



April 2020

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."

## Right to life and prohibition of inhuman or degrading treatment (Article 2 and 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

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 (lesbian, gay, bisexual, and transgender) 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) 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) of the Convention.

*Similar application pending:* **Beus v. Croatia (no. 16943/17)**, communicated to

the Croatian Government on 5 April 2017.

**Women's Initiatives Supporting Group and Others v. Georgia (no. 73204/13)**

Application communicated to the Georgian Government on 24 August 2015

This case concerns a peaceful demonstration to mark the International Day against Homophobia, which was violently disrupted by counter-demonstrators.

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), 10 (freedom of expression), 11 (freedom of assembly and association) and 14 (prohibition of discrimination) of the Convention.

**Chechetkin v. Russia (no. 42395/15)**

Application communicated to the Russian Government on 6 July 2017

The applicant complains in particular of the authorities' failure to adequately investigate an attack motivated by hatred against LGBT (lesbian, gay, bisexual, and transgender) persons.

The Court gave notice of the application to the Russian Government and put questions to the parties under Articles 3 (prohibition of inhuman or degrading treatment) and 14 (prohibition of discrimination) of the Convention.

**Romanov v. Russia and two other applications (nos. 58358/14, 7146/15 and 25887/15)**

Applications communicated to the Russian Government on 2 November 2017

These applications concern verbal and physical violence against LGBT activists committed by counter-demonstrators during gay-pride events.

The Court gave notice of the applications to the Russian Government and put questions to the parties under Articles 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security), 8 (right to respect for private life), 11 (freedom of assembly and association) and 14 (prohibition of discrimination) of the Convention.

**A v. Azerbaijan (no. 17184/18) and 24 other applications**

Applications communicated to the Government of Azerbaijan on 26 February 2019

The applicants are members of the LGBT (lesbian, gay, bisexual, and transgender) community who were arrested during police raids in mid-September 2017.

The Court gave notice of the applications to the Government of Azerbaijan and put questions to the parties under Articles 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security), 8 (right to respect for private life) and 14 (prohibition of discrimination) of the Convention.

## 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.

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

13 December 2016 (decision – partly struck out and partly inadmissible)

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

The Court **struck** the applicant's complaint under Article 13 (right to an effective remedy) taken in conjunction with Articles 2 (right to life) and 3 (prohibition of torture and inhuman or degrading treatment) of the Convention **out of its list of cases**, noting in particular that the applicant was not, at the time of its decision,

at risk of being removed from Spanish territory and that, in the event that her asylum request is rejected by means of administrative procedure, she would have an opportunity of appealing before the *Audiencia Nacional*. The Court further declared **inadmissible**, as being premature, the applicant's complaints under Articles 2 and 3 of the Convention.

#### **I.K. v. Switzerland (no. 21417/17)**

19 December 2017 (decision on the admissibility)

The applicant, a Sierra Leonean, who claimed to be homosexual, stated in particular that he feared that he would be subjected to inhuman or degrading treatment if he were to be returned to Sierra Leone.

The Court declared the application **inadmissible** as being manifestly ill-founded. It noted in particular that sexual orientation was a fundamental facet of an individual's identity and awareness and that, in consequence, individuals submitting a request for international protection based on their sexual orientation could not be required to hide it. In the present case, however, noting the lack of credibility in the applicant's allegations or of conclusive documents in support of them, the Court considered that there were not substantial grounds to believe that he would be exposed to a real risk of treatment contrary to Article 3 (prohibition of torture and inhuman or degrading treatment) of the Convention in the event of his return to Sierra Leone.

See also, recently:

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

25 April 2017 (decision – strike out)

#### **E.S. v. Spain (no. 13273/16)**

26 September 2017 (decision – partly struck out and partly inadmissible)

#### **Nurmatov (Ali Feruz) v. Russia**

2 October 2018 (decision – partly struck out and partly inadmissible)

#### **S.A.C. v. the United Kingdom (no. 31428/18)**

12 November 2019 (decision – strike out)

#### **Pending application**

#### **B v. Switzerland (no. 43987/16)**

Application communicated to the Swiss Government on 29 March 2017

This case concerns 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 Gambia.

The Court gave notice of the application to the Swiss Government and put questions to the parties under Article 3 of the Convention.

