

LGBTI PERSONS' RIGHTS



DEPARTMENT FOR
THE EXECUTION OF
JUDGMENTS OF THE
EUROPEAN COURT OF
HUMAN RIGHTS

DG1

THEMATIC FACTSHEET

September 2021

LGBTI PERSONS' RIGHTS

These summaries are made under the sole responsibility of the Department for the Execution of Judgments of the European Court and in no way bind the Committee of Ministers.

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According to the European Court of Human Rights, the principle of non-discrimination is "fundamental" and underpins the Convention along with the rule of law and the values of tolerance and peace. Lesbian, gay, bisexual, transgender and intersex (LGBTI) persons have been for many centuries and are still subject to homophobia, transphobia and other forms of intolerance and discrimination (including criminalisation, marginalisation, social exclusion and violence) on the basis of their sexual orientation or gender identity. For this reason, States must take action to ensure the full enjoyment of the human rights of these persons.¹

This factsheet outlines a number of examples of general and, where appropriate, individual measures adopted and reported by States in the context of the implementation of the judgments of the European Court to safeguard and protect the rights of LGBTI persons including: decriminalisation of same-sex relationships, combating hate crimes, freedom of assembly and freedom of expression, legal recognition of gender identity, access of LGBTI persons to social rights, same-sex persons in the armed forces, same-sex couples and civil union laws, right of residence and private and family life, right to adoption, parental authority and custody of children, maintenance and succession of tenancy agreements.

¹ See Recommendation [CM/Rec\(2010\)5](#) on measures to combat discrimination based on sexual orientation or gender identity.
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1. DECRIMINALISATION OF HOMOSEXUAL RELATIONS

1.1. Homosexual relationships between adult men

Legislative amendment clarifying the scope of the concept of "in public" and the age limit for consensual homosexual relations

CYP / Modinos
(15070/89)

The European Court found a violation of Article 8 in relation to the existence of legislation criminalising certain homosexual acts. The applicant, a homosexual man in a relationship with another adult man, who was the chairman of the "Cyprus Homosexual Liberation Movement", claimed that the legislation criminalising certain homosexual acts was a source of great tension and fear of prosecution.

[Judgment final on](#)
[22/04/1993](#)

[Final Resolution](#)
[CM/ResDH\(2001\)152](#)

In order to prevent further violations, the 1998 Act and a 2000 amendment modified the Penal Code. The amended Code establishes that sexual intercourse between men is a crime punishable by five years' imprisonment only if committed in public, or where one of the persons is under the age of eighteen, regardless of where it is committed. In addition, sexual intercourse between men is a crime punishable by seven years' imprisonment if committed in the context of a relationship of dependence arising from any service, by an adult seducing a person under the age of eighteen, or for economic or commercial purposes. The term "in public" means a place which can be seen by the public or to which the public has a right of access with or without conditions.

Amendment of the criminal law concerning homosexual acts in private between two consenting men

IRL / Norris
(10581/83)

Following the European Court's judgment concerning interference with the applicant's right to privacy due to the existence of legislation prohibiting male homosexual acts, the *Criminal Law - Sexual Offences Act 1993* amended the criminal law concerning homosexual acts. Since the Act came into force, homosexual acts committed voluntarily and in private by males over the age of 17 and capable of consent are no longer crimes or offences under the Criminal Law.

[Judgment final on](#)
[26/10/1988](#)

[Final resolution](#)
[DH\(93\)62](#)

Decriminalisation of homosexual acts between two consenting adults

UK / Dudgeon
(7525/76)

The European Court found a violation of Article 8 due to the legislation in force in Northern Ireland which criminalised male homosexual relations. The applicant, a homosexual, complained that he had experienced feelings of fear, suffering and anxiety as a result of the very existence of the laws in question, including fear of bullying and blackmail. He further complained that he had been the subject of an investigation regarding certain homosexual activities.

