



By refusing any form of legal recognition and protection for same-sex couples, the Russian Federation breached the Convention

In today's **Grand Chamber** judgment¹ in the case of [Fedotova and Others v. Russia](#) (applications nos. 40792/10, 30538/14 and 43439/10), the European Court of Human Rights held, by fourteen votes to three, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the Russian authorities' refusal to ensure legal recognition and protection for the applicants as same-sex couples.

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 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. The Court 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 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. The Court 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.

The Court concluded 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

A legal summary of this case will be available in the Court's database HUDOC ([link](#))

Principal facts

The applicants, Irina Borisovna Fedotova, Irina Vladimirovna Shipitko, Dmitriy Nikolayevich Chunosov, Yaroslav Nikolayevich Yevtushenko, Ilmira Mansurovna Shaykhrznova and Yelena Mikhaylovna Yakovleva, are Russian nationals who were born between 1977 and 1994. The six applicants formed three same-sex couples.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

On various dates they gave notice of marriage to their local departments of the Register Office. The authorities rejected the notices, relying on Article 1 of the Russian Family Code, which defines marriage as a “voluntary marital union between a man and a woman”. The applicants challenged those decisions in the domestic courts.

Ms I. Fedotova and Ms I. Shipitko

Ms Fedotova and Ms Shipitko challenged the rejection of their notice of marriage in the Tverskoy District Court of Moscow. On 6 October 2009 the District Court dismissed their claim, holding that it did not satisfy the conditions set out in the Family Code in that the requirement of a “voluntary union between a man and a woman” was not met since the couple did not include a man. The applicants appealed. On 21 January 2010 the Moscow City Court upheld the judgment on appeal, endorsing the District Court’s reasoning. In addition, it held that the absence of an explicit ban on same-sex marriage could not be construed as State-endorsed acceptance of that type of marriage.

Mr D. Chunosov and Mr Y. Yevtushenko

Mr Chunosov and Mr Yevtushenko challenged the rejection of their notice of marriage in the Gryazi Town Court (Lipetsk Region). On 2 August 2013 the Town Court held that the refusal by the Register Office to examine the notice of marriage on its merits had been unlawful because under Russian law, such an examination was required for any notice of marriage. However, as far as the refusal to allow marriage between two persons of the same sex was concerned, the Town Court cited the Constitutional Court’s decision in the case of Mr E. Murzin, in which that court had held that neither the Constitution nor legislation bestowed the right to marry on same-sex couples. The applicants appealed against that judgment. On 7 October 2013 the Lipetsk Regional Court dismissed the applicants’ appeal, and on 12 March 2014 the same court refused them leave to lodge a cassation appeal.

Ms I. Shaykhrznova and Ms Y. Yakovleva

Ms Shaykhrznova and Ms Yakovleva challenged the rejection of their notice of marriage in the Gryazi Town Court (Lipetsk Region). On 12 August 2013 the Town Court found against them. On 18 November 2013 and 11 March 2014 respectively the Lipetsk Regional Court dismissed an appeal and a subsequent cassation appeal by the applicants, holding that their arguments were based on an incorrect interpretation of the provisions of family law and ran counter to established national traditions.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life) of the European Convention on Human Rights, the applicants complained 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 as protected by that Article.

The applications were lodged with the European Court of Human Rights on 20 July 2010, 5 April 2014 and 17 May 2014.

On 13 July 2021 a Chamber of the Court delivered a [judgment](#) in which, unanimously, it joined the three applications, declared them admissible, held that there had been a violation of Article 8 of the Convention and found that there was no need to examine the merits of the complaints under Article 14 of the Convention taken in conjunction with Article 8.

On 12 October 2021 the Government requested that the case be referred to the Grand Chamber under Article 43 of the Convention. On 22 November 2021 the panel of five judges of the Grand Chamber accepted that request.

Ms Dunja Mijatović, the Council of Europe Commissioner for Human Rights, exercised her right to intervene in the proceedings and submitted written comments.

The President gave the following third parties leave to intervene in the written procedure, and comments were received from them: LGB Alliance; ACCEPT Association jointly with the Youth LGBT Organisation Deystvie, the National LGBT Rights Organisation LGL, the “Love Does Not Exclude” Association, the Polish Society of Anti-Discrimination Law, Inicijativa Inakost, Insight Public Organisation and Sarajevo Open Centre; the Human Rights Centre of Ghent University; the Euroregional Center for Public Initiatives (ECPI), jointly with the Global Justice Institute (GJI); the AIRE Centre, jointly with the International Commission of Jurists (ICJ) and the Network of European LGBTIQ+ Families Associations (NELFA); and the Russian LGBT Network, jointly with Sphere Foundation.

