

## Is there a right to be recognised as a same-sex union under ECHR?

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## Pending cases from Poland

- A total of 20 complaints regarding the lack of legal protection for same-sex couples in Poland were communicated in June 2020; they were made by more than a dozen applicants;
- These cases are:
  - 1) S. Formela and K. Formela v. Poland (4 cases)
  - 2) Grochulski v. Poland
  - 3) Mieszkes v. Poland
  - 4) Starska v. Poland
  - 5) Szypuła v. Poland; Urbanik and Alonso Rodriguez v. Poland
  - 6) Przybyszewska and others v. Poland

## Cases of a couple K. Formela and S. Formela

The first application no. 58828/12 (2012) concerns three problems

- First, the clients had lost a case at national level concerning **exemption from tax on a donation**. This fiscal privilege is available mostly to spouses or other close family members. This action resulted in denial of tax relief.
- Second, the national tax authorities refused the women the **right to submit a joint tax return**. This case also ended in failure in the national courts, as Polish law extends this privilege only to married couples.
- Third, the women were also denied **the right to a benefit to care for a sick spouse**, which can be received when looking after a family member - here too, the resolution was negative.

## Cases of a couple K. Formela and S. Formela

- The second application no 40795/17 (2017), concerns a case when one of the partners demanded that her **health insurance should cover the other** - again the hurdle was legal regulations, which reserve such rights for spouses. These issues demonstrate the problems such couples deal with in their everyday lives.
- The third (no 55306/18) and fourth application (no 55321/18; 2018) concern inability to **register their marriage**, contracted before the British authorities in 2015 (converted from a civil union formed in 2010) at the Polish registry office. On this occasion too, it was refused by the administrative bodies and courts.

## Starska case (application no. 18822/18)

- The applicant Barbara Gabriela Starska complains under Article 8 of the ECHR that she was prevented from **changing her surname** to that of her partner. She underlined that under Polish law she and her partner had no right to marry or to enter into any other form of civil union.
- She also complains that the situation amounted to a breach of Article 14 of the Convention, taken together with Article 8, as she was discriminated against on the ground of her sexual orientation.

## Grochulski case (application no. 131/15)

- The applicant Rafał Grochulski complains of the temporary impossibility of subscribing together with his same-sex life partner to **a private life insurance scheme** for couples violated his rights guaranteed by Article 14 of the Convention in conjunction with Article 8 of the Convention.

## Meszkes case (application no. 11560/19)

- The applicant complains under Article 8 of the Convention that he and his partner had no possibility to formalise their relationship. In consequence, after his partner's death, the applicant had to pay 20% **inheritance tax**, the highest rate, applicable for inheritance outside a family. The applicant further complains that the facts of the case show that he was discriminated against on the basis of his sexual orientation.

## Szypuła v. Poland; Urbanik and Alonso Rodriguez v. Poland

- The applicants complain under Article 8 of the Convention about the Polish authorities' **refusal to issue the marriage eligibility certificate** that would enable them to get married in Spain. They complain that Polish law does not allow any other form of recognition of their relationship. The applicants complain that by requiring the first applicant to indicate the name and the gender of his future spouse the authorities breached their rights protected by Article 8 of the Convention.
- The applicants complain that the situation amounted to a breach of Article 12 of the Convention in that they were prevented from getting married in Spain. Finally, they complain that they were discriminated against, on the basis of their sexual orientation, in breach of Article 14 taken together with Article 8 of the Convention.

## Przybyszewska and others v. Poland

- All the cases were submitted after the *Oliari and others v Italy* (2015)
- All the applicants complain under Article 8 of the Convention that their right to private and family life was breached. Although they form stable couples, **the domestic law does not allow them to marry or enter into any other form of civil union.**
- The applicants also complain under Article 14, taken together with Article 8 of the Convention. They complain that their inability to enter into marriage or any other type of civil union recognising their relationship amounts to discrimination on the basis of sexual orientation.

## Fedotova and Others v. Russia (applications nos. 40792/10 and 2 others) as a new standard

- Article 8 **'does not explicitly impose on the Contracting States an obligation to formally acknowledge same-sex unions;**
- The Court states, by reference to *Oliari* and *Orlandi*, that the applicants' interest was for the **'provision of a legal framework allowing them to have their relationship recognised and protected under domestic law'**.
- However, the ECHR's stance in *Fedotova* is stronger than in *Oliari v Italy*:
  - the Court does not refer to the existence of a European consensus in favour of the recognition and protection of same-sex couples;
  - the social context is not so important (e.g. surveys showing anti-LGBTQI+ sentiment).

