



March 2012

This factsheet does not bind the Court and is not exhaustive

# Sexual Orientation Issues

## Marriage

### **Schalk and Kopf v. Austria (no. 30141/04)**

24.06.2010

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.

The Court 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 European Convention on Human Rights 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. 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 European Convention on Human Rights.

### **Pending case**

#### **Chapin and Charpentier v. France (no. 40183/07) - statement of facts**

Marriage of two men conducted by the mayor of Bègles and subsequently declared null and void by the courts.

## Adoption

### **Fretté v. France (no. 36515/97)**

26.02.2002

Refusal of a request by a homosexual man for prior authorisation to adopt a child.

The Court held 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. No violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private life). In addition, violation of Article 6 - right to a fair hearing.

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

22.01.2008

Refusal of a request by a single woman in a stable relationship with another woman for prior authorisation to adopt a child.

The Court observed 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. Violation of Article 14 of the Convention, taken in conjunction with Article 8.

Measures taken following the judgment.

### **Gas and Dubois v. France (no. 25951/07)**

15.03.2012

The applicants were two cohabiting women. The case concerned the refusal of the first applicant's request for simple adoption of the second applicant's child.

No violation of Articles 14 (prohibition of discrimination) and 8 (right to respect for private and family life): the Court considered 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 (judgment in *Schalk and Kopf v. Austria*).

### **Pending cases**

#### **X and Others v. Austria (no. 19010/07) – statement of facts**

Refusal of request by first applicant to adopt her partner's child.  
([hearing](#) held on 01.12.2011 - [webcast](#))

## Parental rights

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### **Salgueiro da Silva Mouta v. Portugal (no. 33290/96)**

21.12.1999

Joint custody withdrawn from a father on account of his homosexuality.

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". The Court held that that distinction, based on considerations relating to sexual orientation, was not acceptable under the Convention. Violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private and family life).

[Measures](#) taken following the judgment.

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

28.09.2010

Following her divorce, the applicant's former husband became the parent with care of their children and she was required to contribute financially to the cost of their upbringing. In 1998, she started living with another woman in an intimate relationship. The regulations that applied at that time - prior to the introduction of the Civil Partnership Act - provided for reduced child maintenance where the absent parent had entered into a new relationship, married or unmarried, but took no account of same-sex relationships.

The Court held that the rules on child maintenance prior to the introduction of the Civil Partnership Act had discriminated against those in same-sex relationships. Violation of Article 14 (prohibition of discrimination) in conjunction with Article 1 of Protocol No. 1 (protection of property).

### **Pending case**

#### **Hallier and Lucas v. France (no. 46386/10) – statement of facts**

Paternity leave refused to a woman on the occasion of the birth of her female's partner.

## Employment

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### **Lustig-Prean and Beckett v. the United Kingdom (nos. 31417/96 and 32377/96) and Smith and Grady v. the United Kingdom (nos. 33985/96 and 33986/96)**

27.09.1999

### **Perkins and R. v. the United Kingdom (nos. 43208/98 and 44875/98) and Beck, Copp and Bazeley v. the United Kingdom (nos. 48535/99, 48536/99 and 48537/99)**

22.10.2002

Applicants discharged from the armed forces solely on account of their homosexuality, following investigations into their sexual orientation.

The Court held 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". Violations of Article 8 (right to respect for private life). In certain cases, violation of Article 13 (right to an effective remedy). In *Beck, Copp and Bazeley*: no violation of Article 3 (prohibition of inhuman or degrading treatment).

Measures taken following these judgments (law changed)

## Social rights

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### **Mata Estevez v. Spain (no. 56501/00)**

10.05.2001 (decision on the admissibility)

Ineligibility of a homosexual couple for a survivor's pension.

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

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

22.07.2010

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 prior to July 2007 there had been a violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life). 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.

## Right to a lease

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### **Karner v. Austria (no. 40016/98)**

24.07.2003

Refusal to allow a homosexual to succeed to a tenancy following the death of his partner. The Court could not accept that a blanket exclusion of persons living in a homosexual relationship from succession to a tenancy was necessary for the protection of the family. Violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for home).

Measures taken following this judgment.

### **Kozak v. Poland (no. 13102/02)**

02.03.2010

Refusal to allow a homosexual to succeed to a tenancy following the death of his partner.

The Court could not accept that a blanket exclusion of persons living in a homosexual relationship from succession to a tenancy was necessary for the protection of the family. Violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for home).

Execution of this judgment [pending](#).

## Freedom of assembly and association

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### **Bączkowski and Others v. Poland (no. 1543/06)**

03.05.2007

The applicants 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 Court observed 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. They had had only *post hoc* remedies available in respect of the decisions refusing permission for the event. It could reasonably be surmised that the real reason for the refusal had been the local authorities' opposition to homosexuality. Violation of Articles 11 (freedom of assembly and association), 13 (right to an effective remedy) and 14 (prohibition of discrimination).

Execution of this judgment [pending](#).

### **Alekseyev v. Russia (no. 4916/07, 25924/08 and 14599/09)**

21.10.2010

The case concerned the complaints by a Russian gay-rights activist about repeated rejections (2006, 2007, 2008) by the Moscow authorities of his requests to organise gay-pride marches.

The Court held 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 Mr Alekseyev had no effective remedy to challenge those bans, and that they had been discriminatory because of his sexual orientation. Violation of Articles 11 (freedom of assembly and association), 13 (right to an effective remedy) and 14 (prohibition of discrimination).

### **Pending cases**

#### **Genderdoc-M v. Moldova (no. 9106/06) - statement of facts**

Refusal of permission to hold a march in Chişinău.

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

Refusal to register a Lesbian, Gay, Bisexual and Transsexual association.

## Homophobia and ill-treatment in prison

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### **Vincent Stasi v. France (no. 25001/07)**

The case concerned the measures taken by prison authorities following ill-treatment of an inmate.

The Court 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. The Court has found no violation of Article 3.

### **Pending case**

#### **X. v. Turkey (no. 24626/09) – statement of facts**

The applicant complains among other things, of discrimination based on his homosexuality, in the context of his detention alone in a 5 m<sup>2</sup> cell, without any contact with the other detainees or access to walks in fresh air.

## Sexual orientation hate speech

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### [Vejdeland and Others v. Sweden](#)

09.02.2012

The case concerned the applicants' conviction for distributing in an upper secondary school approximately 100 leaflets considered by the courts to be offensive to homosexuals. The applicants had distributed leaflets by an organisation called National Youth, by leaving them in or on the pupils' lockers. The statements in the leaflets were, in particular, allegations that homosexuality was a "deviant sexual proclivity", had "a morally destructive effect on the substance of society" and was responsible for the development of HIV and AIDS. The applicants claimed that they had not intended to express contempt for homosexuals as a group and stated that the purpose of their activity had been to start a debate about the lack of objectivity in the education in Swedish schools.

The Court found that these statements had constituted serious and prejudicial allegations, even if they had not been a direct call to hateful acts. The Court stressed that discrimination based on sexual orientation was as serious as discrimination based on "race, origin or colour".

The Court concluded that there had been no violation of Article 10, 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.

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

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### **Pending case**

#### [K.N. v. France \(no. 47129/09\)](#)

Alleged risks of death and ill-treatment for a homosexual man in the event of his being returned to Iran.

**Media Contact :**  
**+33 (0) 3 90 21 42 08**