



## Refusal to grant residence permit to gay couple on family grounds was unjustified discrimination

In today's **Chamber judgment**<sup>1</sup> in the case of [Taddeucci and McCall v. Italy](#) (application no. 51362/09) the European Court of Human Rights held, by six votes to one, that there had been:

**a violation of Article 14 (prohibition of discrimination) taken together with Article 8 (right to respect for private and family life) of the European Convention on Human Rights.**

The case concerned a refusal by the Italian authorities to grant a residence permit to a gay couple on family grounds.

The Court found in particular that the situation of Mr Taddeucci and Mr McCall, a gay couple, could not be understood as comparable to that of an unmarried heterosexual couple. As they could not marry or, at the relevant time, obtain any other form of legal recognition of their situation in Italy, they could not be classified as "spouses" under national law. The restrictive interpretation of the notion of family member constituted, for homosexual couples, an insuperable obstacle to the granting of a residence permit on family grounds. That restrictive interpretation of the concept of family member, as applied to Mr McCall, did not take due account of the applicants' personal situation and in particular their inability to obtain a form of legal recognition of their relationship in Italy.

In deciding to treat homosexual couples in the same way as heterosexual couples without any spousal status, the State had breached the applicants' right not to be subjected to discrimination based on sexual orientation in the enjoyment of their rights under Article 8 of the Convention.

### Principal facts

The applicants, Roberto Taddeucci and Douglas McCall, are Italian and New Zealand nationals, born in 1965 and 1958. They are a homosexual couple and live in Amsterdam. They complain of discrimination based on their sexual orientation.

Mr Taddeucci and Mr McCall lived in New Zealand, as an unmarried couple, until December 2003, when they decided to settle in Italy. During their first period of residence in Italy Mr McCall had a student's temporary residence permit. He applied for a residence permit on family grounds. On 18 October 2004 the Livorno chief of police dismissed his request on the ground that the statutory criteria were not fulfilled.

Mr Taddeucci and Mr McCall lodged an application under Legislative Decree no. 286 of 1998, seeking a residence permit for Mr McCall on family grounds. On 4 July 2005 the Florence District Civil Court granted their application, finding that Article 30 of Legislative Decree no. 286 of 1998 should be construed to mean that the same-sex partner was regarded as a member of the Italian national's family and was thus eligible for a residence permit. The Minister of Internal Affairs appealed.

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](http://www.coe.int/t/dghl/monitoring/execution).

In a judgment of 12 May 2006 the Florence Court of Appeal allowed the appeal. It indicated that the New Zealand authorities had accorded Mr Taddeucci and Mr McCall the status of “unmarried partners” and not that of “members of the same family”. According to the Court of Appeal, the Italian legal system gave different scope and meaning to those two legal concepts. The Court of Appeal considered that New Zealand law was incompatible with Italian public policy on the grounds that it regarded same-sex couples as partners and that the law could be interpreted as conferring the status of family members on such persons with a view to issuing them with a residence permit.

Mr Taddeucci and Mr McCall appealed on points of law. The Court of Cassation dismissed their appeal, observing that, under Article 29 of Legislative Decree no. 286 of 1998, the concept of “family member” included only spouses, children under the age of majority, adult dependent children and dependent relatives. It also pointed out that the Constitutional Court had ruled out the possibility of extending to partners the protection granted to members of the legitimate family. Lastly, it considered that Article 8 (right to respect for private and family life) and Article 12 (right to marry) of the Convention left wide room for manoeuvre (“margin of appreciation”) to the States in such matters.

## 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), Mr Taddeucci and Mr McCall alleged that the refusal by the Italian authorities to grant Mr McCall a residence permit on family grounds amounted to discrimination based on their sexual orientation. Relying on Article 8 they complained about the absence in Italy of specific statutory provisions in favour of the recognition and protection of unions between same-sex partners

The application was lodged with the European Court of Human Rights on 15 September 2009.

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

Mirjana **Lazarova Trajkovska** (“The former Yugoslav Republic of Macedonia”), *President*,  
Ledi **Bianku** (Albania),  
Guido **Raimondi** (Italy),  
Kristina **Pardalos** (San Marino),  
Linos-Alexandre **Sicilianos** (Greece),  
Robert **Spano** (Iceland),  
Pauliine **Koskelo** (Finland),

and also Abel **Campos**, *Section Registrar*.

