015

This case concerned the complaint by three homosexual couples that under Italian legislation they do not have the possibility to get married or enter into any other type of civil union.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It considered that the legal protection available to same-sex couples in Italy – as was shown by the applicants' situation – did not only fail to provide for the core needs relevant to a couple in a stable committed relationship, but it was also not sufficiently reliable. A civil union or registered partnership would be the most appropriate way for same-sex couples like the applicants to have their relationship legally recognised. The Court pointed out, in particular, that there was a trend among Council of Europe member States towards legal recognition of same-sex couples – 24 out of the 47 member States having legislated in favour of such recognition – and that the Italian Constitutional Court had repeatedly called for such protection and recognition. Furthermore, according to recent surveys, a majority of the Italian population supported legal recognition of homosexual couples.

### **Pending applications**

#### **Ratzenböck and Seydl v. Austria (no. 28475/12)**

Application communicated to the Austrian Government on 3 March 2015

This case concerns an alleged discrimination of a different-sex couple as regards access to registered partnership, which according to the Registered Partnership Act is exclusively reserved for same-sex couples.

The Court gave notice of the application to the Austrian Government and put questions to the parties under Article 8 (right to respect for private and family life) and Article 14 (prohibition of discrimination) of the Convention.

#### **Hörmann and Moser v. Austria (no. 31176/13) and Dietz and Suttasom v. Austria (no. 31185/13)**

Applications communicated to the Austrian Government on 29 May 2015

The applicants, two same-sex couple who have been living in a stable relationship for several years, complain in particular that they are discriminated on grounds of their sexual orientation, because in Austria registered partnerships are concluded before the District Administrative Authorities, while civil marriage is contracted before the Office for Matters of Personal Status.

The Court gave notice of the applications to the Austrian Government and put questions to the parties under Article 14 (prohibition of discrimination) read in conjunction with Article 8 of (right to respect for private and family life) of the Convention.

**Fedotova and Shipitko v. Russia (no. 40792/10), Chunosov and Yevtushenko v. Russia (no. 30538/14) and Shaykhraznova and Yakovleva v. Russia (no. 43439/14)**

Applications communicated to the Russian Government on 2 May 2016

These cases concern the complaint by three same-sex couples that under Russian legislation they do not have the possibility to get married or enter into any other type of legally-recognised and protected union.

The Court gave notice of the applications to the Russian Government and put questions to the parties under Article 8 (right to respect for private and family life) and Article 14 (prohibition of discrimination) of the Convention.

## Discharge from army

**Lustig-Prean and Beckett v. the United Kingdom and Smith and Grady v. the United Kingdom**

27 September 1999

**Perkins and R. v. the United Kingdom and Beck, Copp and Bazeley v. the United Kingdom**

22 October 2002

The applicants were all British armed forces personnel, discharged from the forces on the basis of their homosexuality. They alleged in particular that the investigations into their sexuality and their discharge as a result of the absolute ban on homosexuals in the armed forces that existed at the time, had violated their rights under Articles 8 (right to respect for private life) and 14 (prohibition of discrimination) of the Convention.

In all these cases, the Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. It found that the measures taken against the applicants had constituted especially grave interferences with their private lives and had not been justified by "convincing and weighty reasons".

In *Smith and Grady* and *Beck, Copp and Bazeley*, the Court also held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention, in that the applicants did not have an effective domestic remedy in relation to the violation of their right to respect for their private lives. In these two cases, it lastly held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention.

## Dismissal of claim for defamation

**Sousa Goucha v. Portugal**

22 March 2016<sup>3</sup>

This case concerned the Portuguese courts' decisions dismissing a defamation case the applicant – one of the best-known television hosts in Portugal – had brought against a television company following a joke made during the broadcast of a late-night comedy show in late 2009. Notably, the applicant alleged that the joke, which had included him in a list of best female television hosts, damaged his reputation as it had mixed his gender with his sexual orientation. In April 2012 the Portuguese courts ultimately dismissed his claim for damages as ill-founded. Before the Court, the applicant maintained in particular that the decisions had been

<sup>3</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 of the [Convention](#).

discriminatory as they had been based on his homosexuality.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. In view of the margin of appreciation afforded to the State in that area, it found that the Portuguese courts had struck a fair balance between the television show's freedom of expression (Article 10 of the Convention) and the applicant's right to have his reputation respected (Article 8). The Court was therefore satisfied that this decision was in line with Convention standards, and found no reason to substitute its view for that of the domestic courts. The Court also held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention taken **in conjunction with Article 8**, finding that it was not possible to speculate whether the applicant's sexual orientation had had any bearing on the domestic courts' decisions. Although the relevant passages were debatable and could have been avoided, they did not have discriminatory intent.

