

Lack of legal recognition and protection for same-sex couple violated the Convention

In today's Chamber judgment¹ in the case of [Maymulakhin and Markiv v. Ukraine](#) (application no. 75135/14) the European Court of Human Rights held, unanimously, that there had been:

a violation of 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).

The case concerned legal recognition and protection of same-sex couples in Ukraine.

The Court found in particular that the applicants had been treated differently from opposite-sex couples on account of the lack of any legal recognition and protection for them and that their sexual orientation had been the sole basis for the difference in treatment. It considered that the State had failed to provide any justification for treating them differently. In particular, the broadly worded aim of the protection of the traditional family could not in itself be accepted as a valid ground justifying the denial of any legal recognition and protection for same-sex couples.

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

Principal facts

The applicants, Andriy Yuriyovych Maymulakhin and Andriy Mykhaylovych Markiv, are two male Ukrainian nationals who were born in 1969 and 1984 respectively and live in Kyiv. They have been living together in a stable and committed relationship since 2010. In October 2014, they applied to seven different registry offices to marry but were unable to do so on the grounds that the Constitution and the Family Code of Ukraine explicitly defined marriage as a family union between a woman and a man.

Complaints, procedure and composition of the Court

Relying on Article 14 (prohibition of discrimination), taken in conjunction with Article 8 (right to respect for private and family life), as well as Article 1 of Protocol no. 12 (general prohibition of discrimination), the applicants complained that it was not possible under Ukrainian law for them to marry or to enter into any other type of civil union recognising their relationship and that that amounted to discrimination on the basis of sexual orientation.

The application was lodged with the European Court of Human Rights on 24 November 2014.

Third-party interventions were received from: the *Fédération Internationale pour les Droits Humains*; the Center for Civil Liberties (Ukraine); the Network of European LGBTIQ Families Association; the European Commission on Sexual Orientation Law; the Polish non-governmental organisation Ordo Iuris Institute for Legal Culture; and the Ukrainian non-governmental organisation "All together!".

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.

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

Georges Ravarani (Luxembourg), *President*,
Carlo Ranzoni (Liechtenstein),
Mārtiņš Mits (Latvia),
María Elósegui (Spain),
Mattias Guyomar (France),
Kateřina Šimáčková (the Czech Republic),
Mykola Gnatovskyy (Ukraine),

and also Martina Keller, *Deputy Section Registrar*.

Decision of the Court

[Article 14 taken in conjunction with Article 8](#)

The Court noted that the applicants had been living together in a stable and committed relationship since 2010 and were therefore in a relevantly similar situation to any opposite-sex couple as regards their need for legal recognition and protection of their relationship. Whereas the existing legal framework in Ukraine recognised two types of relationship for opposite-sex couples – marriage and family union, where a man and a woman “live as a family without being married” – same-sex couples were denied both.

As a result, same-sex couples were denied any opportunity to regulate fundamental aspects of life as a couple except certain property-related aspects, and then only as private individuals entering into contracts under the ordinary law. The Court has already held that such private contractual agreements cannot be considered to give recognition and the required protection to a couple, as they are limited in scope and fail to provide for basic rights. In general, there was no possibility for a same-sex couple to rely on the existence of their relationship in dealings with the judicial or administrative authorities, as regards, for example, the right to joint matrimonial property, the right to inheritance by law, the right to receive visits from the partner in the event of hospitalisation, the right to refuse to testify against one another, the right to adoption, and the right to social assistance and benefits for low-income families.

It followed that Mr Maymulakhin and Mr Markiv had been treated differently from opposite-sex couples on account of the lack of any legal recognition and protection for them. Their sexual orientation had been the sole basis for the difference in treatment.

In the light of its case-law principles, the Court accepted that Ukraine was free to restrict access to marriage to opposite-sex couples only. At the same time, it reiterated that, where a difference in treatment was based on sex or sexual orientation, the State’s discretion (“margin of appreciation”) was narrow. The Court held that the Government had not advanced any reasons, let alone convincing and weighty ones, for the outright exclusion of same-sex couples from legal regulation in Ukraine.

The Court observed that the prospect of legislative amendments referred to by the Government remained remote and had no practical impact on the applicants’ daily life. While welcoming the Government’s intention to put in place a legal framework allowing same-sex couples to be granted adequate recognition and protection of their relationship, the Court noted that it was not able to comment on a piece of legislation that did not exist yet.

The Court reiterated that there was no basis 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. Therefore, the broadly

worded aim of the protection of the traditional family could not in itself be accepted as a valid reason for denying legal recognition and protection for same-sex couples.

The Court concluded that the difference in treatment in the present case, which consisted in the unjustifiable denial to the applicants as a same-sex couple of any form of legal recognition and protection as compared with opposite-sex couples, amounted to discrimination against the applicants on the grounds of their sexual orientation. There had therefore been a violation of Article 14 taken in conjunction with Article 8.

Other articles

Although the applicants had additionally relied on Article 1 of Protocol No. 12, the Court considered that their complaint fell to be examined only under Article 14 read in conjunction with Article 8 of the Convention.

Just satisfaction (Article 41)

The Court held that Ukraine was to pay 32 euros (EUR) to each of the applicants in respect of pecuniary damage, EUR 5,000 to each of them in respect of non-pecuniary damage and EUR 4,000 jointly in respect of costs and expenses.

The judgment is available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHR_CEDH](https://twitter.com/ECHR_CEDH).

Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

Jane Swift (tel.: + 33 3 88 41 29 04)

Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)

Denis Lambert (tel.: + 33 3 90 21 41 09)

Inci Ertekin (tel.: + 33 3 90 21 55 30)

Neil Connolly (tel.: + 33 3 90 21 48 05)

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.