

PIAC Flash numéro 5

European Court of Human Rights: Greek civil unions law only for heterosexual couples violates European human rights law

In a judgment in the joint cases of *Vallianatos and Mylonas v. Greece* and *C.S. and others v. Greece* delivered today, the Grand Chamber of the European Court of Human Rights ruled that Greece had violated the European Convention on Human Rights by excluding same-sex couples from a “civil union”, restricted in Greece to heterosexual couples.

FIDH, ILGA-Europe, the ICJ, AIRE-Centre and Hellenic league for Human Rights welcome this important decision. The organisations had submitted written comments about the case to the Court in June 2011.

“All Member States of the Council of Europe must condemn any form of discrimination against homosexuals. Homosexual couples, as heterosexual couples, involved in a stable relationship, should benefit from a legal recognition”, said **Karim Lahidji**, FIDH President. He added: *“Twenty-two of the Member States of the Council of Europe have created a legal form of recognition for same-sex couples. Greece must change its law to comply with the European Convention on Human Rights”.*

Livio Zilli, Senior Legal Adviser at the International Commission of Jurists, said: *“The Court reiterated that the Convention was a living instrument to be interpreted in the present-day conditions and that the state was obliged under the Convention to take account of societal developments, as well as the fact that there no single way or choice when it came to people’s exercise and enjoyment of their right to family or private life.”*

In its decision, the Court ruled that Greece had failed to provide a convincing justification for excluding same-sex couples. The Government's argument, according to which the law's main purpose was to protect children of unmarried parents, did not constitute a valid reason, because the law's real objective was the legal recognition of a new form of family life. Therefore, exclusion of same-sex couples breaches the Convention.

In November 2008, Greece adopted a law creating the “civil unions”, an alternative to marriage. However, the first article restricts such unions to “two physical individuals of different sex who have reached the age of majority”.

An animated debate relating to the inclusion of same-sex couples took place before the adoption of this law.

During the debate before the Hellenic Parliament, the Minister of Justice at the time, declared: “We mustn't include same sex couples. We are indeed convinced that the needs and demands of the Hellenic society do not cross this line; as a legislator, the political party in power is accountable to the Greek people; we have our own beliefs and negotiations are over; I believe it is the way to go”.

In [their written comments, FIDH, ILGA-Europe, ICJ and AIRE-Centre](#) recalled that the European Court has repeatedly condemned direct discrimination based on sexual orientation as a violation of protected rights. The Court's case-law reiterates that when it comes to a difference in treatment based on sex or sexual orientation, the principle of proportionality does not merely require that the measure chosen is in principle suited for realising the aim sought. It must also be shown that the discriminatory treatment is necessary in order to achieve that aim, otherwise the measure will be in violation of the Convention. Creating a “civil union” only for unmarried different-sex couples amounts to direct discrimination and therefore violates the Convention.

Today's decision follows recent jurisprudence of the Court against discrimination of same-sex couples. [On February 2013, in the X. and others v. Austria case, the European Court condemned Austria for banning a homosexual person to adopt the biological child of his/her partner.](#) It decided that the ban of unmarried same-sex couples, which are in the same situation than unmarried different-sex couples, was not justified and violated article 14 of the Convention in conjunction with article 8.