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

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

5 July 2016

This case concerned the applicant's detention for 58 days following his request for asylum in Hungary, in which he stated that he had been forced to flee Iran, his country of origin, because of his homosexuality. In October 2014 he was recognised as a refugee. The applicant complained in particular that his detention had been arbitrary and unjustified.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention in the period between 25 June and 22 August 2014.



It found in particular that the decisions of the authorities did not contain any adequate reflection on the individual circumstances of the applicant, member of a vulnerable group by virtue of belonging to a sexual minority in Iran.

## Right to respect for private and family life, the home and correspondence (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>1</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

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<sup>1</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).

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.

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.

## 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.

## **Pending applications**

### **R.F. and Others v. Germany (no. 46808/16)**

Application communicated to the German Government on 13 January 2017



**S.W. and Others v. Austria (no. 1928/19)**

Application communicated to the Austrian Government on 12 February 2019

## 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.

### **Hörmann and Moser v. Austria and Dietz and Suttasom v. Austria**

30 March 2017 (decision – strike out)

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

The Court noted in particular that, following legislative changes, as of 1 April 2017, the applicants would have the possibility to conclude a registered partnership before the Office for Matters of Personal Status. It therefore considered that the matter had been resolved within the meaning of Article 37 (striking out applications) of the Convention and decided to **strike** the applications **out** of its list of cases.

### **Ratzenböck and Seydl v. Austria**

26 October 2017

This case concerned the complaint by a heterosexual couple about being denied access to a registered partnership, a legal institution only available to same-sex couples. The applicants maintained that they were discriminated against based on their sex and sexual orientation.

The Court held that there had been **no violation of Article 14** (prohibition of discrimination) **taken together with Article 8** (right to respect for private and family life) of the Convention. It found in particular that there were no more substantial differences between marriage and registered partnership in Austria. Their access to marriage satisfied the applicants' principal need for legal recognition, and they had not claimed to have been specifically affected by any difference in law between the two institutions.

### **Orlandi and Others v. Italy**

14 December 2017

This case concerned a complaint by six same-sex couples that they had been unable to have their marriages, which they had contracted abroad, registered or recognised in any form as a union in Italy. They alleged, among other things, discrimination on the grounds of their sexuality.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding that the State had failed to strike a fair balance between the competing interests and that there had been a violation of

the couples' rights. It noted in particular that States had wide discretion on the question of whether or not to allow or register same-sex marriages. However, the Court found that there had been a violation of the couples' rights after they had married abroad because Italian law had not provided any legal protection or recognition for them before 2016 when legislation on same-sex civil unions had come into force.

#### **Pending applications**

##### **[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.

### Conjugal visits

#### **Pending application**

##### **[Duță v. Romania \(no. 8783/15\)](#)**

Application communicated to the Romanian Government on 24 June 2019

This case concerns the refusal to allow a homosexual prisoner to have conjugal visits. The Court gave notice of the applications to the Romanian 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.

### Denial for employment

#### **Pending application**

##### **[Oleynik v. Russia \(no. 4086/18\)](#)**

Application communicated to the Russian Government on 5 February 2020

This case concerns a homosexual who was denied employment by a private company. The applicant complains that his denial of employment was of a discriminatory nature and that the domestic courts did not answer his arguments in this respect.

The Court gave notice of the application to the Russian Government and put questions to the parties under Article 8 (right to respect for private and family life), Article 14 (prohibition of discrimination) and Article 6 (right to a fair trial) 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

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 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.

## Medically-assisted procreation

### **Charron and Merle-Montet v. France**

16 January 2018 (decision on the admissibility)

The applicants, a female married couple, complained that their request for medically assisted reproduction had been rejected on the grounds that French law did not authorise such medical provision for same-sex couples.

The Court declared the application **inadmissible**. It noted in particular that the Hospital's decision rejecting the applicants' request for access to medically assisted reproduction had been an individual administrative decision that could have been set aside on appeal for abuse of authority before the administrative courts. However, the applicants had not used that remedy. In the present case, noting the importance of the subsidiarity principle, the Court found that the applicants had failed to exhaust domestic remedies.