[Judgment final on](#)
[22/10/1981](#)

[Final resolution](#)
[DH\(83\)13](#)

Following the Court's ruling, *The Homosexual Offences (Northern Ireland) Order 1982* amended the law so that homosexual acts between two consenting adults no longer constitute a criminal offence.

Repeal of legal provisions criminalising private homosexual acts between consenting men

UK. / A.D.T.
(35765/97)

The European Court found a violation of the applicant's right to respect for his private life because of his conviction for indecent assault in respect of consensual homosexual acts that took place in private at his home. In accordance with the law in force at the time, he was sentenced to two years' imprisonment and was released on parole. His home was searched, and certain items were seized and destroyed.

[Judgment final on 31/10/2000](#)

[Final Resolution CM/ResDH\(2010\)118](#)

The 2003 Act came into force in 2004. It repealed all the provisions that had led to the applicant's conviction, namely the articles of the Sexual Offences Act 1956 regarding sodomy and indecent assault, and an article of the Sexual Offences Act 1967. The Act focuses on the concept of "consent" and no longer provides for any specific offence for homosexual activities undertaken in private between consenting adults.

1.2. Elimination of discrimination in criminal law between heterosexual and homosexual acts with adolescents

Repeal of the criminal provision criminalising homosexual relations between consenting adult males aged over 14

AUT / L. and V.
(39392/98)

The European Court found a violation of Articles 14 and 8 of the Convention in relation to the applicants' criminal conviction for having homosexual relations with young men aged 14-18 between the 1980s and 1990s. The criminal law criminalised sexual relations between adult men and young men aged 14-18, but not between adult men and girls aged 14-18.

[Judgment final on 09/04/2003](#)

and S.L.
(45330/99)

In order to remedy this violation and to prevent similar violations, the provision of the Criminal Code found to be discriminatory was repealed in 2002. The applicants in the case of *L. and V. were* given the opportunity to request the reopening of the proceedings with a view to having the consequences of the convictions erased.

[Judgment final on 09/04/2003](#)

[Final Resolution CM/ResDH\(2007\)111](#)

Amendment of the law on the age of sexual majority for homosexual and heterosexual acts

UK. / B.B.
(53760/00)

The European Court found a violation of Articles 14 and 8 of the Convention in relation to the applicant's criminal conviction for having homosexual relations with a 16-year-old boy. The sexual offences legislation in force at the time of the events (1998-1999) criminalised homosexual relations with men under the age of 18, whereas the age of consent for heterosexual relations was 16.

[Judgment final on 07/07/2004](#)

[Final Resolution CM/ResDH\(2005\)99](#)

In order to comply with the European Court's judgment, the Sexual Offences Act 2000 amended the Sexual Offences Act so that the age of sexual majority is the same for both homosexual and heterosexual acts.

2. COMBATING HATE CRIMES, FREEDOM OF ASSEMBLY AND FREEDOM OF EXPRESSION

Measures to improve the adequacy and monitoring of hate crime investigations

GEO / Identoba and others
(73235/12)

In relation to a peaceful demonstration in Tbilisi in May 2012 to mark the International Day against Homophobia, which was violently disrupted by counter-demonstrators who outnumbered the demonstrators, the European Court found violations of Articles 3, 11 and 14 of the Convention. It noted that the authorities had failed to protect the demonstrators and had not conducted an effective investigation in view of establishing, in particular, the discriminatory cause of the attacks. Furthermore, they had failed to take the necessary measures to ensure that the demonstration could proceed peacefully.

[Judgment final on](#)
[12/08/2015](#)

[Action report](#)

[Status of execution: pending](#)

As part of the implementation of the Court's judgment, which is ongoing, the authorities focused on measures to improve the monitoring of hate crime investigations which included the establishment of specialised prosecutors and investigators as well as training activities for investigators, prosecutors, and judges in the field of hate crimes based on the Council of Europe's "HELP" programme.

The authorities also pointed out that, within the framework of the Council of Europe project entitled "Combating discrimination, hate crime and hate speech in Georgia", the methodology for collecting statistical data on hate crime continues to be improved.

