

Press release issued by the Registrar

GRAND CHAMBER JUDGMENT
E.B. v. FRANCE

The European Court of Human Rights has today delivered at a public hearing its Grand Chamber judgment¹ in the case of *E.B. v. France* (application no. 43546/02).

The Court held by ten votes to seven that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for private and family life) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court by eleven votes to six awarded the applicant 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 14,528 for costs and expenses. (The judgment is available in English and French.)

1. Principal facts

E.B. is a French national aged 45. She is a nursery school teacher and has been living with another woman, R., who is a psychologist, since 1990.

The application concerns the refusal by the French authorities to grant the applicant's request to adopt a child, allegedly on account of her sexual orientation.

In February 1998 the applicant applied to the Jura Social Services Department for authorisation to adopt a child. During the adoption procedure she mentioned her homosexuality and her stable relationship with R.

On the basis of the reports drawn up by a social worker and a psychologist, the adoption board made a recommendation in November 1998 that the application be rejected. Shortly afterwards the president of the council for the *département* of the Jura gave a decision refusing authorisation. Following an appeal by the applicant, the president of the council for the *département* confirmed his refusal in March 1999. The reasons given for both decisions were the lack of "identificational points of reference" due to the absence of a paternal image or reference and the ambiguous nature of the applicant's partner's commitment to the adoption plan.

The applicant lodged an application with Besançon Administrative Court, which set both decisions of the president of the council for the *département* aside on 24 February 2000. The *département* of the Jura appealed against the judgment. Nancy Administrative Court of Appeal set aside the Administrative Court's judgment on 21 December 2000. It held that the refusal to grant the applicant authorisation had not been based on her choice of lifestyle and

¹ Grand Chamber judgments are final (Article 44 of the Convention).

had not therefore given rise to a breach of Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination) of the European Convention on Human Rights.

The applicant appealed on points of law, arguing in particular that her application to adopt had been rejected on account of her sexual orientation. In a judgment of 5 June 2002, the *Conseil d'Etat* dismissed E.B.'s appeal on the ground, among other things, that the Administrative Court of Appeal had not based its decision on a position of principle regarding the applicant's sexual orientation, but had had regard to the needs and interests of an adopted child.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 2 December 2002.

The FIDH (*Fédération Internationale des ligues des Droits de l'Homme*), the ILGA-Europe (the European Region of the International Lesbian and Gay Association), the APGL (*Association des Parents et futurs Parents Gays et Lesbiens*) and the BAAF (British Agencies for Adoption and Fostering) were given leave to take part in the proceedings before the Chamber as third party interveners under Article 36 § 2 of the Convention (third party intervention) and Rule 44 § 2 of the Rules of Court.

On 19 September 2006, under Article 30 of the Convention¹, the Chamber relinquished jurisdiction in favour of the Grand Chamber.

A public hearing took place in the Human Rights building, Strasbourg, on 14 March 2007.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Christos **Rozakis** (Greek), *President*,
Jean-Paul **Costa** (French),
Nicolas **Bratza** (British),
Boštjan M. **Zupančič** (Slovenian),
Peer **Lorenzen** (Danish),
Françoise **Tulkens** (Belgian),
Loukis **Loucaides** (Cypriot)
Ireneu **Cabral Barreto** (Portuguese),
Rıza **Türmen** (Turkish),
Mindia **Ugrekhelidze** (Georgian),
Antonella **Mularoni** (San Marinese),
Elisabeth **Steiner** (Austrian),
Elisabet **Fura-Sandström** (Swedish),
Egbert **Myjer** (Dutch),
Danutė **Jočienė** (Lithuanian),
Dragoljub **Popović** (Serbian),

¹ Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

Sverre Erik **Jebens** (Norwegian) *judges*,

and also Michael **O’Boyle**, *Deputy Registrar*.

3. Summary of the judgment¹

Complaints

Relying on Article 14 of the Convention, taken in conjunction with Article 8, the applicant alleged that at every stage of her application for authorisation to adopt she had suffered discriminatory treatment that had been based on her sexual orientation and had interfered with her right to respect for her private life.

Decision of the Court

Admissibility

The Court reiterated at the outset that whilst French law and Article 8 did not guarantee either the right to found a family or the right to adopt (which neither party contested), the concept of “private life” within the meaning of Article 8 was a broad one which encompassed a certain number of rights.

