



September 2023

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)

### Homophobic murder

#### **Stoyanova v. Bulgaria**

14 June 2022

This case concerned the homophobic murder of the applicant’s 26-year-old son. His attackers, secondary-school students, had singled him out for assault because they had thought he looked like a homosexual. The attackers had been found guilty of aggravated murder, but had been given sentences which were below the statutory minimum after the courts took into account mitigating factors such as their young age and clean criminal records. The applicant alleged that the Bulgarian authorities’ legal response to the homophobic motive underlying the murder of her son had been inadequate – in particular, because of the lack of statutory provisions making such a motive an aggravating factor for the crime of murder.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **taken together with Article 2** (right to life) of the Convention, finding that, despite the clearly established finding that the reason behind the attack on the applicant’s son had been the perpetrators’ hatred for homosexuals, there had not been any tangible legal consequences in the Bulgarian courts. In the Court’s view, this was chiefly because of the fact that Bulgarian criminal law had not properly equipped the courts to respond rather than because of the manner in which they had dealt with the case. The Court noted, in particular, that under the Bulgarian Criminal Code, murder motivated by hostility towards the victim on account of his or her actual or presumed sexual orientation was not aggravated or otherwise treated as a more serious offence. Furthermore, under **Article 46** (binding force and execution of judgments) of the Convention, the Court gave an indication on how the breach of the Convention in the applicant’s case, which had resulted from the content of the relevant Bulgarian criminal law, as interpreted and applied by the Bulgarian courts,

could be avoided in the future. In this regard, the Court indicated that Bulgaria should ensure that violent attacks (in particular, those resulting in the victim's death) motivated by hostility towards the victim's actual or presumed sexual orientation were in some way treated as aggravated in criminal-law terms.

(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.

### **Aghdgomelashvili and Japaridze v. Georgia**

8 October 2020

This case concerned a police raid on the office of a lesbian, gay, bisexual and transgender organisation in Tbilisi. The applicants, who worked at the organisation, complained that the police had insulted and threatened them, and put them through humiliating strip-searches. They submitted that they had been subjected to physical and mental abuse with clear homophobic and/or transphobic overtones, which had moreover been overlooked in the course of the ensuing ineffective investigation.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention under its **substantive limb taken in conjunction with Article 14** (prohibition of discrimination) and a **violation of Article 3** under its **procedural limb taken in conjunction with Article 14**, finding that the State had been responsible for the homophobic and/or transphobic police abuse that had been inflicted on the applicants and the absence of an effective investigation into the officers' grossly inappropriate behaviour. Of particular concern for the Court was the fact that neither the police nor the Georgian Government had given reasons for the strip-searches, leading it to conclude that their sole purpose had been to embarrass and punish the applicants for their association with the LGBT community.

### **Sabalić v. Croatia**

14 January 2021

The applicant, who had been attacked in a bar by a man to whom she had disclosed her homosexual orientation, complained 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.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) **in conjunction with Article 14** (prohibition of discrimination) of the Convention. It found in particular that the minor-offence proceedings against the applicant's aggressor had not addressed the hate-crime element of the offence and had resulted in a derisory fine. Those shortcomings had amounted to a fundamental defect in the proceedings. It would therefore have been justified for the authorities to terminate or annul the minor-offence proceedings and to re-examine the case, instead of them rejecting the applicant's criminal complaint on grounds of double jeopardy.

See also: **Beus v. Croatia**, judgment (Committee) of 21 March 2023.

### **Women's Initiatives Supporting Group and Others v. Georgia**

16 December 2021

The applicants in this case were 35 Georgian nationals and two non-governmental organisations set up to promote and protect the rights of lesbian, gay, bisexual and transgender (LGBT) people in Georgia. The case concerned an attack by a mob on LGBT demonstrators on 17 May 2013 – the International Day Against Homophobia – in central Tbilisi.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) **in conjunction with Article 14** (prohibition of discrimination) of the Convention, both on account of the authorities' failure to protect the peaceful demonstrators from homophobic and transphobic aggression and of the ensuing inadequate investigation. It found in particular that the authorities had failed to take measures to protect the LGBT demonstrators from the mob, despite being aware of the risks associated with the event. There was furthermore evidence, namely video footage by independent journalists, of official connivance in the acts of

violence and underlying prejudice. Indeed, the Court could not exclude the possibility that the unprecedented scale of the violence had been influenced by the authorities' failure to carry out a timely and objective investigation into the attacks on the LGBT community during the previous year's event, which was also the subject of a case before the Court where violations of the Convention were found (see, above, *Identoba and Others v. Georgia*). The Court also held that there had been a **violation of Article 11** (freedom of association) of the Convention **in conjunction with Article 14** in the present case, finding that the authorities had never made it their priority to put in place effective measures to protect the applicants. They had not evaluated the resources necessary in the planning phase of the event and had limited their role to designing a dispersal plan.