Legislative measures and training activities to combat discrimination

MDA / Genderdoc-M
(9106/06)

The European Court found violations of Articles 11, 13 and 14 of the Convention in relation to the prohibition of a demonstration that the applicant association was planning to hold in May 2005 to encourage the adoption of laws on the protection of sexual minorities against discrimination. In particular, it found that the applicant association had not enjoyed an effective remedy under domestic law for the alleged violation of the right to freedom of assembly.

[Judgment final on](#)
[12/09/2012](#)

[Final Resolution](#)
[CM/ResDH\(2019\)239](#)

The 2008 law on public assemblies was adopted after the events related to this case. As a result, national courts examine complaints about the organisation of demonstrations, adopting decisions before the date of the proposed events. In 2013, the Anti-discrimination Act was adopted. It established procedures and remedies for the assessment of discrimination issues and created the Anti-Discrimination Council with quasi-judicial and investigative powers.

In addition, training courses on non-discrimination and equality were conducted for judges, prosecutors, court clerks and judicial assistants, with a view to equipping them with new skills and competences for dealing with discrimination cases. These courses were organised within the framework of the joint project with the European Union and the Council of Europe "Supporting efforts to prevent and combat discrimination in Moldova".

Unconstitutionality of laws requiring permits to march

The European Court found a violation of Articles 11, 13 and 14 concerning the refusal of the local authorities to give permission for a parade to raise awareness on discrimination against minorities, women and the disabled. The applicants, the Foundation for Equality (*Fundacja Równości*) and five of its members, campaign for gay rights. The march eventually went ahead, but without having been able to obtain a permit or a final decision prior to the scheduled date. This might have had a deterrent effect and discouraged people from participating in the demonstration.

POL / Baczkowski and others
(1543/06)

[Judgment final on](#)
[24/09/2007](#)

[Final Resolution](#)
[CM/ResDH\(2015\)234](#)

In 2006, the Constitutional Court declared unconstitutional the provisions of the 1997 Road Traffic Act that required organisers of assemblies that might interfere with road traffic to obtain prior permission. It thus became no longer compulsory to obtain permission to organise a march/parade. In 2014, the Constitutional Court issued a further ruling on the rights to gather publicly in line with the European Court's ruling in this case. In addition, the 2015 Act provided for an appeal procedure against the refusal to hold an assembly. Notice must be given to the authorities between 30 and 6 days prior to the date of the planned assembly. The municipal authorities must issue a decision at least 96 hours prior to the planned date. Appeals against this decision can be lodged with the regional court, which must decide within 24 hours. The order of the regional court can be appealed to the court of appeal, whose decision is final.

Criminal sanctions for incitement to hatred, discrimination and abuse of authority by public officials

In 2006, the applicants who participated in the annual LGBTI march in Bucharest were attacked by a group of people. The European Court found violations of Articles 3 and 14 of the Convention, finding that the investigation by the competent authorities had been ineffective as it lasted too long; was marked by serious shortcomings; and failed to take into account possible homophobic motivations.

ROM / M.C. and A.C.
(12060/12)

[Judgment final on](#)
[12/07/2016](#)

[Status of execution: pending](#)

With the aim of strengthening protection against hate crimes and ensuring effective investigations, since 2006 the Criminal Code provides for punishment for incitement to hatred or discrimination, as well as the abuse of authority by public officials. It also establishes that discriminatory motives for an offence, including sexual orientation, be an aggravating factor, which obliges the authorities to investigate these types of cases *ex officio*. Administrative laws serve to complement these criminal law protections, sanctioning various discriminatory acts, unless they qualify as offences under criminal law.

Case law balancing freedom of expression and the right to protection of reputation in the context of public debates on negative stereotypes of homosexual persons

The European Court found a violation of the applicant publishing company's right to freedom of expression because it had been ordered by the national courts to pay damages to a Member of Parliament for insulting him in an article concerning a parliamentary debate on the legal recognition of homosexual relationships. The article had been published in 2005 in a magazine owned by the applicant company.

