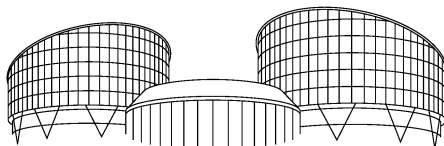


**Corte EDU e matrimonio same-sex**  
(CEDU sez. I, sentenza 24 aprile 2015, ric. n. 53662/20 )

Il caso deciso dalla Corte EDU ha ad oggetto il ricorso presentato da un cittadino polacco, il quale ha lamentato, ai sensi dell'articolo 8 della Convenzione, la mancata registrazione da parte delle autorità nazionali del suo matrimonio, validamente contratto all'estero, con un partner dello stesso sesso. In effetti, l'Ufficio dello Stato Civile di Goszczyszyn aveva respinto l'istanza di riconoscimento avanzata dal ricorrente, poiché l'iscrizione di un matrimonio tra persone dello stesso sesso sarebbe contraria ai "principi fondamentali del diritto polacco". Sotto il profilo dell'ammissibilità, la Corte ha osservato che l'indisponibilità di un regime giuridico per il riconoscimento e la protezione delle coppie omosessuali incide sia sull'identità personale che sociale del ricorrente e, pertanto, l'articolo 8 della Convenzione è applicabile al caso di specie sia sotto il profilo della "vita privata" che di quello della "vita familiare". Quanto al merito, i Giudici di Strasburgo hanno ritenuto che gli Stati membri sono tenuti a fornire un quadro giuridico che consenta alle coppie dello stesso sesso di ottenere un adeguato riconoscimento ed una protezione della loro relazione e, per conseguenza, hanno concluso che le autorità polacche siano venute meno al loro obbligo positivo di garantire una adeguata disciplina sul riconoscimento e sulla protezione delle unioni omosessuali, in violazione dell'articolo 8 della Convenzione.

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

FIRST SECTION

**CASE OF OMISSIS v. POLAND**

*(Application no. 53662/20)*

JUDGMENT  
STRASBOURG  
24 April 2025

*This judgment is final but it may be subject to editorial revision.*

**In the case of Omissis v. Poland,**

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Erik Wennerström, *President,*

Raffaele Sabato,

Artūrs Kučs, *judges,*

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 53662/20) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 18 November 2020 by a Polish national, Mr XXX (“the applicant”), who was born in 1988, lives in Colwyn Bay, United Kingdom, and was represented by Mr P. Knut, a lawyer practising in Warsaw;

the decision to give notice of the application to the Polish Government (“the Government”) represented by their Agent, Mr J. Sobczak, of the Ministry of Foreign Affairs;

the parties’ observations;

the comments submitted by Ordo Iuris Institute for Legal Culture which was granted leave to intervene by the President of the Section.

Having deliberated in private on 20 March 2025,

Delivers the following judgment, which was adopted on that date:

## **SUBJECT MATTER OF THE CASE**

1. The applicant complained under Article 8 of the Convention that his marriage with his same-sex partner, contracted abroad, had not been registered in Poland while there had been no other form of legal recognition and protection for his relationship.

2. On 7 May 2016 the applicant married his partner in Covwy, United Kingdom.

3. In February 2017 the applicant requested the Goszczyszyn Civil Status Office to register his marriage contracted abroad, which it refused because entering a same-sex marriage in the Polish Registry would be contrary to “basic principles of the Polish law”. Upon appeal, the Mazowiecki Governor upheld the decision as did the Warsaw Regional Administrative Court. On 25 February 2020 the Supreme Administrative Court dismissed his cassation appeal. The judgment was notified to the applicant on 21 May 2020.

4. The applicant complained under Article 8 of the Convention of a total lack of recognition of his relationship in Poland, in that it was impossible for him to enter into any type of legally recognised union with his same-sex partner. The applicant further complained that his marriage contracted abroad was not recognised by the Polish authorities in any way.

