

STRATEGIC LITIGATION ON SEXUAL ORIENTATION, GENDER IDENTITY AND SEX CHARACTERISTICS

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

10/2020

I. 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, gender identity, expression and sex characteristics. 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. 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. For additional information on the execution of judgments process please see section V below.

2020 continued steady progress with filling SOGI litigation gaps, especially in the areas of hate speech, LGR and access to employment and non-discrimination. ILGA-Europe had intervened together with partners in [Beizaras and Levickas v Lithuania](#) (online hate speech), [Rana v Hungary](#) (LGR for refugees), [Y.T. v Bulgaria](#) (LGR) before the ECtHR. In the case of [NH v Associazione Avvocatura per i diritti LGBTI – Rete Lenford](#), concerning access to employment and non-discrimination, we supported our member organisation Rete Lenford in the litigation before the CJEU.

- **ECtHR. [Beizaras and Levickas v. Lithuania](#)**
The ECtHR found Lithuania's failure to investigate online hateful comments against a gay couple to violate their rights to private and family life as well as being discriminatory on the ground of sexual orientation. The landmark case of *Beizaras and Levickas v. Lithuania* originated after one of the applicants posted a photograph of him kissing his male partner on his Facebook page, which led to hundreds of online hate comments.
- **ECtHR. [Lilliendahl v. Iceland](#)**
The ECtHR decided that the conviction by Iceland's authorities of the author of homophobic comments online complied with the Convention. The Court clarified the concept of 'hate speech': its gravest forms are excluded entirely from the protection of Article 10 (freedom of expression) whereas less grave forms are not but can be restricted in certain circumstances. This second category includes speech without explicit call for violence targeting specific groups, depending on the content and manner of delivery. The prejudicial comments at stake, which publicly promoted detestation of gay persons, fell within this second category, and did not enjoy protection as a form of freedom of expression.
- **ECtHR. [Rana v. Hungary](#)**
The Court held that Hungary had breached its obligation to protect the right to private life under Article 8 of the European Convention by rejecting the application of an Iranian transgender refugee to have his name and sex marker changed in official documents. The judgement is even more significant because it arrived two months after the Hungarian Parliament approved a bill, replacing "sex" on the civil registry with "sex assigned at birth", which effectively bans legal gender recognition in the country. The Court recalled the State's positive obligation to provide a procedure allowing legal recognition of gender identity and clarified it extended to all lawfully settled non-national citizens.
- **ECtHR. [Y.T. v. Bulgaria](#)**

The Court found violation of Article 8 (right to private and family life) as domestic authorities' refusal to grant legal recognition to Y.T.'s gender reassignment, without giving relevant and sufficient reasons, and that the rigidity in the domestic courts' reasoning, which lasted for an unreasonable and continuous period resulted in applicant's feelings of vulnerability, humiliation and anxiety.

- **CJEU. [NH v Associazione Avvocatura per i diritti LGBTI – Rete Lenford](#) (access to employment and discriminatory speech)**

The case concerned homophobic statements made by an attorney who declared publicly during a radio interview in Italy that he would never hire a homosexual person in his law firm. The CJEU decided that such statements constitute discrimination in employment and occupation when they have a non-hypothetical link with the employer's recruitment policy. Existence of such link is assessed by the national courts based on all the circumstances characterising those statements. In the absence of an identifiable victim, national law may give associations with a legitimate interest standing to bring proceedings and to ask for the discriminatory conduct to be sanctioned in an effective, proportionate and dissuasive manner, including by an award of damages.

