

STRATEGIC LITIGATION ON SEXUAL ORIENTATION, GENDER IDENTITY AND SEX CHARACTERISTICS

Inventory of relevant SOGIESC case law and pending cases before the ECtHR and CJEU

2021-2023 Update

2021-2023 continued steady progress with filling gaps in case law related to sexual orientation, gender identity, expression, and sex characteristics. The 2024 inventory highlights four main findings:

- i. The findings of this research concord with those of **ILGA-Europe Annual Reviews** published in 2022, 2023 and 2024 highlighting notably a rise in hate crime and anti-LGBTI rhetoric. In parallel, pending cases on this topic constantly increase. However, the very low number of gender identity cases, pending and decided, contrasts with the rise in transphobic rhetoric in Europe.
- ii. On all topics, there is a disproportion between cases addressing discrimination based on **gender identity** versus sexual orientation. In those three years, 55 judgments were issued by European Courts on sexual orientation and 19 on gender identity. In December 2023, 46 cases were pending on sexual orientation and 11 on gender identity. More cases are needed to close those gaps.
- iii. While some gaps identified in 2010 seem to have been definitely closed (for instance the issue of “medical abuse”, which is now apprehended under the topics of LGR and IGM), **new topics are constantly identified**, for instance cases addressing non-discriminatory access to sports competitions in the framework of intersex people’s rights.
- iv. Monitoring the implementation of ECtHR and CJEU judgments is necessary in order to identify the progress in tackling gaps as **the number of judgments rendered but still under implementation is very high**, with 28 sexual orientation judgments and 8 gender identity judgments rendered in the past three years still under implementation.

§1. Strategic litigation: a mechanism for protecting and advancing the fundamental rights of LGBTI people afforded by European human rights law

The Council of Europe (CoE) and the European Union (EU) have set important European human rights standards as well as legal protection of the rights of LGBTI people at the European level. Judgments of the European Court of Human Rights (ECtHR), and preliminary rulings of the Court of Justice of the European Union (CJEU) are part of this standard-setting, ensuring Member States respect their commitments to end discrimination on the grounds of sexual orientation (“SO”), gender identity (“GI”), expression, and sex characteristics

("SOGIESC"). They are also important instruments to ensure implementation and full appliance of existing standards by CoE and EU Member States.

These ECtHR judgments and CJEU rulings set human rights standards which apply to governments across the CoE and the EU respectively. Considering the widespread nature of discrimination against LGBTI people, increased attacks on LGBTI people in a number of countries, still existing legislative gaps in ensuring non-discrimination, as well as the fact that some governments have started actively taking back established rights, strategic litigation plays an ever more important role in protecting and advancing equal rights for LGBTI persons across Europe.

ILGA-Europe supports strategic litigation at the European courts to advance the rights of LGBTI people and closing the gap areas discussed below. We work towards achieving legal change for LGBTI people at the European and national level by enhancing the knowledge and capacity of LGBTI activists and organisations to engage in litigation. Support at the national level ensures that strategic cases reach the European level and serve building stronger protection of LGBTI rights. In European courts, ILGA-Europe supports strategic cases by submitting third party interventions before the ECtHR and strategic guidance in cases before the CJEU. Where relevant, we also consider submitting collective complaints to the European Committee on Social Rights and the European Commission. Some of our submissions can be consulted on [ILGA-Europe's website](#).

ILGA-Europe also monitors and supports SOGIESC cases throughout the process of execution of judgments by the [CoE Committee of Ministers](#). In collaboration with the [European Implementation Network \(EIN\)](#) and our members and partners, we make Rule 9 submissions before the Committee of Ministers, provide briefings where the gaps exist and make recommendations to assist with the execution process.

In order to focus our strategic litigation efforts across Europe to fully protect and advance LGBTI rights, with this inventory ILGA-Europe wants to support members and partners across the region to identify trends and gaps in protection at the European level, which can commonly be tackled through litigation. The inventory can further strengthen cooperation and help guide our work and efforts by others in bringing forward and supporting strategic cases.

This inventory and continuous assessment of the European landscape informs ILGA-Europe's ongoing engagement in strategic litigation through identification and support of strategic opportunities.

§2. Inventory of relevant SOGIESC case-law and pending cases before the ECtHR and CJEU

In this analysis of the inventory of cases we focus on a number of key gap areas we have identified, including:

- i. Areas where protection of rights is not in place to ensure equality for specific groups of LGBTI people in European human rights law, such as access to marriage for same-sex couples, as well as parenting rights of trans persons;
- ii. Areas where the human rights of trans and intersex people are not respected. This includes bans on intersex genital mutilation (“IGM”) as well as ensuring legal gender recognition (“LGR”) procedures based on self-determination and without any abusive requirements, particularly divorce or medical treatments, and without age limits;
- iii. Issues specific to LGBTI people which have been recognized in ECtHR judgments, but remain contested by a number of states. This would apply particularly to certain family and parenting rights which the ECtHR has supported e.g. partnership recognition, and sterilisation requirement as part of the legal gender recognition process;
- iv. Generally recognized rights, which some Member States tried to undermine during the negotiation in 2009/2010 of the Council of Europe *Committee of Ministers Recommendation on combating sexual orientation or gender identity discrimination* - particularly in relation to the provision of objective information on sexual orientation and gender identity in educational curricula, and a school environment free from discrimination;
- v. Generally recognized rights, which all Member States, in accepting the above Recommendation, have acknowledged to apply to LGBTI people, but which some in practice fail to uphold: for example, protection from hate crimes or hate speech, or freedom of expression or association;
- vi. Issues relating to the boundary between freedom of religion on the one hand and the right to non-discrimination on the other.

§3. Overview of the SOGIESC cases pending before the European Courts

I. General observations

The 2024 inventory enabled to identify four main findings:

- 1) For some gaps, the evolution of pending and decided cases **aligns with the findings of ILGA-Europe’s Annual Review.** This concerns in particular hate crimes, hate speech based on sexual orientation.

Regarding hate crimes, the constant increase in pending sexual orientation cases in recent years aligns with a severe rise of violence in general, domestic violence and police brutality against LGBTI people in every country across the Council of Europe region (source: ILGA-Europe Annual Review, 2024).

Concerning hate speech, the constant rise of pending sexual orientation cases aligns with a severe rise of anti-LGBTI rhetoric from politicians across the Council of Europe region

(source: ILGA-Europe Annual Review, 2024). The high number of cases pending contrasts with the very slow rate of judgments delivered.

On the contrary, the very low number of gender identity cases, pending and decided, contrasts with the empirical observation that the anti-LGBTI rhetoric also targets gender identity and sex characteristics.

“Transphobic speech continues to be on the rise ... and intensified around parliamentary discussions ..., around LGBTI events ... and in the lead up to elections Hate speech concerning trans minors’ access to healthcare was commonplace. ... LGBTIphobic and transphobic pieces in the media are further on the rise” (ILGA-Europe Annual Review, 2024).

Considering trans persons’ rights, there has been a slight decrease in the number of pending cases in recent years. Inadequate procedures for LGR remain the issue in most cases. Regarding the political context and the legal framework, “despite negative public opinion and a stark rise in anti-trans speech from official sources, governments are following up on commitments, several introducing good self-determination standards in legal gender recognition.” (ILGA-Europe Annual Review, 2024).

- 2) Another key observation is the **considerable disproportion** between sexual orientation on the one hand, with gaps filling at a reasonable speed, and gender identity and sex characteristics on the other hand, where most gaps still need way more cases to be filled.

One clear example of this trend is the gap I a ‘hate crime – failure of the State to provide protection’. The number of cases was very low both regarding sexual orientation and gender identity in 2010. However, over the years, there has been an increase in pending sexual orientation cases (4 in 2023) and of sexual orientation cases decided (9 in 2020-2023). On the contrary, the number of gender identity pending cases has been consistently low over the years, with one case pending in 2023 and none decided in the last three years.