With regard to an allegation of discrimination on grounds of the applicant’s homosexuality, the Court also reiterated that Article 14 (prohibition of discrimination) had no independent existence. The application of Article 14 did not necessarily presuppose the violation of Article 8. It was sufficient for the facts of the case to fall “within the ambit” of that Article. This was the case here since French legislation expressly granted single persons the right to apply for authorisation to adopt and established a procedure to that end.

Consequently, the Court considered that the State, which had gone beyond its obligations under Article 8 in creating such a right, could not then take discriminatory measures when it came to applying it. The applicant alleged that, in the exercise of her right under the domestic law, she had been discriminated against on the ground of her sexual orientation, which was a concept covered by Article 14.

Article 14 of the Convention, taken in conjunction with Article 8, was therefore applicable in the present case.

Article 14 in conjunction with Article 8

After drawing a parallel with a previous case, the Court pointed out that the domestic administrative authorities, and then the courts that heard the applicant’s appeal, had based their decision to reject her application for authorisation to adopt on two main grounds: the lack of a paternal referent in the applicant’s household, and the attitude of the applicant’s declared partner.

The Court found that the attitude of the applicant’s partner was not without interest or relevance in assessing the application. In the Court’s view, it was legitimate for the

¹ This summary by the Registry does not bind the Court.

authorities to ensure that all safeguards were in place before a child was taken into a family, particularly where not one but two adults were found to be living in the household. In the Court's opinion, that ground had nothing to do with any consideration relating to the applicant's sexual orientation.

With regard to the ground relied on by the domestic authorities relating to the lack of a paternal referent in the household, the Court considered that this did not necessarily raise a problem in itself. However, in the present case it was permissible to question the merits of such a ground as the application had been made by a single person and not a couple. In the Court's view, that ground might therefore have led to an arbitrary refusal and have served as a pretext for rejecting the applicant's application on grounds of her homosexuality, and the Government had been unable to prove that use of that ground at domestic level had not been leading to discrimination. Regarding the systematic reference to the lack of a "paternal referent", the Court disputed not the desirability of addressing the issue, but the importance attached to it by the domestic authorities in the context of adoption by a single person.

The fact that the applicant's homosexuality had featured to such an extent in the reasoning of the domestic authorities was significant despite the fact that the courts had considered that the refusal to grant her authorisation had not been based on that. Besides their considerations regarding the applicant's "lifestyle", they had above all confirmed the decision of the president of the council for the *département* recommending that the application for authorisation be refused and giving as reasons the two impugned grounds: the wording of certain opinions revealed that the applicant's homosexuality or, at other times, her status as a single person had been a determining factor in refusing her authorisation whereas the law made express provision for the right of single persons to apply for authorisation to adopt.

The Court considered that the reference to the applicant's homosexuality had been, if not explicit, at least implicit; the influence of her homosexuality on the assessment of her application had not only been established but had also been a decisive factor leading to the decision to refuse her authorisation to adopt.

Accordingly, it considered that the applicant had suffered a difference in treatment. If the reasons advanced for such a difference in treatment were based solely on considerations regarding the applicant's sexual orientation this amounted to discrimination under the Convention. In any event, particularly convincing and weighty reasons had to be made out in order to justify such a difference in treatment regarding rights falling within the ambit of Article 8. There were no such reasons in the present case because French law allowed single persons to adopt a child, thereby opening up the possibility of adoption by a single homosexual. Furthermore, the Civil Code remained silent as to the necessity of a referent of the other sex and, moreover, the applicant presented – in the terms of the judgment of the *Conseil d'Etat* – "undoubted personal qualities and an aptitude for bringing up children".

The Court noted that the applicant's situation had been assessed overall by the domestic authorities, who had not based their decision on one ground alone but on "all" the factors, and considered that the two main grounds had to be examined concurrently. Consequently, the illegitimacy of one of the grounds (lack of a paternal referent) had the effect of contaminating the entire decision.

The Court concluded that the decision refusing the applicant authorisation was incompatible with the Convention and that there had been a violation of Article 14 of the Convention, taken in conjunction with Article 8.

Judges Lorenzen and Jebens expressed a concurring opinion, and Judges Costa, Türmen, Ugrekhelidze, Jočienė, as well as Judges Zupančič, Loucaides and Mularoni, expressed dissenting opinions. These are annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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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.