### **Lapunov v. Russia**<sup>1</sup>

12 September 2023<sup>2</sup>

This case concerned the alleged taking of the applicant from his place of work in Grozny to the local police headquarters, where he had been, along with other men, badly beaten and threatened seriously by police officers because of his sexual orientation. Those allegations were against a background of a reported "purge" of homosexual or presumed homosexual people in the Chechen Republic by the authorities there. The applicant submitted in particular that he had been tortured and unlawful detained by Chechen police officers on account of his sexual orientation, and that the investigation into this matter had not been effective.

Given the applicant's plausible allegations, and the Russian Government's failure to refute those allegations, the Court held that he had been detained and tortured by State agents, in **violation of Article 3** (prohibition of torture) of the Convention. The Court also held that the investigation into the treatment of the applicant had been ineffective, in **violation of Article 3** of the Convention. The Court further held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 3** of the Convention in respect of the application. In this regard, it noted in particular that there did not appear to have been reasonable steps to investigate the role the applicant's sexual orientation might have had in his ill-treatment. Indeed, the refusals to open a criminal case contained no assessment of the possible motives. Lastly, the Court held that there had been a **violation of Article 5** (right to liberty and security) of the Convention, having established that the applicant had been detained by agents of the State without any legal grounds.

### **Romanov and Others v. Russia**<sup>3</sup>

12 September 2023<sup>4</sup>

This case encompassed six separate applications involving a total of eleven applicants. It concerned Russia's alleged failure to protect the applicants, all members of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community, from homophobic attacks and to conduct an effective investigation into the incidents. Some applicants also complained that they had been arrested and detained unlawfully during peaceful pro-LGBTI demonstrations.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) **read in the light of Article 14** (prohibition of discrimination) of the Convention in respect of seven of the applicants, finding that the domestic authorities had failed to take measures to prevent the hate-motivated attacks. It also held that there had been a **violation of Article 3 read in the light**

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<sup>1</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the European Convention on Human Rights ("the Convention").

<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](#).

<sup>3</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

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

**of Article 14** of the Convention in respect of eight of the applicants, finding that the authorities had failed to conduct an effective investigation into their allegations of assault motivated by homophobia. The Court noted with great concern that this appeared to be common practice in dealing with hate crimes against LGBTI people in Russia. In this case the Court further found **violations of Article 5 § 1** (right to liberty and security) **and Article 11** (freedom of assembly and association), **taken alone or together with Article 14** of the Convention in respect of some of the applicants.

See also:

### **Genderdoc-M and M.D. v. Republic of Moldova**

14 December 2021

#### **Pending applications**

##### **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.

##### **Bednarek and Others v. Poland (no. 58207/14)**

Application communicated to the Polish Government on 9 February 2021

This case concerns acts of violence allegedly motivated by hatred against LGBTI (lesbian, gay, bisexual, transgender and intersex) persons.

The Court gave notice of the application to the Polish Government and put questions to the parties under Articles 3 (prohibition of inhuman or degrading treatment), 13 (right to an effective remedy) and 14 (prohibition of discrimination) of the Convention.

## Aggressive homophobic campaigns

### **Oganezova v. Armenia**

17 May 2022

This case concerned an aggressive homophobic campaign against the applicant, a well-known member of the lesbian, gay, bisexual and transgender (LGBT) community in Armenia, including an arson attack in May 2012 on the bar she co-owned and ran in Yerevan.

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, finding it established that the Armenian authorities had failed to provide adequate protection to the applicant from homophobic attacks and hate speech and to conduct a proper investigation into the hate-motivated ill treatment against her including the arson attack on the club and the subsequent homophobic attacks.