On 16 March 2022 the Committee of Ministers of the Council of Europe adopted Resolution CM/Res(2022)2, by which the Russian Federation ceased to be a member of the Council of Europe as from 16 March 2022. On 22 March 2022 the Court, sitting in plenary session, adopted the “Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights”. It stated that the Russian Federation would cease to be a High Contracting Party to the Convention on 16 September 2022.

On 21 April 2022, observing that neither the Government nor the applicants had provided the names of the persons who would be appearing at the hearing on 27 April 2022, the President of the Court decided to cancel the hearing. The President also decided that the Court would deliberate on the case on 27 April 2022.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Robert **Spano** (Iceland), *President*,
Jon Fridrik **Kjølbro** (Denmark),
Síofra **O’Leary** (Ireland),
Georges **Ravarani** (Luxembourg),
Marko **Bošnjak** (Slovenia),
Krzysztof **Wojtyczek** (Poland),
Iulia Antoanella **Motoc** (Romania),
Branko **Lubarda** (Serbia),
Yonko **Grozev** (Bulgaria),
Armen **Harutyunyan** (Armenia),
Stéphanie **Mourou-Vikström** (Monaco),
Pere **Pastor Vilanova** (Andorra),
Alena **Poláčková** (Slovakia),
Tim **Eicke** (the United Kingdom),
Darian **Pavli** (Albania),
Frédéric **Krenc** (Belgium),
Mikhail **Lobov** (Russian Federation),

and also Søren **Prebensen**, *Deputy Grand Chamber Registrar*.

Decision of the Court

The wording of Article 58 of the Convention indicated that a State which ceased to be a Party to the Convention by virtue of the fact that it had ceased to be a member of the Council of Europe was not released from its obligations under the Convention in respect of any act performed by that State before the date on which it ceased to be a Party to the Convention. In its “Resolution on the

consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights”, adopted on 22 March 2022, the Court had stated that it “remain[ed] competent to deal with applications directed against the Russian Federation in relation to acts or omissions capable of constituting a violation of the Convention provided that they occurred until 16 September 2022”. In the present case, the facts giving rise to the violations of the Convention alleged by the applicants had taken place before 16 September 2022. Since the applications had been lodged with it in 2010 and 2014, the Court had jurisdiction to deal with them.

In letters sent on 17 May 2022, the Registry of the Court took note of Mr Chunusov’s wish to pursue the proceedings and asked the other five applicants to indicate whether they intended to pursue their applications. The applicants Ms Fedotova, Ms Shaykhrznova and Mr Yevtushenko replied on 30 May 2022 that, like Mr Chunusov, they wished to pursue the proceedings, while Ms Shipitko and Ms Yakovleva did not respond. The Court decided to strike applications nos. 40792/10 and 43439/14 out of its list of cases in so far as they concerned Ms Shipitko and Ms Yakovleva and to continue the examination of the case in respect of the other applicants.

Article 8

The Court observed that the present case concerned the absence in Russian law of any possibility of legal recognition for same-sex couples, regardless of the form such recognition might take.

The Court noted that its case-law 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”. It referred to its judgments in [Oliari and Others v. Italy](#) and [Orlandi and Others v. Italy](#). However, Article 8 of the Convention had to date not been interpreted as imposing a positive obligation on the States Parties to make marriage available to same-sex couples.

This case-law of the Court concerning Article 8 of the Convention, from which it followed that the States Parties had a positive obligation to provide legal recognition and protection to same-sex couples, was in line with the tangible and ongoing evolution of the States Parties’ domestic legislation and of international law. The Court reiterated that the Convention was a living instrument which had to be interpreted in the light of present-day conditions and of the ideas prevailing in democratic States today. A failure by the Court to maintain a dynamic and evolutive approach would risk rendering it a bar to reform or improvement.

As far as the present case was concerned, the Court had taken note, through its case-law, of an ongoing trend towards legal recognition and protection of same-sex couples in the States Parties. For example, the Court had observed in [Schalk and Kopf v. Austria](#) in 2010: “[T]here is an emerging European consensus towards legal recognition of same-sex couples. Moreover, this tendency has developed rapidly over the past decade. Nevertheless, there is not yet a majority of States providing for legal recognition of same-sex couples. The area in question must therefore still be regarded as one of evolving rights with no established consensus, where States must also enjoy a margin of appreciation in the timing of the introduction of legislative changes.”

In 2013 the Court had observed in [Vallianatos and Others v. Greece](#) that “although there is no consensus among the legal systems of the Council of Europe member States, a trend is currently emerging with regard to the introduction of forms of legal recognition of same-sex relationships”.

