



Impossibility for partner in same-sex relationship to obtain residence permit for family reunification: discriminatory

In today's **Chamber judgment**¹ in the case of **Pajić v. Croatia** (application no. 68453/13) the European Court of Human Rights held, unanimously, that there had been:

a 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 national of Bosnia and Herzegovina, who is in a stable same-sex relationship with a woman living in Croatia, of having been discriminated against on the grounds of her sexual orientation when applying for a residence permit in Croatia.

The Court found in particular that Ms Pajić had been affected by a difference in treatment between different-sex couples and same-sex couples introduced by the Aliens Act, which reserved the possibility of applying for a residence permit for family reunification to different-sex couples. The Croatian Government had not shown that that difference in treatment was necessary to achieve a legitimate aim or that it was justified by any other convincing reason.

Principal facts

The applicant, Danka Pajić, is a national of Bosnia and Herzegovina who was born in 1973 and lives in Brčko (Bosnia and Herzegovina).

In December 2011 Ms Pajić lodged a request for a residence permit in Croatia on the grounds of family reunification with her partner, Ms D.B., who was living in Sisak (Croatia). She submitted in particular that she wanted to live with D.B., with whom she had been in a relationship for two years, and with whom she was planning to establish a household and start a business. During the proceedings, the Sisak Police Department found that the two women had been in a relationship since October 2009 and that in order to maintain their relationship they had been travelling to see each other.

Ms Pajić's request was dismissed by the Sisak police department indicating that the relevant requirements under the Aliens Act had not been met. Her appeal to the Ministry of the Interior was rejected. She then lodged an action with the Zagreb Administrative Court, arguing that she had been discriminated against in comparison with different-sex couples who had a possibility to seek family reunification under the Aliens Act. The Administrative Court dismissed her action, finding in particular that, given the limited legal effects of a same-sex union, the possible existence of such a union did not represent a basis for family reunification. In May 2013 the Constitutional Court rejected Ms Pajić's constitutional complaint against that decision.

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.

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) of the European Convention on Human Rights, Ms Pajić complained that she had been discriminated against on the grounds of her sexual orientation.

The application was lodged with the European Court of Human Rights on 23 October 2013.

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

Işıl Karakaş (Turkey), *President*,
Nebojša Vučinić (Montenegro),
Paul Lemmens (Belgium),
Valeriu Griţco (the Republic of Moldova),
Ksenija Turković (Croatia),
Stéphanie Mourou-Vikström (Monaco),
Georges Ravarani (Luxembourg),

and also Abel Campos, *Deputy Section Registrar*.

Decision of the Court

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

The Court noted that here was no doubt that the relationship of a same-sex couple like Ms Pajić's fell within the notion of "private life" for the purpose of Article 8. In addition, the Court came to the conclusion that the facts of the case fell within the notion of "family life" for the purpose of Article 8. Consequently, Article 14 in conjunction with Article 8 applied.

In arriving at that conclusion, the Court observed in particular that in recent years a considerable number of member States of the Council of Europe had given legal recognition to same-sex couples. In view of that evolution it would be artificial to maintain the view that, in contrast to a different-sex couple, a same-sex couple could not enjoy "family life". In a recent judgment in another case² the Court had further found that there could be no basis for drawing a distinction between stable same-sex couples who lived together and those who – for professional and social reasons – did not, since the latter situation did not deprive the couples concerned of the stability which brought them within the scope of "family life". It was undisputed between the parties that Ms Pajić had maintained a stable relationship with D.B. since October 2009 and that she regularly travelled to Croatia, sometimes spending three months living together with D.B., as that was the only possibility open to her to maintain a relationship with her partner due to the relevant immigration restrictions.

As regards the question of whether Ms Pajić had been discriminated against, the Court noted that the Croatian legal system recognised both extramarital relationships of different-sex couples and same-sex couples. It thus acknowledged in general the possibility that both categories of couples were capable of forming stable committed relationships. In any case, the Court considered that a partner in a same-sex relationship, as Ms Pajić, who applied for a residence permit for family reunification so he or she could pursue the intended family life in Croatia was in a comparable situation to a partner in a different-sex extramarital relationship as regards the same intended manner of making his or her family life possible.

However, the relevant provisions of the Croatian Aliens Act essentially reserved the possibility of applying for a residence permit for family reunification to different-sex couples, married or living in

² *Vallianatos and Others v. Greece* (nos. 29381/09 and 32684/09), Grand Chamber judgment of 7 November 2013

an extramarital relationship. By tacitly excluding same-sex couples from its scope, the Aliens Act introduced a difference in treatment based on the sexual orientation of the persons concerned.

The Court dismissed an argument by the Croatian Government to the effect that Ms Pajić was not in a comparable situation to different-sex couples living in an extramarital relationship given that she had not been in a relationship with her partner for a period of three years. The Court pointed out that the Croatian authorities had not examined the relevant factual aspects of her situation, as they had relied on the legal impossibility, under the Aliens Act, of obtaining a residence permit for family reunification by a partner in a same-sex relationship. Moreover, the Court noted that by the time her case reached the stage of the proceedings before the Administrative Court, Ms Pajić relationship with her partner had lasted more than three years. In conclusion, she had been affected by the difference in treatment based on sexual orientation introduced by the Aliens Act.

It had therefore been for the Government to show that that difference in treatment could be justified by pursuing a legitimate aim and that there was a reasonable relationship of proportionality between the means employed and the aim sought to be realised. States had only a small room for manoeuvre (“margin of appreciation”) in cases where there was a difference in treatment based on sex or sexual orientation. Accordingly they had to show that it was necessary, in order to achieve that aim, to exclude certain categories of people – in this case, persons in a same-sex relationship – from the scope of application of the relevant domestic provisions at issue.

However, the Croatian authorities had not provided any such justification, nor had the Croatian Government, in its submissions to the Court, given any convincing reasons to justify the difference in treatment. Instead, the relevant provisions of the Aliens Act provided for a blanket exclusion of persons living in a same-sex relationship from the possibility of obtaining family reunification, which could not be considered compatible with the standards under the Convention.

The Court therefore found that there had been a violation of Article 14 conjunction with Article 8.

[Just satisfaction \(Article 41\)](#)

The Court held that Croatia was to pay Ms Pajić 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 5,690 in respect of costs and expenses.

The judgment is available only in English.

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Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Nina Salomon (tel: + 33 3 90 21 49 79)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

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.