SVN / Mladina D.D.
Ljubljana
(20981/10)

[Judgment final on](#)
[17/07/2014](#)

[Final Resolution](#)
[CM/ResDH\(2017\)111](#)

The Court stressed that the article had not been a gratuitous personal attack on the parliamentarian, but a response to remarks that he had made publicly and, in particular, to his behaviour, which could be said to have been aimed at ridiculing homosexuals and promoting negative stereotypes. In May 2014, in a similar case, the Constitutional Court, referring to the

findings of the European Court, changed its case law with the aim of striking a fair balance between freedom of expression and the right to protection of reputation. It referred the case back to the judge of the previous instance for a new decision adapted to the European Court's ruling.

3. LEGAL RECOGNITION OF GENDER IDENTITY

Case law establishing the duty to recognise civil status in accordance with the gender identity of the person

FRA / B.
(13343/87)

The European Court found a violation of the right to respect for the private and family life of the applicant, a transgender woman, who complained that the authorities had refused to recognise her true gender identity and to grant her the change of civil status that she requested.

[Judgment final on](#)
[25/03/1992](#)

[Final resolution](#)
[DH\(93\)52](#)

The Court of Cassation adopted case law in two rulings in 1992 to prevent similar cases from reoccurring. In these rulings, the Court established that when a transgender person “no longer possesses all the characteristics of his or her original sex and has taken on a physical appearance that brings him or her closer to the other sex, to which his or her social behaviour corresponds, the principle of respect for privacy justifies that his or her civil status should henceforth indicate the sex of which he or she has the appearance; the principle of the unavailability of the status of persons is not an obstacle to such a change”.

New law allowing transgender persons to have their sex and first name changed in their civil status in line with their gender identity, without having to prove irreversible medical and surgical treatment

FRA / A.P., Garçon et Nicot
(79885/12)

[Judgment final on](#)
[06/07/2017](#)

[Final Resolution](#)
[CM/ResDH\(2018\)179](#)

The European Court found that the refusal by the domestic courts between 2009 and 2013 to change the sex on the birth certificates of the applicants, who were transgender persons, on the grounds that they had not established the irreversible nature of the transformation of their appearance was contrary to the Convention. This condition was detrimental to their physical integrity and constituted a disproportionate interference with their right to privacy, as it involved an operation or medical treatment with a very high probability of sterilisation.

To remedy the negative consequences of the violation, one of the applicants obtained the rectification of his birth certificate and civil status after having requested it. Moreover, the conditions for transgender persons to obtain recognition of their identity and the modalities for changing their first name and sex in civil status records were amended by the Justice Modernisation Act 2016 and by an additional decree in 2017. Thus, if transgender persons demonstrate that the sex mentioned in their civil status does not correspond to the sex in respect of which they are perceived and present themselves in society, the data can be changed. A refusal cannot be based on the fact that they have not undergone medical treatment, surgery or sterilisation.

Case law establishing that gender reassignment surgery is no longer required for gender rectification in civil status

ITA / S.V.
(55216/08)

The European Court ruled on the refusal of the Italian authorities to authorise the change of a transgender woman's male first name on the grounds that she had not undergone gender reassignment surgery and that a final judicial decision establishing this had not been issued. The applicant was allowed by the Civil Court of Rome to undergo gender reassignment surgery in 2001. However, in 2003, she had to wait for the court to confirm that the operation had been carried out before she could obtain a final decision on her gender identity, and thus change her first name, as required by the 1982 law in force at the time.

[Judgment final on](#)
[11/01/2019](#)

[Final Resolution](#)
[CM/ResDH\(2020\)131](#)

In 2011, a legislative decree amended the 1982 law by establishing that it was no longer necessary to obtain a court decision in gender rectification proceedings concerning persons who have undergone surgery, since the rectification of civil status can be ordered by the judge at the same time as the decision authorising the surgery. In turn, the Constitutional Court has considered that, in order to obtain the rectification of sex in the civil status registers, a surgical intervention is no longer required, if it is demonstrated that the individual's transformation path is serious, univocal and definitive.