## **THE COURT’S ASSESSMENT**

### **I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION**

#### **A. Admissibility**

5. The Court notes firstly that the unavailability of a legal regime for the recognition and protection of same-sex couples affects both the personal and the social identity of the applicant as a person wishing to have his same-sex relationship as a couple legitimised and protected by law. Article 8 of the Convention is therefore applicable in the present case under both its “private life” and “family life” aspects (see *Przybyszewska and Others v. Poland*, nos. 11454/17 and 9 others, § 39, 12 December 2023, with further references). The Government’s objection in this respect must therefore be rejected.

6. The Court also notes that it has previously dismissed the Government’s objections on non-exhaustion of the domestic remedies – failure to complain to the Constitutional Court (*ibid.*, § 53). It does not find it necessary to repeat those arguments in the case at hand and concludes that the applicant should be considered to have exhausted domestic remedies. The Government’s objection in this respect is thus dismissed.

7. The Government further submitted that no significant disadvantage had been suffered by the applicant and that he could not claim to be a victim of the alleged violations of the Convention since, despite receiving an unfavourable decision by the Polish authorities, the applicant continued to live with his husband in the UK and did not suffer any damage. The applicant contested the objections, reiterating that Poland refused to offer him any form of recognition of his relationship, even by, at the very least, registering his foreign marriage certificate. The applicant underlined that in Poland he had no access to core rights that were relevant to any couple in a stable relationship, which had been the reason for him to stay abroad where his rights were protected. He applied for registration of his marriage as he intended to study in Poland where university education was free of charge. However, following the refusal to register his marriage, he was forced to abandon his plans to move back to Poland with his husband. As a Polish citizen he has been practically forced to live abroad which caused him stress and anxiety which affected his private and family life.

8. The Court finds that the objections on victim status and non-significant disadvantage are phrased in similar terms and are closely linked to the merits of the complaint that the applicant's Convention rights were breached by the lack of legal recognition of same-sex unions. Accordingly, it joins these objections to the merits.

9. It follows that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

10. The general principles confirming that, in accordance with their positive obligations under Article 8 of the Convention, the member States are required to provide a legal framework allowing same-sex couples to be granted adequate recognition and protection of their relationship, are set out in *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, §§ 152-65 and 178, 17 January 2023.

11. In the application of those principles, the Court found in *Przybyszewska and Others* (cited above, § 122) that Poland had failed to comply with its positive obligation to ensure that the applicants in that case had a specific legal framework providing for the recognition and protection of their same-sex unions, in breach of Article 8 of the Convention (compare also, *Formela and Others v. Poland* [Committee], nos. 58828/12 and 4 others, § 25, 19 September 2024).

12. In the case at hand, the applicant did not complain that it was impossible for him to get married in Poland and the Court notes that Articles 8, 12 and 14 of the Convention have to date not been interpreted as imposing a positive obligation on the States Parties to make marriage available to same-sex couples (*Fedotova and Others*, cited above, § 165).

13. The Court will focus its examination on the question of whether the respondent State has satisfied its positive obligation to provide a legal framework allowing the applicant to be granted adequate recognition and protection of his relationship (see *Koilova and Babulkova v. Bulgaria*, no. 40209/20, § 41, 5 September 2023). To that end, it must examine whether, having regard to the margin of appreciation afforded to it, the respondent State struck a fair balance between the prevailing interests upon which it relied and the interests claimed by the applicant (see *Buhuceanu and Others v. Romania*, nos. 20081/19 and 20 others, § 75, 23 May 2023).

14. It has not been disputed that Polish law still provides for only one form of family union – an opposite-sex marriage – and does not allow for any form of legal recognition for same-sex couples (see *Przybyszewska and Others*, cited above, § 105). The situation therefore differs significantly from that of a very large number of member States which have undertaken to amend their domestic law with a view to ensuring that persons of the same sex enjoy effective protection of their private and family life.

15. As submitted by the applicant, same-sex partners could not inherit from each other unless expressly indicated in a will, they have no right to submit a joint tax declaration or to benefit from tax exemptions on inheritance or donation granted to the married persons. The same-sex couples are forced to find alternative ways of organising their lives together and to seek recognition, for instance by marrying abroad.