II. 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 are 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 include bans on intersex genital mutilation as well as ensuring legal gender recognition procedures based on self-determination and without any abusive requirements, particularly divorce, and without age limits;
- iii. Issues specific to LGBTI people which have been recognised 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 recognised rights, which all Member States, in accepting the above Recommendation, have acknowledged to apply to LGBTI people, but which some in

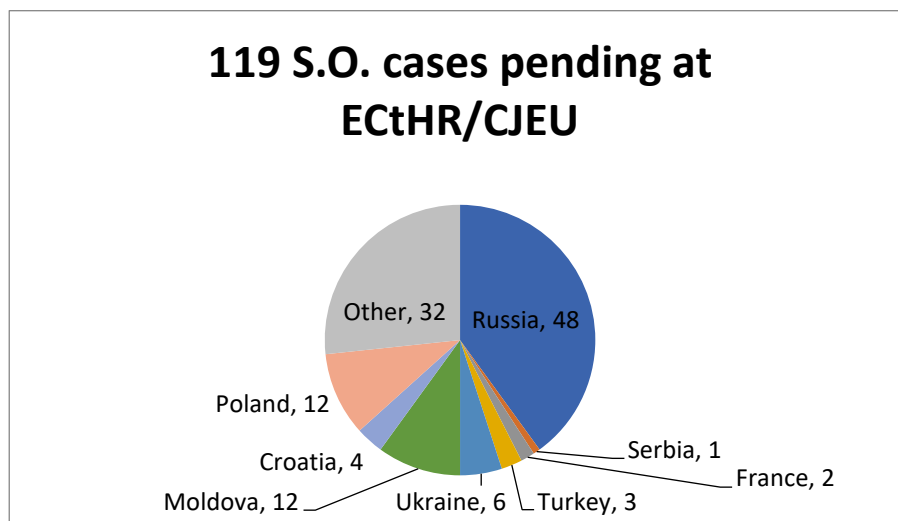
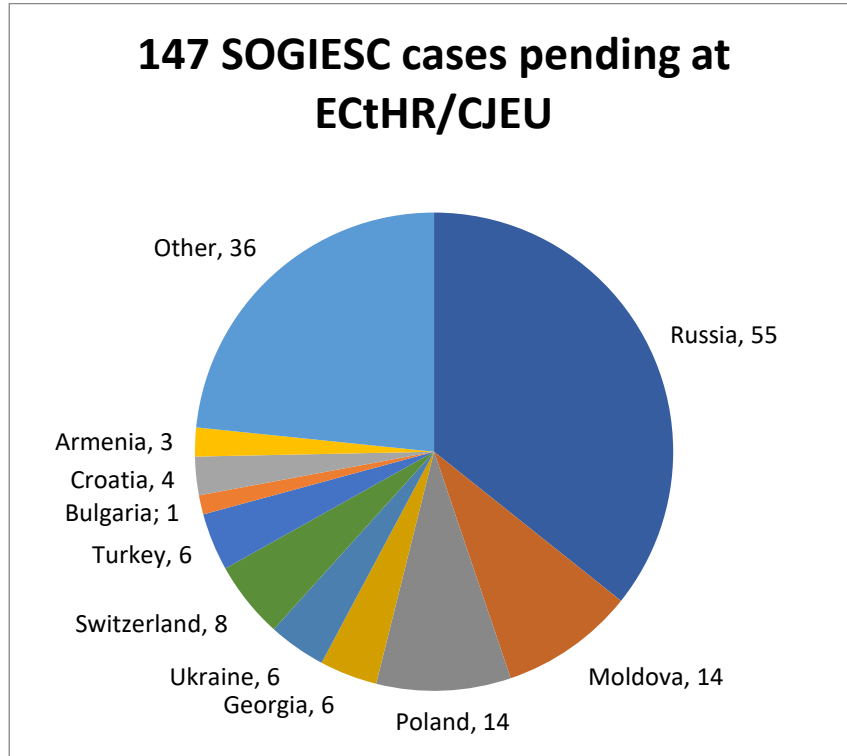
practice fail to uphold: for example, protection from hate crimes or hate speech, or freedom of expression or association;

- vi. Issues relating to the boundary between freedom of religion on the one hand and the right to non-discrimination on the other.

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 guiding 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.