Case law allowing changes to official documents without the need for sex reassignment surgery

LIT/L.
(27527/03)

The European Court found that the State had failed in its obligation to ensure respect for the applicant's right to privacy, as he was prevented from undergoing full gender reassignment surgery and having his gender identification changed in official documents due to the absence of applicable legislation.

[Judgment final on 31/03/2008](#)

[Status of execution: pending](#)

Since 2017, draft laws regulating access to an administrative procedure for the legal recognition of gender identity has been underway with the cooperation of civil society and the Sexual Orientation and Gender Identity Unit of the Council of Europe. In the meantime, in 2020, an order of the Minister of Education was amended to allow transgender persons to change their registration for diplomas and certificates according to their gender identity. In 2021, the Ministry of Justice registered a draft amendment to an ordinance allowing transgender persons to change their name in accordance with their gender identity in an administrative procedure requiring provision of a medical certificate. Furthermore, from 2017 onwards, national courts have developed case law that allows for the modification of official documents even without irreversible gender reassignment surgery. A 2019 ruling by the Constitutional Court concluded that discrimination on the basis of gender identity is prohibited by the Constitution.

Proposal for the adoption of a legislative framework for the legal recognition of gender compatible with the Convention

MKD/X
(29683/16)

The European Court found a violation of the applicant's right to privacy as a transgender person due to the absence of a prompt, transparent and accessible procedure under domestic law that would have allowed him to change the sex/gender designation on his birth certificate. As a result, the applicant has been in a situation of distressing uncertainty about the recognition of his identity since 2011, when he filed the application with the Civil Registry.

[Judgment final on 17/04/2019](#)

[Status of execution: pending](#)

In 2020, the Civil Registry changed the mention of the sex/gender of the applicant. In addition, a draft law has been submitted to the Parliament with the cooperation of the Council of Europe on these issues and with the aim of raising awareness of the stakeholders concerned by this ruling during the public debate organised in 2019. The adoption of a clear legal framework is required, regulating the conditions and procedures for the legal recognition of gender and in line with Council of Europe standards, in particular Recommendation CM/Rec(2010)5 of the Committee of Ministers on measures to combat discrimination based on sexual orientation or gender identity. Amendments aimed at establishing a legislative framework for the legal recognition of gender compatible with the Convention have been approved by the government. On 6 May 2021, they were sent to Parliament for adoption.

Removal of the requirement of permanent incapacity to procreate in order to obtain a gender reassignment permit

TUR / Y.Y.
(14793/08)

The European Court found a violation of the applicant (a transgender persons)'s right to private life given the authorities' refusal to authorise gender reassignment surgery on the grounds that the Civil Code established permanent incapacity to procreate as a precondition for authorisation for such surgery.

[Judgment final on](#)
[10/06/2015](#)

[Final Resolution](#)
[CM/ResDH\(2018\)395](#)

In 2016, a domestic court authorized the applicant's new application for permission to undergo gender reassignment surgery. The applicant had that surgery, his name was changed and he was issued with identity documents in his gender. Furthermore, in 2017, the Constitutional Court removed the requirement of permanent incapacity to procreate from the Civil Code in order to be allowed to undergo a sex change.

Promulgation of a law for the legal recognition of gender identity

UK. / I.
(25680/94)

The European Court found violations of the right to respect for private and family life as well as the right to marry and found a family in relation to the State's refusal to legally recognise the applicants' gender reassignment, as transgender persons who had undergone surgery, and the impossibility for them to marry a person of the opposite sex to their new gender.

[Judgment final on](#)
[11/07/2002](#)

And

The Gender Recognition Act 2005 allows transgender persons who have taken decisive steps to live fully and permanently in their new gender identity to have this identity be legally recognised. The Gender Recognition Commission, established under this law, is responsible for deciding on applications for recognition of gender identity. If the application is accepted, the Commission issues a certificate of recognition of the gender identity and the beneficiaries are allowed to marry a person of the opposite sex.

