Joint statement: Welcoming European Court judgement on Poland's failure to protect same-sex couples married abroad

News, Civil Rights and Freedom, Legal Protection, European Court of Human Rights, Family, Marriage Equality, Poland

The European Court of Human Rights has found that Poland breached the right to respect for the family life of two same-sex Polish couples married abroad by failing to recognise their relationships.

ILGA-Europe, the International Federation for Human Rights (FIDH), the Network of European LGBTIQ* Families Associations (NELFA), and the European Commission on Sexual Orientation Law (ECSOL) jointly welcome a ruling released today in the case of *Formela and others v. Poland*, in which the European Court of Human Rights (ECtHR) found that Poland violated Article 8 (the right to respect for private and family life) of the European Convention on Human Rights.

The case concerned two same-sex Polish couples who married respectively in the UK and in Denmark, and requested Polish authorities to register their marriages contracted abroad. The authorities dismissed the requests, finding that registering their marriage would be contrary to the Polish legal order which allowed only marriage between different-sex couples. This failure resulted in the applicants' inability to regulate fundamental aspects of their daily lives: they were prevented from taking leave to care for their ill partner; could not extend health insurance to cover their partner; were treated as being unrelated in the field of taxation and could not benefit from an exemption from donation tax granted to next-of-kin or from the right to submit a joint tax declaration.

The Court decided that "by refusing to register the applicants' marriages under any form and failing to ensure that they have a specific legal framework providing for recognition and protection, the Polish authorities have left them in a legal vacuum and have not provided for the core needs of recognition and protection of same-sex couples in a stable and committed relationship." The Court added that none of the public interest grounds put forward by the Polish authorities could prevail over the applicants' interest in having their respective relationships adequately recognised and protected by law.

The Court referred to its landmark judgement of December 2023 in *Przybyszewska and others v. Poland* finding that Poland had breached Article 8 of the Convention as it had failed to comply with its positive obligation to ensure that same-sex couples had a specific legal framework providing for the recognition and protection of their unions.

Poland is also bound by the 2018 Court of Justice of the European Union *Coman* landmark ruling requiring EU Member States to treat same-sex couples in the same way as different-sex couples when they exercise freedom of movement rights in the EU.

On 27 December 2023, Poland's Prime Minister, Donald Tusk, announced that a bill to legalise same-sex unions would be introduced and debated in early 2024. This bill was added to the government's agenda on 8 July 2024.

Annamaria Linczowska, Advocacy and Litigation Officer at Campaign Against Homophobia (KPH) in Poland said: "Today's verdict shows once again that through lack of legal protection and recognition of same-sex couples, Poland does not meet the Council of Europe standards of human rights protection. Poland should no longer be one

of the few CoE Member States that do not provide recognition for same-sex couples. This judgement is an important argument for implementation of civil unions and marriage equality in Poland. To provide a wide protection of human rights, Poland can not forget about same-sex couples and their safety."

Read KPH's press release here.

According to Milena Adamczewska-Stachura, who represents the Love Does Not Exclude Association, involved in the fight towards marriage equality in Poland: "Today's rulings are a wake-up call for the Polish government, reminding it that the unchanging, complete lack of protection for same-sex couples violates the European Convention on Human Rights. Today's judgement is an important tool for legal practitioners who fight in the courts for transcription of foreign marriage certificates, and a small but important step towards equality."

ILGA-Europe, FIDH, NELFA and ECSOL submitted a joint intervention in the case.

According to Senior Strategic Litigation Officer at ILGA-Europe, Marie-Hélène Ludwig: "Today's judgement is another important step towards due recognition and protection of same-sex couples in Poland, whether they are married abroad or wish to legalise their unions in Poland. It is however unfortunate that the Court considered once again that it was unnecessary to examine the applicants' complaint under Article 14 of the Convention (non-discrimination)."

Daniel Martinovi?, President of NELFA, said: "We welcome today's judgement as a powerful affirmation of the rights of same-sex couples in Poland and beyond. This ruling should serve as a beacon of hope and strength for all queer families, inspiring us to continue striving for a more inclusive and secure future where our relationships are recognised, respected, and protected."

Helmut Graupner, Co-Coordinator of ECSOL, pointed out that "this is the second time Europe's highest human rights court made clear that Poland is violating the European Convention of Human Rights by refusing same-gender couples formal recognition of their partnership. It should cause Poland to speedily meet European minimum human rights standards. If not going beyond them, as it had done by completely decriminalising homosexuality as early as 1932 when many other European countries like Great Britain, Germany, Austria, Switzerland, Czechoslovakia, Hungary, Norway and Finland still had a criminal total ban on consensual homosexual relations between adults."

"Today's European Court of Human Rights' ruling sends a strong message to Poland and all Council of Europe member states that they must urgently address the persistent discrimination against same-sex couples and grant them equal rights with heterosexual couples' concluded Elena Crespi, Head of the Europe Programme at FIDH. "The judgement also offers the Polish government a chance to demonstrate its commitment to implementing European court rulings, as part of its efforts to restore the rule of law and align Poland with international standards'.