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La CEDU sulla necessità di relazioni formalmente riconosciute per le coppie omosessuali (CEDU, sez. III, sent. 13 luglio 2021, ric. n. 40792/10 et aa.)

La Corte Edu si è pronunciata sul caso di tre coppie omosessuali che a fronte del rifiuto di trascrizione dell'atto di matrimonio, hanno lamentato l'impossibilità di vedere riconosciuta formalmente e legalmente la propria unione in Russia.

I Giudici di Strasburgo hanno ritenuto sussistere in capo allo Stato l'obbligo di garantire il rispetto della vita privata e familiare dei ricorrenti, fornendo un quadro giuridico che consenta loro di vedere le loro relazioni riconosciute e tutelate dal diritto interno.

L'assenza di previsione di un qualsiasi mezzo possibile affinché le coppie omosessuali vedano ufficialmente riconosciuta la loro relazione crea un conflitto tra la realtà sociale dei ricorrenti e la realtà normativa. La Corte ha respinto l'argomento del governo secondo cui gli interessi della comunità nel suo complesso potrebbero giustificare la mancanza di opportunità per le coppie omosessuali di formalizzare le loro relazioni.

La Corte, dopo aver specificato che resta nella discrezionalità dello Stato convenuto la scelta della forma più appropriata di registrazione delle unioni omosessuali, ha concluso che, nel negare alle coppie dello stesso sesso l'accesso al riconoscimento formale del loro *status*, le autorità russe sono andate oltre il 'margine di apprezzamento' di cui godono gli Stati in tali casi, determinando una violazione del diritto al rispetto della vita privata e familiare dei ricorrenti.

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EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF XXXXX AND OTHERS v. RUSSIA
(*Applications nos. 40792/10 and 2 others – see appended list*)

JUDGMENT
STRASBOURG
13 July 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXXXX and Others v. Russia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:
Paul Lemmens, *President*,
Georgios A. *Serghides*,
Dmitry Dedov,
María Elósegui,
Anja Seibert-Fohr,
Peeter Roosma,
Andreas Zünd, *judges*,
and Milan Blaško, *Section Registrar*,
Having regard to:
the applications (nos. 40792/10, 30538/14, and 43439/14) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by six Russian nationals, listed in the appended table ("the applicants"), on the dates indicated in that table;
the decision to give notice to the Russian Government ("the Government") of the complaints concerning a lack of available legal structure for the applicants' same-sex unions and discrimination against them on the grounds of their sexual orientation, and the decision to declare inadmissible the remainder of the applications;
the parties' observations;
Having deliberated in private on 8 June 2021,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns a lack of opportunity for the applicants, three same-sex couples, to have their relationships formally registered, which amounted, in their opinion, to discrimination against them on the grounds of their sexual orientation.

THE FACTS

2. The applicants' names and the dates on which they lodged their applications with the Court are set out in the appended table. They were represented before the Court by Mr E. Daci and Mr B. Cron, lawyers practising in Geneva.
3. The Government were initially represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, then by his successor in that office, Mr M. Galperin, and then by his next successor in that office, Mr A. Fedorov.
4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. The applicants' attempts to marry

5. On various dates the applicants, three same-sex couples, gave notice of intended marriage (заявление о вступление в брак) ("notice of marriage") to their local departments of the Register Office (органы записи актов гражданского состояния). In particular, Ms I. XXXXX and Ms I. XXXXX lodged their notices with the Tverskoy Department of the Register Office in Moscow on 12 May 2009. The remainder of the applicants lodged their notices with the Fourth Department of the Register Office in St Petersburg on 28 June 2013.
6. The Tverskoy Department of the Register Office in Moscow examined the notice and dismissed it on 12 May 2009. The Fourth Department of the Register Office in St Petersburg refused to examine the two notices and rejected both of them on 29 June 2013. The authorities relied on Article 1 of the Russian Family Code, which referred to marriage as a "voluntary marital union between a man and a woman". Since the applicants' couples were not made up of "a man and a woman", their applications for marriage could not be processed.
7. The applicants challenged the above decisions before domestic courts.