## 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 (decision – strike out)

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 out** the application **out** of its list of cases, noting in particular that the applicant had been granted asylum in the Netherlands, and finding 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**, 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.

### **B and C v. Switzerland (nos. 889/19 and 43987/16)**

17 novembre 2020

The applicants, a Gambian and a Swiss national respectively, lived in Switzerland together until the second applicant's death at the end of 2019. The first applicant had been in Switzerland since 2008. His application for asylum was rejected, as the Swiss authorities found his claims of previous ill-treatment not credible. He risked being returned to Gambia following the rejection of his partner's application for family reunification and submitted that he was at risk of ill-treatment if returned.

The Court held that there would be a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention if the first applicant were deported to the Gambia on the basis of the domestic decisions in his case. While considering that criminalisation of homosexual acts was not sufficient to render return contrary to the Convention, it found, however, that the Swiss authorities had failed to adequately assess the risk of ill-treatment for the first applicant as a homosexual person in the Gambia and the availability of State protection against ill-treatment from non-State actors. The Court also noted that several independent authorities had noted that the Gambian authorities were unwilling to provide protection for LGBTI people.

See *also*, among others:

### **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**<sup>5</sup>

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)

## 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.

**Berkman v. Russia**<sup>6</sup> (see also below, under "Freedom of assembly and association (Article 11 of the Convention)")

1 December 2020

This case concerned a public LGBTI (lesbian, gay, bisexual, transgender and intersex) meeting in St Petersburg and the authorities' failure to protect participants from aggressive counter-demonstrators. The applicant complained in particular that her arrest and subsequent detention had been arbitrary and unlawful.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention because the applicant's arrest during the meeting had been unlawful. It found in particular that the arrest in question had lacked reasons and legal grounds. Notably, according to her arrest record she had been taken to the police station for the purpose of drawing up an administrative-offence report. Such a measure was permitted under domestic law if it was not possible to write the report on the spot. The Russian Government did not, however, show that in the applicant's case drawing up such a report at the site of the protest had been impossible. Moreover, the domestic authorities had never assessed in a meaningful manner the necessity of her transfer to the police station.

## 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*.

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<sup>5</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

<sup>6</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

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>7</sup> in respect of the second applicant's child. They maintained that this decision had infringed their right to private and family life in a discriminatory manner.

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

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

19 February 2013 (Grand Chamber)

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

<sup>7</sup> Simple adoption enables a second legal parent-child relationship to be established in addition to the original parent-child relationship based on blood ties (as opposed to full adoption, where the new legal relationship replaces the original one).

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) taken **in conjunction with Article 8** (right to respect for private and family life) of the Convention on account of the difference in treatment of the applicants in comparison with unmarried different-sex couples in which one partner wished to adopt the other partner's child. It further held that there had been **no violation of Article 14 taken in conjunction with Article 8** when the applicants' situation was compared with that of a married couple in which one spouse wished to adopt the other spouse's child. The Court found in particular that the difference in treatment between the applicants and an unmarried heterosexual couple in which one partner sought to adopt the other partner's child had been based on the first and third applicants' sexual orientation. No convincing reasons had been advanced to show that such difference in treatment was necessary for the protection of the family or for the protection of the interests of the child. At the same time, the Court underlined that the Convention did not oblige States to extend the right to second-parent adoption to unmarried couples. Furthermore, the case was to be distinguished from the case *Gas and Dubois v. France* (see above), in which the Court had found that there was no difference of treatment based on sexual orientation between an unmarried different-sex couple and a same-sex couple as, under French law, second-parent adoption was not open to any unmarried couple, be they homosexual or heterosexual.

## 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.

See also:

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

6 September 2022 (decision on the admissibility)

## **Pending applications**

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

Application communicated to the German Government on 13 January 2017

The second and the third applicant in the case form a female same-sex registered civil partnership. The second applicant had donated an egg cell which was inseminated by an anonymous sperm donation and then transferred into the third applicant's womb. The first applicant was given birth by the third applicant. The applicants complain about the domestic authorities' refusal to register the second applicant, who in the meantime adopted the child, as second parent.

The Court gave notice of the application to the German 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.

