



## Inability of heterosexual couple to enter into registered partnership: not discriminatory

In today's Chamber judgment<sup>1</sup> in the case of [Ratzenböck and Seydl v. Austria](#) (application no. 28475/12) the European Court of Human Rights held, by five votes to two, that there had been:

**no violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private and family life) of the European Convention on Human Rights**

The case concerned the complaint by a heterosexual couple about being denied access to a registered partnership, a legal institution only available to same-sex couples. The applicants maintained that they were discriminated against based on their sex and sexual orientation.

The Court found in particular that there were no more substantial differences between marriage and registered partnership in Austria. Their access to marriage satisfied the applicants' principal need for legal recognition, and they had not claimed to have been specifically affected by any difference in law between the two institutions.

### Principal facts

The applicants, Helga Ratzenböck and Martin Seydl, are Austrian nationals who were born in 1966 and 1964 respectively and live in Linz (Austria).

In February 2010, the applicants, who had been living in a stable relationship for many years, lodged an application to enter into a registered partnership under the Registered Partnership Act, which had entered into force on 1 January 2010. The Mayor of Linz dismissed their application, finding that they did not meet the requirements since the registered partnership was reserved for same-sex couples. After the applicants' appeal – alleging discrimination based on their sex and their sexual orientation – had been dismissed by the Upper Austrian Regional Governor, they lodged complaints with the Administrative Court and the Constitutional Court. They argued that marriage was not a suitable option for them and that a registered partnership was more modern and “lighter” than marriage. In particular, there was a difference in the statutory time-limit for divorce and for the dissolution of a registered partnership and there were differences as regards a number of obligations following from marriage and registered partnership respectively.

In September 2011, the Constitutional Court dismissed the complaint. Referring to the European Court of Human Rights' judgment in the case of *Schalk and Kopf v. Austria* (30141/04), the Constitutional Court considered that if the question of whether or not to allow same-sex marriage was left to regulation by domestic law this had to apply also for the question of whether registered partnerships were to be open to different-sex couples. Moreover, given that persons of different sex had access to marriage, the registered partnership had been introduced only to counter discrimination against same-sex couples. In February 2013, the Administrative Court also dismissed the applicants' complaint.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

## Complaints, procedure and composition of the Court

Relying on Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private and family life), the applicants complained of discrimination based on their sex and sexual orientation on account of their exclusion from the registered partnership.

The application was lodged with the European Court of Human Rights on 11 May 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,  
Nona **Tsotsoria** (Georgia),  
André **Potocki** (France),  
Yonko **Grozev** (Bulgaria),  
Mārtiņš **Mits** (Latvia),  
Gabriele **Kucsko-Stadlmayer** (Austria),  
Lətif **Hüseynov** (Azerbaijan),

and also Milan **Blaško**, *Deputy Section Registrar*.

## Decision of the Court

### [Article 14 in conjunction with Article 8](#)

The Court accepted that different-sex couples were in principle in a relevantly similar or comparable situation to same-sex couples as far as their general need for legal recognition and protection of their relationship was concerned.

However, the exclusion of different-sex couples from the registered partnership in Austria had to be seen in the context of the overall legal framework governing the recognition of relationships. The registered partnership had been introduced as an alternative to marriage in order to make available to same-sex couples, who remained excluded from marriage, a substantially similar institution for legal recognition. The Registered Partnership Act of 2010 thus counterbalanced the previous exclusion of same-sex couples from any legal recognition.

In its judgment in the case of *Schalk and Kopf v. Austria* (30141/04) of 24 June 2010, which concerned the complaint by a same-sex couple about being denied access to marriage, the Court had found that the legal status provided for by the Registered Partnership Act was equal or similar in many respects. Since then, the legal frameworks governing the two forms of legal recognition of a relationship had been further harmonised, so that no substantial differences remained.

The fact that the applicants as a different-sex couple had access to marriage satisfied their principal need for legal recognition. Moreover, they had not claimed to have been specifically affected by any difference in law between the two institutions.

The applicants were therefore not in a relevantly similar or comparable situation to same-sex couples who had no right to marry in Austria and needed the registered partnership as an alternative means of providing legal recognition to their relationship. There had accordingly been no violation of Article 14 in conjunction with Article 8.

## Separate opinions

Judge Mits expressed a concurring opinion. Judges Tsotsoria and Grozev expressed a joint dissenting opinion. These opinions are annexed to the judgment.

*The judgment is available only in English.*

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