UK. / Christine Goodwin
(28957/95)

[Judgment final on](#)
[11/07/2002](#)

[Final Resolution](#)
[CM/ResDH\(2011\)175](#)

4. ACCESS TO SOCIAL RIGHTS FOR LGBTI PERSONS

Equal access to extended health insurance coverage for couples regardless of their sex

AUT / P.B. and J.S.
(18984/02)

The European Court found that a same-sex couple was discriminated against because the first applicant was refused the extension of health insurance coverage to the second applicant. The legislation provided that only a close relative of the health insurance holder or a person of the opposite sex cohabiting with the health insurance holder could be considered a dependant. Prior to the judgment, an amendment had been introduced that no longer distinguished between same-sex and opposite-sex couples. The applicants were no longer subjected to unjustified differential treatment with regard to the extension of health insurance.

[Judgment final on](#)
[22/10/2010](#)

[Final Resolution](#)
[CM/ResDH\(2011\)42](#)

Coverage of medical costs for gender reassignment

SUI / Schlumpf
(29002/06)

The European Court found a disproportionate interference with the applicant's right to respect for her private life. This was due to the refusal of the applicant's health insurance to cover the costs of her gender reassignment operation because of the failure to comply with a two-year observation period, established by case law, as a condition for the coverage of the related medical costs. The time limit had been applied without taking into account the age of the applicant (67), whose decision to undergo the operation was likely to be affected by this time limit, thus jeopardising her freedom to define her gender identity.

[Judgment final on](#)
[05/06/2009](#)

[Final Resolution](#)
[CM/ResDH\(2011\)161](#)

In 2005, prior to the judgment, the applicant's civil status was amended to take into account her sex change. In 2010, a decision of the Federal Court concluded that, while the two-year waiting condition, decided by national case law, should continue to exist in general, an individual assessment would be possible in specific cases and reimbursement of medical expenses would not be automatically refused on the sole ground that the two-year condition had not been met.

Legal recognition of gender identity for social security benefits and allowances

UK. / Grant
(32570/03)

The European Court found a violation of the privacy of the applicant, a transgender female who had undergone gender reassignment surgery, and whose application for a pension in 1997 at the age of 60 was refused on the grounds that she was not entitled until she had reached the male retirement age of 65.

[Judgment final on](#)
[23/08/2006](#)

[Final Resolution](#)
[CM/ResDH\(2011\)173](#)

To remedy the negative consequences of the violation, the applicant was issued a gender recognition certificate and receives a state pension as a woman. In addition, the Gender Recognition Act 2005 allows transgender persons to be legally recognised in their acquired gender for matters such as social security benefits and receipt of a state pension, upon the issuance of a Gender Recognition Certificate.

5. HOMOSEXUAL PERSONS IN THE ARMED FORCES

Lifting the ban on homosexuals serving in the military

The European Court found an infringement of the applicants' right to respect for private and family life as a result of investigations into their homosexuality and their subsequent dismissal from the *Royal Air Force* in accordance with the policy banning homosexuals from the UK armed forces, as well as the lack of an effective remedy under domestic law.

In 2000, in response to the findings of the European Court, measures were adopted to prevent further violations, including the issuance of a Code of Social Conduct in the Armed Forces, which lifted the ban on homosexuals serving in the military. The Code of Conduct applies to all members of the armed forces, regardless of gender, sexual orientation, rank or status. In addition, it is consistent with policies of zero tolerance of harassment, discrimination and abuse. Guidance notes have been issued to commanding officers to explain the Code of Conduct and to give them specific guidance on its application.

UK. / Smith and Grady
(33985/96)

[Judgment final on](#)
[27/12/1999](#)

[Final Resolution](#)
[ResDH\(2002\)35](#)

6. SAME-SEX COUPLES AND CIVIL UNION LAWS

Legislation to end unequal treatment on the basis of sexual orientation

The European Court found that the 2008 law which allowed only opposite-sex couples to form civil unions discriminated against same-sex couples, as it aimed to give legal recognition to other non-marital unions, but unjustifiably excluded same-sex couples from its scope.