This is most obvious regarding family rights. While there has been a considerable increase in recent years of judgments strengthening same-sex partners’ family and parenting rights (14 cases decided in the last three years), the number of cases addressing family rights specific to couples where one or both parents are trans is significantly low (2 cases decided in the last three years).

Intersex people’s rights are still an emerging issue. While the 2023 Annual Review reported a growing number of countries recognising or beginning to address the rights of intersex people, especially regarding intersex bodily integrity, the 2024 Annual Review reports a stagnation on IGM bans with governments not following up on commitments they had made (ILGA-Europe Annual Review 2024). Consequently, cases are needed to establish some legal safeguards at the European level.

For some gaps, there has been zero gender identity case brought to the Court since 2010: Freedom of expression, Freedom of association and Employment.

- 3) The inventory reveals that in the last three years, **some gaps have been definitively closed, while new ones** have been brought to light.

The gap of “I c Medical abuse” has been closed. The issue of medical abuse is now apprehended under the limb of i) obligation to undergo surgical interventions prior to LGR and ii) intersex genital mutilations.

While in 2022, the gap ‘II b Education’ was not considered a worrying issue in the Annual Review 2022, the 2023 Annual Review reported that it was “a growing battleground in the resistance to LGBTI people and rights” and that “progression on sexual education [was] being challenged at a fundamental level.” The 2024 Annual Review confirmed this trend with “scare tactics around sex education ... further on the rise”. There has only been one case since 2010.

A new issue was identified relating to the gap “intersex people’s rights”: 37. Cases addressing non-discriminatory access to sports competitions. In parallel, 2024 Annual Review reports that “sport is becoming more visibly an area of engagement with actors both for and against trans and intersex inclusion.”

- 4) **Monitoring the implementation of ECtHR and CJEU cases is crucial in identifying the progress in tackling gaps.**

The number of judgments rendered currently under implementation is very high, with 28 sexual orientation judgments and 8 gender identity judgments rendered in the past three years still under implementation.

Family rights, including same-sex partners’ rights and parenting rights is a clear example of how pending cases alone cannot properly determine whether the gaps are correctly addressed.

Indeed, there has been a considerable increase in cases addressing same-sex partners’ family and parenting rights (14 cases decided in the last three years on sexual orientation and 2 on gender identity). The gaps are not closed so the judgments and their implementations must be monitored closely in the coming months/years.

The same observation applies to hate crime. It will be most important to monitor the implementation of judgments: 9 sexual orientation cases have been decided in the last three years, all found a violation of the ECHR, and 5 are under enhanced supervision.

For extensive information on the supervision of the implementation process, please see **§4**.

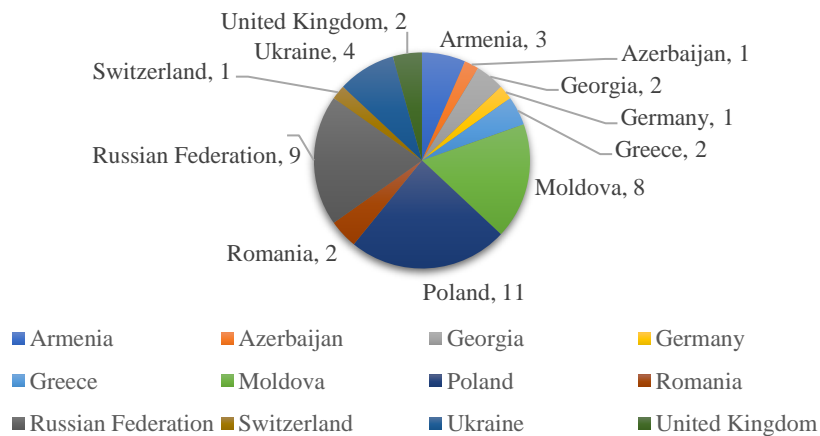
II. Key figures on SOGIESC pending cases

Regarding sexual orientation, there are currently **46 cases pending before the European Courts**, concerning *12 different countries*. In the last three years, 55 judgments were issued.

Regarding gender identity and sex characteristics, there are currently **11 cases pending before the European Courts**, concerning *8 different countries*. In the last three years, 19 judgments were issued.

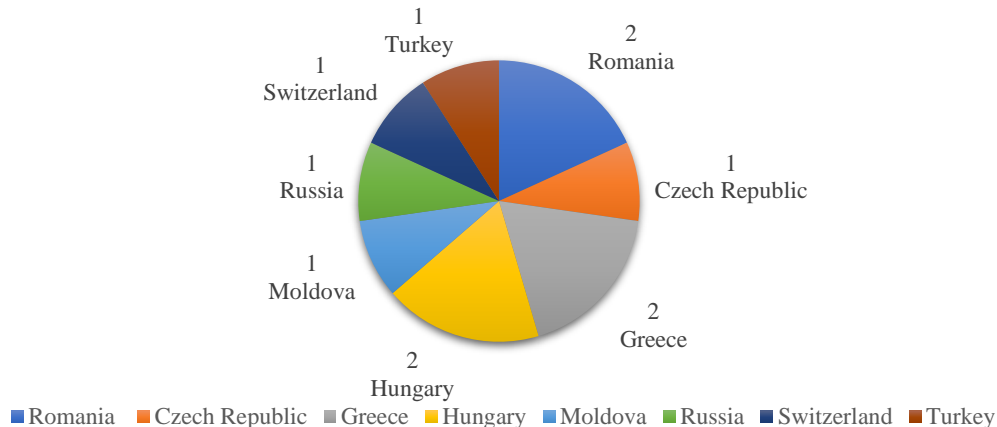
46 SO cases pending before the ECtHR and CJEU

December 2023



11 GIESC cases pending before the ECtHR and CJEU

December 2023



- **The gap relating to hate crime, hate speech and asylum rights gathers the most pending case in 2023, and the most judgments issued in the last 3 years.**
Sexual orientation: 27 pending cases in 2022; 38 cases decided in the last 3 years
Gender identity: 4 pending cases in 2023; 3 cases decided in the last 3 years (also SO)
- **The gap covering socio-economic rights still needs more cases to be filled**
Sexual orientation: 4 pending cases in 2022; 2 cases decided in the last 3 years
Gender identity: 0 pending case in 2023; 0 case decided in the last 3 years.
- **Concerning the gap relating to the rights of trans persons, the observation made in 2020 that there was a good evolution in attempting to filling the gap still applies in 2023, especially regarding access to legal gender recognition.**
4 pending cases in 2023; 10 cases decided in the last 3 years.
- **The gap relating to family rights is a clear example of the disproportion between the progress in tackling sexual orientation specific gaps versus gender identity and sex characteristics.**
Sexual orientation: 15 pending cases in 2022; 14 cases decided in the last 3 years
Gender identity: 1 pending case in 2023; 2 cases decided in the last 3 years.
- **The gap relating to the rights of intersex persons is still an emerging issue, so more cases need to be brought before the European Courts.**
2 pending cases in 2023; 4 cases decided in the last 3 years.

§4. Key figures on SOGIESC case-law from the last three years

The last three years were rich in key and leading judgments being delivered by the European Court of Human Rights.

ECtHR cases are divided into three categories according to their importance. The category of ‘key cases’ refers to the “most important cases dealt with by the Court”¹. They clearly set out the European standard of protection attached to the ECHR articles at stake. ‘Leading cases’ reveal new structural and/or systemic problems. Such cases require the adoption of new general measures to prevent similar violations in the future.

Both categories of cases must hence be closely monitored in order to ensure that general measures are adopted to prevent the further violation of LGBTI individuals’ rights in the Member State of concern.