II. court proceedings

A. Ms I. XXXXX and Ms I. XXXXX

8. Ms I. XXXXX and Ms I. XXXXX challenged the dismissal of their marriage notice before the Tverskoy District Court of Moscow.
9. They stated that their notice complied with the requirements of the Family Code and that the refusal to register their marriage violated their rights under the Constitution and the Convention.
10. On 6 October 2009 the Tverskoy District Court dismissed the claim. It concluded that the applicants' notice of marriage had not satisfied the conditions set down in the Family Code, because it lacked the required "voluntary consent of a man and a woman" since the couple did not include a man. The court noted that neither international law nor the Constitution imposed an obligation on the authorities to promote or support same-sex unions. Lastly, the court pointed out that a form of the notice of marriage contained two fields: "he" and "she" and could not therefore be used by same-sex couples.
11. The applicants appealed, arguing that the Family Code did not ban same-sex marriage. In particular, the list of circumstances precluding marriage (Article 14 of the Family Code) did not mention same-sex couples.
12. On 21 January 2010 the Moscow City Court upheld the judgment on appeal, endorsing the District Court's reasoning. In addition, it held that the absence of an explicit ban on same-sex marriage could not be construed as State-endorsed acceptance of such marriage.

B. Mr D. XXXXX and Mr Y. XXXXX

13. Mr D. XXXXX and Mr Y. XXXXX lodged their claim with the Gryazi Town Court in the Lipetsk Region.
14. They argued that the Family Code did not restrict the right of same-sex couples to marry. They also argued that various international documents, including the Convention, prohibited any form of discrimination, including on the grounds of sexual orientation, and imposed an obligation on the Contracting States to protect family and private life.

15. On 2 August 2013 the Gryazi Town Court held that the Register Office had unlawfully refused to examine the merits of the notice of marriage, because under Russian law, each notice of marriage must be examined on the merits. Turning to the registration of the same-sex marriages, the court cited the Constitutional Court's decision in the case of Mr E. Murzin (see paragraph 25 below), in which the Constitutional Court held that the Constitution or legislation did not bestow the right to marry on same-sex couples. The concept of same-sex marriage ran counter national or religious traditions, the understanding of a marriage "as a biological union between a man and a woman", the State's policy of protecting the family, motherhood and childhood, the ban on the promotion of homosexuality. The court also stated that the Convention did not impose an obligation on Contracting States to allow same-sex marriages.

16. The applicants appealed against the judgment, arguing that Russian law did not give a definition of marriage as a different-sex union, and that the Family Code did not prohibit same-sex marriage. They stressed that they had no other means of giving a legal status to their relationship as marriage was the only legally acknowledged family union.

17. On 7 October 2013 the Lipetsk Regional Court dismissed the appeal. It stated that the applicants' arguments were no more than their personal opinion based on the wrong interpretation of family law and national traditions.

18. On 12 March 2014 the Lipetsk Regional Court refused leave to appeal to the court of cassation.

C. Ms I. XXXXX and Ms Y. XXXXX

19. Ms I. XXXXX and Ms Y. XXXXX also brought their claim before the Gryazi Town Court in the Lipetsk Region, raising essentially the same arguments as Ms I. XXXXX and Ms I. XXXXX.

20. On 12 August 2013 the Town Court dismissed the claim. It found that, although it might have appeared that the applicants' notice of marriage had been rejected without being examined on the merits, that had not been the case. The court found that the Register Office had duly examined the notice of marriage and had lawfully refused to marry the applicants. The court repeated the arguments used in the judgment of 2 August 2013 (see paragraph 15 above).

21. On 18 November 2013 and then on 11 March 2014 the Lipetsk Regional Court dismissed an appeal by the applicants and their cassation appeal respectively, stating that the applicants' arguments were based on the wrong interpretation of the provisions of family law and ran counter to the established national traditions.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. Domestic law

A. Constitution

22. The relevant provisions of the Constitution read as follows:

Article 15

"1. The Constitution of the Russian Federation has supreme juridical force and direct effect and is applicable throughout the territory of the Russian Federation. Laws and other legal acts adopted in the Russian Federation shall not contradict the Constitution ...
4. The universally recognised standards of international law and the international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation sets out rules which are different from those laid down by the law, the rules of the international agreement shall apply."

Article 17

"1. The Russian Federation recognises and guarantees the rights and freedoms of individuals and citizens in conformity with the universally recognised principles and standards of international law, and under the present Constitution ...
3. The exercise of individual and civic rights and freedoms may not violate the rights and freedoms of other people."

