

Schalk & Kopf v Austria

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Same-sex marriage

(Application No. 30141/04), 26 June 2007

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- The applicants, a same-sex couple, complained that the authorities' refusal to allow them to contract marriage violated Article 12 of the Convention.
- ILGA-Europe, together with FIDH, ICJ and AIRE Centre submitted the following:
 - There is a need for guidance on whether “**family life**” in Art. 8 should be interpreted as including same-sex couples. They consider that *Karner v. Austria* (2003) implies that same-sex couples (without children) enjoy “family life”. Furthermore, national courts in European and other democratic societies have treated unmarried same-sex couples (without children) as families.
 - If the European Convention does not yet require equal access to legal marriage for same-sex couples, it is indirect **discrimination based on sexual orientation** to limit a particular right or benefit to married different-sex couples, but provide no means for same-sex couples to qualify. There also is a growing **consensus** in European and other democratic societies that **same-sex couples must be provided with some means of qualifying for rights or benefits attached to marriage**.
- The European Court of Human Rights delivered its [judgment on 24 June 2010](#).
- The Court considered that Article 12 does not impose an obligation on the respondent Government to grant a same-sex couple such access to marriage (para 63). However, the case is important because the Court held that **the relationship of the applicants**, a cohabiting same-sex couple living in a **stable de facto partnership**, falls within the notion of “family life”, just as the relationship of a different-sex couple in the same situation would (paras 94-95). Further, the Court observed that legislation gave the applicants a possibility to obtain a legal status equal or similar to marriage in many respects.