III. Overview of the SOGIESC cases pending before the European Courts



28 GIESC cases pending at ECtHR



This inventory once again clearly shows the growth of strategic litigation for the protection and advancement of LGBTI rights in Europe. As of September 2020, there were

- 119 Sexual orientation cases pending before the ECtHR
 - 69 communicated
 - 50 lodged and not yet communicated
- 28 gender identity and sex characteristics cases pending before the ECtHR
 - 18 communicated
 - 10 lodged and not yet communicated

We also clearly see that while the overall number of cases grows, the use of strategic litigation is still limited to a small number of countries, with Russia yet again having by far the most pending cases. There is a substantial number of cases (90 compared to 29 in end of 2016) “communicated”, so there is a big potential for significant advances in case law in the next few years.

We slowly see progress in tackling gaps of legislation or full implementation of LGBTI rights through strategic litigation, namely in the following areas:

- Hate crime, hate speech and asylum rights *filling at reasonable speed*
- Socio-economic rights and access to services – *slow, more cases needed*
- Same-sex family rights *major growth* in 2019-2020
- Trans-specific rights – *good evolution* since 2016
- Intersex rights: *more cases needed*

IV. Focus area categorisation in identifying judgements and pending cases to address existing gaps in the protection of LGBTI rights

This overview explains how pending cases and delivered judgements 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:
 - 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.
 - Attacks on known LGBTI venues
 - LGBTI phobia violence by family members
 - 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/transgender status 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.¹

III – Trans -specific rights

III a Legal recognition issues

17. Inadequate procedures for legal recognition
 - 17a. Refusal by authorities to allow a change of name aligned with gender identity
 - 17b. Abolition of requirement for transgender persons to undergo medical interventions prior to legal recognition of their preferred gender
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.²

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

¹ The 2013 *Ladele and McFarlane vs UK* cases are an important first step in closing this gap.

² 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 procreation³
 - ii. Adoption by a single person⁴
 - 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;⁵
 - 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**⁶; 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;

³ 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

⁴ 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.

⁵ 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.

⁶ *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.

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)
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 change of gender.
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. In case of a FTM person, right to be designated as father of a child on 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 Intersex

34. Cases addressing the problem of young intersex children being exposed to sex assignment surgery 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.

V. 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, including **judgements issued**, **SO cases communicated** and **GIESC cases communicated since**

2010. The inventory does not cover all cases, but the ones that ILGA-Europe does identify as strategic based on the thinking set out above.

For each judgement, the reasoning of the Court as well as the status of execution is detailed and links to the judgement provided. Cases with * are included in this version for information only as the judgments were delivered outside the temporal scope of this assessment.

How to understand the status of the cases:

When a case succeeds before the ECtHR it is passed over to the CoE's governing body, the Committee of Ministers (CM), whose responsibility is to ensure that the respondent state complies with its obligation to implement the judgment. The CM does this through a supervisory mechanism – the execution of judgments process – which allows, when needed, for the application of political pressure on the respondent state. The CM is supported in this work by the [Department for the Execution of Judgments \(DEJ\)](#).

Implementation involves the respondent state undertaking two kinds of measures: individual measures, to ensure that the injured party is made whole, e.g. through financial compensation and/or specific remedies such as release from prison, reopening investigations into a crime etc; and general measures, to ensure that the state puts in place changes to its laws, policies, procedures etc to prevent the violation in question being repeated.

Supervision of implementation is conducted through a two-track system: a minority of cases – those deemed to present particularly serious structural or complex problems – are supervised by the CM itself at its quarterly Human Rights meetings through the so-called “enhanced procedure”. All other cases are supervised under the “standard procedure” by the DEJ through an informal dialogue with the respondent state. Depending on progress or lack thereof, cases can be transferred from one procedure to the other.

In the table below:

- Where there is no comment, it means damages were paid, the case is implemented in the country of concern, so the supervision by the CM is closed.
- Where there is a comment on the execution status, it means the execution is pending and the case is under the supervision of the CM, either under the enhanced procedure or the standard procedure.

AREAS OF RIGHTS OF LGBTI PEOPLE AND NON-DISCRIMINATION

CASES

I. Rights of LGBTI people to be free from violence and to campaign for legal reforms

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

- JUDGEMENTS

[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.

[MC & AC 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; general measures under assessment.*

[Sabalic v. Croatia* \(violation of Art 3 and 14 - 2020\)](#): authorities' response to violent homophobic attack was ineffective.