## Exclusion from giving blood

### **Tosto v. Italy, Crescimone v. Italie and Faranda v. Italy**

15 October 2002 (decisions – strike out)

Each of the applicants having expressed the wish to give blood, they were given a form listing the cases in which a person could be excluded from giving blood, in view of the risk of passing on infectious diseases such as AIDS or hepatitis, in accordance with a decree issued by the Ministry of Health in 1991. Being in a homosexual relationship was listed as one of the grounds for permanent exclusion. Being homosexuals, the applicants were unable to give blood. They complained of a violation of Articles 8 (right to respect for private life) and 14 (prohibition of discrimination) of the Convention on the grounds of their permanent exclusion from giving blood, based exclusively on their sexual orientation.

The Court noted in particular that, following the replacement of the 1991 ministerial decree by the decree of 26 January 2001, the applicants could now give blood. Since the entry into force of the new rules, the Italian authorities had therefore eliminated the legal obstacle which prevented the applicants from giving blood. Although they had not given the Court any precise indication regarding the continuation of the examination of their applications, the Court considered that it was no longer justified to continue the examination of the applications, in accordance with Article 37 (striking out applications) of the Convention, and decided to **strike them out** of its list of cases.

## Parental authority

### **Salgueiro da Silva Mouta v. Portugal**

21 December 1999

The applicant – a homosexual living with another man – was prevented by his ex-wife from visiting his daughter, in breach of an agreement reached at the time of their divorce. He complained of an unjustified interference with his right to respect for his private and family life, as guaranteed by Article 8 of the Convention and discrimination contrary to Article 14 of the Convention. He maintained, too, that contrary to Article 8 he had been forced by the court of appeal to hide his homosexuality when seeing his daughter.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) taken **in conjunction with Article 8** (right to respect for private and family life) of the Convention. The Portuguese courts' decision had been largely based on the fact that the applicant was a homosexual and that "the child should live in a traditional Portuguese family". That distinction, based on considerations relating to sexual orientation, was not acceptable under the Convention.

### **Pending applications**

#### **Francine Bonnaud and Patricia Lecoq v. France (no. 6190/11)**

Application communicated to the French Government on 30 May 2011

This case concerns the rejection of the applicants' requests to be granted parental authority each in respect of the other's child. The applicants, who live as a couple, each had a child using medically assisted procreation.

In May 2011 the Court gave notice of the application to the French Government for information and, in May 2013, invited the Government to submit observations in the light of the judgments in *Gas and Dubois v. France* (see above, under "Adoption") and *X and Others v. Austria* (see above, under "Adoption"), and the adoption in France of the law of 17 May 2013 opening marriage to same sex couples.

#### **D. and B. v. Austria (no. 40597/12)**

Application communicated to the Austrian Government on 23 March 2015

This case concerns the Austrian authorities' refusal to award joint custody to a woman living in a same-sex relationship, where the child was conceived by the other partner with the help of medically assisted procreation.

The Court gave notice of the application to the Austrian Government and put questions to the parties under Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination) of the Convention.

## Parental leave

### **Pending application**

#### **Hallier and Lucas v. France (no. 46386/10)**

Application communicated to the French Government on 6 April 2011

The applicants – two women who have been living together for eight years and signed a *Pacte civil de solidarité* (PACS – French civil union agreement) in 2004 – complain about the refusal to grant the second applicant paternity leave on the occasion of the birth of her partner's child.

The Court gave notice of the application to the French Government and put questions to the parties under Articles 34 (right to individual application) and 35 (admissibility criteria) of the Convention, and under Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life) of the Convention.