In 2015 the Court had observed in [Oliari and Others](#) that the trend towards legal recognition of same-sex couples had “continued to develop rapidly in Europe since the Court’s judgment in [Schalk and Kopf](#)”.

The same trend already observed by the Court in the above-mentioned cases was by now clearly confirmed.

This clear ongoing trend within the States Parties 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.

Having regard to its case-law as consolidated by a clear ongoing trend within the member States of the Council of Europe, the Court confirmed that in accordance with their positive obligations under Article 8 of the Convention, the States were required to provide a legal framework allowing same-sex couples to be granted adequate recognition and protection of their relationship.

In implementing their positive obligations, the States Parties enjoyed a margin of appreciation, the scope of which varied according to different factors.

Where an essential or particularly important facet of an individual's existence or identity was at stake, the margin allowed to the State was normally restricted. Where, however, there was no consensus within the member States of the Council of Europe, the margin was wider, particularly where the case raised sensitive moral or ethical issues.

The Court had already held that essential or particularly important facets of an individual's identity were at stake in cases concerning the legal parent-child relationship, access to information about one's origins and the identity of one's parents, ethnic identity or gender identity. As far as the issue raised by the present case was concerned, the Court found that a claim by same-sex partners for legal recognition and protection of their relationship touched on particularly important facets of their personal and social identity.

As to the existence of a consensus on this issue, the Court had already noted a clear ongoing trend at European level towards legal recognition and protection of same-sex couples within the member States of the Council of Europe.

Accordingly, given that particularly important facets of the personal and social identity of persons of the same sex were at stake and that, in addition, a clear ongoing trend had been observed within the Council of Europe member States, the Court considered that the States Parties' margin of appreciation was significantly reduced when it came to affording same-sex couples the possibility of legal recognition and protection.

Nevertheless, the Court pointed out that the States Parties had a more extensive margin of appreciation in determining the exact nature of the legal regime to be made available to same-sex couples, which did not necessarily have to take the form of marriage. Indeed, States had the "choice of the means" to be used in discharging their positive obligations inherent in Article 8 of the Convention.

As to whether the respondent State had satisfied its positive obligation, the Court observed that when the applicants had applied to the Russian authorities for legal recognition, Russian law had not provided for that possibility. Nor had there been any change in the law since the present applications had been lodged. The Court 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.

Examining the reasons put forward by the respondent State to justify the lack of any legal recognition and protection for same-sex couples, the Court noted that the Government had relied on traditional family values, the feelings of the majority of the Russian population and the protection of minors from promotion of homosexuality.

There was no basis in the Court's view for considering that affording legal recognition and protection to same-sex couples in a stable and committed relationship could in itself harm families constituted in the traditional way or compromise their future or integrity. Indeed, the recognition of same-sex couples did not in any way prevent different-sex couples from marrying or founding a family corresponding to their conception of that term. More broadly, securing rights to same-sex couples

did not in itself entail weakening the rights secured to other people or other couples. The Court therefore found that the protection of the traditional family could not justify the absence of any form of legal recognition and protection for same-sex couples in the present case

The Court had repeatedly held that although individual interests on occasion had to 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.

Thus, the Court had already rejected the 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. Like the Chamber, the Grand Chamber considered that it would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority.

The Court therefore found that the allegedly negative, or even hostile, attitude on the part of the heterosexual majority in Russia could not be set against the applicants' interest in having their respective relationships adequately recognised and protected by law.

Moreover, the Court had already had the opportunity to rule on the legislative ban on promotion of homosexuality or non-traditional sexual relations among minors in [Bayev and Others v. Russia](#). In that judgment, it had held that "the legislative provisions in question embodied a predisposed bias on the part of the heterosexual majority against the homosexual minority". The Court saw no reason to depart from that conclusion in the present case.

In conclusion, the Court found that none of the public-interest grounds put forward by the Government prevailed over the applicants' interest in having their respective relationships adequately recognised and protected by law. The Court concluded 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.

There had therefore been a violation of Article 8 of the Convention.

Article 14 in conjunction with Article 8

Having regard to its finding of a violation of Article 8, the Grand Chamber held that it was not necessary to examine whether in the present case there had also been a violation of Article 14 of the Convention taken in conjunction with Article 8.

Just satisfaction (Article 41)

The Court considered that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage that might have been sustained by the applicants. Since they had not submitted any claims in respect of costs and expenses incurred in the proceedings before the Grand Chamber, the Court made no award under this head.

Separate opinions

Judge Pavli, joined by Judge Motoc, expressed a partly dissenting opinion. Judges Wojtyczek, Poláčeková and Lobov each expressed a dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.