## (Allegedly) offensive comments or publications

### **Beizaras and Levickas v. Lithuania**

14 January 2020<sup>2</sup>

The applicants, two young men who were in a relationship, alleged that they had been discriminated against on the grounds of sexual orientation because of the authorities' refusal to launch a pre-trial investigation into the hate comments on the Facebook page of one of them. The latter had posted a photograph of them kissing on his Facebook page, which led to hundreds of online hate comments. Some were about LGBT people in general, while others personally threatened the applicants. The applicants submitted that they had been discriminated against on the grounds of sexual orientation. They also argued that the refusal had left them with no possibility of legal redress.

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 life) of the Convention, finding that the applicants had suffered discrimination on the grounds of their sexual orientation and that the Lithuanian Government had not provided any justification showing that the difference in treatment had been compatible with the standards of the Convention. It noted in particular that the applicants' sexual orientation had played a role in the way they had been treated by the authorities, which had quite clearly expressed disapproval of them so publicly demonstrating their homosexuality when refusing to launch a pre-trial investigation. Such a discriminatory attitude had meant that the applicants had not been protected, as was their right under the criminal law, from undisguised calls for an attack on their physical and mental integrity. The Court also held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention because the applicants had been denied an effective domestic remedy for their complaints.

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

### **Pending applications**

#### **Minasyan and Others v. Armenia (no. 59180/15)**

Application communicated to the Armenian Government on 21 February 2018

The applicants, gay rights activists, complain about articles published on the website of a newspaper allegedly insulting to them.

The Court gave notice of the application to the Armenian Government and put questions to the parties under Article 8 (right to respect for private life), Article 14 (prohibition of discrimination) and Article 17 (prohibition of abuse of rights) of the Convention.

#### **Association ACCEPT and Others v. Romania (no. 19237/16)**

Application communicated to the Romanian Government on 7 February 2019

The application concerns the interruption of an LGBT (lesbian, gay, bisexual, and transgender) rights film screening by a group shouting homophobic abuse.

The Court gave notice of the application to the Romanian Government and put questions to the parties under Articles 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for private and family life), 11 (freedom of association), 13 (right to an effective remedy) and 14 (prohibition of discrimination) of the Convention and Article 1 (general prohibition of discrimination) of Protocol No. 12 to the Convention.

### Online harassment

#### **Pending application**

#### **Giuliano v. Hungary (no. 45305/16)**

Application communicated to the Hungarian Government on 21 October 2019

This case concerns the alleged online harassment of a well-known gay rights activist.

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

### Parental authority, child custody and access rights

#### **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.

#### **Bonnaud and Lecoq v. France**

6 February 2018 (decision on the admissibility)

This case concerned an application for joint exercise of parental responsibility made by two women living as a couple, each of whom had a child born as a result of medically assisted reproduction. The applicants alleged that the refusal of their application to delegate parental responsibility to each other had been based on their



sexual orientation and entailed an unjustified and disproportionate difference in treatment.

The Court decided to conduct a separate examination of the applicants' situation before and after their separation in early 2012. Concerning the applicants' situation before their separation, it considered that the assessment made by the Court of Appeal and upheld by the Court of Cassation, according to which the criteria for mutual delegation of parental responsibility between the applicants were not satisfied, did not disclose a difference in treatment based on their sexual orientation. It therefore declared this aspect of the complaint **inadmissible** as being manifestly ill-founded. As regards the applicants' situation after their separation, the Court rejected this aspect of the complaint as being premature.

See also, recently:

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

31 October 2017 (decision –partly inadmissible; partly struck out)

#### **Pending application**

#### **X. v. Poland (no. 20741/10)**

Application communicated to the Polish Government on 26 February 2019

The applicant complains about the Polish authorities' decision to remove her children from her custody, alleging discrimination on grounds of her sexual orientation.

The Court gave notice of the application to the Polish Government and put questions to the parties under Articles 6 § 1 (right to a fair trial), 8 (right to respect for private and family life) and 14 (prohibition of discrimination) of the Convention.

### Parental leave

#### **Hallier and Others v. France**

12 December 2017 (decision on the admissibility)

The applicants – two women who had been living as a couple for many years and were in a civil partnership – complained in particular about the refusal to grant the second applicant paternity leave on the occasion of the birth of her partner's child.