## Refusal to register as a parent in birth certificate

#### **Boeckel and Gessner-Boeckel v. Germany**

7 May 2013 (decision on the admissibility)

The applicants, two women in a registered civil partnership, complained about the refusal to register one of them as a parent in the birth certificate of the other partner's child born during their partnership. They relied on Article 8 (right to respect for private and family life) taken alone and in conjunction with Article 14 (prohibition of discrimination) of the Convention.

The Court declared the application **inadmissible** as being manifestly ill-founded. It found that the applicants were not in a relevantly similar situation to a married different-sex couple when it came to the issue of the entries to be made in a child's birth certificate.

## Residence permit

#### **Pajić v. Croatia**

23 February 2016

The case concerned the complaint by a national of Bosnia and Herzegovina, who is in

a stable same-sex relationship with a woman living in Croatia, of having been discriminated against on the grounds of her sexual orientation when applying for a residence permit in Croatia.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) taken **in conjunction with Article 8** (right to respect for private and family life) of the Convention. It found in particular that the applicant had been affected by a difference in treatment between different-sex couples and same-sex couples introduced by the Aliens Act, which reserved the possibility of applying for a residence permit for family reunification to different-sex couples. The Croatian Government had not shown that that difference in treatment was necessary to achieve a legitimate aim or that it was justified by any other convincing reason.

### **Pending application**

#### **Taddeucci and McCall v. Italy (no. 51362/09)**

Application communicated to the Italian Government on 10 January 2012

This case concerns the inability of the applicants, a same-sex couple one of whom is an Italian and the other a New Zealand national, to live together in Italy on account of the Italian authorities' refusal to issue the second applicant with a residence permit because the national immigration legislation does not allow unmarried partners to obtain a family member's residence permit. The applicants allege discrimination based on their sexual orientation on the grounds that the second applicant was refused a family residence permit and that they have no other means of living together as a couple in Italy.

The Court gave notice of the application to the Italian Government and put questions to the parties under Article 14 (prohibition of discrimination) read in conjunction with Article 8 (right to respect for private and family life) of the Convention.

Social protection (insurance cover, survivor's allowances, etc.)

#### **Mata Estevez v. Spain**

10 May 2001 (decision on the admissibility)

The applicant complained in particular of the difference of treatment regarding eligibility for a survivor's pension between *de facto* homosexual partners and married couples, or even unmarried heterosexual couples who, if legally unable to marry before the divorce laws had been passed in 1981, were eligible for a survivor's pension. He submitted that such difference in treatment amounted to unjustified discrimination which infringed his right to respect for his private and family life.

The Court declared the application **inadmissible** as being manifestly ill-founded, finding that Spanish legislation relating to eligibility for survivors' allowances pursued a legitimate aim (the protection of the family based on the bonds of marriage), and that the difference in treatment could be considered to fall within the State's margin of appreciation.

#### **P.B. and J.S. v. Austria (no. 18984/02)**

22 July 2010

This case concerned the refusal to extend sickness insurance cover to the homosexual partner of an insured person. Before a legislative amendment in July 2007, Austrian law provided that only a close relative of the insured person or a cohabitee of the opposite sex qualified as dependants.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for private and family life) of the Convention in respect of the period prior to July 2007, and **no violation of these provisions** since July 2007. As a result of the July 2007

legislative amendment, the relevant law was now neutral as regards the sexual orientation of cohabitants, which, in the Court's view, had put an end to the violation.

### **Manenc v. France**

21 September 2010 (decision on the admissibility)

This case concerned the refusal of reversionary pension to the survivor of a civil partnership between two people of the same sex on the ground that the requirement of a lawful marriage, sanctioned by a marriage certificate, had not been met. The applicant alleged that this requirement was discriminatory, in particular towards persons who had entered into a civil partnership agreement, and more especially same-sex couples.

The Court declared the application **inadmissible** as being manifestly ill-founded. It noted in particular that the survivor's pension had been refused to the applicant solely on the ground that he had been in a civil partnership. Consequently, the French legislation on survivors' benefits pursued a legitimate aim, namely the protection of the family based on the bonds of marriage; the limiting of the scope of the legislation to married couples, to the exclusion of partners in a civil partnership regardless of their sexual orientation, fell within the broad margin of appreciation accorded to the States by the European Convention on Human Rights in this sphere. Hence, the domestic legislation was not manifestly without reasonable foundation.

