



Legislation preventing marriage between “ex-” brothers- and sisters-in-law: violation of the right to marry

In today’s Chamber judgment¹ in the case of [Theodorou and Tsotsorou v. Greece](#) (application no. 57854/15) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 12 (right to marry) of the European Convention on Human Rights.

The case concerned a judicial decision annulling the marriage of Ms Tsotsorou and Mr Theodorou on the grounds that Ms Tsotsorou was Mr Theodorou’s former sister-in-law.

On the basis of Article 1357 of the Civil Code – which prohibits, in particular, marriage between persons of collateral affinity up to the third degree –, the Greek courts annulled the applicants’ marriage, 10 years after it had been entered into, and held that the individuals in question were related in collateral affinity to the second degree.

The Court found that the annulment of the applicants’ marriage had disproportionately restricted their right to marry to such an extent that the very essence of that right had been impaired.

Principal facts

The applicants, Georgios Theodorou and Sophia Tsotsorou, are Greek nationals who were born in 1951 and 1957 respectively. They live in Koropi (Greece).

In 1971 Mr Theodorou married P.T., with whom he had a daughter. In 2001 the marriage was dissolved by decision of Athens Regional Court, which noted in its judgment that the applicants had been living separately since 1996. In 2004 a divorce certificate was issued.

In 2005 Mr Theodorou married the sister of P.T. (Ms Tsotsorou) in a religious ceremony. The following year P.T. complained to the public prosecutor’s office about that marriage, pleading nullity on the grounds of kinship by marriage between the two spouses.

In 2010 the Regional Court annulled the marriage on the basis of Article 1357 of the Greek Civil Code (CC), which prohibits, in particular, marriage between persons related by collateral descent up to the third degree. In its decision the court pointed out that the applicants were second-degree relatives by collateral descent, and that Greek law prohibited their marriage for reasons of decency and respect for the institution of the family. An appeal by the applicants was dismissed, and their marriage was definitively annulled by the Court of Cassation on 29 June 2015 following the dismissal of their appeal on points of law.

Complaints, procedure and composition of the Court

The applicants relied on Article 12 (right to marry).

The application was lodged with the European Court of Human Rights on 16 November 2015.

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:

Ksenija **Turković** (Croatia), *President*,
Krzysztof **Wojtyczek** (Poland),
Linos-Alexandre **Sicilianos** (Greece),
Armen **Harutyunyan** (Armenia),
Pere **Pastor Vilanova** (Andorra),
Pauliine **Koskelo** (Finland),
Jovan **Ilievski** (North Macedonia),

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

Decision of the Court

Article 12

The Court noted as follows.

Firstly, a consensus had emerged in the member States of the Council of Europe with regard to the impediment to the marriage of “ex-” sisters-in-law and brothers-in-law. Only two of the member States (Italy and San Marino) reviewed had introduced such an impediment to marriage, and even then that impediment was not absolute. The Court attached particular importance to this European consensus.

Secondly, the applicants had not faced any obstacles prior to entering into their marriage and the national authorities had raised no objections. Furthermore, Greek law laid down a series of procedural requirements before a marriage could be concluded. In particular, persons intending to marry were required to announce their intentions publicly. No objections had been raised to the applicants’ marriage after the publication of the relevant announcement. P.T. had not complained to the prosecutor about the marriage until approximately one year and five months after it had taken place, and the prosecutor had only applied to the first-instance court seven months later, that is, two years after the marriage.

Thirdly, the relevant authorities were required to verify that the legal conditions had been met to allow an intended marriage to be contracted, and they would issue a marriage licence only if they considered that those conditions had been met. In the present case, the relevant authorities had not expressed any doubts whatsoever before issuing this licence.

The question of the marriage’s validity had been raised only subsequently, and the applicants had enjoyed both the legal and social recognition of the relationship resulting from their marriage and the protection afforded solely to married couples for more than ten years.

Fourthly, with regard to the Government’s arguments concerning “biological considerations” and the risk of confusion, the Court noted that those problems did not arise in the present case. It was not clear what exactly those biological considerations involved, or the practical risk of confusion preventing the applicants’ marriage, given that they were not blood relatives and had not had children together. Furthermore, with regard to the Government’s argument that there existed a social need for communication between the members of a family and the outside world, the Court observed that the Government had not specified how the prohibition in question could assist in or serve such communication.

Fifthly, the applicants were currently deprived of all the rights afforded to married couples, which they had nonetheless enjoyed for ten years.

In consequence, the Court held that the annulment of the applicants' marriage had disproportionately restricted their right to marry to such an extent that the very essence of that right had been impaired. **It therefore found that there had been a violation of Article 12.**

Just satisfaction (Article 41)

The Court held that Greece was to pay the applicants jointly 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,120.79 in respect of costs and expenses.

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.