



## Reasons for excluding same-sex couples from “civil unions” under Greek law were not convincing

In today’s Grand Chamber judgment in the case of **Vallianatos and Others v. Greece** (applications nos. 29381/09 and 32684/09), which is final<sup>1</sup>, the European Court of Human Rights held, by a majority, 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 the “civil unions” in Greece introduced by Law no. 3719/2008, entitled “Reforms concerning the family, children and society”. This Law made provision for an official form of partnership, allowing the persons concerned to register their relationship within a more flexible legal framework than that provided by marriage.

The applicants complained that Law no. 3719/2008 provided for civil unions only for different-sex couples, thereby automatically excluding same-sex couples from its scope. They complained that the Greek State had introduced a distinction which, in their view, discriminated against them.

The Court remarked that of the 19 States which authorised some form of registered partnership other than marriage, Lithuania and Greece were the only ones to reserve it exclusively to different-sex couples. It held that the State had not shown it to have been necessary, in pursuit of the legitimate aims invoked by the Law introducing civil unions, to bar same-sex couples from entering into such unions.

### Principal facts

The first application (no. 29381/09) was lodged by two Greek nationals, Grigoris Vallianatos and Nikolaos Mylonas, who were born in 1956 and 1958 respectively. The second application (no. 32684/09) was lodged by six Greek nationals, C.S., E.D., K.T., M.P., A.H. and D.N., and by the association Synthessi – Information, Awareness-raising and Research, a legal entity based in Athens.

Mr Vallianatos and Mr Mylonas live together as a couple. C.S. and E.D. have lived together as a couple for a long time, as have K.T. and M.P. The applicants A.H. and D.N. are in a relationship together but for professional and social reasons do not live together. D.N. pays A.H.’s social-security contributions. The seventh applicant is a not for-profit association the aims of which include providing psychological and moral support to gays and lesbians.

On 26 November 2008 Law no. 3719/2008, called “Reforms concerning the family, children and society”, came into force. It made provision for an official form of partnership called a “civil union”. Under section 1 of that Law, a civil union could only be entered into by two adults of opposite sex.

<sup>1</sup> Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their 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)

## Complaints, procedure and composition of the Court

Relying on Article 14 (prohibition of discrimination) taken together with Article 8 (right to respect for private and family life), the applicants complained that the fact that civil unions were designed only for different-sex couples infringed their right to private and family life and amounted to unjustified discrimination between different-sex and same-sex couples.

Relying on Article 13 (right to an effective remedy), the applicants complained of the lack of an effective remedy in domestic law enabling them to assert their complaints concerning the discriminatory nature of civil unions.

The application was lodged with the European Court of Human Rights on 6 May 2009. On 11 September 2012 the Chamber relinquished jurisdiction in favour of the Grand Chamber. A hearing was held on 16 January 2013.

Judgment was given by the Grand Chamber of 17 judges, composed in this case as follows:

Dean **Spielmann** (Luxembourg), *President*,  
Josep **Casadevall** (Andorra),  
Guido **Raimondi** (Italy),  
Ineta **Ziemele** (Latvia),  
Mark **Villiger** (Liechtenstein),  
Isabelle **Berro-Lefèvre** (Monaco),  
Peer **Lorenzen** (Denmark),  
Danutė **Jočienė** (Lithuania),  
Mirjana **Lazarova Trajkovska** (“the Former Yugoslav Republic of Macedonia”),  
Ledi **Bianku** (Albania),  
Angelika **Nußberger** (Germany),  
Julia **Laffranque** (Estonia),  
Paulo **Pinto de Albuquerque** (Portugal),  
Linos-Alexandre **Sicilianos** (Greece),  
Erik **Møse** (Norway),  
André **Potocki** (France),  
Aleš **Pejchal** (the Czech Republic),

and also Michael **O’Boyle**, *Deputy Registrar*.

