

LGBTI PERSONS' RIGHTS



**Department for the
Execution of Judgments
of the European Court
of Human Rights**

DGI

Thematic factsheet

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**Department for the Execution of Judgments
of the European Court of Human Rights**

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INTRODUCTION

According to the European Court of Human Rights, the principle of non-discrimination is of a fundamental nature and underlies the Convention together with the rule of law, and the values of tolerance and social peace.¹ 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 human rights by these persons.²

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 European Court's judgments 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 *Minasyan and Others v. Armenia* (App. No. 59180/15), § 68.

² See Recommendation [CM/Rec\(2010\)5](#) on measures to combat discrimination based on sexual orientation or gender identity.

1. DECRIMINALISATION OF HOMOSEXUAL RELATIONS

1.1. Homosexual relationships between adults

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

The European Court found a violation of the applicant's right to respect for private life 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.

In order to prevent further violations, the 1998 Act and an amendment from 2000 modified the Criminal 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.

CYP / *Modinos*
(15070/89)

Judgment final on 22/04/1993

Final Resolution
CM/ResDH(2001)152

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

Following the European Court's judgment concerning interference with the applicant's right to respect for private life 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 men over the age of 17 and capable of consent are no longer crimes or offences under the Criminal Law.

IRL / *Norris* (10581/83)
Judgment final on 26/10/1988

Final resolution
DH(93)62

Decriminalisation of homosexual acts between two consenting adults

The European Court found a violation of the applicant's right to respect for private life due to the legislation in force in Northern Ireland which criminalised male homosexual relations. The homosexual applicant 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.

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.

UK. / *Dudgeon* (7525/76)
Judgment final on 22/10/1981

Final resolution
DH(83)13

Repeal of legal provisions criminalising private homosexual acts between consenting men

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.

UK. / *A.D.T.* (35765/97)
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. Discrimination in criminal law between heterosexual and homosexual relations regarding the age of consent

Decriminalisation of homosexual relations between adults and consenting minors aged over 14

The European Court found a violation of the Convention on account of the applicants' criminal conviction for having had homosexual relations with young men aged between 14 and 18 years in the 1980s and 1990s. The criminal law criminalised sexual relations between adult men and male minors aged 14-18, but not between adult men and female minors aged 14-18 years.

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 their convictions erased.

AUT / *L. and V.*

(39392/98)

Judgment final on 09/04/2003

AUT / *S.L.* (45330/99)

Judgment final on 09/04/2003

**Final Resolution
CM/ResDH(2007)111**

Amendment of the law on the age of consent for hetero- and homosexual relations

The European Court found a violation of the Convention in relation to the applicant's criminal conviction for having homosexual relations with a 16-year-old in 1998 to 1999. The sexual offences legislation in force at the time of the events, which made it a criminal offence to engage in homosexual activities with men under 18 years of age while the age of consent for heterosexual relations was fixed at 16 years of age.

In response to the Court's judgment, the Sexual Offences (Amendment) Act 2000, the relevant part of which came into force on 8 January 2001, reduced the age of consent for homosexual acts to the same age as for heterosexual acts.

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

Judgment final on 07/07/2004

**Final Resolution
CM/ResDH(2005)99**

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

Repeal of a law imposing limitations on the freedom to receive and impart information about the diversity of family models and relationships

This case concerned a violation of the freedom of expression on account of suspension of the distribution of a children's book, followed by the resumption of its distribution with warning labels stating that its contents could be harmful to children under the age of 14, based on the Minors Protection Act. The book contained two fairy tales depicting marriage between same-sex persons. The Court found that the measures imposed had intended to limit children's access to information depicting same-sex relationships and had not pursued any aims that could be accepted as legitimate.

LIT / *Macaté* (61435/19)

Judgment final on 23/01/2023

**Final Resolution
CM/ResDH(2025)134**

In December 2024, the Lithuanian Constitutional Court declared unconstitutional the impugned legal provision, recalling that under the Constitution the concept of family is neutral in terms of gender. It thus ruled that a legal regulation imposing limitations on the freedom to receive and impart information, including a legal regulation limiting information about the diversity of family models and relationships, hinders the development of minor children as mature and well-rounded personalities. Moreover, it is incompatible with the constitutional duty of the state to ensure the harmonious and comprehensive development of the child, based on respect for human rights and dignity, as well as on the values of equality, pluralism, and tolerance, which are inherent in a democratic society. Following the Constitutional Court's decision, the government emphasised that the provision in question lost its legal force and was removed from the Lithuanian legal system.

