



Failure to provide any legal recognition of same-sex relationships

In today's **Chamber judgment**¹ in the case of [Buhuceanu and Others v. Romania](#) (applications nos. 20081/19 and 20 others) the European Court of Human Rights held, by 5 votes to 2, 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 applicants are all same-sex couples. The case concerned access to legal recognition for the applicants' relationships.

The Court found in particular that Romania had a duty to provide adequate recognition and protection for same-sex relationships, although it had discretion as to the form and the protections afforded. None of the Government's arguments regarding same-sex marriage could outweigh the applicants' interest in having their unions recognised.

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

Principal facts

The applicants are 21 same-sex couples who are Romanian nationals. They were born between 1967 and 1996 and live in various parts of Romania.

The couples had been living together for varying lengths of time when they respectively gave notice to their local registry offices (*Serviciul de Stare Civilă*) of their intention to marry. Those requests were rejected as being contrary to Articles 271 ("Marriage is concluded between a man and a woman") and 277 § 1 ("Same-sex marriage is prohibited") of the Civil Code.

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 that, as it was impossible for them to enter together into any type of legally recognised union in Romania, they had no means of legally safeguarding their relationships.

The 21 applications were lodged with the European Court of Human Rights on various dates in 2019 and 2020.

Third-party submissions were received from: the Council of Europe Commissioner for Human Rights; Dentons Europe – Zizzi-Caradja și Asociații SPARL; Civil Society Development Foundation (CSDF), supported by PRIDE Romania, Rise OUT, Identity, Education, APADOR-CH, ActiveWatch; the Center for Partnership and Equality (CPE), FILIA Center, Déclic, and the Association Center for Public Innovation (CPI); Prof. Dr Raluca Popescu; Prof. Robert Wintemute, on behalf of FIDH (*Fédération Internationale pour les Droits Humains*), ILGA-Europe (the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association), NELFA (the Network of European LGBTIQ*

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.

Families Associations), and ECSOL (the European Commission on Sexual Orientation Law); the Lithuanian Gay League joined by the Association of LGBT and their friends MOZAÏKA (Latvia), Inicativa Inakost' (Slovakia), Love Does Not Exclude (Poland); and Bilitis (Bulgaria); the Alliance of Romania's Families and PRO VITA Bucharest; and Ordo Iuris Institute for Legal Culture.

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

Gabriele **Kucsko-Stadlmayer** (Austria), *President*,
Tim **Eicke** (the United Kingdom),
Krzysztof **Wojtyczek** (Poland),
Faris **Vehabović** (Bosnia and Herzegovina),
Branko **Lubarda** (Serbia),
Armen **Harutyunyan** (Armenia),
Ana Maria **Guerra Martins** (Portugal),

and also Ilse **Freiwirth**, *Deputy Section Registrar*.

Decision of the Court

Article 8

The Court reiterated that the member States were required to provide a legal framework allowing adequate recognition and protection of the relationship of same-sex couples. It referred in this connection to its Grand Chamber judgment *Fedotova and Others v. Russia* (nos. 40792/10 and 2 others) and the clear ongoing trend within the member States. States had some discretion ("margin of appreciation") as regards the form of the recognition and the type of protection granted.

Pursuant to Romanian law, only one form of family union – an opposite-sex marriage – was legally recognised. Several attempts to change this legal situation had failed in the Romanian Parliament, and the Government had given no indication of their intention to widen access to legal protections for other relationships, stating that the "prevailing interest" was in not giving such unions protection under Article 8, in stark contrast to the situation in a large number of other Convention States.

The applicants, like other couples in their situation, were unable to access numerous social and civil rights available under the law to married couples, and to regulate areas such as property, maintenance and inheritance within the couple. The Court noted the Government's argument that these rights could be replicated by private contractual arrangements, but held that the argument lacked detail, and in any case had already been rejected in the Court's case-law.

Furthermore, the Court stated that negative attitudes on the part of the heterosexual majority could not override the applicants' interests in having their relationships recognised, and that allowing recognition of same-sex unions would not harm the institution of marriage, as opposite-sex couples could still marry.

Overall, none of the arguments put forward by the Government to justify the restriction on legal unions to heterosexual marriage could outweigh the applicants' interest in having their relationships recognised. There had therefore been a violation of Article 8 of the Convention.

Other articles

The Court did not consider it necessary to examine separately the complaints under Article 14, given its findings under Article 8.

Just satisfaction (Article 41)

The Court held by 6 votes to 1 that the finding of a violation was sufficient just satisfaction for the damage sustained by the applicants.

Separate opinions

Judge Guerra Martins expressed a partially dissenting opinion. Judges Wojtyczek and Harutyunyan expressed a joint dissenting opinion. These opinions are annexed to the judgment.

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.