### **Pending application**

#### **Aldeguer Tomas v. Spain (no. 35214/09)**

Application communicated to the Spanish Government on 18 October 2012

This case concerns the Spanish authorities' refusal to grant the applicant a survivor's pension on the ground that he had never been married to his late partner, who had died three years before the entry into force of Law No. 13/2005 recognising same-sex marriage.

The Court gave notice of the application to the Spanish Government and put questions to the parties under Article 14 (prohibition of discrimination) of the Convention read in conjunction with Article 8 (right to respect for private and family life) of the Convention and/or Article 1 (protection of property) of Protocol No. 1 to the Convention.

## Succession to a tenancy

### **Karner v. Austria**

24 July 2003

The applicant alleged, in particular, that the Austrian Supreme Court's decision not to recognise his right to succeed to a tenancy after the death of his companion had amounted to discrimination on the ground of his sexual orientation. The Government had requested that the application be struck out of the list of cases in accordance with Article 37 (striking out applications) of the Convention, since the applicant had died in the course of the proceedings before the European Court of Human Rights and there were no heirs who wished to pursue the application.

In the particular circumstances of the case, the Court found that respect for human rights as defined in the Convention and the Protocols thereto required a continuation of the examination of the case (Article 37 § 1 *in fine* of the Convention) and accordingly rejected the Government's request for the application to be struck out of its list. The Court further held that there had been a **violation of Article 14** (prohibition of discrimination) taken **in conjunction with Article 8** (right to respect for home) of the Convention, finding that the Austrian Government had not offered convincing and weighty reasons justifying the narrow interpretation of section 14(3) of the Rent Act that prevented a surviving partner of a couple of the same sex from relying on that provision.

### Kozak v. Poland

2 March 2010

Following the death of his homosexual partner, the applicant instituted proceedings against the municipality claiming to be entitled to succeed to the tenancy of the council flat, which was in his partner's name. In dismissing his claim, the Polish courts found that the applicant had moved out of the flat and stopped paying rent before his partner's death and that, in any event, a *de facto* marital relationship, which was a pre-requisite for succession to the tenancy of a council flat, could only exist between persons of the opposite sex.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) taken **in conjunction with Article 8** (right to respect for home) of the Convention. Despite the importance of the legitimate aim pursued in the applicant's case, namely that of protecting traditional families, in its choice of means to protect that aim the State had to take into account developments and changes in society, including the fact that there was not just one way or one choice in the sphere of leading and living one's family and private life. Given the State's narrow margin of appreciation in cases of difference in treatment on the basis of sexual orientation, a blanket exclusion of persons living in a homosexual relationship from succession to a tenancy could not be considered acceptable.

## Freedom of thought, conscience and religion (Article 9 of the Convention)

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### Ladele and McFarlane v. the United-Kingdom

15 January 2013

The applicants – respectively a Registrar of Births, Deaths and Marriages and a counsellor with a confidential sex therapy and relationship counselling service – were practising Christians who alleged that domestic law had failed adequately to protect their right to manifest their religious beliefs. They both complained that they had been dismissed for refusing to carry out certain of their duties which they considered would condone homosexuality, a practice they felt was incompatible with their religious beliefs.

The Court found that there had been **no violation of Article 9** (freedom of religion) **taken alone or in conjunction with Article 14** (prohibition of discrimination) of the Convention, as concerned the second applicant, and **no violation of Article 14 taken in conjunction with Article 9** as concerned the first applicant. It held in particular that it could not be said that national courts had failed to strike a fair balance when they upheld the employers' decisions to bring disciplinary proceedings. In each case the employer was pursuing a policy of non-discrimination against service-users, and the right not to be discriminated against on grounds of sexual orientation was also protected under the Convention.

## Freedom of expression (Article 10 of the Convention)

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### Vejdeland and Others v. Sweden

9 February 2012

The case concerned the applicants' conviction in 2005 for distributing in an upper secondary school approximately 100 leaflets considered by the courts to be offensive to homosexuals. The applicants alleged in particular that the Swedish Supreme Court convicting them of agitation against a national or ethnic group had constituted a violation of their freedom of expression.