↳ *Execution status: standard; Awaiting Action Plan/Report, awaiting payment.*

[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: standard; Awaiting Action Plan/Report.*

- PENDING CASES

SO; [Identoba v. Georgia \(2\)](#); [Armine Oganezova II v. Armenia \(2019\)](#); [A v. AZERBAIJAN and 24 other applications \(2019\)](#); [Beus v Croatia \(2017\)](#); [V. ZAHTILA and G. KOLETIĆ v. Croatia \(2018\)](#); [Mihail Dontov v Moldova \(2018\)](#); [CHECHETKIN v. Russia \(2017\)](#); [Ivanov v Russia \(2019\)](#); [Romanov v. Russia \(2017\)](#); [Lebedev and Nasonov v Russia \(2017\)](#);

GIESC: [Koutra and Katzaki v. Greece \(2017\)](#); [GROMADSKAYA v. RUSSIA \(2020\)](#)

- JUDGEMENTS

[X v. Turkey \(Art 3 + 14 – 2012\)](#): conditions of detention in solitary confinement incompatible with human dignity and based on sexual orientation (discriminatory motive); lack of effective remedy.

↳ *Execution pending, standard procedure.*

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

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[Aghdgomelashvili v Georgia \(violation of 3 + 14, 2020\)](#):

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, standard procedure.*

- PENDING CASES

SO: [Dzerkhorashvili & Others v. Georgia \(2019\)](#); [V.P.v. Russia \(2017\)](#); [Lambda Istanbul v. Turkey \(2018\)](#); [Lapunov v. Russia \(2019\)](#);
GIESC: [Cemal DUĞAN v. Turkey \(2019\)](#), [GROMADSKAYA v. RUSSIA \(2020\)](#), [SOLMAZ v. Turkey \(2020\)](#).

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"

- JUDGEMENTS

[Vejdeland v. Sweden \(2012\)](#): 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 \(violation of 8 + 14, 2020\)](#): failure to investigate online hateful comments against a gay couple.

↳ *Execution status: enhanced procedure; complex problem; action plan/report is awaited.*

[Lilliendahl v. Iceland \(2020\)](#): 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.

- PENDING CASES

SO: [Minasyan and others v. Armenia \(2018\)](#); [Andrea GIULIANO against Hungary \(2019\)](#); [Jonas VALAITIS against Lithuania \(2020\)](#); [Alekseyev et al v. Russia \(2016\)](#); [Krikkerik v. Russia \(2017\)](#).
GIESC: [Onurhan SOLMAZ v. Turkey \(2020\)](#).

I e Asylum

- JUDGEMENTS

[X, Y & Z \(2013\) \(CJEU\)](#): 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 \(2015\) \(CJEU\)](#): prohibition of refugee assessment based on stereotyped notions concerning homosexuals, sexual practices, and other 'tests' (films).

[OM 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.*

[B and C v. Switzerland \(violation of art 3 - 2019\)*](#): 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: Pending, standard procedure; leading case.*

- PENDING CASES

SO: [A.R.B. v. Netherlands \(2018\)](#); [V.D. v. Russia \(2020\)](#);

I f Freedom of expression/association

- JUDGEMENTS

[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 penalising propaganda of bisexuality and trans identity among minors reinforce stigma and prejudice and must be repealed.

↳ *Execution pending, enhanced procedure.*

- PENDING

SO: [Nino Bolkvadze and others v. Georgia \(2019\)](#); [Neringa Dangvydė MACATĖ v. Lithuania \(2020\)](#); [Ecodefence and Others v. Russia \(2017\)](#); [Ilupin and Others v. Russia \(2018\)](#); [Klimova v. Russia \(2017\)](#);

I g Freedom of association

Refusal to register LGBTI organisations

I h Freedom of assembly

- PENDING

National interest cases

Many cases lodged since 2013 and not communicated yet (15 applications)

SO: [SOZAYEV and Others v. Russia and Pavel Valeryevich SAMBUROV v. Russia \(2016\)](#); [Teplitskaya v. Russia \(2016\)](#).