### **A.D.-K. and Others v. Poland (no. 30806/15)**

Application communicated to the Polish Government on 26 February 2019

This case concerns the domestic authorities' refusal to include the child of a same-

sex couple in the register of civil status.

The Court gave notice of the application to the Polish 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.

Similar application pending: [A.P. and R.P. v. Poland](#) (no. 1298/19), communicated to the Polish Government on 8 December 2020.

## Conjugal visits in detention

### [Duță v. Romania](#)

14 May 2020 (Committee decision – strike out)

This case concerned the refusal to allow a homosexual prisoner to have conjugal visits.

Taking note of the friendly settlement reached between the applicant and the Romanian Government, the Court was satisfied that respect for human rights as defined in the Convention and its Protocols did not require it to continue the examination of the case. It therefore decided to **strike** the application **out** of its list of cases.

## Contraindications to blood donation, 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 and decided to **strike** them **out** of its list of cases.

### [Drelon v. France](#)

8 September 2022

This case (two applications) concerned, first, the collection and retention, by the French blood donation service (EFS) of personal data reflecting the applicant's presumed sexual orientation – together with the rejection of his criminal complaint for discrimination – and, second, the refusal of his offers to donate blood, together with the dismissal by the *Conseil d'État* of his judicial review application challenging an order of 5 April 2016 which amended the selection criteria for blood donors.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention on account of the collection and retention of the personal data concerned. Addressing the first application, it considered that the collection and retention of sensitive personal data constituted an interference with the applicant's right to respect for his private life. That interference had a foreseeable

legal basis as the authorities' discretionary power to set up a health database for such purpose was sufficiently regulated by the then applicable Law of 6 January 1978. Whilst the collection and retention of personal data concerning blood donor candidates contributed to guaranteeing blood safety, it was nevertheless particularly important for the sensitive data involved to be accurate, up-to-date, pertinent and non-excessive in relation to the goals pursued; and the data retention period had to be limited to what was necessary. The Court observed, first, that even though the applicant had refused to answer the questions about his sex life during the medical examination prior to the blood donation, the data included a contraindication to giving blood that was specific to men who had intercourse with other men. It concluded that the data in question was based on mere speculation without any proven factual basis. Secondly, after noting that the Government had not shown that the data retention period (until 2278 at the time) had been regulated in such a way that it could not exceed the period necessary for the aim pursued, the Court found that the excessive retention period had made it possible for the data to be used repeatedly against the applicant, thus entailing his automatic exclusion from being a blood donor. As to the second application, the Court **rejected** as out of time the complaints about the decisions excluding the applicant from blood donation on 16 November 2004 and 9 August 2006. As regards the decision of 26 May 2016 the Court found that the applicant could not invoke a violation of Articles 8 and 14 (prohibition of discrimination) of the Convention in respect of the order of 5 April 2016 as it was not yet in force on the date of the refusal in question.

## Denial for employment

### Pending application

#### [Oleynik v. Russia \(no. 4086/18\)](#)<sup>8</sup>

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

<sup>8</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

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.

## Gestational surrogacy and parent child relationship

### **D.B. and Others v. Switzerland (nos. 58817/15 and 58252/15)**

22 November 2022

This case concerned a same-sex couple who were registered partners and had entered into a gestational surrogacy contract in the United States under which the third applicant had been born. The applicants complained in particular that the Swiss authorities had refused to recognise the parent child relationship established by a US court between the intended father (the first applicant) and the child born through surrogacy (the third applicant). The Swiss authorities had recognised the parent child relationship between the genetic father (the second applicant) and the child.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention in respect of the applicant child and **no violation of Article 8** (right to respect for family life) in respect of the intended father and the genetic father. Regarding the child, it noted in particular that, at the time he was born, domestic law had afforded the applicants no possibility of recognition of the parent-child relationship between the intended parent and the child. Adoption had been open to married couples only, to the exclusion of those in registered partnerships. Not until 1 January 2018 had it become possible to adopt the child of a registered partner. Thus, for nearly seven years and eight months, the applicants

had had no possibility of securing definitive recognition of the parent child relationship. The Court therefore held that for the Swiss authorities to withhold recognition of the lawfully issued foreign birth certificate in so far as it concerned the parent-child relationship between the intended father and the child born through surrogacy in the United States, without providing for alternative means of recognising that relationship, had not been in the best interests of the child. In other words the general and absolute impossibility, for a significant period of time, of obtaining recognition of the relationship between the child and the first applicant had amounted to a disproportionate interference with the third applicant's right to respect for private life. Switzerland had therefore overstepped its margin of appreciation by not making timely legislative provision for such a possibility. Regarding, on the other hand, the first and second applicants, the Court first observed that the surrogacy arrangement which they had used to start a family had been contrary to Swiss public policy. It went on to hold that the practical difficulties they might encounter in their family life absent recognition under Swiss law of the relationship between the first and third applicants were within the limits of compliance with Article 8 of the Convention.