Article 19

"1. Everyone shall be equal before the law and courts of law.
2. The State shall guarantee equality of rights and freedoms regardless of sex, race, nationality, language, origin, social and official status, place of residence, religion, personal convictions, membership of public associations, or of any other ground. Any restriction on the human rights of citizens on social, racial, national, linguistic or religious grounds is forbidden ..."

23. On 14 March 2020 Article 72 § 1 of the Constitution which set out guidelines for the division of powers between the federal and the regional authorities was amended by Federal Law no. 1-FKZ. That law added to the Constitution a provision stating that the Russian Federation and the regions of the Russian Federation should exercise joint jurisdiction in respect of the protection of "marriage in a form of union between a man and a woman".

B. Family Code of Russia

24. The relevant provisions of the Family Code read as follows:

Article 1. Fundamental principles of family legislation

"1. The family, motherhood, fatherhood and childhood are protected by the State ...
3. The regulation of family relationships is based on the principles of a voluntary marital union between a man and a woman, on the equality of spouses' rights in the family...
4. It is prohibited to place any form of restriction on people's rights to enter into marriage ... based on a person's social, racial, national, linguistic or religious affiliation ..."

Article 12. Conditions for marriage

"1. The mutual and voluntary consent of a man and a woman who have attained the age of marriage is required for the registration of a marriage.
2. Marriage cannot be registered if any of the circumstances listed in Article 14 of the Code are present."

Article 14. Circumstances preventing marriage

"Marriage is not allowed between:
- persons, if at least one of them is already married;
- close relatives ..., siblings, and half-siblings;
- foster parents and their foster children;
- persons, if at least one of them has been deprived of legal capacity by a court owing to a mental disorder."

II. Domestic practice

Decision of the Constitutional Court of 16 November 2006 no. 496-O in the case of Mr E. Murzin

25. On 16 November 2006 the Constitutional Court declared inadmissible the complaint lodged by Mr E. Murzin, who challenged the compatibility of Article 12 of the Family Code with the Constitution, as far as its interpretation by the domestic authorities prevented the latter from marrying him with his same-sex partner. In the relevant part the decision reads as follows:

"2. Having examined the documents submitted by Mr E. Murzin, the Constitutional Court does not find any grounds to proceed with the examination of the merits of his application.
2.1... The Constitution of Russia and international legal rules are based on the principle that the main purpose of the family is to bear and bring up children.
Taking that principle into consideration, as well as the national tradition of interpreting marriage as a biological union between a man and a woman, the Family Code provides that the regulation of family relationships is based on the principles of a voluntary marital union between a man and a woman, on the priority of the parenting of children within the family and on caring for their well-being and development (Article 1). Accordingly, the federal legislator, acting within its powers, has stated that the mutual, voluntary consent of a man and a woman is one of the conditions for marriage. That [principle] cannot be considered as a violation of the constitutional rights to which the applicant referred in his claim.
2.2. By challenging Article 12 § 1 of the Family Code, the applicant asks the State to recognise his relationship with another man by ensuring their registration in the form of a union protected by the State.
At the same time, no obligation on the State to create conditions for advocating, supporting or recognising same-sex unions flows from either the Constitution or the international obligations of the Russian Federation. The lack of such recognition and registration [of same-sex unions] on its own had no effect on the level of recognition and guarantees for the applicant's individual and civil rights in the Russian Federation.

The existence of a different approach in certain European States to the treatment of demographic and social issues does not prove that the applicant's constitutional rights were infringed. This conclusion can be drawn because in accordance with Article 23 of the International Covenant on Civil and Political Rights, the right to marriage is recognised specifically for men and women. Article 12 of the Convention explicitly provides for the possibility to begin a family in line with national legislation that regulates the exercise of that right.
On the basis of all of the above ... the Constitutional Court has decided ... not to proceed with the examination of Mr E. Murzin's claim on the merits as it falls short of the requirements for admissibility set out in the Constitutional Court Act introduced by federal constitutional law ..."