Legislative measures and training activities to combat discrimination

The European Court found several violations of the Convention due 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.

Following the events related to this case, the 2008 Law on public assemblies was adopted. 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".

MDA / Genderdoc-M

(9106/06)

Judgment final on 12/09/2012

Final Resolution

CM/ResDH(2019)239

Unlawful refusal to grant permission for a march to protest against discrimination

The European Court found different violations of the Convention rights of the applicant Foundation for Equality (*Fundacja Równości*) and five of its members on account of the refusal of the local authorities to give permission required under the Road Traffic Act for an assembly (a march) to raise awareness on discrimination against minorities – sexual, national, ethnic and religious – and also against women and disabled persons. The march eventually went ahead, but without the applicants having been able to obtain a permit or a final decision prior to the scheduled date. The Court found that the refusal to give authorisation could have had a deterrent effect and discouraged people from participating in the demonstration as without official authorisation, there was no guarantee of protection by the authorities against potentially hostile counter-demonstrators.

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 was thus no longer compulsory to obtain permission to organise such marches. 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.

POL / *Baczkowski and Others* (1543/06)

Judgment final on 24/09/2007

Final Resolution
CM/ResDH(2015)234

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 that the investigations by the competent authorities into the allegations of ill-treatment were ineffective as they lasted too long; were marked by serious shortcomings; and failed to take into account possible discriminatory motives.

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, are 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.

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

Judgment final on 12/07/2016

Status of execution:
pending

Convention compliant case law balancing freedom of expression and the right to protection of reputation in public debates on recognition of homosexual relationships

The European Court found a violation of the applicant publishing company's right to freedom of expression because it had been ordered by 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. 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

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

Judgment final on 17/07/2014

Final Resolution
CM/ResDH(2017)111

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

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

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.

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".

FRA / *B.* (13343/87)

Judgment final on 25/03/1992

Final resolution
DH(93)52

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

The European Court found that the refusal by the domestic courts between 2009 and 2013 to change the sex on the transgender applicants' birth certificates, 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 respect for private life, 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.

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

Judgment final on 06/07/2017

Final Resolution
CM/ResDH(2018)179

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

The European Court ruled on the refusal of the Italian authorities to authorise the change of a transgender woman's male first name. The applicant was allowed by the

ITA / *S.V.* (55216/08)

Judgment final on 11/01/2019

Final Resolution
CM/ResDH(2020)131

Civil Court of Rome to undergo gender reassignment surgery in 2001. However, 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. The Court found that the applicant's inability to obtain a change of forename over a period of two and a half years, on the grounds that the gender transition process had not been completed by means of gender reassignment surgery, amounted to a failure on the part of the respondent State to comply with its positive obligation to secure the applicant's right to respect for her private life.

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 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)

Judgment final on 31/03/2008

Status of execution:
pending

The European Court found that the State had failed in its obligation to ensure respect for the applicant's right to respect for private life, 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.

Since 2017, the preparation of legislative changes regulating access to an administrative procedure for the legal recognition of gender identity has been underway with the participation 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.

Changes in the domestic practice of legal gender recognition**MKD / X** (29683/16)

Judgment final on 17/04/2019

Status of execution:
pending

The European Court found a violation of the applicant's right to respect for private life 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.

In 2020, the Civil Registry changed the mention of the sex/gender of the applicant. The Administrative Court has started allowing lawsuits from transgender persons in legal gender recognition proceedings. In doing so, it has been remitting cases back to the Civil Status Registry with instructions to implement the Court's case-law on legal gender recognition. Moreover, the State Commission started ordering the Civil Status Registry to change the sex/gender marker in personal records of transgender people. However, despite such improvements in domestic practice, there is a

pressing need for a clear legal framework regulating the conditions and procedures for legal gender recognition in line with the Convention and the Court's case-law.

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

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

In 2016, a domestic court authorized the applicant's new application for permission to undergo gender reassignment surgery. The applicant underwent surgery, his name was changed, and he was issued with identity documents indicating 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.

