



## Forthcoming Grand Chamber judgment concerning second-parent adoption in a same-sex relationship

The European Court of Human Rights will be delivering a Grand Chamber judgment in the case of **X and Others v. Austria** (application no. 19010/07) **at a public hearing on 19 February 2013 at 11 a.m.** – local time – in the Human Rights Building, Strasbourg.

The case concerns the complaint by two women who live in a stable homosexual relationship about the Austrian courts' refusal to grant one of the partners the right to adopt the son of the other partner without severing the mother's legal ties with the child (second-parent adoption).

### Principal facts

The applicants are two Austrian women ("the first and the third applicant"), both born in 1967, who live in a stable homosexual relationship, and the son of one of them ("the second applicant"). The latter was born out of wedlock in 1995 and his mother (the third applicant) has sole custody of him. The applicants live together and the two women jointly care for the child.

Wishing to create a legal relationship between the first applicant and the child without severing the relationship with his mother, they concluded an adoption agreement in February 2005 and submitted it to the competent district court for approval. Being aware that the relevant provisions of the Civil Code could be understood to exclude the adoption of the child of one partner of a homosexual couple by the other partner without severing the relationship with the natural parent, the applicants requested the Constitutional Court to declare those provisions unconstitutional as discriminating against them on account of their sexual orientation. The Constitutional Court rejected the request as inadmissible in June 2005, pending the decision of the district court.

In October 2005, the district court refused to approve the adoption agreement, holding that the Civil Code envisaged that in case of an adoption by one person the adopting parent replaced the natural parent of the same sex, thus severing the child's relationship with him or her. In the case at hand, the child's adoption by the first applicant would sever his relationship with his mother, not with his father.

The applicants' appeal was dismissed by the regional court in February 2006. In addition to the considerations of the district court, it observed that Austrian law, while not giving a precise definition of the term "parents", plainly envisaged two people of different sex. Where, as in the present case, a child had both parents there was no need to replace one of them by an adoptive parent. In that connection, the court noted on the basis of the file that the child had regular contacts with his father. It did not deal with the question whether, as alleged by the applicants, there were grounds for overriding the father's refusal to consent to the adoption. In September 2006, the Supreme Court dismissed the applicants' appeal on points of law, holding that the adoption of a child by the female partner of his or her mother was legally impossible. It considered that the relevant provisions of the Civil Code did not disclose any appearance of being unconstitutional.

## Complaints and procedure

The applicants complain under Article 14 (prohibition of discrimination) of the European Convention on Human Rights taken in conjunction with Article 8 (right to respect for private and family life) that they are being discriminated against on account of the first and third applicants' sexual orientation. They submit that there is no reasonable and objective justification for allowing adoption of one partner's child by the other partner if heterosexual couples are concerned, be they married or unmarried, while prohibiting the adoption of one partner's child by the other partner in the case of homosexual couples.

The application was lodged with the European Court of Human Rights on 24 April 2007. On 5 June 2012, the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber. A Grand Chamber hearing took place in Strasbourg on 3 October 2012.

Under Article 36 of the Convention, the President of the Grand Chamber authorised the following organisations and institutions to submit written comments as third parties:

- *Federation International des ligues des Droits de l'Homme* (FIDH), International Commission of Jurists (ICJ), the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe), British Association for Adoption and Fostering (BAAF), Network of European LGBT Families Associations (NELFA) and the European Commission on Sexual Orientation Law (ECSOL), jointly,
- European Centre for Law and Justice (ECLJ),
- Attorney General for Northern Ireland,
- Amnesty International (AI) and
- Alliance Defending Freedom.

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