## Legal recognition of same-sex relationships

### **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 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.

### **Fedotova and Others v. Russia**<sup>9</sup>

17 January 2023 (Grand Chamber)

This case concerned the complaint by three same-sex couples that it was impossible for them to have their relationships as couples recognised and protected by law in Russia. In their view, this amounted to a violation of their right to respect for their private and family life.

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 respondent State had overstepped its margin of appreciation and had failed to comply with its positive obligation to secure the applicants' right to respect for their private and family life. It noted in particular that the case-law of the Court showed that Article 8 of the Convention had already been interpreted as requiring a State Party to ensure legal recognition and protection for same-sex couples by putting in place a "specific legal framework". The clear ongoing trend observed within the States Parties towards legal recognition and protection of same-sex couples was consolidated by the converging positions of a number of international bodies. Several Council of Europe bodies had stressed the need to ensure legal recognition and protection for same-sex couples within the member States. The Court further observed that at the time when the applicants had applied to the Russian authorities for legal recognition of their respective relationships, Russian law had not provided for that possibility. Nor had there been any change subsequently. It noted that the respondent State had not informed it of any intention to amend its domestic law in order to allow same-sex couples to enjoy official recognition and a legal regime offering protection. The Court had already rejected the Russian Government's argument that the majority of Russians disapproved of homosexuality, in the context of cases concerning freedom of expression, assembly or association for sexual minorities. It had repeatedly held that although individual interests must on occasion be subordinated to those of a group, democracy did not simply mean that the views of a majority always had to prevail: a balance had to be achieved which ensured the fair treatment of people from minorities and avoided any abuse of a dominant position. The Court had consistently declined to endorse policies and decisions which embodied a predisposed bias on the part of a heterosexual majority against a homosexual minority.

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<sup>9</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

### **Buhuceanu and Others v. Romania**

23 May 2023

The applicants in the case were all same-sex couples. The couples had been living together for varying lengths of time when they respectively gave notice to their local registry offices of their intention to marry. Those requests were rejected. The applicants complained that, as it was impossible for them to enter together into any type of legally recognised union in Romania, they had no means of legally safeguarding their relationships.

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, overall, none of the arguments put forward by the Romanian Government to justify the restriction on legal unions to heterosexual marriage could outweigh the applicants' interest in having their relationships recognised. It noted, in particular, that Romania had a duty to provide adequate recognition and protection for same-sex relationships, although it had discretion as to the form and the protections afforded.

### **Maymulakhin and Markiv v. Ukraine**

1 June 2023

The two applicants in the case had been living together in a stable and committed relationship since 2010. In October 2014, they applied to seven different registry offices to marry but were unable to do so on the grounds that the Constitution and the Family Code of Ukraine explicitly defined marriage as a family union between a woman and a man. They complained that it was not possible under Ukrainian law for them to marry or to enter into any other type of civil union recognising their relationship and that that amounted to discrimination on the basis of sexual orientation.

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, finding that the difference in treatment in the present case, which had consisted in the unjustifiable denial to the applicants as a same-sex couple of any form of legal recognition and protection as compared with opposite-sex couples, had amounted to discrimination against the applicants on the grounds of their sexual orientation. It noted, in particular, that the applicants had been treated differently from opposite-sex couples on account of the lack of any legal recognition and protection for them and that their sexual orientation had been the sole basis for the difference in treatment. The Court considered that the State had failed to provide any justification for treating them differently. In particular, the broadly worded aim of the protection of the traditional family could not in itself be accepted as a valid ground justifying the denial of any legal recognition and protection for same-sex couples.