TUR / Y.Y. (14793/08)
Judgment final on 10/06/2015

Final Resolution
CM/ResDH(2018)395

Promulgation of a law for the legal recognition of gender identity

The applicants in these cases are transgender persons who underwent gender reassignment surgery. The European Court found violations of the right to respect for private and family life as well as of the right to marry because of the state's refusal to legally recognise the applicants' gender reassignment.

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 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. / I. (25680/94)
Judgment final on 11/07/2002

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

The European Court found that a same-sex couple was discriminated against because the first applicant was refused the extension of his 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.

AUT / P.B. and J.S.
(18984/02)
Judgment final on 22/10/2010

Final Resolution
CM/ResDH(2011)42

Coverage of medical costs for gender reassignment

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

SUI / Schlumpf (29002/06)
Judgment final on 05/06/2009

Final Resolution
CM/ResDH(2011)161

undergo the operation was likely to be affected by this time limit, thus jeopardising her freedom to define her gender identity.

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

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.

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.

UK. / Grant (32570/03)
Judgment final on 23/08/2006

Final Resolution
CM/ResDH(2011)173

5. LGBTI 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 of 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 similar 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. LGBTI PERSONS IN DETENTION

Procedures for the classification and placement of detainees declaring their different sexual orientation upon admission

The European Court found that the homosexual applicant's detention conditions in solitary confinement for more than eight months, on grounds of his sexual orientation, without sufficient assessment of the real risk to his safety in shared prison areas, amounted to sustained discrimination and inhuman and degrading treatment.

TUR / X. (24626/09)
Judgment final on 27/05/2013

Final Resolution
ResDH(2022)295

In 2015, the Prison Administration Circular No. 167 provided that, in the absence of appropriate accommodation in a given penitentiary institution, detainees of a different sexual orientation are to be transferred to a suitable one. Placement and transfer decisions of the Administration and Observation Board are subject to judicial review. In 2020, the Regulation on "Centres for the Observation, Classification and Assessment of Convicts" established procedures for the classification and placement of convicts/detainees declaring their different sexual orientation upon admission. In the framework of a programme conducted by the General Directorate of Prisons and Detention Facilities, trainings are provided to staff in penitentiary institutions about the basic approach towards LGBTI detainees and on modalities for referral, intervention and follow-up in case of mental health issues

7. SAME-SEX COUPLES AND CIVIL UNION LAWS

Legislation allowing civil unions also between same-sex couples

The European Court found that the 2008 law which allowed only opposite-sex couples to form 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 hetero- 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

8. PROTECTION OF PERSONAL DATA OF LGBTI PERSONS

Legal prohibition on the collection of personal data on sexual orientation in the context of blood donation

FRA / Drelon (3153/16)

Judgment final on 08/12/2022

In this case, the European Court found a disproportionate interference with the applicant's right to respect for his private life, as a result of the collection in 2004 and retention by the *Établissement Français du Sang* (French Blood Establishment) of personal data containing information about his alleged sexual orientation, which had led to several refusals to accept the applicant as a blood donor.

The applicable legislation has been amended several times. According to a decree of 16 March 2022, sexual orientation is no longer considered a contraindication to donating blood. It is therefore now forbidden to collect data on this subject. Data collected prior to 2022 will continue to be kept by the *Établissement Français du Sang* but will only be accessible to a very limited number of medical practitioners, and they will be kept for 15 to 30 years from the last blood donation, depending on the nature of the data.

Final Resolution
CM/ResDH(2024)217

9. RESIDENCE RIGHTS, EXPULSION AND EXTRADITION

Legislation allowing residence permits for same-sex partners

In response to the European Court's findings of discrimination on account of sexual orientation 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 reasons

The European Court found a violation of the applicants' right not to be subjected to discrimination on grounds of sexual orientation due to the refusal of the second applicant's request for a residence permit for family reasons. The Italian authorities had argued that, as part of a same-sex couple, they could not be considered to be family members as this qualification only applied to "spouses", and as the applicants did not have the possibility of contracting marriage in Italy, unlike unmarried heterosexual couples, they could not be regarded as "spouses".

The respondent state enacted the 2016 Law on Civil Union of Committed and Stable Homosexual Relationships, 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.