III. council of europe material

A. Parliamentary Assembly ("PACE")

26. On 10 October 2018 the PACE adopted its Resolution 2239 (2018) "Private and family life: achieving equality regardless of sexual orientation", which reads in the relevant part as follows:

"4. ... the Assembly calls on Council of Europe member States to: ...
4.3. align their constitutional, legislative and regulatory provisions and policies with respect to same-sex partners with the case law of the European Court of Human Rights in this field, and accordingly:
4.3.1. ensure that same-sex partners have available to them a specific legal framework providing for the recognition and protection of their unions;
4.3.2. grant equal rights to same-sex couples and heterosexual couples as regards succession to a tenancy;
4.3.3. ensure that cohabiting same-sex partners, whatever the legal status of their partnership, qualify as dependants for the purposes of health insurance cover;
4.3.4. when dealing with applications for residence permits for the purposes of family reunification, ensure that, if same-sex couples are not able to marry, there is some other way for a foreign same-sex partner to qualify for a residence permit; ..."

B. European Commission against Racism and Intolerance ("ECRI")

27. In its fifth report on the Russian Federation adopted on 4 December 2018 and published on 5 March 2019 the ECRI noted as follows:

"117. ECRI recommends that the [Russian] authorities provide a legal framework that affords same-sex couples, without discrimination of any kind, the possibility to have their relationship recognised and protected in order to address the practical problems related to the social reality in which they live."

28. On 1 March 2021 the ECRI issued "Factsheet on LGBTI issues" to present its key standards on issues of sexual orientation, gender identity and sex characteristics. In the relevant part it reads as follows:

"6. The authorities should provide a legal framework that allows same-sex couples to have their relationship formally and legally recognised and protected, without discrimination of any kind, in order to address the practical problems related to the social reality in which they live. The authorities should examine whether there is an objective and reasonable justification for any differences in the regulation of married and same-sex couples and abolish any such unjustified differences."

IV. COMPARATIVE LAW

29. As of June 2021, sixteen Contracting States to the Convention legally recognise and perform same-sex marriages: Austria, Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom. Additional fourteen Contracting States legally recognise some form of civil union for same-sex couples: Andorra, Croatia, Cyprus, the Czech Republic, Estonia, Greece, Hungary, Italy, Liechtenstein, Monaco, Montenegro (the relevant legislation enters in force in July 2021), San Marino, Slovenia, and Switzerland (also see the comparative law material described in Orlandi and Others v. Italy, nos. 26431/12 and 3 others, §§ 110-14, 14 December 2017).

THE LAW

I. JOINDER OF THE APPLICATIONS

30. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION and article 14 in conjunction with article 8 of the convention

31. The applicants complained that they had been discriminated against on the grounds of their sexual orientation because they had no means of securing a legal basis for their relationship as it was impossible for them to enter into marriage. They also had no other possibility to gain formal acknowledgment for their relationship. They relied on Article 8 of the Convention alone and on Article 14 taken in conjunction with Article 8 of the Convention. In the relevant part those provisions read as follows:

Article 8

"1. Everyone has the right to respect for his private and family life ...
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex ... or other status."

A. Admissibility

1. The parties' submissions

(a) The Government

32. The Government claimed that the applicants' complaints were manifestly ill-founded. The domestic courts ruled against the applicants to protect "interests of a traditional family unit", which is subject to the special protection by the State. They also stated that a marriage is a "historically determined union between a person of male and a person of female sex, which regulates relationship between the two sexes and determines a status of a child in society".

33. The legal issues related to same-sex unions raise a number of legal disputes in Europe and there is no consensus regarding the formal acknowledgment of same-sex unions. The regulation of the matter should therefore be left to the Contracting State. The legal practice in European countries should not influence Russia, which should be given an opportunity to develop its policy in line with its traditional understanding of marriage and its unique historical path.

34. The formal acknowledgment of same-sex unions would be contrary to the crucial principle of protecting minors from promoting homosexuality. It may harm their health, morals and create in them "a distorted image of the social equivalence of traditional and non-traditional marital relations".

35. A research by the Russian Public Opinion Research Center in 2015 found that 15% of Russian population considered that homosexuals were ordinary people, but preferred not to have any contacts with them; 20% believed that homosexuality was a medical disease; 15% considered homosexuality to be "a social disease"; and 20% treated homosexuals as dangerous people which should be isolated from society. The number of people who were opposed to same-sex marriages increased from 38% in 1995 to 80% in 2015.

36. Lastly, a lack of formal acknowledgment of same-sex unions did not deprive homosexuals of their rights and freedoms.

(b) The applicants

37. The applicants complained about the lack of possibility to gain formal acknowledgment for their relationship in form of a marriage, or in any other form.