#### **Pending applications**

**Formela v. Poland (no. 58828/12) and three other applications**

**Szypuła v. Poland (no. 78030/14) and Urbanik and Alonso Rodriguez v. Poland (no. 23669/16)**

**Grochulski v. Poland (no. 131/15)**

**Przybyszewska v. Poland (no. 11454/17) and nine other applications**

**Starska v. Poland (no. 18822/18)**

**Meszkes v. Poland (no. 11560/19)**

**Handzlik-Rosuł and Rosuł v. Poland (no. 45301/19)**

Application communicated to the Polish Government on 20 June 2020

These applications concern complaints brought by same-sex couples that Polish law does not allow them to marry or enter any other type of civil union.

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

#### **Grochulski v. Poland (no. 131/15)**

Application communicated to the Polish Government on 20 June 2020

The applicant in this case complains about the temporary impossibility of subscribing together with his same-sex life partner to a private life insurance scheme for couples. The Court gave notice of the application to the Polish 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.

## 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

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.

See also: **Giuliano v. Hungary**, Committee decision (inadmissible) of 6 July 2021.

### **Association ACCEPT and Others v. Romania**

1 June 2021

This case concerned the interruption of an LGBT (lesbian, gay, bisexual, and transgender) rights film screening by a group shouting homophobic abuse and the domestic authorities' alleged failure to protect the applicants – an LGBT rights non-governmental organisation and five private individuals who had attended the screening – from homophobic verbal abuse and threats and to conduct a subsequent effective investigation into the applicants' complaint.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 8** (right to respect for private and family life) in respect of the individual applicants, finding that the Romanian authorities had failed to discharge their positive obligation to investigate in an effective manner whether the verbal abuse directed towards the individual applicants constituted a criminal offence motivated by homophobia. In doing so, the authorities had shown their own bias towards members of the LGBT community. The Court also held that there had been a **violation of Article 14 taken in conjunction with Article 11** (freedom of assembly and association) of the Convention in the present case, finding that the authorities had failed to ensure that the event in question (which was organised by the applicant association and attended by the individual applicants) could take place peacefully by sufficiently containing the homophobic counter-demonstrators.

### **Valaitis v. Lithuania**

17 January 2023

In January 2018 the applicant published an essay on the Internet portal of a major daily newspaper, *lrytas.lt*, mentioning a finalist of the televised singing competition *The Voice*, who had publicly come out as homosexual. Twenty-one comments were posted in reply, insulting both the applicant and homosexuals, going so far as to suggest that homosexuals should be burnt in Auschwitz. Before the Court, the applicant submitted that the Lithuanian authorities had not taken effective measures to protect homosexuals from hate speech.

The Court held that there had been **no violation of Article 13** (right to an effective remedy) of the Convention in respect of the applicant. It noted in particular that the reopening of the investigation in the present case, following its judgment in the case *Beizaras and Levickas v. Lithuania* (see above), had demonstrated a clear and positive shift in the State authorities' attitude towards the prosecution of hate crimes, who had drawn the necessary conclusions from that judgment. The Court did not find that the reopened pre-trial investigation in the applicant's case had been discontinued or suspended owing to a prejudicial attitude by the authorities. Although it had not led to anyone being charged or convicted, it had not, on the whole, fallen short of the requirements under Article 13 of the Convention.

### **Pending application**

#### **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.

## 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.

### Honner v. France

12 November 2020

This case concerned the refusal to award contact rights to the applicant in respect of the child which had been born to her former partner in Belgium using assisted reproductive techniques while the two women were a couple, despite the fact that the applicant had raised the child during his early years. The applicant submitted that that refusal had breached her right to respect for her family life.

The Court held that there had been **no violation of Article 8** (right to respect for family life) of the Convention, finding, in particular, that by rejecting the applicant's request on grounds of the child's best interests and by duly giving reasons for the decision, the French authorities had not failed to fulfil their positive obligation to guarantee effective respect for the applicant's right to respect for her family life.

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

16 September 2021

This case concerned proceedings the applicant had brought to contest the removal of her youngest child from her custody after her former husband had obtained a change in the custody arrangements ordered in the divorce judgment. The applicant submitted that the courts had acted in his favour because of her relationship with

another woman. She alleged, in particular, that the Polish courts had refused to grant her custody of her child on the grounds of her sexual orientation.