The Court declared the application **inadmissible** as being manifestly ill-founded. It noted in particular that the institution of paternity leave pursued a legitimate aim, namely to allow fathers to play a greater role in their children's upbringing by being involved at an early stage, and to promote a more equal distribution of household tasks between men and women. Furthermore, the difference in treatment whereby, at the relevant time, only the biological father was eligible for paternity leave had not been based on sex or sexual orientation. Lastly, the Court noted that, following amendments introduced by a Law of 17 December 2012, the mother's partner was now entitled to carer's leave under the same conditions as paternity leave if he or she was not the child's biological parent.

### 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 **together 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.

### **Taddeucci and McCall v. Italy**

30 June 2016

This case concerned the inability of the applicants, a gay 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 on family grounds because the national immigration legislation did not allow unmarried partners to obtain a family member's residence permit. The applicants alleged in particular that this refusal amounted to discrimination based on their sexual orientation.

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, finding that the refusal to grant a residence permit to the applicants on family grounds was an unjustified discrimination. The Court found in particular that the situation of the applicants, a gay couple, could not be understood as comparable to that of an unmarried heterosexual couple. As they could not marry or, at the relevant time, obtain any other form of legal recognition of their situation in Italy, they could not be classified as "spouses" under national law. The restrictive interpretation of the notion of family member constituted, for homosexual couples, an insuperable obstacle to the granting of a residence permit on family grounds. That restrictive interpretation of the concept of family member, as applied to the second applicant, did not take due account of the applicants' personal situation and in particular their inability to obtain a form of legal recognition of their relationship in Italy. The Court therefore concluded that, in deciding to treat homosexual couples in the same way as heterosexual couples without any spousal status, Italy had breached the applicants' right not to be subjected to discrimination based on sexual orientation in the enjoyment of their rights under Article 8 of the Convention.

## Search and seizure at an association's premises

### **Pending applications**

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

Application communicated to the Georgian Government on 3 December 2013

See above, under "Right to life and prohibition of inhuman or degrading treatment", "Allegations of ill-treatment by the police or by private individuals".

#### **LAMBDA İstanbul LGBTI Solidarity Association v. Turkey (no. 53335/08)**

Application communicated to the Turkish Government on 15 November 2018

This case concerns a search carried out and the seizure of documents at the applicant association's premises.

The Court gave notice of the application to the Turkish Government and put questions to the parties under Article 8 (right to respect for home), Article 11 (freedom of association), 13 (right to an effective remedy), 14 (prohibition of discrimination) and 35 (admissibility criteria) of the Convention.

## Social protection

### **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 cohabitees, 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.

#### **Aldeguer Tomás v. Spain**

14 June 2016

This case concerned the applicant's complaint of having been discriminated against on the ground of his sexual orientation in that he was denied a survivor's pension following the death of his partner, with whom he had lived in a *de facto* marital relationship. The applicant had been unable to marry his partner under the law in force during the latter's lifetime. Three years after his partner's death, the law legalising same-sex marriage in Spain entered into force.

The Court held that there had been **no violation of Article 14** (prohibition of discrimination) **read in conjunction with Article 8** (right to respect for private and family life) of the Convention **and Article 1** (protection of property) **of Protocol No. 1 to the Convention**, finding that there had been no discrimination in the applicant's case. In particular, his situation following the entry into force of the law

legalising same-sex marriage in Spain in 2005 had not been relevantly similar to that of a surviving partner of a heterosexual cohabiting couple, who had been unable to marry his or her partner before the law legalising divorce entered into force in 1981 and who qualified for a survivor's pension by virtue of a provision of that law. Moreover, States had, at the relevant time, a certain room for manoeuvre ("margin of appreciation") as regards the timing of the introduction of legislative changes in the field of legal recognition of same-sex couples and the exact status conferred on them, an area which was regarded as one of evolving rights with no established consensus.

## 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.

### **Pending application**

### Lee v. the United Kingdom (no. 18860/19)

Application communicated to the UK Government on 6 March 2020

## 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.

### **Kaos Gl v. Turkey**

22 November 2016

This case concerned the seizure of all the copies of an issue of a magazine published by a cultural research and solidarity association for gays and lesbians. The applicant association complained in particular of the seizure in question and the criminal proceedings brought against the president of the association and editor-in-chief of the magazine.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It found in particular that the ground of protecting public morals relied upon by the authorities had been insufficient to justify the seizure order and the confiscation of all the copies of the issue of the magazine in question for more than five years. The Court accepted that the measures taken to prevent access by specific groups of individuals – including minors – to this publication might have met a pressing social need. However, it emphasised that the domestic authorities had not attempted to implement a less harsh preventive measure than seizure of all the copies of the issue in question, for example by prohibiting sale of the magazine to persons under the age of 18 or requiring special packaging with a warning for minors.