¹Council of Europe, “Key cases 2023”. https://www.echr.coe.int/Documents/Cases_list_2023_ENG.pdf

‘Repetitive cases’ highlight gaps where the ECtHR has already delivered key judgments setting European standards of protection, but where the Member States are still continuously violating LGBTI individuals’ fundamental rights in the context of structural and/or general problems.

All these precisions explain why the number of pending SOGIESC cases itself is not sufficient to determine whether a particular gap is being addressed by the European Courts. It must be read in the light of the implementation status of judgments delivered in these categories of gaps.

Below are the *key figures* on the implementation status concerning the European Court of Human Rights case law in the last three years.

One clear example is the gap ‘hate crime’. As of 31 December 2023, there are **5** SOGIESC pending cases before the European Court of Human Rights. Concomitantly, **9 judgments** finding a violation of the ECHR have been issued over the past three years, 5 of them being under enhanced supervision by the Committee of Ministers.

The same applies to ‘freedom of assembly’. There are currently **5** sexual orientation cases pending before the ECtHR. In parallel, **11 cases** were decided in the last three years, 7 of which found a violation of the ECHR. Out of these, 5 cases are under enhanced procedure and 4 are considered as complex problems by the Committee of Ministers.

Gap issues for which both the number of pending cases and the number of judgments is high call for increased scrutiny. Indeed, not only did numerous applicants suffer violations of their rights in recent years, leading to key judgments being delivered to reaffirm strong European standard of protection, but the violations keep occurring, resulting in a constant increase in pending cases.

It is thus crucial to solicit the Committee of Ministers to push for the implementation of the judgments by the relevant Member States, in order to put an end to the continuing violations of LGBTI individuals’ fundamental rights in the specific areas of concern.

At the EU level, several key judgments rendered by the CJEU on fundamental family rights questions (notably the judgments rendered respectively in 2018 and 2021 in the *Coman* and *Pancharevo* cases) have still not been implemented to date, leading to the filing of complaints to the European Commission, which should push for their implementation by the relevant Member States.

1) **SEXUAL ORIENTATION: 29 ECtHR judgments under implementation delivered in the last three years**

- **14 cases identified as key/leading cases** by the Committee of Minister in relation to the implementation process:
 - **B and C v. SWITZERLAND** (Applications nos. [889/19](#) and [43987/16](#)) 17 November 2020
LEADING (*asylum*)
 - **BERKMAN v. Russia** (Application no. [46712/15](#)) 1 March 2021
LEADING (*Freedom of assembly*)
 - **SABALIĆ v. CROATIA** (Application no. [50231/13](#)) 14 April 2021
KEY CASE (*hate crime*)
 - **ASSOCIATION ACCEPT AND OTHERS v. ROMANIA** (Application no. [19237/16](#)),
Final 1 September 2021
LEADING (*Freedom of assembly*)
 - **J.L. against ITALY** (Application no. [5671/16](#)), Final 27 August 2021
LEADING (“*Secondary victimisation*” of a victim of sexual assault on account of comments in the reasoning of the judgment)
 - **X v. POLAND** (Application no. [20741/10](#)) 28 February 2022
LEADING (*Refusal to grant applicant full parental rights and custody over her youngest child based solely or decisively on considerations regarding her sexual orientation*)
 - **GENDERDOC-M and M.D. v. THE REPUBLIC OF MOLDOVA** (Application no. [23914/15](#)) 14 March 2022
LEADING (*discrimination by agents of the State*)
 - **OGANEZOVA V ARMENIA** (Applications nos. [71367/12](#) and [72961/12](#)) 17 August 2022
LEADING (*hate crime and hate speech*)
 - **STOYANOVA v. BULGARIA** (Application no. [56070/18](#)), Final 14 September 2022
LEADING (*Hate crime*)
 - **CASE OF ECODEFENCE AND OTHERS v. RUSSIA** (Applications nos. [9988/13](#) and 60 others) 10 October 2022
KEY CASE (*freedom of association*)
 - **FEDOTOVA AND OTHERS v. RUSSIA** (Applications nos. [40792/10](#), [30538/14](#), [43439/14](#)) 17 January 2023
KEY CASE (*Absence of any form of legal recognition and protection for same-sex couples*)
 - **MACATE v. LITHUANIA** (Application no. [61435/19](#)) 23 January 2023
KEY CASE (*No legitimate aim for temporary suspension of children’s fairy tale book depicting same-sex relationships and its subsequent labelling as harmful to children under the age of 14*)
 - **MAYMULAKHIN AND MARKIV v. UKRAINE** (Application no. [75135/14](#)) Final 1 September 2023
LEADING (*Absence of any form of legal recognition and protection for a same-sex couple*)
 - **BUHUCEANU AND OTHERS v. ROMANIA** (Application no. [20081/19](#) and 20 others)
Final 25 September 2023

LEADING (*Absence of any form of legal recognition and protection for same-sex couples*)

• **13 “Repetitive” cases:**

- **AGHDGOMELASHVILI JAPARIDZE v. GEORGIA**
Abusive police conduct during search of premises of an LGBT NGO motivated by homophobic and/or transphobic hatred
- Repetitive for 1 Leading Case: 73235/12 - IDENTOBA AND OTHERS v. Georgia

- **CASE OF WOMEN’S INITIATIVES SUPPORTING GROUP AND OTHERS v. GEORGIA**
Hate crime
- Repetitive for 1 Leading Case: 73235/12 - IDENTOBA AND OTHERS v. Georgia

- **KAVKAZSKIY AND OTHERS v. Russia**
Unlawful detention
Enhanced procedure
- Repetitive for 3 Leading Cases: 926/08 - Karelin v. Russia , 54381/08 - Tsvetkova and Others v. Russia , 74467/10 - Atyukov v. Russia

- **YARTSEV v. RUSSIA (Application no. 16683/17) 2021**
Freedom of expression • No legal basis for applicant’s conviction for shouting slogans not corresponding to the declared aims of a lawful public event
- Repetitive for 1 Leading Case: 57818/09 - Lashmankin and Others v. Russia

- **SOZAYEV and others v. Russia**
Abusive administrative offences
Enhanced procedure
- Repetitive for 2 Leading Cases: 926/08 - Karelin v. Russia , 57818/09 - Lashmankin and Others v. Russia

- **SHNEYDER and others v. RUSSIA**
Article 11, abusive administrative offence.
Enhanced procedure
- Repetitive for 2 Leading Cases: 926/08 - Karelin v. Russia , 57818/09 - Lashmankin and Others v. Russia

- **IVANOV v. RUSSIA**
Hate crime
Enhanced procedure
- Repetitive for 1 Leading Case: 46712/15 - Berkman v. Russia

- **ISAKOV v. RUSSIA**
Freedom of expression
Enhanced procedure

- ➔ Repetitive for 1 Leading Case: 67667/09 - Bayev and Others v. Russia
 - **ABAKUMOV AND OTHERS v. RUSSIA**
Freedom of Assembly
New Case
- ➔ Repetitive for 1 Leading Case: 57818/09 - Lashmankin and Others v. Russia
 - **DAVYDOV AND OTHERS V. RUSSIA**
Freedom of Assembly
Enhanced procedure
- ➔ Repetitive for 1 Leading Case: 57818/09 - Lashmankin and Others v. Russia
 - **DZERKORASHVILI AND OTHERS v. GEORGIA**
Unjustified detention
Standard procedure
- ➔ Repetitive for 1 Leading Case: 23158/20 - Makarashvili and Others v. Georgia
 - **BEUS v. CROATIA**
Hate crime
Standard procedure
- ➔ Repetitive for 1 Leading Case: 50231/13 - Sabalic v. Croatia
 - **NEPOMNYASHCHIY AND OTHERS v. RUSSIA**
Hate speech
Enhanced procedure
- ➔ Repetitive for 1 Leading Case: 46712/15 - Berkman v. Russia
- 2 New cases
 - **ROMANOV AND OTHERS v. RUSSIA**
 - **LAPUNOV v. RUSSIA**
- 2) **GENDER IDENTITY: 5 ECtHR judgments under implementation delivered in the last three years**
 - **1 leading case:**²
 - **X AND Y v. ROMANIA** (*Application nos. 2145/16 and 20607/16*) Final 19 April 2021

² Three other cases are identified as “key cases” despite the judgments not finding any violation:

- **Y. v. FRANCE** (*Application no. 76888/17*) Final 26 June 2023
Refusal by the national authorities to insert the term “neutral” or “intersex” on the birth certificate of an intersex person – no violation
- **A.H. and others v. GERMANY** (*Application no. 7246/20*) Final 4 July 2023
Legal impossibility for transgender parent’s current gender to be indicated on birth certificate of child conceived after LGR – no violation
- **O.H. and G.H. v. GERMANY** (*Application nos. 53568/18 and 54741/18*) Final 4 July 2023
Legal impossibility for transgender parent’s current gender to be indicated on birth certificate of child conceived after LGR – no violation

LEADING (*Refusal of national authorities to recognise male identity of transgender persons in the absence of gender reassignment surgery*).

