



June 2014

This factsheet does not bind the Court and is not exhaustive

# Homosexuality: criminal aspects

See also the factsheet on ["Sexual orientation issues"](#).

## Criminalisation of homosexual relations in general

### Dudgeon v. the United Kingdom

22 October 1981

The legislation then in force in Northern Ireland classified homosexual relations between males as a criminal offence. The applicant, who was a homosexual, complained that he experienced feelings of fear, suffering and psychological distress as a result of the very existence of the laws at issue, including fear of harassment and blackmail. He also complained that he had been subjected to an investigation into certain homosexual activities.

The European Court of Human Rights held that there had been a **violation of Article 8** (right to respect for private life) of the [European Convention on Human Rights](#). It found that the restriction imposed on the applicant, by reason of its breadth and absolute character, had been, quite apart from the severity of the possible penalties, disproportionate to the aims sought to be achieved, namely the protection "of the rights and freedoms of others" and "of morals".

### Norris v. Ireland

26 October 1988

The legislation then in force in Ireland classified male homosexual relations as a criminal offence. The applicant, who was a homosexual, complained about this legislation, which in his view entailed an excessive interference with his right to respect for his private life – including his sexual relationships.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. It found that it could not be maintained that in Ireland there was a "pressing social need" to make homosexual acts criminal offences. In particular, although members of the public who regarded homosexuality as immoral might be shocked, offended or disturbed by such acts, this could not on its own warrant the application of penal sanctions when consenting adults alone were involved.

### Modinos v. Cyprus

22 April 1993

The applicant was a homosexual in a relationship with another male adult. He was the President of the "Liberation Movement of Homosexuals in Cyprus". He stated that he had suffered great strain, apprehension and fear of prosecution by reason of the legal provisions which criminalised certain homosexual acts.

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 existence of this legislation continuously and directly affected the applicant's private life.

### A.D.T. v. the United Kingdom (application no. 35765/97)

31 July 2000

The applicant mainly argued that his prosecution and conviction for participating, in private and in his own home, in sexual acts with more than one consenting adult of the male sex, constituted interference with his private life.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. In its view, the acts in question were purely private in nature and so the respondent State's margin of appreciation was narrow. There was no "pressing social need" to justify the legislation in question or its application in the proceedings against the applicant.

### **H. Ç. v. Turkey (no. 6428/12)**

3 June 2014 (strike-out decision)

The applicant's complaints in this case were directed primarily against the existence of laws in the "Turkish Republic of Northern Cyprus" (TRNC) which had the effect of criminalising certain homosexual acts between consenting adult males.

In April 2014 the applicant informed the Court that he wanted to withdraw the application as the relevant provisions of the Criminal Code in TRNC, criminalising homosexuality, had been amended. The Court considered that, in these circumstances, the applicant may be regarded as no longer wishing to pursue his application. Furthermore, the Court found no special circumstances regarding respect for human rights as defined in the Convention which required the continued examination of the case. The Court therefore decided to strike the application out of its list of cases.

## Criminalisation of homosexual relations between adults and adolescents

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### **L. and V. v. Austria (nos. 39392/98 and 39829/98) and S.L. v. Austria (no. 45330/99)**

9 January 2003

The applicants were convicted for having homosexual intercourse with young males of 14 to 18. Austrian legislation classified as a criminal offence homosexual acts of adult men with young males between 14 and 18, but not with young females in the same age bracket.

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 life). It found no sufficient justification for the difference in treatment complained of.

See also: **Woditschka and Wilfing v. Austria**, judgment of 21 October 2004; **Ladner v. Austria**, judgment of 3 February 2005; **Wolfmeyer v. Austria**, judgment of 26 May 2005; **H.G. and G.B. v. Austria (nos. 11084/02 and 15306/02)**, judgment of 2 June 2005; **R. H. v. Austria (no. 7336/03)**, judgment of 19 January 2006; **E.B. and Others v. Austria** (nos. 31913/07, 38357/07, 48098/07, 48777/07 and 48779/07), judgment of 7 November 2013.

### **B.B. v. the United Kingdom (no. 53760/00)**

10 February 2004

The applicant was prosecuted for having sexual intercourse with an adolescent of 16. The legislation in force at the time (1998-1999) made it a criminal offence to engage in homosexual activities with men under 18 years of age, while the age of consent for heterosexual relations was 16.

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 life) of the Convention.

See also:

- **Sutherland v. the United Kingdom**, judgment of 27 March 2001: case struck out of the Court's list of cases, pursuant to Article 37 of the Convention – matter resolved after new legislation fixed the same age of consent for both heterosexual and homosexual relations;

- **Connell and Others v. the United Kingdom**, decision of 8 January 2002: case struck out of the Court's list of cases, pursuant to Article 37 of the Convention – matter resolved after settlement reached between the Government and the applicants.

**Santos Couto v. Portugal**

21 September 2010

The applicant argued that his conviction for homosexual activities with adolescents had been discriminatory as it had been based on his sexual orientation.

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. There had been no difference in treatment of the applicant in comparison with other persons in an analogous or relevantly similar situation and, thus, no discriminatory treatment.

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