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. It found, in particular, that the applicant's sexual orientation and relationship with another woman had been consistently at the centre of deliberations and present at every stage of the judicial proceedings. It concluded that there had been a difference in treatment between the applicant and any other parent wishing to have full custody of his or her child. That difference had been based on her sexual orientation and therefore amounted to discrimination.

### **Callamand v. France**

7 April 2022

This case concerned the rejection of the applicant's request for contact rights with her former spouse's child, who had been conceived by medically assisted procreation. The applicant submitted that the rejection of her request had breached her right to respect for her private and family life. She also argued that she had been discriminated against in the enjoyment of her right to respect for her private and family life.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention in present case. Having noted, in particular, the existence of genuine personal links between the applicant and the child, which were protected by Article 8 of the Convention, the Court observed that the applicant had not sought the establishment of kinship or shared parental authority, but merely the possibility of continuing, occasionally, to see a child in respect of whom she had acted as a joint parent for more than two years since his birth. The Court emphasised, firstly, that it was difficult to see, from the reasoning set out by the Court of Appeal, which had seen no need to conduct a psychological assessment of the child, why it had departed from the assessment of the *tribunal de grande instance* and the public prosecutor's office regarding the acceptance of the applicant's request. It noted, secondly, that the reasons given in the appeal court judgment did not show that a fair balance had been struck between the applicant's interest in protecting her private and family life and the child's best interests. As regards, however, the applicant's complaint concerning discrimination on grounds of sexual orientation, the Court, having noted that that complaint had not been raised before the domestic courts, concluded that the domestic remedies had not been exhausted as required. It therefore declared that complaint **inadmissible**.

See also:

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

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

## 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

### LAMBDA İstanbul LGBTI – Solidarity Association v. Turkey

19 January 2021 (decision (Committee) on the admissibility)

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

The Court declared the application **inadmissible** as being manifestly ill-founded. It noted in particular that there was nothing in the case to suggest that the search had not been reasonably proportionate to the legitimate aim pursued, namely to prevent crime. Further, the applicant had been able to lodge an appeal against the search and to make submissions. In addition, no criminal proceedings had been instituted as a result of the search and all the documents seized had been returned to the applicant. Moreover, in the light of the documents in the file and the information provided by the parties, the applicant association had not in any way substantiated the extent to which its associative activities had actually been affected or hindered by the search, as it claimed.

## 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.

## 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**<sup>10</sup>

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

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<sup>10</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

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.

### **Lee v. the United Kingdom**

7 December 2021 (decision on the admissibility)

This case concerned the refusal by a Christian-run bakery to make a cake with the words "Support Gay Marriage" and the QueerSpace logo on it which the applicant – who was associated with QueerSpace, an organisation for the lesbian, gay, bisexual and transgender community in Northern Ireland – had ordered and the proceedings that had followed. The applicant complained that his rights had been interfered with by a public authority – the Supreme Court – by its decision to dismiss his claim for breach of statutory duty, and that the interference had not been proportionate.

The Court declared the application **inadmissible** for non-exhaustion of domestic remedies. It noted in particular that the applicant had not invoked his Convention rights at any point in the domestic proceedings. By relying solely on domestic law, the applicant had deprived the domestic courts of the opportunity to address any Convention issues raised, instead asking the Court to usurp the role of the domestic courts.

### **Macatė v. Lithuania**

23 January 2023 (Grand Chamber)

The applicant was an openly lesbian children's author. The case concerned a children's book of fairy tales that she had written containing storylines about same-sex marriage. Distribution of the book had been suspended soon after its publication in 2013. It had been resumed one year later after the book had been labelled as possibly harmful to children under the age of 14. The applicant complained in particular about the temporary suspension of the distribution of her book and its subsequent labelling as harmful to children, alleging that those measures had been taken solely because the book contained a positive depiction of same-sex relationships.

The Grand Chamber held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It noted in particular that the measures against the applicant's book had intended to limit children's access to information depicting same-sex relationships as essentially equivalent to different-sex relationships. In particular the Court could not see how, according to the national courts and the Lithuanian Government, certain passages – a princess and a shoemaker's daughter sleeping in one another's arms after their wedding – had been sexually explicit. Nor was it convinced by the Government's argument that the book had promoted same-sex families over others. To the contrary, the fairy tales had advocated respect for and acceptance of all members of society in a fundamental aspect of their lives, namely a committed relationship. As a result, the Court found that restricting children's access to such information had not pursued any aims that it could accept as legitimate.