- **4 repetitive cases:**
 - **A.M. and OTHERS v. RUSSIA**
Unjustified discrimination on grounds of gender identity resulting in deprivation of contact rights with children.
→ Repetitive for 1 Leading Case: 77546/14 - Elita Magomadova v. Russia
 - **DUĞAN v. TÜRKİYE**
Unjustified detention
Standard procedure
→ Repetitive for 1 Leading Case: 33362/04 - KUCUK v. Turkey and Switzerland
 - **CSATA v. ROMANIA**
Refusal to grant legal gender recognition in the absence of sex reassignment surgery
Enhanced procedure
→ Repetitive for 1 Leading Case: 2145/16 - X and Y v. Romania
 - **R.K. v. HUNGARY**
Lack of regulatory framework for legal gender recognition
New case
→ Repetitive for 1 Leading Case: 40888/17 - Rana v. Hungary

§5. Focus area categorisation in identifying judgments and pending cases to address existing gaps in the protection of LGBTI rights

This overview explains how pending cases and delivered judgments have been categorised for this inventory. They aim at providing a clear idea of the areas where the protection of LGBTI rights needs to be advanced. It also helps identifying most pressing issues to be addressed through strategic litigation.

I. Hate crime, hate speech and asylum rights

I a Hate crime – failure of state to provide protection

1. Failure of states to uphold **positive obligation to protect LGBTI people** from crimes motivated by LGBTI phobia, for example:
 - i. Ill-treatment by private individuals or state officials, whether at public events such as pride marches, in police stations or places of detention, or through death threats.
 - ii. Attacks on known LGBTI venues
 - iii. LGBTI phobia violence by family members
 - iv. Lack of effective investigations into the above types of incident.

I b Discrimination by agents of the state in the execution of their duties

2. **Direct harassment/discrimination against LGBTI people by the police, or other officials**, including: arbitrary detention and arrest; illegal collection and retention of private data; police

investigation data or criminal record maintained after repeal of discriminatory law; right to fair trial prejudiced by discriminatory attitude of courts.

I c Medical abuse

3. Forced and intrusive **medical examinations, commitment to medical/psychiatric facilities** with intention of "curing" the person; designation of homosexuality/gender identity as a mental health problem.

I d Hate speech

4. Failure of states to protect LGBTI people from bias-motivated hate speech, including when propagated over the Internet.

I e Asylum

5. Where an LGBTI asylum seeker is sent back to a country on the basis that sexual orientation, gender identity, gender expression or sex characteristics can be concealed (in contrast to political views or religious beliefs).

5a. Use of personality tests in screening LGBTI asylum applicants.

I f Freedom of expression – especially “propaganda of homosexuality” (including addressing argument that information about homosexuality is a danger to children)

6. Cases involving prosecution for disseminating information about homosexuality or trans- and intersex issues

I g Freedom of association

7. Refusal to register LGBTI organisations

I h Freedom of assembly

National interest cases

II. Socio-economic rights

II a Employment

8. General employment discrimination, including workplace harassment (important for those countries outside the EU and which have no effective protection).
9. Discrimination by religious organisations in access to jobs not directly concerned with the exercise of their faith.
10. Extending employment protection under CJEU case law beyond those intending to undergo, undergoing or having undergone reassignment treatment - (case involving discrimination against a trans person not falling under the existing definition of "transsexual", in order to extend protection to those not able or not wishing to undergo gender reassignment treatment).

II b Education

11. Positive obligation of states to take measures to protect LGBTI students from harassment and discrimination in educational establishments.
12. LGBTI phobic materials in the curricula, particularly in state funded faith schools.
13. Cases establishing that the right of parents under ECHR Protocol 1 Article 2 to ensure education in conformity with their religious convictions is subordinated to the right of children, specifically in the context of sexual orientation, gender identity, gender expression and sex characteristics, to an objective and non-discriminatory education.
14. Constructive exclusion from education where a trans student is compelled to wear clothes opposite to their self-identified gender, or forced to use their legal name (where this has not been changed).

II c Access to services

15. Discrimination in access to services, generally
16. Discrimination in access to non-religious services provided by faith organisations to the general public (e.g. education, medical services, adoption agencies), or by persons of faith working within a non-faith organisation.³

III. Rights of trans persons

III a Legal gender recognition

17. Inadequate procedures for legal gender recognition (including for non-binary persons)
 - 17a. Refusal by authorities to allow a change of name aligned with gender identity
 - 17b. Abolition of requirement for trans persons to undergo medical interventions prior to legal gender recognition
18. Right to identity, private life and protection of personal and medical data

III b Access to reassignment treatment

19. Private or state insurance systems to cover cost of medically necessary treatment on non-discriminatory basis.⁴

IV. Family rights - Same-sex partners' rights and parenting by LGBTI individuals

³ The 2013 *Ladele* and *McFarlane vs UK* cases are an important first step in closing this gap.

⁴ Existing cases – *Schlumpf* and *van Kück* are rather narrow in the circumstances they address, giving too much scope for states to escape their obligations. Need clear-cut case in which a private or state health scheme refuses to cover any of the cost of medically necessary reassignment treatment.

20. Access to **non-parenting rights of married different-sex couples**: any field such as immigration, free movement under EU law, survivor's pension, family benefit, etc
21. Access to **parenting rights of individuals or unmarried different-sex couples**:
- i. Custody/access to biological child, e.g. following break up of previous different sex relationship, or where child is conceived with the help of medically assisted procreation⁵
 - ii. Adoption by a single person⁶
 - iii. Access to assisted reproductive treatment by a single woman
 - iv. Access to parental responsibility
 - v. Second parent adoption by two women with a child by donor insemination or from a heterosexual relationship;⁷
 - vi. Joint adoption by same-sex couple, where permitted to unmarried different sex couple;
 - vii. Non-genetic father/mother's parenthood not recognised;
 - viii. Access to "maternity" or "paternity" leave for second parent in same-sex couple.
22. Access to **parenting rights of different sex married couples**
- i. Second parent adoption by two women with a child by donor insemination or from a heterosexual relationship;
 - ii. joint adoption by same-sex couple in countries where adoption restricted to opposite sex married couples;
 - iii. Access to assisted reproductive treatment in countries where restricted to opposite sex married couples;
 - iv. Right of bi-national same-sex couple (and their child) legally recognised in one of their two countries, but not the other, to have their child's birth certificate replicated in the second country.
23. Where no right to marry exists, **access to alternative of registered partnership**⁸; includes recognition of registered partnership contracted in a foreign country.
24. Where rights attached to registered partnership fall short of those attached to marriage.
25. Same-sex couples' right to marry.
26. Recognition of foreign marriages contracted by same-sex couples, including right of a foreign partner to reside in partner's country and right of couple's children to nationality; also, refusal of national authorities to provide certificate confirming that their citizen can enter into a [same-sex] marriage abroad.
27. Right of a child of a same-sex couple to parents' citizenship (e.g. in case of surrogate child, or child adopted abroad)

⁵ Although covered in principle by the settled case of *Mouta v. Portugal*, in practice, as experienced in drafting of Committee of Ministers Recommendation, this is strongly contested by a number of member states

⁶ Although covered in principle by the settled case of *E.B. v. France*, in practice, as experienced in drafting of Committee of Ministers Recommendation, this is strongly contested by a number of member states.

