



Russia failed to justify the lack of any opportunity for same-sex couples to have their relationship formally acknowledged

In today's **Chamber** judgment¹ in the case of [Fedotova and Others v. Russia](#) (applications nos. 40792/10, 30538/14 and 43439/14) the European Court of Human Rights held, unanimously, 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 refusal to register the notice of marriage of the applicants, who are same-sex couples.

The Court found that Russia had an obligation to ensure respect for the applicants' private and family life by providing a legal framework allowing them to have their relationships acknowledged and protected under domestic law. The lack of any opportunity for same-sex couples to have their relationships formally acknowledged created a conflict between the social reality of the applicants and the law. The Court dismissed the Government's argument that the interests of the community as a whole could justify the lack of opportunity for same-sex couples to formalise their relationships. It concluded that, in denying access to formal acknowledgment of their status for same-sex couples, the Russian authorities had gone beyond the discretion (margin of appreciation) enjoyed by them. The Court stated that the choice of the most appropriate form of registration of same-sex unions remained at the discretion of the respondent State.

Principal facts

The applicants, Irina Fedotova, Irina Shipitko, Dmitriy Chunosov, Yaroslav Yevtushenko, Ilmira Shaykhrznova and Yelena Yakovleva, are Russian nationals who were born between 1977 and 1994. They live in various parts of the Russian Federation, Luxembourg and Germany. They are three same-sex couples.

On various dates the applicants gave notice of their intention to marry at their local registry offices in Russia. Their applications were rejected. The applicants challenged those decisions in the courts.

Ms Fedotova and Ms Shipitko argued before the Tverskoy District Court of Moscow that the refusal to accept their notice to marry had violated their rights under the Constitution and the Convention. Their claim was dismissed because, among other things, the court found that marriage had to have the "voluntary consent of a man and a woman" and that neither the Constitution nor international law imposed any obligations in respect of same-sex marriage. That decision was upheld on appeal.

Mr Chunosov and Mr Yevtushenko made similar arguments before the Gryazi Town Court in the Lipetsk Region. The court determined that the registry office had unlawfully not examined the application, as under Russia law each notice of intention to marry had to be examined individually. However, it held that under the Constitution and Russian case-law, there was no right to same-sex

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

marriage; nor was one conferred by the Convention. That decision was upheld on appeal, with the applicants being refused leave to appeal in cassation.

Ms Shaykhrznova and Ms Yakovleva made similar arguments also before the Gryazi Town Court. The court found that the registry office had examined the applicants' notice individually, with the reasoning much the same as in Mr Chunusov's and Mr Yevtushenko's case. That decision was upheld on appeal and following a cassation appeal.

Complaints, procedure and composition of the Court

Relying on Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination), the applicants complained, in particular, that they had been discriminated against on the grounds of their sexual orientation because they had no means of securing a legal basis for their relationship as it was impossible for them to enter into marriage or any other formal union.

The application was lodged with the European Court of Human Rights on 20 July 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Paul Lemmens (Belgium), *President*,
Georgios A. Serghides (Cyprus),
Dmitry Dedov (Russia),
María Elósegui (Spain),
Anja Seibert-Fohr (Germany),
Peeter Roosma (Estonia),
Andreas Zünd (Switzerland),

and also Milan Blaško, *Section Registrar*.

Decision of the Court

Article 8

The Court reiterated that Article 8 did not explicitly impose on States an obligation to formally acknowledge same-sex unions. However, it implied a need to strike a fair balance between the competing interests of same-sex couples and the community as a whole. There was also a positive obligation to set up a legal framework guaranteeing the effective enjoyment of the rights enshrined in Article 8. The Court noted in particular the impact on an individual when there is a discordance between the law and social reality, as in the present case.

As regards same-sex couples, the Court reaffirmed that they were just as capable as different-sex couples of entering into committed relationships, with a need for formal acknowledgment and protection of their relationship. It was incumbent on the States to take that into account, and to strike a balance between their needs and those of community at large. The Court determined that there was no justification for the applicants' not being able to place their unions on a legal footing. In particular, regarding the argument that a majority of Russians disapprove of same-sex unions, the Court stated that access to rights for a minority could not be dependent on the acceptance of the majority. The Court furthermore reiterated that giving the applicants access to formal acknowledgment of their couples' status in a form other than marriage would not be in conflict with the "traditional understanding of marriage" prevailing in Russia, or with the views of the majority to which the Government referred, as those views opposed only same-sex marriages, were not against other forms of legal acknowledgment.

As a result, the Court held that Russia had failed to meet its obligations under Article 8, leading to a violation of the Convention.

Other articles

Owing to the judgment under Article 8, it was not necessary to examine the complaint under Article 14 in conjunction with Article 8.

Separate opinions

Judges Lemmens and Zund expressed a joint partly dissenting opinion.

The judgment is available only in English.

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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.