### Lenis v. Greece

27 June 2023 (decision on the admissibility)

This case concerned the posting by the applicant – who was the Metropolitan (equivalent of a bishop) of the Greek Orthodox Church for Kalavryta and Aigialeia at the time of the events – of a homophobic article on his personal blog in December 2015, when the Greek Parliament had been about to debate proposed legislation introducing civil unions for same-sex couples, and his subsequent prosecution and sentencing for incitement to hatred and discrimination.

The Court declared the application **inadmissible** as being incompatible *ratione materiae* with the provisions of the Convention. In the present case, it noted in particular that the applicant's right to freedom of expression as protected by the Convention had not been violated, as his views had been liable to cause discrimination and hatred. Moreover, even though criticism of certain lifestyles on moral or religious grounds was not in itself exempt from protection under Article 10 of the Convention, when remarks went so far as to deny LGBTI people their human nature, and were coupled with incitement to violence, then the engagement of Article 17 (prohibition of abuse of rights) of the Convention had to be considered. Considering the nature and wording of the statements in the impugned article, the context in which they had been published, their potential to lead to harmful consequences and the reasons found by the Greek courts, which had carefully assessed the evidence before them and had conducted a balancing exercise which had taken into account the applicant's right to freedom of expression, the Court found that the statements sought to deflect Article 10 of the Convention from its real purpose. In addition, the remarks related directly to an issue which was of high importance in modern European society – protection of people's dignity and human value irrespective of their sexual orientation.

### **Pending application**

#### Klimova v. Russia (no. 33421/16)<sup>11</sup>

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

<sup>11</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

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**<sup>12</sup>

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**<sup>13</sup>, 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,

<sup>12</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

<sup>13</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

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.

See also: **Women's Initiatives Supporting Group and Others v. Georgia**, judgment of 16 December 2021.

**Lashmankin and Others v. Russia**<sup>14</sup>

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

<sup>14</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

available that would have allowed the applicants to properly challenge the authorities' decisions.

### **Alekseyev and Others v. Russia**<sup>15</sup>

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>16</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 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**<sup>17</sup>

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.

<sup>15</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

<sup>16</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. See also: [Alekseyev and Others v. Russia](#), decision of 30 June 2020.

<sup>17</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.



**Berkman v. Russia**<sup>18</sup> (see also above, under “Right to liberty and security (Article 5 of the Convention)”)

1 December 2020

This case concerned a public LGBTI (lesbian, gay, bisexual, transgender and intersex) meeting in St Petersburg and the authorities’ failure to protect participants from aggressive counter-demonstrators. The applicant submitted in particular that the authorities had failed to ensure that the public meeting proceed peacefully. She argued that those breaches of her rights had been a part of the State’s discriminatory policy towards LGBTI people.

The Court held that there had been a **violation of the State’s obligations under Article 11** (freedom of assembly) of the Convention taken alone because the applicant’s arrest had prevented her from continuing to participate in the LGBTI meeting, without sufficient justification. It also held that there had been a **violation of the State’s obligations under Article 11 in conjunction with Article 14** (prohibition of discrimination) of the Convention, because the police had failed to take steps to facilitate access to the meeting and to protect the applicant from the counter protestors’ homophobic attacks. The Court held, however, that there had been **no violation of Article 14 taken in conjunction Article 11** as concerned the applicant’s allegation that the police officers had only arrested LGBTI participants and disregarded breaches of order by the counter-demonstrators. The Court found in particular that a State did not just have a duty under the Convention not to interfere with the right to freedom of assembly. For that right to be genuine and effective, the authorities also had an obligation to facilitate access to meetings and ensure participants’ safety. In the applicant’s case however the police, aware of the risk of tensions in advance and outnumbering the counter-demonstrators, had been passive in the face of the homophobic attacks. The Court stressed that the authorities’ duty to take steps to facilitate and protect had been all the more important in the case of the applicant, who belonged to a vulnerable minority group towards whom there had been a history of public hostility in Russia.

## 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.

<sup>18</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

### **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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