### **Bayev and Others v. Russia**

20 June 2017

The case concerned a complaint brought by three gay rights activists about legislation in Russia banning the promotion of homosexuality, also known as the "gay propaganda law" (in a series of legislative acts – most recently in 2013 – "promoting non-traditional sexual relationships" among minors was made an offence punishable by a fine). As a protest against these laws, the applicants had staged demonstrations between 2009 and 2012. They were subsequently found guilty of administrative offences and given fines. The applicants complained about the ban on public statements concerning the identity, rights and social status of sexual minorities, alleging that it was discriminatory.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention and a **violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 10**. It found in particular that, although the laws in question aimed primarily at protecting minors, the limits of those laws had not been clearly defined and their application had been arbitrary. Moreover, the very purpose of the laws and the way they were formulated and applied in the applicants' case had been discriminatory and, overall, served no legitimate public interest. Indeed, by adopting such laws the authorities had



reinforced stigma and prejudice and encouraged homophobia, which was incompatible with the values of a democratic society.

#### **Pending applications**

**[Rakurs v. Russia \(no. 44403/15\), Maximum Centre v. Russia \(no. 49258/15\), Perm Human Rights Centre \(Perm HRC\) v. Russia \(no. 35816/16\) and Coming Out v. Russia \(no. 4798/15\)](#)**

Applications communicated to the Russian Government on 22 March 2017

These cases concern the Russian Foreign Agents Act. The applicants are NGOs active in the field of the protection of LGBT (lesbian, gay, bisexual, and transgender) rights. The Court gave notice of the applications to the Russian Government and put questions to the parties under Article 10 (freedom of expression), Article 11 (freedom of assembly and association) and Article 14 (prohibition of discrimination) of the Convention.

**[Klimova v. Russia \(no. 33421/16\)](#)**

Application communicated to the Russian Government on 26 October 2017

This case concerns in particular the conviction of the applicant, who is the founder of the online support project "Children-404", of an administrative offence for "propaganda of homosexuality among minors".

The Court gave notice of the application 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.

See also: Alekseyev and Others v. Russia, judgment (Committee) of 16 January 2020.

### 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.

### **Lashmankin and Others v. Russia**

7 February 2017

In this case, 23 applicants from different parts of Russia alleged that local authorities had imposed severe restrictions on peaceful assemblies planned by them, without any proper justification. As regards four applicants, in particular, their proposed assemblies were as follows: a gay pride march and meeting in the centre of St Petersburg on 26 June 2010; on the same day, a picket in four different administrative districts of St Petersburg; a gay pride march and meeting in St Petersburg on 25 June 2011.

The Court held, in particular, that there had been a **violation of Article 11** (freedom of assembly) **interpreted in the light of Article 10** (freedom of expression) of the Convention. It found that the authorities had placed such severe limitations on the applicants' plans for public events, that they had violated the applicants' right to freedom of assembly. The restrictions included requirements for the location, time or manner of conduct that undermined the very purpose of the event. These restrictions – along with a wide range of other measures taken against the applicants – had been disproportionate and unjustified. Furthermore, they had been based on legal provisions which had not protected against an arbitrary and discriminatory use of the authorities' power. The Court also held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention **in conjunction with Article 11**, finding that there had been no legal procedure available that would have allowed the applicants to properly challenge the authorities' decisions.

### **Alekseyev and Others v. Russia**

27 November 2018

This case, which brought together 51 applications from seven applicants, concerned the continued refusal by Russian authorities to approve organisers' requests to hold LGBT rallies. The applicants complained that they had been banned from holding public LGBT events, that there had been no effective remedy to address this fact, and that, in their handling of the applicants' requests, the authorities had acted in a discriminatory manner.

