

## ***Taddeucci and McCall v. Italy (communicated case) - 51362/09***

### **Article 14**

#### **Discrimination**

Refusal to grant unmarried homosexual partner leave to remain as member of the family: *communicated*

The applicants, Mr Taddeucci and Mr McCall, of Italian and New Zealand nationality respectively, have been living together as a couple since 1999. In December 2003 they decided to move to Italy on account of the first applicant's fragile state of health. During their initial period of residence, the second applicant was first granted a temporary residence permit as a student. He subsequently applied for a permit as a family member. His application was rejected by the police authority in 2005. The district court upheld the applicants' appeals but in 2006 the court of appeal found in favour of the authority. The applicants then appealed to the Court of Cassation. In a judgment of September 2008, deposited in March 2009, that court dismissed the applicants' appeals. It stated first that, under Article 29 of Decree no. 286, the notion of "family member" comprised only spouses, minor children, adult children who were not autonomous for health reasons and dependent parents having inadequate support in their country of origin. In addition, as the Constitutional Court had ruled out the possibility of extending to partners the protection afforded to recognised family members, a more extensive interpretation of the article in question was not required by the provisions of the Constitution. The Court of Cassation subsequently held that such an interpretation could not be derived from Articles 8 and 12 of the Convention, since those provisions left to States a broad margin of appreciation as to how the protected rights were to be exercised, in particular when it came to regulating immigration. Moreover, the Court of Cassation found that there had been no discrimination based on the applicants' sexual orientation as the exclusion of unmarried partners from the right to obtain a family residence permit concerned both same-sex and opposite-sex partners. Lastly, it found that [EU Directive 2004/38/EC](#)\* on the right of citizens of the Union to move freely within the territory of member States other than their country of origin was not applicable in the present case because the family reunification in question concerned an Italian national residing in his own country. In July 2009 the applicants moved to the Netherlands, where the second applicant was granted a five-year residence permit.

Before the European Court, the applicants complain of discrimination on grounds of sexual orientation because the second applicant was denied a family residence permit and they have no other possibility of living together in Italy as a couple.

*Communicated* under Article 14 in conjunction with Article 8 of the Convention.

\* Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the member States.

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