⁷ The 2013 Grand Chamber judgment in *X v. Austria* is an important start to closing this gap. But highly contested, and more cases are needed. Important to include the child as a party in such cases, so as to bring in the best interests of the child.

⁸ *Oliari and Others v Italy*, however need more similar cases from other regions to clarify applicability of Oliari judgment in other Council of Europe States and provide guidance to the scope of rights "specific legal framework" for recognition of same-sex unions would entail.

28. Violation of right to privacy, through disclosure on birth certificate of a child of a same-sex couple whose parent was the non-biological parent.

Family rights issues specific to couples where one or both partners are trans, and to trans individuals

29. The right of trans persons not to be required to dissolve a marriage entered into prior to their legal gender recognition.
30. Custody/access to the child following break up of a marriage or relationship; recognition of parental ties according to gender identity.
31. Where single persons are allowed to adopt, adoption rules to be applied without discrimination on grounds of gender identity.
32. Right to be designated with the legally recognised gender one's child's birth certificate, and related privacy issue re disclosure of trans status.

33. General Issue in parenting

Affirmation that parenting by LGBTI persons is not contrary to the best interests of the child

V. Rights of intersex persons

34. Cases addressing the problem of young intersex children being exposed to IGM (intersex genital mutilation) before they are old enough to give informed consent.
35. Cases addressing intersex persons' access to legal gender recognition.
36. Cases addressing the access to health care of adult intersex persons.
37. Cases addressing non-discriminatory access to sport competitions. **(new)**

§6. Case-law evolution on the protection of the rights of LGBTI people on European level

The table below provides an overview of the **evolution of case law on LGBTI rights since 2010** when ILGA-Europe started conducting this inventory, including judgments issued since then and cases communicated and still pending, as of December 2023. **The inventory does not cover all cases, but the ones that ILGA-Europe does identify as strategic based on the thinking set out above.**

Highlighted in yellow: cases decided/communicated/lodged over the last three years.

All cases are hyperlinked.

AREAS OF RIGHTS OF LGBTI
PEOPLE

• JUDGMENTS

I. Hate crime, hate speech and asylum rights

I a. Hate crimes - failure of the state to protect

Identoba v. Georgia (violation of Art 3, 11, 14 - 2015): Failure to provide adequate protection against inhuman and degrading treatment against LGBTI activists by religious groups during a march in 2012; absence of effective investigation.

↳ *Execution status: enhanced procedure because ongoing problem in identifying hate motives; systematic measures needed to protect LGBTI demonstrators; action plan/report received.*

M.C. and A.C. v. Romania (violation of Art 3 + 14 – 2016): Treatment directed at the applicant's identity, incompatible with respect for their human dignity, ineffective investigations, failure to consider possible discriminatory motives.

↳ *Execution status: enhanced procedure; complex problem; action plan/report received; general measures under assessment; just satisfaction paid.*

Sabalic v. Croatia (violation of Art 3 and 14 - 2020) authorities' response to violent homophobic attack was ineffective. KEY CASE.

↳ *Execution status: standard; Action Plan/Report received, just satisfaction paid.*

Association ACCEPT and others v. Romania (violation of art 8+11+14 - 2021): Police failed to prevent far-right invasion of gay film screening and homophobic abuse.

↳ *Execution status: enhanced procedure since 2022 (was under standard supervision before then); Action Plan/Report received; just satisfaction paid.*

Genderdoc-M and M.D. v. the Republic of Moldova (violation of Art 3+14 – 2021): Failure to conduct effective investigation into whether assault by private party was a hate crime motivated by homophobia.

↳ *Execution status: Closed.*

Oganezova II v. Armenia (72961/12) (violation of Art 3 + 14 – 2022): State's failure to protect LGBT bar owner and activist from homophobic arson, physical and verbal attacks and to carry out effective investigation

↳ *Execution status: Action Plan/ Report received; complex problem; just satisfaction paid.*

WISG and others v. Georgia (73204/13 and 74959/13) (Violation of Art 3 + 14 and 11 + 14 – 2022): State’s failure to take operational preventive measures to protect applicants from homophobic and/or transphobic violence, conduct an effective investigation and ensure LGBT rally proceeded peacefully. Indications of official acquiescence, connivance and active participation in individual acts motivated by prejudice
 ↳ *Execution status: paid; enhanced procedure; complex problem.*

Stoyanova v. Bulgaria (56070/18) (Violation of Art 14+2 – 2022): State’s failure to consider homophobic motives underlying the murder of a gay man as a statutory aggravating factor, with no measurable effect on sentencing.
 ↳ *Execution status: enhanced procedure; complex problem; paid.*

Ivanov v Russia (violation of Art 3, 3+14 and 13 – 2023): State’s failure to take into account the discriminatory motive of the assault of an LGBTI activist during a demonstration
 ↳ *Execution status: enhanced procedure; complex problem; awaiting payment.*

Beus v. Croatia (violation of Art 3, 8 and 14 – 2023): Domestic authorities’ lack of appropriate procedural response to acts of homophobic violence
 ↳ *Execution status: standard procedure; paid.*

Romanov and others v. Russia (violation of Art 3+14, 5 § 1, 11, 11+14 – 2023): State’s failure to take effective preventive measures aimed at protecting members of LGBTI community from violent verbal and physical hate-motivated attacks by private individuals during demonstrations and to conduct an effective investigation into homophobic motives of counter-demonstrators

- PENDING

SO: A v. AZERBAIJAN and 24 other applications (2019); ‘TBILISI PRAIDI’ and Others v Georgia and Salome NIKOLEISHVILI and Others v Georgia (602/22 and 13073/22 – 2022); Zoryan Romanovych KIS and Tymur Anzorovych LEVCHUK v. Ukraine (910/18 – 2023)

GIESC: Koutra and Katzaki v. Greece (2017)

• JUDGMENTS

I b Discrimination by agents of the state in the execution of their duty

X v. Turkey (violation of Art 3 + 14 – 2012): conditions of detention in solitary confinement incompatible with human dignity and based on sexual orientation (discriminatory motive); lack of effective remedy.
↳ *Execution closed.*

Aghdgomelashvili v Georgia (violation of Art 3 + 14 – 2021): the inappropriate conduct of the police officers (strip searches, insults, threats of physical violence) incompatible with human dignity; failure to identify the discriminatory motives, namely homophobic and transphobic hatred against the applicants.
↳ *Execution pending, enhanced procedure; complex problem; paid.*

J.L. against Italy (violation of Art 8-1 – 2021): failure of the national authorities to protect the applicant from secondary victimisation throughout a criminal proceedings (notably in the language and arguments used by the court in a public judgment).
↳ *Execution pending; enhanced procedure; complex problem.*

GENDERDOC-M and M.D. v. the Republic of Moldova (violation of Art 3 + 14 – 2022): State's failure to conduct effective investigation into whether assault by private party was a homophobic hate crime.
↳ *Execution closed*

Duğan v. Turkey (violation of Art 5 and 14 – 2023): Unjustified short-term detention at a police station of a transgender sex worker, for disrupting traffic
↳ *Execution: standard procedure; awaiting for Action Plan/Report.*

Dzerkhorashvili & Others v. Georgia (violation of Art 5 § 1 – 2023): Administrative arrest and detention of LGBTI activists for about twelve hours not free from arbitrariness, for drawing graffiti on the walls of a church.
↳ *Execution: standard procedure; paid.*

Lapunov v. Russia (violation of Art 3, 14+3 and 5 § 1 – 2023): Discriminatory abduction, detention and torture of a gay man by State agents in Chechnya on account of his sexual orientation and

systematic failure to investigate unacknowledged detentions and disappearances in Chechnya.