ITA / Taddeucci and MC Call (51362/09)
Judgment final on 30/09/2016

Final Resolution
CM/ResDH(2018)125

Positive obligation of national authorities to assess the risks of ill-treatment of a homosexual person in the event of expulsion

In this case, the Court recalled that sexual orientation is part of a person's identity and that it could not be expected from a person to conceal it in order to avoid persecution. On this basis, it held that in view of the domestic courts' failure to sufficiently assess the risks of ill-treatment for the applicant as a homosexual person in the Gambia and the availability of state protection against ill-treatment emanating from non-State actors, his deportation to the Gambia, without a fresh assessment of these aspects, would breach the Convention.

SUI / B. and C. (889/19)
Judgment final on 17/02/2021

Final Resolution
CM/ResDH(2022)133

Following the Court's judgment, the applicant was granted a renewable authorisation to stay in Switzerland, which can ultimately lead to a residence permit. In November 2020, an online training session for the Swiss legal community was organised by the Sexual Orientation and Gender Identity (SOGIESC) Unit of the Council of Europe, the United Nations High Commissioner for Refugees (UNHCR), the Swiss Refugee Aid Organisation (OSAR), and the *Berner Rechtsberatungsstelle für Menschen in Not* (RBS Bern). The training focused on asylum claims based on sexual orientation and/or gender identity or religious affiliation in light of international refugee law and the European Convention on Human Rights.

10. RIGHT TO ADOPTION

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

The European Court found that the applicants, two women in a stable same-sex relationship, had been discriminated against because the domestic courts had refused 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). The Court considered that the difference in treatment of unmarried homosexual 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 accordingly and second-parent adoptions in same-sex couples are possible, i.e. without severing the family-law relationship with the biological parent of the same sex. The new provisions also apply to adoption contracts concluded before August 2013.

AUT / X and Others
(19010/07)

Judgment final on 19/02/2013

Final Resolution
CM/ResDH(2014)159

Possibility to apply for establishment of parenthood for intended parents in Denmark based on a foreign surrogacy agreement

In this case, the Court found a disproportionate interference with the right to private life of two children, born abroad through a commercial surrogacy agreement, on account of the authorities' refusal to allow their adoption by their intended mother. In particular, the Court was not satisfied that the Danish authorities, when refusing to allow the adoption, had struck a fair balance between the children's interest in obtaining a legal parent-child relationship with their intended mother. On 27 July 2023, the Family Law Agency reopened the case and granted the applicant intended parent the adoption of the children. Amendments to the Children Act (*børneloven*) came into force on 1 January 2025, providing for the possibility to apply for establishment of parenthood for intended parents in Denmark based on a foreign surrogacy agreement. To establish parenthood, a number of conditions must be met. For instance, the surrogate mother, at the time of concluding the surrogacy agreement, must have been residing abroad for at least the past six months. Two routes are now available in Denmark - stepchild adoption or establishment of parenthood for intended parent - to establish the same legal parent-child relationship as that of children and parents with a biological link.

DNK / K.K. and Others
(28212/21)

Judgment final on 06/03/2023

Final Resolution
CM/ResDH(2025)140

Coherent application of the law allowing adoption by all unmarried persons over 28 years of age

The European Court found that the applicant's sexual orientation had been decisive in the authorities' rejection of her application for adoption, 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.

FRA / E.B. (43546/02)

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.

Amendment to the Civil Code allowing the adoption of a registered same-sex partner's child

The European Court found that the authorities' refusal to recognise the legal parent-child relationship between a child born through gestational surrogacy abroad and the intended father, who was the genetic father's registered partner, was not in the child's best interests and amounted to a disproportionate interference with the child's right to respect for his private life.

In January 2018, an amendment to the Civil Code came into force which legalised the adoption of a registered partner's child. The applicants filed for adoption and the cantonal authorities granted the adoption in December 2018.

SUI / D.B. and Others
(58817/15)

Judgment final on 22/02/2023

Final Resolution
CM/ResDH(2023)386

11. PARENTAL AUTHORITY, CHILD CUSTODY, AND MAINTENANCE

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

The European Court found that the applicant had been discriminated against due to 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.

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. 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.

PRT / Salgueiro Da Silva Mouta (33290/96)

Judgment final on 21/03/2000

Final Resolution
CM/ResDH(2007)89

Legislative amendments to ensure non-discriminatory determination of maintenance

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.

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

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.

12. SUCCESSION OF TENANCY AGREEMENTS

Change of legislation to ensure non-discriminatory succession of tenancy

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.

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.

POL / Kozak (13102/02)

Judgment final on 02/06/2010

Final Resolution
CM/ResDH(2013)81

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