The Court concluded that there had been **no violation of Article 10** (freedom of expression) of the Convention, as the interference with the applicants' exercise of

their right to freedom of expression had reasonably been regarded by the Swedish authorities as necessary in a democratic society for the protection of the reputation and rights of others. The Court found in particular that the statements in question had constituted serious and prejudicial allegations, even if they had not been a direct call to hateful acts. It further stressed that discrimination based on sexual orientation was as serious as discrimination based on race, origin or colour.

### **Mladina D.D. Ljubljana v. Slovenia**

17 April 2014

This case concerned the applicant publisher's complaint that it was ordered by the national courts to pay damages to a parliamentarian for insulting him in an article concerning a parliamentary debate on the legal recognition of same-sex relationships. The article was published in the publisher's magazine in June 2005. The applicant complained, in particular, that the national courts had been unwilling to expose harmful, homophobic stereotypes and had not taken into consideration that the exaggerated, satirical style of the article was a reaction to the parliamentarian's own controversial behaviour.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It pointed out that the limits of acceptable criticism were wider as regards a politician, especially when he himself had made controversial public statements, than as regards a private individual. Both the context in which the publisher's article had been written (an intense political debate) and the style used (matching the parliamentarian's own provocative comments and behavior) had not been given sufficient consideration by the national courts. The article had not, therefore, been a gratuitous personal attack on the parliamentarian, but a counter-response to the parliamentarian's own public remarks and, in particular, conduct which could be regarded as a ridicule of homosexuals and promoting negative stereotypes. Accordingly, the national courts had failed to strike a fair balance between the competing interests of protecting the reputation or rights of the parliamentarian and the publisher's right to freedom of expression.

### **Pending applications**

#### **Bayev v. Russia (no. 67667/09), Kiselev v. Russia (no. 44092/12) and Alekseyev v. Russia (no. 56717/12)**

Applications communicated to the Russian Government on 16 October 2013

These cases concern the prohibition of "homosexual propaganda" in Russia.

The Court gave notice of the applications to the Russian Government and put questions to the parties under Article 10 (freedom of expression) and Article 14 (prohibition of discrimination) of the Convention.

## **Freedom of assembly and association (Article 11 of the Convention)**

### **Bączkowski and Others v. Poland**

3 May 2007

The applicants are the Foundation for Equality (*Fundacja Równości*) and five of its members. They campaign for homosexual rights. In 2005 the local authorities refused permission for them to organise a march in the streets of Warsaw to raise public awareness of discrimination against minorities, women and people with disabilities. The march was eventually held anyway. The applicants complained that their right to peaceful assembly had been breached by the way in which the domestic authorities had applied relevant domestic law to their case. They also complained that they had not had at their disposal any procedure which would have allowed them to obtain a final decision before the date of the planned demonstrations. They

further alleged that they had been treated in a discriminatory manner in that they had been refused permission to organise certain demonstrations whereas other organisers had obtained permission.

The Court held that there had been a **violation of Article 11** (freedom of assembly), a **violation of Article 13** (right to an effective remedy) **taken in conjunction with Article 11**, and a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 11** of the Convention. It observed in particular that while it was true that the march had eventually been held, the applicants had taken a risk since it had not been officially authorised at the time. Further, the applicants had had only *post hoc* remedies available in respect of the decisions refusing permission for the event. Lastly, it could reasonably be surmised that the real reason for the refusal had been the local authorities' opposition to homosexuality.

### **Alekseyev v. Russia**

21 October 2010

The applicant was one of the organisers of several marches in 2006, 2007 and 2008 which were aimed at drawing public attention to the discrimination against the gay and lesbian community in Russia and to promoting tolerance and respect for human rights. He complained about the repeated ban on holding the gay-rights marches and pickets, about not having an effective remedy to challenge those bans, and about them being discriminatory because of his and the other participants' sexual orientation.

The Court found a **violation of Article 11** (freedom of assembly), a **violation of Article 13** (right to an effective remedy) **taken in conjunction with Article 11**, and a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 11** of the Convention. It held in particular that the bans imposed on the holding of the impugned marches and pickets had not been necessary in a democratic society. It further held that the applicant had no effective remedy to challenge those bans, and that they had been discriminatory because of his sexual orientation.