Silvia Viktorova DIMITROVA v. Bulgaria (inadmissible – 2023): refusal by the authorities to issue a protection order in a case of domestic violence by a same-sex partner, inadmissible for failure to exhaust local remedies based on Article 35 §§ 1 and 4.

- PENDING

SO: V.P. v. Russia (2017); Lambda Istanbul v. Turkey (2018); S.BEDNAREK and others v Poland (2022); Sahakyan and Others v. Armenia (2022); SOLMAZ v. Turkey (2020); Irakli ARESHIDZE v. Georgia (2023)

GIESC: Jand v. Greece (2020)

I c Medical abuse

Forced and intrusive medical examinations, commitment to medical/psychiatric facilities with intention of "curing" the person; designation of homosexuality/trans status as a mental health problem.

I d "Hate speech"

- JUDGMENTS

Vejdeland v. Sweden (no violation – 2012): Sweden acted in compliance with article 10 by convicting the applicants who had distributed homophobic leaflets in a secondary school.

Beizaras and Levickas v. Lithuania (violation of Art 8 + 14 – 2020): failure to investigate online hateful comments against a gay couple.

↳ *Execution status: standard procedure; complex problem; action plan/report is received; paid.*

Lilliendahl v. Iceland (no violation – 2020): Iceland acted in compliance with the Convention by convicting and fining the author of homophobic comments. Such prejudicial and intolerant comments, which promoted intolerance and detestation of homosexual persons, fell within the definition of hate-speech under Article 10.

GenderDoc-M v. Moldova (23914/15) (inadmissible – 2022): Hate speech claim inadmissible because the claimant, an LGBTI association was neither a direct or indirect victim of the acts affecting the rights of its individual members.

Andrea GIULIANO v. Hungary, (inadmissible – 2022): §30. “In the light of the above, the Court considers that the investigative actions undertaken by the domestic authorities constituted appropriate, albeit unsuccessful, steps towards identifying and punishing those responsible for the alleged crimes.”

Nepomnyashchiy and others v. Russia (violation of Art 8+14 – 2023): Domestic authorities’ failure to comply with their obligation to respond adequately to homophobic statements made by state officials against members of the LGBTI community published in a newspaper.

Jonas VALAITIS v. Lithuania (no violation – 2023): The State took wide-ranging and multifaceted domestic measures combatting hate speech in response to the Court’s judgment in Beizaras and Levickas case. An investigation was carried out in the applicant’s case.

Public association “Information Centre GENDERDOC-M” v. Moldova (23911/15, 18083/16) (inadmissible – 2023): homophobic statements by politicians and a priest, inadmissible *ratione personae* for lack of victim status of the applicant.

- PENDING

SO: Minasyan and others v. Armenia (2018); Andrea GIULIANO v. Hungary (2019); Alekseyev et al v. Russia (2016); Krikerik v. Russia (2017); Sahakyan and others v. Armenia (2021); GenderDoc-M v Moldova (17766/16, 2021); GenderDoc-M v Moldova (23907/15, 2022); Makeleio EPE (CJEU, 2023); Zougla SA (CJEU, 2023); New generation humanitarian NGO v. Armenia (2023)

GIESC: Onurhan SOLMAZ v. Turkey (2020).

I e Asylum

- JUDGMENTS

X, Y & Z (CJEU – 2013): application of law criminalising homosexual acts is an act of persecution; when assessing an application for refugee status, the competent authorities cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality.

A, B & C (CJEU – 2015): prohibition of refugee assessment based on stereotyped notions concerning homosexuals, sexual practices, and other ‘tests’ (films).

O.M. v. Hungary (violation of Art 5 – 2016): the applicant’s detention verged on arbitrariness and did not contain any adequate reflection on his individual circumstances as a member of a vulnerable group by virtue of belonging to a sexual minority in Iran
 ↳ *Execution status: Pending, standard procedure; repetitive case; paid.*

B and C v. Switzerland (violation of Art 3 – 2020): domestic courts’ failure to sufficiently assess the risks of ill-treatment as a homosexual person in the Gambia and the availability of State protection against ill-treatment emanating from non-State actors.
 ↳ *Execution status: closed, standard procedure; leading case.*

LB v. France (inadmissible – 2023): expulsion to Morocco of an intersex person who had started gender reassignment treatment in France after the rejection of his asylum application. Inadmissible based on failure to exhaust local remedies.

- PENDING

SO V.D. v. Russia (2020); **M.I. v Switzerland (2022; discretion argument)**

If Freedom of expression/association

- JUDGMENTS

Kaos GL v. Turkey (violation of Art 10 – 2016): Seizure of all copies of a magazine published by an association promoting LGBT rights in Turkey breached its right to freedom of expression.
 ↳ *Execution status: Pending, standard procedure, repetitive case.*

Bayev v Russia (violation of Art 10 + 14 – 2017): Laws prohibiting propaganda of homosexuality among minors and penalizing propaganda of bisexuality and trans identity among minors reinforce stigma and prejudice and must be repealed.
 ↳ *Execution pending, enhanced procedure.*

Ecodefence and others v. Russia (violation of Art 11 and 34 – 2022): Application of Foreign Agents

Act to applicant NGO. Violation art 34 on account of the respondent State's failure to comply with the interim measure indicated by the Court. KEY CASE.

↳ *Execution pending; new case; awaiting AP/R.*

Yevtushenko and Isakov v. Russia (violation of Art 10 and 14+10 – 2023): The State's ban on "promotion of homosexuality among minors" and its implementation in the case where the applicant was convicted for an administrative offence for picketing with a banner against homophobia, violates Articles 10 and 14+10.

↳ *Execution pending; enhanced procedure; complex problem; awaiting information on payment.*

Neringa Dangvydė MACATĖ v. Lithuania (violation of Art 10 and 14+10 – 2023): No legitimate aim for temporary suspension of a children's fairy tale book depicting same-sex relationships and its subsequent labelling as harmful to children under the age of 14. KEY CASE.

↳ *Execution pending; leading; enhanced procedure; paid.*

C8 (Canal 8) v. France (no violation – 2023): Sanctions imposed by the national broadcasting authority to a television channel for a footage perpetuating a negative and stigmatising stereotype of homosexual people has not infringed its right to freedom of expression.

Lenis v. Greece (inadmissible – 2023): Criminal conviction of senior Greek Orthodox Church official for publishing an article containing hate speech and incitement to violence targeting LGBTI people does not violate his freedom of expression.