## Decision of the Court

### Article 14 taken together with Article 8

The Court referred to its findings in [Schalk and Kopf v. Austria](#) that it was artificial to consider that a homosexual couple could not have a “family life” under Article 8 of the Convention. It had taken the view that the relationship between Mr Schalk and Mr Kopf, a gay couple living together on a permanent basis, fell within the concept of “family life”. It did not now see any reason to reach any different conclusions as regards Mr Taddeucci and Mr McCall. It noted that the refusal to grant Mr McCall a residence permit, as confirmed by the Court of Cassation, had meant that he was legally obliged to leave Italy. That fact had prevented the couple from continuing to live together in Italy. There had thus been an interference with one of the core elements of their “family life” and therefore with their right to respect for such life. The Court further observed that the existence of a legal basis for a refusal to grant a residence permit did not necessarily imply that there had been no

interference with the right to respect for private and family life. Nor did such legal basis enable the respondent State to refuse to accept any responsibility under the Convention.

The Court observed that the interference complained of by the applicants had begun on 18 October 2004, date of the first rejection of the residence permit request, and had come to an end by July 2009, following the depositing of the final judgment of the Court of Cassation dismissing the appeal of Mr Taddeucci and Mr McCall. They had then decided to leave Italy to settle in the Netherlands. That interference had thus lasted for about four years and nine months.

According to the Court's settled case-law, an issue could arise under Article 14 only when there was a difference in the treatment of individuals in comparable situations, or when States did not apply different treatment to individuals whose situations were significantly different.

The Court found that it did not appear that Mr Taddeucci and Mr McCall, an unmarried homosexual couple, had been treated differently from an unmarried heterosexual couple. The status of "family member" was granted by Italian law to a "spouse" but not to a cohabiting partner. As the Court of Cassation had pointed out, the exclusion of unmarried partners from the right to obtain a residence permit concerned all unmarried couples, regardless of sexual orientation.

However, the situation of Mr Taddeucci and Mr McCall could not be understood as comparable to that of an unmarried heterosexual couple. As they could not get married or, at the relevant time, obtain any other form of legal recognition of their situation in Italy, they could not be classified as "spouses" under national law. The restrictive interpretation of the notion of family member thus constituted, for homosexual couples alone, an insuperable obstacle to the granting of a residence permit on family grounds. In addition, Mr Taddeucci and Mr McCall had been unable to obtain any form of legal recognition of their relationship in Italy other than marriage, as at the relevant time the Italian legal system did not provide for the possibility of access to a civil union or registered partnership guaranteeing certain basic rights.

As to the granting of a residence permit on family grounds, the Court found that Mr Taddeucci and Mr McCall, a homosexual couple, had been treated in the same way as persons who were in a significantly different situation from their own, namely heterosexual couples who had decided not to tie the knot. The Court thus had to examine whether the fact of not applying different treatment in the present case could be justified under Article 14.

The Court found that the Italian law did not treat unmarried couples differently according to their sexual orientation, but limited the concept of "family member" to heterosexual couples. Without any objective or reasonable justification, the Italian State had failed to treat homosexual couples differently from heterosexual couples or to take account of the possibility for the latter to obtain legal recognition of their relationship and thus to meet the requirements of domestic law for the purposes of granting a residence permit – a possibility from which Mr Taddeucci and Mr McCall had been unable to benefit.

The Court observed that the inability for homosexual couples to have access to a form of legal recognition had placed Mr Taddeucci and Mr McCall in a different situation from that of an unmarried heterosexual couple. Unlike someone in a heterosexual relationship, Mr McCall had no legal means in Italy by which to obtain the status of "family member" in relation to Mr Taddeucci and was not therefore entitled to a residence permit. The Court thus found that the fact of not treating the applicants differently from unmarried heterosexual couples, who did have access to spousal status, had no objective or reasonable justification. There had thus been a violation of Article 14 taken together with Article 8 of the Convention.

#### Article 8

The Court noted that this complaint had not been raised by the applicants on the application form and had not been brought to the attention of the Government. In addition, it observed that, when they had raised this complaint, they were no longer living in Italy but had been in the Netherlands

for six years and had married in Amsterdam on 8 May 2010, so they had obtained legal recognition of their relationship in their country of residence. In those circumstances the Court found that Mr Taddeucci and Mr McCall had ceased to be affected by the lack in Italy of any form of legal recognition of same-sex unions. Their complaint being out of time, it was rejected.

#### [Just satisfaction \(Article 41\)](#)

The Court held that Italy was to pay the applicants 20,000 euros (EUR) in respect of non-pecuniary damage, and EUR 18,924.58 for costs and expenses.

#### Separate Opinions

Judge Spano expressed a concurring opinion, joined by Judge Bianku; Judge Sicilianos expressed a partly dissenting opinion. The opinions are appended to the judgment.

*The judgment is available only in 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.