In response to these findings, the 2015 law was passed stipulating that “a contract between two adults, regardless of their sex, governing their life as a couple or civil union must be concluded by means of a notarial act in the presence of the parties (...)”. With this stipulation, the law put an end to differential treatment based on sexual orientation and the legislation now extends equal treatment to all citizens, regardless of their sexual orientation.

*GRC / Vallianatos and
Mylonas
(29381/09)*

[Judgment final on
07/11/2013](#)

[Final Resolution
CM/ResDH\(2016\)275](#)

Law regulating civil unions and cohabitation of couples regardless of sexual orientation

The European Court ruled on the rights of three same-sex couples who complained that the law did not allow them to marry or enter into any other form of civil union. It ruled that the protection provided by the law for same-sex couples did not meet the basic needs of a couple in a stable relationship.

As a result, the 2016 law was passed to regulate same-sex unions and cohabitation for all. The law establishes a status for heterosexual and homosexual cohabitants and creates, for homosexual couples only, a civil union described as a 'specific social formation'. The law provides for the sharing of the family name, the obligation of mutual moral and material assistance, a residence permit for the foreign spouse and the possibility of adopting the name of the spouse, among other rights. The text allows for the possibility to submit adoption applications on a case-by-case basis.

*ITA / Oliari and others
(18766/11)*

[Judgment final on
21/10/2015](#)

[Final Resolution
CM/ResDH\(2017\)182](#)

7. RIGHT OF RESIDENCE AND PRIVATE AND FAMILY LIFE

Legislation allowing residence permits for same-sex partners or couples

In response to the European Court's findings of sexual orientation discrimination against a female couple who had been refused a residence permit, the Same Sex Partnership Act 2003 has been replaced by the 2014 Act. This Act allows people in registered same-sex partnerships (or informal partnerships of more than three years) or living in a same-sex marriage to apply for a residence permit on grounds of family reunification through an administrative procedure before the Home Office.

*CRO / Pajić
(68453/13)*

[Judgment final on
23/05/2016](#)

[Final Resolution
CM/ResDH\(201\)387](#)

Law legally recognising same-sex relationships and allowing foreign same-sex partners to obtain residence permits for family purposes

The European Court found that in refusing the applicants' residence permit because, as part of a same-sex couple, they could not be considered to be family members as this only applied to spouses, there was a violation of the applicants' right not to be subjected to discrimination on grounds of sexual orientation.

*ITA / Taddeucci and MC Call
(51362/09)*

[Final judgement on
30/09/2016](#)

[Final Resolution
CM/ResDH\(2018\)125](#)

Thus, the 2016 Law on Civil Union of Committed and Stable Homosexual Relationships was enacted, allowing legal recognition and enabling a foreign partner to obtain a residence permit for family purposes. Since 2010, the Constitutional Court has recognised the marriage of same-sex couples concluded in other EU countries. In 2012, the Court of Cassation confirmed the legal possibility for same-sex couples to invoke the same rights as those granted to heterosexual couples.

8. RIGHT TO ADOPTION

Amendment of the civil law allowing the right to co-parent adoption for same-sex couples

*AUT / X and others
(19010/07)*

The European Court found a violation of the prohibition of discrimination for the applicants, two women in a stable same-sex relationship who complained that the courts had refused to grant the request of one of them to adopt the son of the other without severing the legal ties between the mother and the child (co-parental adoption).

[Judgment final on
19/02/2013](#)

[Final Resolution
CM/ResDH\(2014\)159](#)

The Court considered that the difference in treatment for unmarried homosexual couples and heterosexual couples where one of them would have wished to adopt the child of the other, was based on sexual orientation. In 2013, the Civil Code was amended and adoption by the second parent in same-sex couples is now possible. The new provisions also apply to adoption contracts concluded before August 2013.

Coherent application of the legislation stipulating the right to adopt by all unmarried persons over 28 years of age

*FRA / E.B.
(43546/02)*

The European Court found that the applicant's sexual orientation had been decisive in the authorities' rejection of her application, as French law allows the adoption of a child by a single person and thus opens the way for adoption by a single homosexual person.