- PENDING

SO: Ilupin and Others v. Russia (2018); Klimova v. Russia (2017); Doina-Ioana STRĂISTEANU v. Moldova (2023)

I g Freedom of association

Refusal to register LGBTI organisations

No pending cases

One case was declared inadmissible (**Lambda Istanbul v. Turkey – 2021**)

I h Freedom of assembly

National interest cases

- JUDGMENTS

SOZAYEV and others v. Russia (violation of Art 11 + 5 + 6 – 2020): Abusive administrative offences
↳ *Execution pending; enhanced procedure; complex problem.*

Shneyder and others v Russia (violation of Art 11 + 5 + 6 – 2020): Abusive administrative offences
↳ *Execution pending; enhanced procedure; complex problem.*

Berkman v. Russia (violation of Art 11, 5§1 – 2021): Failure to ensure that public LGBTI awareness event proceeded peacefully.
↳ *Execution pending; enhanced procedure; complex problem.*

YARTSEV v. Russia (violation of Art 10 – 2021): No legal basis for applicant's conviction for shouting slogans not corresponding to the declared aims of a lawful public event
↳ *Execution pending; enhanced procedure; complex problem.*

Kavkazskiy v. Russia (violation of Art 5§1 – 2022): Unlawful detention.
↳ *Execution pending; enhanced procedure.*

Abakumov and others v. Russia (violation of Art 11 – 2023): detention and fine for participating in an assembly against LGBTI discriminations.
↳ *Execution pending; new case.*

Daydov and others v. Russia (violation of Art 11 and 13 – 2023): ban on picketing at the Ministry of Health against the ban on blood donations by homosexuals.
↳ *Execution pending; enhanced procedure; complex problem.*

- PENDING

SO: Oleksandra Igorivna SVERDLOVA and Olena Olegivna SHEVCHENKO v. Ukraine (2020); Shevchenko and others v. Ukraine (2022); GENDERDOC-M v. Moldova (40235/15 1 2022)

→ 4 cases **inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention.**

II. Socio-economic rights and access to services

II a Employment – general

• JUDGMENTS

ACCEPT v. Fotbal Club Steaua Bucuresti (CJEU, C-81/12 – 2013): Homophobic statements by the ‘patron’ of a professional football club may shift the burden of proof on to the club to prove that it does not have a discriminatory recruitment policy.

NH v. Associazione Avvocatura per i diritti LGBTI – Rete Lenford (CJEU, C-507/18 – 2020): statements made by a lawyer during a radio programme, saying he would never recruit a “homosexual” or wish to use the services of such persons, fell within the ambit of the anti-discrimination directive.

J.K. v. TP S.A. (CJEU, C-356/21 – 2023): Directive 2000/78 on Equal Treatment protects self-employed persons when contracting with third parties during the performance of their activities from being discriminated against on the basis of their sexual orientation.

• PENDING

SO: Krupnova v. Russia (2017); Oleynik v. Russia (2020); **K.P. v. Poland (2021)**

II a Employment – faith organisations

II b Education – discriminatory materials in school curricula

II c Access to services – generally

• JUDGMENT

Gareth Lee v. UK (inadmissible – 2020)

II c Access to services – discrimination on grounds of faith

• JUDGMENT

Ladele v UK and McFarlane v UK (2013): importance of balancing the right to freedom of religion with the public interest in providing non-discriminatory services and ‘ensuring that members of the public, regardless of their sexual orientation, are treated with dignity and have equal access to services.

• PENDING

SO: **GENDERDOC-M v. Moldova (54873/18, 2022)**

- JUDGMENT

IV Family rights - Same-sex partners' rights and parenting rights

20. Access to non-parenting rights of married different sex couples

any field such as immigration, free movement under EC law, survivor's pension, family benefit, etc

Hay v. Credit agricole mutuel (CJEU, C-267-12 – 2013): an employee who concludes a civil solidarity pact with a person of the same sex must obtain the same benefits (days of special leave and a salary bonus), as those granted to married employees, where the national rules of the Member State concerned do not allow persons of the same sex to marry

Taddeucci & McCall v. Italy (violation of Art 8 + 14 – 2016): treating homosexual couples – for the purposes of granting a residence permit for family reasons – in the same way as heterosexual couples who had not regularised their situation was discriminatory.

V.M.A. v Stolichna obshtina, rayon Pancharevo (CJEU, Grand Chamber, Case C-490/20 – 2021)

Articles 20 and 21 TFEU; notion of family; free movement. In the case of a child, being a minor, whose birth certificate, issued by the host Member State, designates as that child's parents two mothers, the Member State of which that child is a national is obliged (i) to issue to that child an identity card or a passport without requiring a birth certificate to be drawn up beforehand by its national authorities, and (ii) to recognise the birth certificate for the child to move and reside freely within the territory of the Member States.

- PENDING

SO: Antoni MESZKES v. Poland (socio-eco rights, 2020); Rafał GROCHULSKI v. Poland (life insurance, 2020); Barbara Gabriela STARSKA v. Poland (name change, 2020); **Kowalsi v. Poland (2022)**

21. Access to parenting rights of individuals or unmarried different sex couples

X v. Austria (violation of Art 14+ 8 – 2013): excluding second-parent adoption in a same-sex couple, while allowing that possibility in an unmarried different-sex couple, was a distinction incompatible with the Convention.

D.B. and others v. Switzerland (violation of Art 8 – 2022)

Margin of appreciation exceeded. The State's failure to recognize the lawfully issued foreign birth certificate in so far as it concerned the parent-child relationship between the intended father and the child born through surrogacy in the US, without providing for alternative means of recognising that relationship is not in the best interests of the child.

X v. Poland (violation of Art 14 + 8, 2022)

Refusal to grant parental rights and custody based solely or decisively on considerations regarding sexual orientation

↳ *Execution pending; standard; leading.*

Callamand v. France (violation of Art 8 – 2022)

– Rejection of the applicant's request for contact rights with her former spouse's child (conceived by medically assisted procreation and in respect of whom she had acted as a joint parent for more than two years since his birth).

S.-H. v. Poland (inadmissible – 2022)

– Application for Polish citizenship of children of same-sex parents born via a surrogacy agreement residing in Israel. Inadmissible *ratione materiae*.

S.W. and Others v. Austria (inadmissible – 2022)

– Refusal to issue birth certificate indicating both child's parents as her mothers in case of adoption by biological mother's partner in same-sex couple. Application manifestly ill-founded.

Valentina BORTOLANO v. Italy (inadmissible – 2023):

no remedy available for a social/intended mother prevented from visiting her children by the biological/legal mother. Inadmissible based on Article 35 § 4 as the State had a wide margin of appreciation.

- PENDING

SO: R.F. and others against Germany (2017, AMP); A.D.-K. and Others v. Poland (2019)

22. Access to parenting rights of different sex married couples

23. Access to registered partnership

Where no right to marry, **access to alternative of registered partnership**; Includes recognition of registered partnership contracted in a foreign country

• JUDGMENTS

Vallianatos et al v. Greece (violation of Art 14 + 8 – 2013): the Government had not offered convincing and weighty reasons capable of justifying the exclusion of same-sex couples from civil unions.

Oliari v. Italy (violation Art 8 – 2015): taking note of the changing conditions in Italy, the Court noted that the Italian Government had overstepped their margin of appreciation and failed to fulfil their positive obligation to ensure that the applicants have available a specific legal framework providing for the recognition and protection of their same-sex unions

Barmaxizoglou and others v. Greece (violation of Art 14+8 – 2022): the Government had not offered convincing and weighty reasons capable of justifying the exclusion of same-sex couples from civil unions (under law 3719/2008 regime, before the entry into force of law 4356/2015).
↳ *Execution closed.*

Buhuceanu and others v. Romania (violation of Art 8 – 2023): Same-sex couples should have the possibility of entering into a form of civil union or registered partnership in order to have their relationships legally recognised and protected – in the form of core rights relevant to any couple in a stable and committed relationship – without unnecessary hindrance. None of the public-interest grounds put forward by the State prevailed.
↳ *Execution pending; leading; enhanced procedure; complex problem.*

Maymulakhin and Markiv v. Ukraine (violation of Art 14+8 – 2023): The difference in treatment in the present case, which consisted in the unjustifiable denial to the applicants as a same-sex couple of any form of legal recognition and protection as compared with different-sex couples, amounts to discrimination against the applicants on the grounds of their sexual orientation.
↳ *Execution pending; leading; enhanced procedure; complex problem.*

Fedotova and others v. Russia (violation of Art 8 – 2023): States are required to provide a legal framework allowing same-sex couples to be granted adequate recognition and protection of their relationship. The State has overstepped its margin of

appreciation and has failed to comply with its positive obligation to secure the applicants' right to respect for their private and family life. **KEY CASE.**
↳ *Execution pending; leading; enhanced procedure; complex problem.*

Koilova and Babulkova v. Bulgaria (violation of Art 8 – 2023): The State (which refused to recognise a marriage concluded abroad) has overstepped its margin of appreciation and failed to satisfy its positive obligation to ensure that the applicants had available to them a specific legal framework providing for the recognition and protection of their union as a same-sex couple.
↳ *Execution pending; new case.*

Przybyszewska and others v. Poland (violation of Art 8 – 2023): The Polish legal framework cannot be said to provide for the core needs of recognition and protection of same-sex couples in a stable and committed relationship. The State has overstepped its margin of appreciation and has failed to comply with its positive obligation to ensure that the applicants had a specific legal framework providing for the recognition and protection of their same-sex unions.