### **Genderdoc-M v. Moldova**

12 June 2012

The applicant is a Moldovan non-governmental organisation based in Moldova whose object is to provide information to and assist the LGBT (lesbian, gay, bisexual, and transgender) community. The case concerned the banning of a demonstration that the applicant association had planned to hold in Chişinău in May 2005 to encourage laws for the protection of sexual minorities from discrimination. It complained in particular that the ban had been unlawful, that there had been no effective procedure allowing them to obtain a final decision prior to the date of the planned demonstration and that it had been discriminated against because it promoted the interests of the gay community in Moldova.

The Court held that there had been a **violation of Article 11** (freedom of assembly), a **violation of Article 13** (right to an effective remedy) **taken in conjunction with Article 11**, and a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 11** of the Convention. It found in particular that the applicant had been denied an effective domestic remedy in respect of the complaint concerning a breach of the right to freedom of assembly. Furthermore, the Court held the view that when limiting the right of assembly, national authorities should offer clear reasons for so doing. However, in the present case each authority which dealt with the applicant association's request to hold a demonstration rejected it for a different reason.

**Identoba and Others v. Georgia** (see also above, under “Prohibition of inhuman or degrading treatment” (Article 3 of the Convention) »)

12 May 2015

This case concerned a peaceful demonstration organised by an NGO – the first applicant – in Tbilisi in May 2012 to mark the International Day against Homophobia, which was violently disrupted by counter-demonstrators outnumbering the marchers. The applicant NGO and the 13 applicants who had participated in the march complained in particular that they had been unable to proceed with their peaceful march owing to the assaults and the inaction of the police.

The Court held that there had been a **violation of Article 11** (freedom of assembly and association) **taken in conjunction with Article 14** (prohibition of discrimination) of the Convention, finding that the authorities had failed to ensure that the march to mark the International Day against Homophobia could be held peacefully by sufficiently containing homophobic and violent counter-demonstrators. In particular, although given notice nine days prior to the march, the authorities had not used that period for careful preparation. Given the attitudes in parts of Georgian society towards sexual minorities, the authorities knew or should have known of the risk of tensions associated with the march. They had thus been under an obligation to use any means possible to ensure that it could be held peacefully, for instance by making public statements before the demonstration to advocate a tolerant, conciliatory stance, or to warn potential offenders of the nature of possible sanctions. Furthermore, the number of police patrol officers deployed had not been sufficient; it would have thus been prudent if the authorities, given the likelihood of street clashes, had ensured more police manpower.

#### **Pending applications**

##### **Zhdanov and Rainbow House v. Russia (no. 12200/08)**

Application communicated to the Russian Government on 11 March 2011

The first applicant is the president of the second applicant, a regional public association for the protection of citizens’ sexual rights “Raduzhniy Dom” (Rainbow House), operating in the Tyumen region. They complain in particular about the refusals to register the second applicant.

The Court gave notice of the application to the Russian Government and put questions to the parties under Article 11 (freedom of assembly and association) and Article 14 (prohibition of discrimination) of the Convention.

##### **Yefremenkova and Others v. Russia (no. 19700/11)**

Application communicated to the Russian Government on 22 January 2013

The four applicants are gay human rights activists. On 15 June 2010 they notified the Saint Petersburg Security Department of their intention to hold a gay pride march and a subsequent meeting on 26 June 2010, the anniversary of the start of the gay rights movement in the United States of America on 26 June 1969. The aim was to draw the attention of society to the violations of the rights of homosexuals, and the attention of society and the authorities to the widespread discrimination against homosexuals, homophobia, fascism and xenophobia. They complain in particular that the refusals to agree to their marches, meetings and pickets were unlawful because the authorities did not propose alternative venues as they were required to do by domestic law, and that they were subjected to discrimination on account of sexual orientation.

The Court gave notice of the application to the Russian Government and put questions to the parties under Article 11 (freedom of assembly and association), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination) of the Convention.

**Alekseyev and Others v. Russia (no. 14988/09 and 50 other applications)**  
**Alekseyev and Others v. Russia (no. 31782/15)**

Applications communicated to the Russian Government on 15 January 2016

These two cases concern the applicants' complaints about the ban on holding LGBT public assemblies, about not having an effective remedy to challenge those bans and of the discriminatory manner in which the authorities treated their applications for holding LGBT public events.