38. They noted the emergence of European consensus towards formal acknowledgment of same-sex unions. They claimed that even if Contracting States enjoy a margin of appreciation in the field of family law, it cannot undermine the very essence of the right to respect for family life. The authorities' refusal to recognise same-sex unions was based not on objective and reasonable grounds, but on prejudice and negative stereotypes, which should be overcome.

39. The ban on promotion of homosexuality to which the Government referred was highly criticised by the Venice Commission. The formal acknowledgment of same-sex unions promotes not homosexuality, but a message of tolerance into society. The Government's argument about negative

public opinion towards the LGBTI community had already been raised in the case of Alekseyev v. Russia (nos. 4916/07 and 2 others, § 62, 21 October 2010) to justify repeated refusals to authorise gay-pride parades. However, it had not been accepted by the Court.

40. Lastly, the applicants disputed the Government's submission that the absence of formal acknowledgment of same-sex unions did not affect the rights of same-sex families. The applicants stated that without formal acknowledgment same-sex couples were prevented from accessing housing or financing programmes, visiting their partners in hospital, or accessing reproductive programmes. They are also deprived of guarantees in the criminal proceedings (the right not to witness against the partner), and rights to inherit the property of the deceased partner.

2. The Court's assessment

41. The Court accepts that the facts of the present case fall within the scope of the applicants' "private life" and also "family life" within the meaning of Article 8 of the Convention (see Oliari and Others v. Italy, nos. 18766/11 and 36030/11, § 103, 21 July 2015, and Orlandi and Others, cited above, § 143).

42. The Court also notes that the applicants' complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

43. The parties did not make any separate submissions regarding the merits of the case. Their legal positions are summarised in paragraphs 32-36 and 37-40 above.

2. The Court's assessment

(a) Article 8

(i) General principles

44. While the essential object of Article 8 is to protect individuals against arbitrary interference by public authorities, it may also impose on a State certain positive obligations to ensure effective respect for the rights protected by Article 8 (see Söderman v. Sweden [GC], no. 5786/08, § 78, ECHR 2013; Hämäläinen v. Finland [GC], no. 37359/09, § 62, ECHR 2014; X and Y v. the Netherlands, 26 March 1985, § 23, Series A no. 91; and Maumousseau and Washington v. France, no. 39388/05, § 83, 6 December 2007). These obligations may involve the adoption of measures designed to secure respect for private or family life even in the sphere of the relations of individuals between themselves (see S.H. and Others v. Austria [GC], no. 57813/00, § 87, ECHR 2011, and Söderman, cited above, § 78), including positive obligations to establish a legal framework guaranteeing the effective enjoyment of the rights guaranteed by Article 8 of the Convention (see Oliari and Others, cited above, § 185).

45. The notion of "respect" is not clear-cut, especially as far as positive obligations are concerned: having regard to the diversity of the practices followed and the situations obtaining in the Contracting States, the notion's requirements will vary considerably from case to case (see Christine Goodwin v. the United Kingdom [GC], no. 28957/95, § 72, ECHR 2002-VI). Nonetheless, certain factors have been considered relevant for the assessment of the content of those positive obligations on States (see Hämäläinen, cited above, § 66). Of relevance to the present case is the impact on an applicant of a situation where there is discordance between social reality and the law (see Oliari and Others, cited above, § 173, and Orlandi and Others, cited above, § 209). Other factors relate to the impact of the alleged positive obligation at stake on the State concerned. The question here is whether the alleged obligation is narrow and precise or broad and indeterminate (see Botta v. Italy, 24 February 1998, § 35, Reports of Judgments and Decisions 1998-I) or about the extent of any burden the obligation would impose on the State (see Christine Goodwin, cited above, §§ 86-88).
46. The principles applicable to assessing a State's positive and negative obligations under the Convention are similar. Regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole, the aims in the second paragraph of Article 8 being of a certain relevance (see Roche v. the United Kingdom [GC], no. 32555/96, § 157, ECHR 2005-X; Gaskin v. the United Kingdom, 7 July 1989, § 42, Series A no. 160; Oliari and Others, cited above, § 159; and Orlandi and Others, cited above, § 198).
47. In implementing their positive obligation under Article 8 the States enjoy a certain margin of appreciation. A number of factors must be taken into account when determining the breadth of that margin. In the context of "private life" the Court has considered that where a particularly important facet of an individual's existence or identity is at stake the margin allowed to the State will be restricted (see, for example, X and Y v. the Netherlands, 26 March 1985, §§ 24 and 27, Series A no. 91; Christine Goodwin, cited above, § 90; see also Pretty v. the United Kingdom, no. 2346/02, § 71, ECHR 2002-III).
48. As regards same-sex couples, the Court has already held that they are just as capable as different-sex couples of entering into committed relationships. They are in a relevantly similar situation to a different-sex couple as regards their need for formal acknowledgment and protection of their relationship (see Schalk and Kopf v. Austria, no. 30141/04, § 99, ECHR 2010; Vallianatos and Others v. Greece [GC], nos. 29381/09 and 32684/09, §§ 78 and 81, ECHR 2013 (extracts); and Oliari and Others, cited above, §§ 165 and 192).