16. In Poland, same-sex couples, in the absence of official recognition, are mere *de facto* unions, even if – as in the applicant’s case – a valid marriage has been contracted abroad. Same-sex partners are not able to rely on the existence of their relationship in dealings with the judicial or administrative authorities (see *Przybyszewska and Others*, cited above, § 113). The Court reiterates that the need to apply to the domestic courts for protection of their couple’s ordinary needs is in itself an obstacle to respect for their private and family life. In the case at hand, the applicant who had married a British national felt prevented from returning to Poland where his husband and him would receive no legal protection as a couple.

17. Referring to the findings already established by the Court in respect of Poland in the cases indicated above, it thus concludes that by failing to ensure that the applicant has a specific legal framework providing for recognition and protection, the Polish authorities have left him 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 finds that none of the public interest grounds put forward by the Government prevail over the applicant’s interest in having his relationship adequately recognised and protected by law.

18. The Court notes that member States have a more extensive margin of appreciation in determining the exact nature of the legal regime to be made available to same-sex couples. However, it is important that the protection afforded by the States to same-sex couples should be adequate. It is in the latter context that Poland’s social and cultural background may be taken into account.

19. The Court concludes that the respondent State has overstepped its margin of appreciation and has failed to comply with its positive obligation to ensure that the applicant had a specific legal framework providing for the recognition and protection of his same-sex union. This amounts to a breach of the applicant’s right to respect for his private and family life.

20. The Court finally notes that the refusal to register the applicant’s marriage did not deprive him of any rights previously recognised in Poland (had there been any), and that the applicant could still benefit, in the State where he contracted marriage, from the rights and obligations acquired through such marriage (see *Orlandi and Others v. Italy*, nos. 26431/12 and 3 others, § 208, 14 December 2017, where some applicants apparently also resided outside Italy (§ 119)). The Court notes that in the proceedings before the Polish authorities instituted by the applicant, his marriage had not been registered, not on the ground that he had resided abroad, but because Polish law did not provide for such a possibility. The Court considers that the applicant may be considered as member of a class of people who risk being directly affected by the Polish legislation which offers no recognition and protection to same-sex couples, and he was required to modify his conduct, and find an alternative way of obtaining legal protection and recognition as a couple (see *Tănase v. Moldova* [GC], no. 7/08, § 104, ECHR 2010). The failure that has already been established on the part of Poland to provide the applicant’s same-sex union with recognition and protection continues to affect the applicant, a Polish national, even though his current place of residence is not in Poland. The Government’s preliminary objections regarding him suffering no significant disadvantage and his lack of victim status (see paragraph 8 above) must therefore be dismissed.

21. There has accordingly been a violation of Article 8 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 8

22. The applicant further alleged that the fact that he was unable to secure legal recognition of his relationship amounted to discrimination on grounds of sexual orientation. He relied on Article 14 of the Convention taken in conjunction with Article 8.

23. Having regard to its finding under Article 8, the Court considers that it is not necessary to examine separately whether, in this case, there has also been a violation of Article 14 in conjunction with Article 8 (see *Przybyszewska and Others*, cited above, § 126).

#### APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. The applicant sought 10,000 euros (EUR) in respect of non-pecuniary damage. He also claimed EUR 1,588 for costs and expenses incurred before the domestic authorities.

25. The Government contested the claims as unsubstantiated and excessive.

26. Having regard to the circumstances of the case, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage that may have been sustained by the applicant (see *Fedotova and Others*, cited above, § 235).

27. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 1,000, to cover costs claimed by the applicant, plus any tax that may be chargeable.

#### FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 8 of the Convention admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 14 of the Convention taken in conjunction with Article 8 of the Convention;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
5. *Holds*

(a) that the respondent State is to pay the applicant, within three months, EUR 1,000 (one thousand euros), plus any tax that may be chargeable to him, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 April 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt  
Deputy Registrar

Erik Wennerström  
President