The Court gave notice of the applications to the Russian Government and put questions to the parties under Article 11 (freedom of assembly and association), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination) of the Convention.

**Alekseyev and Movement for Marriage Equality v. Russia and Alekseyev and Others v. Russia (nos. 35949/11 and 58282/12)**

Applications communicated to the Russian Government on 22 March 2016

These two cases concern refusals to register associations defending the rights of homosexuals.

The Court gave notice of the applications to the Russian Government and put questions to the parties under Article 11 (freedom of assembly and association) and Article 14 (prohibition of discrimination) of the Convention. Concerning the second application, the Court also put a question to the parties under Article 6 § 1 (right to a fair trial) of the Convention.

## Right to marry (Article 12 of the Convention)

**Schalk and Kopf v. Austria**

24 June 2010

The applicants are a same-sex couple living in a stable partnership. They asked the Austrian authorities for permission to marry. Their request was refused on the ground that marriage could only be contracted between two persons of opposite sex; this view was upheld by the courts. Before the European Court of Human Rights, the applicants further complained of the authorities' refusal to allow them to contract marriage. They complained that they were discriminated against on account of their sexual orientation since they were denied the right to marry and did not have any other possibility to have their relationship recognised by law before the entry into force of the Registered Partnership Act.

The Court found that there had been **no violation of Article 12** (right to marriage), and **no violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for private and family life) of the Convention. It first held that the relationship of the applicants fell within the notion of "family life", just as the relationship of a different-sex couple in the same situation would. However, the Convention did not oblige a State to grant a same-sex couple access to marriage. The national authorities were best placed to assess and respond to the needs of society in this field, given that marriage had deep-rooted social and cultural connotations differing greatly from one society to another.

**Chapin and Charpentier c. France**

9 June 2016<sup>4</sup>

This case concerned the marriage of two men conducted by the mayor of Bègles (Gironde) and subsequently declared null and void by the courts. The applicants submitted that limiting marriage to opposite-sex couples amounted to a discriminatory infringement of the right to marry. They also contended that they had

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<sup>4</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 of the [Convention](#).

been discriminated against, in the exercise of their right to respect for family life, on the basis of their sexual orientation.

The Court held that there had been **no violation of Article 12** (right to marriage) **in conjunction with Article 14** (prohibition of discrimination) and **no violation of Article 8** (right to respect for private and family life) **in conjunction with Article 14** of the Convention.

### Pending applications

#### **Orlandi and Others v. Italy (no. 26431/12 and three other applications)**

Applications communicated to the Italian Government on 3 December 2013

These cases concern the refusal of the Italian authorities to register homosexual marriages contracted abroad and raise the issue of the inability to have any other legal recognition of a same-sex relationship in the Italian legal order.

The Court gave notice of the applications to the Italian Government and put questions to the parties under Article 8 (right to respect for private and family life) and under Article 14 (prohibition of discrimination) read in conjunction with Article 8 and/or Article 12 (right to marry) of the Convention.

## Protection of property (Article 1 of Protocol No. 1 to the Convention)

### **J.M. v. the United Kingdom (no. 37060/06)**

28 September 2010

The applicant was the divorced mother of two children who lived mainly with their father. Since 1998 she had been living with another woman in a long-term relationship. As the non-resident parent, she was required by child-support regulations to contribute financially to the cost of her children's upbringing. The applicant complained that the difference was appreciable – she was required to pay approximately GBP 47 per week, whereas if she had formed a new relationship with a man the amount due would have been around GBP 14. She alleged that, when setting the level of child maintenance she was required to pay, the authorities had discriminated against her on the basis of her sexual orientation.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 1** (protection of property) **of Protocol No. 1** to the Convention. It found in particular that the rules on child maintenance prior to the introduction of the Civil Partnership Act had discriminated against those in same-sex relationships.

## Texts and documents

See in particular:

- the Council of Europe [webpage](#) on "Combating discrimination on the grounds of sexual orientation or gender identity"
- [Handbook on European non-discrimination law](#), European Union Fundamental Rights Agency / Council of Europe, 2010
- [Handbook on European non-discrimination law: Case-law update July 2010-December 2011](#), European Union Fundamental Rights Agency / Council of Europe, 2012

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**Media Contact:**

Tel.: +33 (0)3 90 21 42 08