(ii) Application of general principles to the present case

49. The Court reiterates that Article 8 of the Convention enshrines the right to respect for private and family life. It does not explicitly impose on the Contracting States an obligation to formally acknowledge same-sex unions. However, it implies the need for striking a fair balance between the competing interests of same-sex couples and of the community as a whole. Having identified the individuals' interests at play, the Court must proceed to weigh them against the community interests (see Oliari and Others, cited above, § 175, and Orlandi and Others, cited above, § 198).
50. Given the nature of the applicants' complaint, it is for the Court to determine whether Russia, at the date of the analysis of the Court, failed to comply with the positive obligation to ensure respect

for the applicants' private and family life, in particular through the provision of a legal framework allowing them to have their relationship recognised and protected under domestic law (see Oliari and Others, cited above, § 164).

51. The Court notes that the applicants as other same-sex couples are not legally prevented from living together in couples as families. However, they have no means to have their relationship recognised by law. The domestic law provides for only one form of family unions – a different-sex marriage (see paragraph 22 above). The Court notes the applicants' submission that without formal acknowledgment same-sex couples are prevented from accessing housing or financing programmes and from visiting their partners in hospital, that they are deprived of guarantees in the criminal proceedings (the right not to witness against the partner), and rights to inherit the property of the deceased partner (see paragraph 40 above). That situation creates a conflict between the social reality of the applicants who live in committed relationships based on mutual affection, and the law, which fails to protect the most regular of "needs" arising in the context of a same-sex couple. That conflict can result in serious daily obstacles for same-sex couples.

52. The Court takes note of the Government's assertion that the majority of Russians disapprove of same-sex unions. It is true that popular sentiment may play a role in the Court's assessment when it comes to the justification on the grounds of social morals. However, there is a significant difference between giving way to popular support in favour of extending the scope of the Convention guarantees and a situation where that support is relied on in order to deny access of a significant part of population to fundamental right to respect for private and family life. It would be incompatible with the underlying values of the Convention, as an instrument of the European public order, if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority (see, mutatis mutandis, Alekseyev, cited above, § 81; Bayev and Others v. Russia, nos. 67667/09 and 2 others, § 70, 20 June 2017; and Beizaras and Levickas v. Lithuania, no. 41288/15, § 122, 14 January 2020).

53. The interest in protecting minors from display of homosexuality to which the Government referred is based on the domestic legal provision criticised by the Court in the case of Bayev (cited above, §§ 68 and 69). That argument is not relevant to the present case and therefore it cannot be accepted by the Court.

54. The Court notes that the protection of "traditional marriage" stipulated by the amendments to the Russian Constitution in 2020 (see paragraph 23 above) is in principle weighty and legitimate interest, which may have positive effect in strengthening family unions. The Court, however, cannot discern any risks for traditional marriage which the formal acknowledgment of same-sex unions may involve, since it does not prevent different-sex couples from entering marriage, or enjoying the benefits which the marriage gives.

55. In the light of the above the Court cannot identify any prevailing community interest against which to balance the applicants' interests as identified above. It finds that the respondent State has failed to justify the lack of any opportunity for the applicants to have their relationship formally acknowledged. It therefore cannot conclude that a fair balance between competing interests was struck at the case at hand.