- PENDING

SO: Fausto SCHERMI and Elwin Anthony VAN DIJK v. Italy (foreign marriage, 2019); HANDZLIK-ROSUŁ AND ROSUŁ v. POLAND (2020); Katarzyna FORMELA and Sylwia FORMELA v. Poland and 3 others (2020)

24. Where rights attached to registered partnership fall short of those attached to marriage.

25. Right to marry

The Court no longer considers right to marry limited to two persons of opposite sex. See Schalk & Kopf (2010): the relationship of the applicants, a cohabiting same-sex couple living in a stable *de facto* partnership, falls within the notion of “family life”.

26. Recognition of foreign marriages contracted by same-sex couples

- JUDGMENT

Coman and others v. Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne (CJEU, Grand Chamber, C-673/16 – 2018): The term ‘spouse’ for the purpose of the grant of family reunification rights under EU free movement law, includes the same-sex spouse of a Union citizen who has moved between Member States. The refusal to recognise the same-sex marriage of a third country national and a Union citizen, which has been concluded in another Member State during the Union citizen’s period of genuine residence in that State, can impede the exercise of the right to free movement of the Union citizen.

↳ *Execution pending.*

- PENDING:

Coman and others v. Romania (2663/21) (2021); A.B and K.V. v. Romania (17816/21) (2021) Andersen v. Poland (53662/20, 2022); Ferguson and others v. United Kingdom (2023); CJEU, Wojewoda Mazowiecki (C-713/23) (2023)

- JUDGMENT

A.M. and others v Russia (violation of Art 8 and Art 8+14 – 2021): Restriction of applicant’s parental rights and deprivation of contact with her children on gender identity grounds.

↳ *Execution: pending, standard, awaiting info on payment.*

A.H. and others v. Germany (no violation of Art 8 – 2023): refusal of the civil registration authorities to record a trans women who did not give birth to her child in the register of births as mother. KEY CASE.

O.H. and G.H. v. Germany (no violation of Art 8 – 2023): refusal of the German courts to allow a trans man who gave birth to his child to be recorded as father. KEY CASE.

- PENDING

Y.P. v. Russia (2017)

Family rights issues specific to couples where one or both partners are trans, and to trans individuals

30. **Custody/access to the child** following break up of a marriage or relationship; recognition of parental ties according to gender identity.

32. **Right to be designated with the legally recognised gender one’s child’s birth certificate**, and related privacy issue re disclosure of trans status.

Gaps specific to gender identity and sex characteristics

III a Legal gender recognition — **A.P., Garçon and Nicot v. France (violation of Art 8, 2017)**: LGR should not be dependent on gender reassignment surgery or hormonal treatment.

RANA v. Hungary (violation of Art 8, 2020): obligation to provide a procedure allowing LGR extends to all lawfully settled non-national citizens.
↳ *Execution status: Pending; enhanced procedure; complex problem; action plan/report is awaited.*

Y.T. v. Bulgaria (violation of Art 8 – 2020): Unjustified refusal to grant LGR to the applicant for an unreasonable and continuous period although it had been recognised in other cases.

MB v Sec of State for Work and Pensions (CJEU, C-451/16 – 2018): EU Law precludes national legislation which requires a person who has changed gender not only to fulfil physical, social and psychological criteria but also to satisfy the condition of not being married to a person of the gender that they have acquired as a result of that change, in order to be able to claim a State retirement pension as from the statutory pensionable age applicable to persons of their acquired gender.

S.V. v. Italy (violation of Art 8 – 2018): national authorities' refusal to authorise a trans woman to change her name on the grounds that she had not undergone gender reassignment surgery.

X and Y v. Romania (violation of Art 8 – 2021): legal framework not clear or foreseeable; requirement to undergo gender reassignment surgery as a prior condition for LGR amounts to an unjustified interference with the right to private life.
↳ *Execution: Leading case; enhanced procedure.*

R.K. v. Hungary (violation of Art 8 – 2023): lack of regulatory framework and failure to provide quick, transparent and accessible procedures for LGR.
↳ *Execution: repetitive, complex problem.*

- PENDING

A.C. and others v. Hungary (2020); **Mirin (CJEU, C-4/23, 2023)**; **Deldits (CJEU, C-247/23, 2023)**; **Mousse (CJEU, C-394/23, 2023)**.

III a Legal gender recognition – abolition of harmful and unnecessary medical requirements

Y.Y. v. Turkey (violation of Art 8 – 2015): refusal by the national authorities to authorise gender reassignment surgery on the grounds that the applicant was not permanently unable to procreate.

X. v. the former Yugoslav Republic of Macedonia (violation of Art 8, 2019): lack of statutory regulation of legal gender recognition procedures in the respondent State created a state of uncertainty for trans people, which mitigated in favour of inconsistent practice being created and applied by the domestic authorities.

↳ *Execution status: Pending; enhanced procedure; complex problem.*

A.D. and others v. Georgia (violation of Art 8 – 2022): Domestic authorities’ failure to provide quick, transparent and accessible procedures for legal gender recognition.

↳ *Execution status: Pending; enhanced procedure; complex problem; paid.*

Csata v. Romania (violation of Art 8 – 2023): Domestic authorities’ refusal to grant LGR in the absence of sex reassignment surgery.

↳ *Execution status: Pending; enhanced procedure; complex problem.*

- PENDING

T.H. v. Czech Republic (2023)

III a Legal gender recognition – abolition of divorce requirement

MB v Sec of State for Work and Pensions (CJEU, C-451/16 – 2018)

III b Access to gender reassignment treatment, including fair recovery of costs

Recognition that gender identity covered by non-discrimination Article (14)

P.V. v. Spain (No violation of 8 + 14 – 2010): Restriction of contact arrangements between a trans woman and her six-year-old son was in the child’s best interests; “**transgender identity** is a notion undoubtedly covered by Article 14”

Identoba v. Georgia (2015) “the prohibition of discrimination under Article 14 of the Convention duly covers questions related to sexual orientation and **gender identity**”

VI Intersex persons' rights

34. Cases addressing the wrongful assignment of gender of young intersex children through sex assignment surgery before they are old enough to give informed consent and to express their gender.
35. Access to legal recognition by adult intersex persons.
36. Cases addressing the access to health care by adult intersex persons.
37. Cases addressing the access to sport competitions

M. v. France (inadmissible – 2022): Ill-treatment (surgery and medical treatment) carried out on an intersex person without her consent. Inadmissible for non-exhaustion of domestic remedies.

Y. v. France (no violation – 2023): The applicant is an intersex person, whose birth certificate contains the mention “man”. The authorities refused to replace it by “neutral” or “intersex”. The applicant argues breach of the right to respect of their private life under Article 8 of the Convention. No violation as the State enjoyed a wide margin of appreciation.

- PENDING

Semenya v Switzerland (violation of Art 14+8, 13+14+8 – 2023) (referred to the Grand Chamber): Discrimination against a professional athlete with differences of sex development who was required under non-State regulations (World Athletics DSD regulations) to lower her natural testosterone level to compete in women’s category in international competitions