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

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The refusal to allow a woman to adopt her same-sex partner's child was not discriminatory

In today's Chamber judgment in the case of Gas and Dubois v. France (application no. 25951/07), which is not final[1], the European Court of Human Rights held, by six votes to one, that there had been:

No violation of Articles 14 (prohibition of discrimination) and 8 (right to respect for private and family life) of the European Convention on Human Rights.

The applicants are two cohabiting women. The case concerned the refusal of Ms Gas' application for a simple adoption order[2] in respect of Ms Dubois' child.

The Court saw notably no evidence of a difference in treatment based on the applicants' sexual orientation, as opposite-sex couples who had entered into a civil partnership were likewise prohibited from obtaining a simple adoption order.

Principal facts

The applicants, Valérie Gas and Nathalie Dubois, are French nationals who were born in 1961 and 1965 respectively and live in Clamart (France). They have been cohabiting since 1989. In September 2000 Nathalie Dubois gave birth in France to a daughter, A., who had been conceived in Belgium by means of medically-assisted procreation with an anonymous donor. The child does not have an established parental tie with the father, in accordance with Belgian law. She has lived all her life in the applicants' shared home. In April 2002 Ms Gas and Ms Dubois entered into a civil partnership agreement.

On 3 March 2006 Ms Gas applied to the Nanterre *tribunal de grande instance* for a simple adoption order in respect of her partner's daughter; her partner had given her express consent before a notary. On 4 July 2006 the court observed that the statutory requirements for the adoption had been met and that it had been demonstrated that Ms Gas and Ms Dubois were actively and jointly involved in the child's upbringing, caring for and showing affection to her. However, it refused the application on the grounds that the adoption would have legal implications which ran counter to the applicants' intentions and the child's best interests. This finding was upheld by the Versailles Court of Appeal, which considered that, since the applicants would be unable to share parental responsibility as permitted by the Civil Code[3] in the case of adoption by the spouse of the child's biological mother or father, the adoption would deprive Ms Dubois of all rights

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

2 Simple adoption enables a second legal parent-child relationship to be established in addition to the original parent-child relationship based on blood ties (as opposed to full adoption, where the new legal relationship replaces the original one).

3 Article 365 of the Civil Code governs the transfer of parental responsibility in the event of simple adoption. Parental responsibility is transferred to the adoptive parent; the biological parent or parents thus cease to exercise parental responsibility, except where the adoptee is the child of the husband or wife, in which case the couple share parental responsibility. This exception does not apply to the parties in a civil partnership.

in relation to her child. The applicants appealed on points of law but did not pursue the appeal to its conclusion.

Complaints, procedure and composition of the Court

The applicants complained of the refusal of Ms Gas's application to adopt Ms Dubois's child. They maintained that this decision had infringed their right to private and family life in a discriminatory manner, in breach of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private and family life).

The application was lodged with the European Court of Human Rights on 15 June 2007. It was communicated to the French authorities on 19 May 2009 and declared admissible on 31 August 2010. A hearing was held in the Human Rights Building, Strasbourg, on 12 April 2011.

The International Federation for Human Rights (FIDH), the International Commission of Jurists (ICJ), the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe), the British Association for Adoption and Fostering (BAAF) and the Network of European LGBT Families Associations (NELFA) were given leave to intervene as third parties in the proceedings (Article 36 § 2 of the Convention).

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

Dean **Spielmann** (Luxembourg), *President*,
Jean-Paul **Costa** (France),
Karel **Jungwiert** (the Czech Republic),
Boštjan M. **Zupančič** (Slovenia),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Ganna **Yudkivska** (Ukraine)*, Judges*,

and also Claudia **Westerdiek**, *Section Registrar.*

Decision of the Court

Article 14 in conjunction with Article 8

The Court pointed out that, according to its settled case-law, a difference in treatment between persons in relevantly similar situations was discriminatory if it did not pursue a legitimate aim or if there was not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Court further reiterated that differences based on sexual orientation required particularly serious reasons by way of justification. In the case of E.B. v. France[4], the Court had found that no such reasons had been advanced by the Government. It had taken the view that the refusal of E.B.'s adoption application had been based on discriminatory grounds since French law allowed single persons to adopt a child, thereby opening up the possibility of adoption by a single homosexual like the applicant.

The present case was different, however. As the applicants were not married, they had been unable to exercise parental responsibility jointly as permitted by the Civil Code in the case of simple adoption by the spouse of the child's mother or father. In the context of simple adoption, the only exception to the transfer of parental responsibility to the adoptive parent – entailing the loss of parental responsibility on the part of the biological parent – was in cases where the adoptive parent was the biological parent's husband or

[4] Grand Chamber judgment of 22 January 2008.

wife. The French courts had taken the view that the consequences of the transfer of parental responsibility to Ms Gas – thereby depriving Ms Dubois of parental responsibility – would have been contrary to the child's interests.

With regard to the applicants' criticism of the legal implications of medically assisted procreation with an anonymous donor, the Court noted that, in France, this possibility was mainly confined to infertile opposite-sex couples, a situation that was not comparable to that of the applicants.

Ms Gas and Ms Dubois maintained that their right to private and family life had been infringed in a way which discriminated against them in comparison with opposite-sex couples, whether married or not. With regard to married couples, the Court considered that, in view of the social, personal and legal consequences of marriage, the applicants' legal situation could not be said to be comparable to that of married couples when it came to adoption by the second parent. The Court reiterated that the European Convention on Human Rights did not require member States' Governments to grant same-sex couples access to marriage[5]. If a State chose to provide same-sex couples with an alternative means of recognition, it enjoyed a certain margin of appreciation regarding the exact status conferred. As to unmarried couples, the Court stressed that opposite-sex couples who had entered into a civil partnership were likewise prohibited from obtaining a simple adoption order. It therefore saw no evidence of a difference in treatment based on the applicants' sexual orientation. In reply to the applicants' argument that opposite-sex couples in a civil partnership could circumvent the aforementioned prohibition by marrying, the Court reiterated its findings regarding access to marriage for same-sex couples.

The Court therefore held that there had been no violation of Article 14 taken in conjunction with Article 8.

Separate opinions

Judge Costa expressed a concurring opinion, joined by Judge Spielmann. The latter expressed a concurring opinion, joined by Judge Berro-Lefèvre. Judge Villiger expressed a dissenting opinion. These opinions are annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

[5] See the Chamber judgment in Schalk and Kopf v. Austria of 24 June 2010.