[Judgment final on
22/01/2008](#)

[Final Resolution
CM/ResDH\(2009\)80](#)

The authorities indicated that the law had been misapplied, as it provides that any unmarried person over 28 years of age may apply to adopt. Moreover, the administrative judges who directly apply the Convention are well aware of the European Court's judgment at all levels of jurisdiction. The authorities therefore concluded that the principles identified by the Court could not be disregarded by the administrative court in the eventual examination of similar complaints submitted by the applicant or others in her situation. The judgment has been widely disseminated to the adoption departments of the General Councils and to the courts with jurisdiction in the matter.

9. PARENTAL AUTHORITY AND CUSTODY OF CHILDREN

Duty to interpret legal provisions on parental authority and custody rights regardless of sexual orientation and in the interests of the child

*PRT/ Salgueiro Da Silva
Mouta
(33290/96)*

The European Court found discrimination on the grounds of the applicant's sexual orientation because of the Court of Appeal's decision in 1996 to award his ex-wife parental authority over their daughter (born in 1987). The decision had been based primarily on the fact that the applicant was homosexual and that “the child [should] live in a traditional Portuguese family”. The Court held that this distinction, based on sexual orientation, could not be tolerated under the Convention.

[Judgment final on
21/03/2000](#)

[Final Resolution
CM/ResDH\(2007\)89](#)

In 1999 the applicant lodged a new appeal with the national courts and the question of the exercise of his parental authority was re-examined. In this connection, the authorities emphasised that, in accordance with the direct effect of the Convention in domestic law, the courts would assess the child's interests without using the grounds that had been considered contrary to the Convention. Furthermore, the courts would interpret the relevant provisions, in particular those concerning parental authority and custody rights, in such a way as to avoid violations similar to those found in the present case.

10. CHILD MAINTENANCE

Law establishing that same-sex relationships be taken into account equally with heterosexual relationships in determining the amount of maintenance

*UK. / J.M.
(37060/06)*

The European Court found that the legislation on child support applicable at the time discriminated against same-sex partners. The applicant, who was divorced, was obliged to contribute financially to her children's education. However, there was a significant difference between the amount she was held liable to pay and the amount she would have had to pay had she lived with a man, which constituted discrimination on the basis of her sexual orientation.

[Judgment final on
28/12/2010](#)

[Final Resolution
CM/ResDH\(2012\)231](#)

Prior to the judgment, the Civil Partnership Act 2004 amended the legislation by establishing that same-sex relationships be taken into account in an equivalent way to relationships between persons of the opposite sex and this was to be applicable to situations such as those in this case.

11. SUCCESSION OF TENANCY AGREEMENTS

Adoption of legislation and case law development allowing for the succession of a tenancy agreement for same-sex couples without the requirement of a marital relationship

*POL / Kozak
(13102/02)*

The European Court ruled that the applicant had been discriminated against because, after the death of his partner in 1998, he was refused succession to a rented flat on the grounds of his sexual orientation. Indeed, since 1989, the applicant had been living with his partner in a homosexual relationship, sharing a flat rented by the partner. The applicant's application to succeed to the tenancy after his partner's death was rejected on the basis of a 1994 law which established that, in order to succeed to a tenancy agreement, cohabitation must be marital.

[Judgment final on
02/06/2010](#)

[Final Resolution
CM/ResDH\(2013\)81](#)

The 1994 law was repealed in 2001. Since then, the rules governing the succession of a tenancy agreement have been included in the Civil Code so that, in the event of the death of a tenant, a person who had also lived *de facto* in the flat with the tenant obtains the tenancy agreement. Thus, in contrast with the previous regulation, the current law does not stipulate that cohabitation must be "marital". Furthermore, the Supreme Court, in a resolution of 2012, ratified the inheritance rights of a tenancy agreement for same-sex couples recalling that the case law of the European Court must be taken into account when interpreting domestic law.

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