II. Socio-economic rights and access to services

II a Employment – general

- JUDGEMENTS

[ACCEPT v. Fotbal Club Steaua București \(C-81/12-2013\)\(CJEU\)](#); 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 \(C-507/18- 2020\)\(CJEU\)](#): 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

- PENDING

SO: [Krupnova v. Russia \(2017\)](#); [Oleynik v. Russia \(2020\)](#);

II a Employment – faith organisations

II b Education – discriminatory materials in school curricula

II c Access to services – generally

- PENDING

SO: [Gareth Lee v. UK \(2020\)](#)

II c Access to services – discrimination on grounds of faith

[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.

IV Family rights - Same-sex partners’ rights and parenting by LGB individuals

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 mutual \(CJEU, C-267-12 – 2013\)](#): 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 \(violation of 8 + 14; 2016\)](#): 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.

- PENDING

SO : [Mihai Klepper DUȚĂ v. Romania \(2019, prison visit\)](#); [Antoni MESZKES v. Poland \(socio-eco rights, 2020\)](#); [Rafal GROCHULSKI v. Poland \(life insurance, 2020\)](#); [Barbara Gabriela STARSKA v. Poland \(name change, 2020\)](#).

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

[X v. Austria \(violation of 14+ 8 - 2013\)](#): 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.

- PENDING

SO: [D.B. and Ma. B. v. Switzerland \(2020\)](#); [B. v Switzerland \(adoption; 2020\)](#); [D.B. v Switzerland \(surrogacy, 2020\)](#); [R.F. and others against Germany \(2017, AMP\)](#); [X v. Poland \(custody; 2019\)](#); [A.D.-K. and Others v. Poland \(2019\)](#); [Segev SCHLITTNER-HAY v. Poland and Matan SCHLITTNER-HAY v. Poland \(2019\)](#); [S.W. and Others v. Austria \(2019\)](#).

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

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

[Oliari v. Italy \(2015, violation art 8\)](#): 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

- PENDING

SO: [Florin BUHUCEANU and Victor CIOBOTARU against Romania and 12 other applications \(2020\)](#); Registration of foreign marriage: + 6 Communicated: [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 \(2020\)](#); [Chunosov & Yevtushenko v. Russia \(2016\)](#); [Ilmira Shayhraznovoy & Elena Yakoleva v. Russia \(2016\)](#)

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”

- PENDING

SO: [B.S. & C. P. v Poland and 5 others v Poland \(2020\)](#)

Gender identity and Intersex specific gaps

III c Legal recognition

[A.P., Garcon and Nicot v. France \(violation of Art 8, 2017\)](#): LGR should not be dependent on gender reassignment surgery or hormonal treatment. [RANA against Hungary \(article 8, 2020\)](#): 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 \(violation of Article 8, 2020\)](#): 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 \(CJEU - C-451/16 – 2018\)\(CJEU\)](#): 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.

- PENDING

[Horvath, Török, Molnár, Csikós, Novák v. Hungary \(2020\)](#); [A.S. v. Russia \(2019\)](#); [X v. Russia \(2017\)](#);

[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.*

- PENDING

[A. D. v. Georgia \(2019\)](#); [Nikolo Ghviniashvili v. Georgia \(2019\)](#); [R.L. v. Russia \(2017\)](#)

[MB v Sec of State for Work and Pensions \(CJEU\)](#)

III c Legal recognition – abolition of harmful and unnecessary medical requirements

III c Legal recognition – abolition of divorce requirement

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

- PENDING

[D.C. v. Turkey \(access to health by trans prisoners\)](#)

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 transsexual 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**”

V Trans family rights issues

- PENDING

[O.H. v. GERMANY \(2019\)](#); [A.H. AND OTHERS v. GERMANY \(2020\)](#); [Y. v. Poland \(2020\)](#); [Y.P. v. Russia \(2017\)](#)

VI Intersex

- PENDING

[Y v. France \(2020\)](#): 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.

Issues:

- 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.
- Access to legal recognition by adult intersex persons.
- Cases addressing the access to health care by adult intersex persons.