56. The Court acknowledges that the respondent Government have a margin of appreciation to choose the most appropriate form of registration of same-sex unions taking into account its specific

social and cultural context (for example, civil partnership, civil union, or civil solidarity act). In the present case they have overstepped that margin, because no legal framework capable of protecting the applicants' relationships as same-sex couples has been available under domestic law. Giving the applicants access to formal acknowledgment of their couples' status in a form other than marriage will not be in conflict with the "traditional understanding of marriage" prevailing in Russia, or with the views of the majority to which the Government referred, as those views oppose only same-sex marriages, but they are not against other forms of legal acknowledgment which may exist (see the experience of other Contracting States summarised in paragraph 29 above). There has accordingly been a violation of Article 8 of the Convention.

(b) Article 14 taken in conjunction with Article 8

57. Having regard to its finding under Article 8, the Court considers that it is not necessary to examine whether, in this case, there has also been a violation of Article 14 in conjunction with Article 8.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

59. The applicants claimed 50,000 euros (EUR) in respect of non-pecuniary damage.
60. The Government submitted that the claim was excessive.
61. The Court considers that the finding of a violation constitutes sufficient just satisfaction in the present case for any non-pecuniary damage sustained by the applicants (compare Christine Goodwin, cited above, § 120; S. and Marper v. the United Kingdom [GC], nos. 30562/04 and 30566/04, § 134, ECHR 2008; Norris v. Ireland, 26 October 1988, § 50, Series A no. 142; and Gorlov and Others v. Russia, nos. 27057/06 and 2 others, § 120, 2 July 2019).

B. Costs and expenses

62. Ms I. XXXXX, Mr Y. XXXXX, and Ms I. XXXXX claimed 30,000 Swiss francs (CHF) (EUR 27,900) each for the costs and expenses incurred before the Court. They submitted three invoices indicating that the representatives worked forty hours on each of their cases with the applicable rate of CHF 756 (EUR 711) per hour.
63. The Government noted that the claim was excessive and that the applicants had failed to show that the amount claimed had been paid to the representatives.
64. The Court reiterates that an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are

reasonable as to quantum (see Merabishvili v. Georgia [GC], no. 72508/13, §§ 370-71, 28 November 2017). The applicants in the present case, however, did not submit any documents showing that they had paid or were under a legal obligation to pay the fees charged by their representatives. In the absence of such documents, the Court finds no basis on which to accept that the costs and expenses claimed have actually been incurred (compare Mazepa and Others v. Russia, no. 15086/07, §§ 89-90, 17 July 2018; Radzevil v. Ukraine, no. 36600/09, §§ 94-96, 10 December 2019; Udaltsov v. Russia, no. 76695/11, § 201, 6 October 2020; and Aghdgomelashvili and Japaridze v. Georgia, no. 7224/11, § 61, 8 October 2020).

FOR THESE REASONS, THE COURT

1. Decides, unanimously, to join the applications;
2. Declares, unanimously, the applications admissible;
3. Holds, unanimously, that there has been a violation of Article 8 of the Convention in respect of all applicants;
4. Holds, unanimously, that there is no need to examine the merits of the complaints under Article 14 of the Convention taken in conjunction with Article 8;
5. Holds, unanimously, that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants;
6. Dismisses, by five votes to two, the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 13 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Milan Blaško — Registrar

Paul Lemmens — President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of judges Lemmens and Zünd is annexed to this judgment.

P.L.
M.B.

JOINT PARTLY DISSENTING OPINION OF JUDGES LEMMENS AND ZÜND

We fully agree with the main conclusions of the judgment.

To our regret, however, we are unable to join the majority insofar as they reject the applicants' claim for reimbursement of costs and expenses (see paragraph 64 of the judgment and operative point 6).

In our opinion, the invoices submitted by the Geneva lawyers (see paragraph 62 of the judgment) constitute a sufficient "basis on which to accept that the costs and expenses claimed have actually been incurred" (see paragraph 64 of the judgment). It may well be that under Russian law, for an invoice to be enforceable, there must be a legal-service contract between a lawyer and his or her client. However, the Court is not bound by rules of domestic law. In particular in the present case, where the applicants had sought the services of lawyers practising in a country other than Russia, we find it inappropriate to reject their claim on the basis of reasoning consonant with a procedure which is common in Russia, but not necessarily in other countries.

We are aware that the majority in this case follow the approach adopted by the Court in Alekseyev and Others v. Russia (nos. 14988/09 and 50 others, § 32, 27 November 2018), with regard to the same lawyers. With all due respect to the Court, we believe that the approach in that case was not justified either.