## Decision of the Court

### [Article 14 taken together with Article 8](#)

The Court observed that the applicants’ complaint did not relate to a general obligation on the Greek State to provide for a form of legal recognition in domestic law for same-sex relationships. The applicants complained that Law no. 3719/2008 provided for civil unions for different-sex couples only, thereby automatically excluding same-sex couples from its scope. They criticised the Greek State for introducing a distinction which, in their view, discriminated against them.

The Court rejected the complaint by the association Synthessi – Information, Awareness-raising and Research on the grounds that the association did not have victim status for the purposes of Article 34 (individual applications) of the Convention.

The Court reiterated that same-sex couples were just as capable as different-sex couples of entering into stable committed relationships. It therefore considered that the applicants were in a comparable situation to different-sex couples with regard to their need for legal recognition and protection of their relationships.

Reiterating the principles established by its case-law, the Court stressed that the aim of protecting the family in the traditional sense was rather abstract and that a broad variety of concrete measures could be used to implement it. As the Convention was a living instrument to be interpreted in present-day conditions, the State, under Article 8, had to take into account developments in society and the fact that there was not just one way or one choice when it came to leading one's family or private life. It was therefore up to the State to show that it had been necessary, in pursuit of the legitimate aims invoked, namely the recognition of couples living together outside of marriage and the possibility for the persons concerned to register their relationship within a more flexible legal framework than that provided by marriage, to bar same-sex couples from entering into civil unions.

Even assuming that the legislature's intention had been to enhance the legal protection of children born outside marriage and indirectly to strengthen the institution of marriage, the fact remained that civil unions constituted a form of civil partnership which excluded same-sex couples while allowing different-sex couples, whether or not they had children, to regulate numerous aspects of their relationship.

The Court was not convinced that the attainment through the legislation on civil unions of the goals referred to presupposed excluding same-sex couples from its scope. It would not have been impossible for the legislature to include some provisions dealing specifically with children born outside marriage, while at the same time extending to same-sex couples the general possibility of entering into a civil union. The Court further noted that the National Human Rights Commission considered the bill to be discriminatory for that reason, and that the Scientific Council of Parliament had adopted a similar position.

Lastly, the Court observed that under Greek law different-sex couples, unlike same-sex couples, could have their relationship legally recognised even before the enactment of Law no. 3719/2008, whether fully on the basis of the institution of marriage or in a more limited form under the provisions of the Civil Code dealing with *de facto* partnerships. Consequently, same-sex couples had every interest in entering into a civil union since it would give them the sole basis in Greek law on which to have their relationship legally recognised.

In addition, the Court remarked that there was no consensus among Council of Europe member States but that a trend was currently emerging towards introducing forms of legal recognition of same-sex relationships. Of the 19 States which authorised some form of registered partnership other than marriage, Lithuania and Greece were the only ones to reserve it exclusively to different-sex couples. It followed that, with two exceptions, Council of Europe member States, when they opted to enact legislation introducing a new system of registered partnership as an alternative to marriage, included same-sex couples in its scope.

The Court considered that the Government had not offered convincing and weighty reasons capable of justifying the exclusion of same-sex couples from the scope of Law no. 3719/2008. It therefore held that there had been a violation of Article 14 taken together with Article 8.

### Article 13

The Court reiterated that Article 13 did not go so far as to guarantee a remedy allowing a Contracting State's laws to be challenged before a national authority on the ground of being contrary to the Convention. It considered the applicants' complaint under that Article to be manifestly ill-founded and declared it inadmissible.

### Just satisfaction (Article 41)

The Court held that Greece was to pay each of the applicants, apart from the seventh applicant in application no. 32684/09, 5,000 euros (EUR) in respect of non-pecuniary damage. With regard to costs and expenses, it awarded EUR 5,000 jointly to the applicants in application no. 29381/09 and

EUR 6,000 jointly to the applicants in application no. 32684/09, with the exception of the seventh applicant.

*The judgment is available in English and French.*

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**Press contacts**

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel: +33 3 90 21 42 08

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

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

Nina Salomon (tel: + 33 3 90 21 49 79)

Jean Conte (tel: + 33 3 90 21 58 77)

**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.