The Court found that this case was relevantly similar to the case of *Alekseyev v. Russia*, on which it had adjudicated in 2010 (see above), and that it ought to replicate its judgment in that case in the present instance. It held that there had been a **violation of Article 11** (right to freedom of assembly), a **violation of Article 13** (right to an effective remedy) and a **violation of Article 14** (right not to be discriminated against) of the Convention concerning seven of the applications in question<sup>3</sup>. It found, in particular, that the decision to reject the applicants' requests to hold public LGBT events could not be justified by concerns over public disorder and

<sup>3</sup> The Court found that the 44 other applications were inadmissible as they had not been lodged within six months of the authorities' decision not to approve a public LGBT event.

was in breach of their right to freedom of assembly. It also found that the absence of any requirement on the authorities to make a decision on the events prior to the dates on which they were to be held had amounted to an absence of effective remedy. In addition, the decision to block the LGBT events had clearly been motivated by the authorities' disapproval of the theme of the demonstrations, and had thus amounted to discrimination, in violation of Article 14. Lastly, the Court reiterated the obligation of States to implement judgments and noted that Russia would need to make a sustained and long-term effort to adopt general measures, particularly in relation to issues of freedom of assembly and discrimination.

### **Zhdanov and Others v. Russia**

16 July 2019

This case concerned the authorities' refusal to register organisations set up to promote and protect the rights of lesbian, gay, bisexual and transgender (LGBT) people in Russia. The applicants submitted in particular that the refusal to register the applicant organisations had breached their freedom of association and had been discriminatory.

The Court decided to declare **inadmissible** the complaints lodged by one of the applicants, namely the well-known LGBT activist Nikolay Alekseyev, as an abuse of the right of application because of his offensive and threatening statements about the Court and its judges on social networking accounts. As concerned the remaining applicants, it held that there had a **violation of Article 11** (freedom of association) of the Convention and a **violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 11** in all applications. The Court found in particular that the decisive ground for refusing to register the applicant organisations had been because they promoted LGBT rights. It further considered that that ground could not be reasonably or objectively justified and had, moreover, amounted to discrimination on the grounds of sexual orientation. The Court also held, in one of the applications, that there had been a **violation of Article 6 § 1** (right to a fair trial – access to court) of the Convention.

### **Pending applications**

#### **Alekseyev and Others v. Russia (no. 31782/15)**

Applications communicated to the Russian Government on 15 January 2016

These cases concern the applicants' complaints about the ban on holding LGBT (lesbian, gay, bisexual, and transgender) 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.

#### **Rakurs v. Russia (no. 44403/15), Maximum Centre v. Russia (no. 49258/15), Perm Human Rights Centre (Perm HRC) v. Russia (no. 35816/16) and Coming Out v. Russia (no. 4798/15)**

Applications communicated to the Russian Government on 22 March 2017

These cases concern the Russian Foreign Agents Act. The applicants are NGOs active in the field of the protection of LGBT (lesbian, gay, bisexual, and transgender) rights. The Court gave notice of the applications to the Russian Government and put questions to the parties under Article 10 (freedom of expression), Article 11 (freedom of assembly and association) and Article 14 (prohibition of discrimination) of the Convention.

### **Berkman v. Russia (no. 46712/15)**

Application communicated to the Russian Government on 12 November 2018

This application concerns the applicant's attempt to participate in an "authorised" public event to support LGBT (lesbian, gay, bisexual, and transgender) people, scheduled on 12 October 2013 in St Petersburg.

The Court gave notice of the application to the Russian Government and put questions to the parties under Article 5 (right to liberty and security), Article 11 (freedom of assembly and association), Article 14 (prohibition of discrimination) and Article 35 (admissibility criteria) 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 v. France**

9 June 2016

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 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. It reiterated in particular its finding in *Schalk and Kopf v. Austria* (see above) that neither Article 12, nor Article 8 taken together with Article 14, could be interpreted as imposing an obligation on Contracting States to grant same-sex couples access to marriage. The Court also observed that it had reiterated that conclusion in the *Hämäläinen v. Finland* (see above) and *Oliari and Others v. Italy* (see above) judgments and, given the short period of time that had elapsed since then, it did not see any reason not to reach the same conclusion in the present case. Furthermore, the Court noted that the Law of 17 May 2013 had granted same-sex couples access to marriage in France; the applicants were therefore free to marry.

### **Orlandi and Others v. Italy**

14 December 2017

See above, under “Right to respect for private and family life”, “Civil unions”.

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

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### **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

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See in particular:

- the Council of Europe webpage on **“Sexual orientation or gender identity”**
  - **Handbook on European non-discrimination law – 2018 edition**, European Union Fundamental Rights Agency / Council of Europe, 2018
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