

THE LEGAL LANDSCAPE OF SAME SEX RELATIONSHIPS IN EUROPE: ECHR DECISION BASED ON SECTION 8

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Abstract

This paper analyzes the evolution of legal recognition of same sex civil partnerships in Europe, focusing on the jurisprudence of the European Court of Human Rights, and the interpretation of the Article 8 of the European Convention on Human Rights, which guarantees the right to respect for private family life. The study highlights the persistent East-West divide regarding LGBTQIA rights: while most Western European countries legalized marriage equality, many Eastern European countries continue to deny any form of legal acknowledgment. The analysis centers on the cases Schalk and Kopf v. Austria (2010), Vallianatos and Others v. Greece (2013), Oliari and Others v. Italy (2015), and most recently Buhuceanu and Others v. Romania (2023). The paper underscores the tension between national sovereignty and international human rights commitments, as well as the diverse socio-political contexts shaping the implementation of ECHR judgments. While key decisions have prompted reforms: such as the extension of civil unions in Greece and Italy—persistent resistance in countries like Romania demonstrates the limits of the Court's influence. In conclusion, ECHR jurisprudence has both advanced equality and dignity for same-sex couples and provided a foundation for future advocacy. By emphasizing the practical (inheritance, healthcare, social security) and symbolic importance of recognition, these rulings affirm that human rights protections must extend to all couples across Europe.

Introduction

The legal recognition of civil partnerships has evolved significantly across Europe over the past few decades, reflecting broader societal shifts in attitudes toward same-sex relationships and the rights of LGBTQ+ individuals (*The Council of Europe: Guardian of Human Rights, Democracy and the Rule of Law for 700 million Citizens*, 2025).

In Europe, a clear East-West divide persists regarding the recognition of same-sex couples. While most Western European countries have extended marriage rights to same-sex couples, such recognition remains rare in the countries of the former Socialist bloc. As of today, only Estonia and Slovenia permit same-sex marriage.

Some Eastern European nations offer alternative forms of recognition, such as registered

partnerships or cohabitation agreements,

but many still fail to provide any legal acknowledgment of same sex relationships. This lack of recognition has prompted the European Court of Human Rights to examine whether denying legal recognition to same-sex couples violates the European Convention on Human Rights. Notably, in 2023 alone, the ECHR issued five judgments addressing this issue. (Goris, 2024) By analyzing landmark judgments such as **Schalk and Kopf v. Austria (2010)**, **Vallianatos and Others v. Greece (2013)**, and **Oliari and Others v. Italy (2015)**, this paper will highlight the Court's interpretation of fundamental rights, including the right to private and family life (Article 8) and the prohibition of discrimination (Article 14). According to the European Convention on Human Rights, Article 8 protects the right to respect for private and family life, home, and correspondence. It emphasizes the importance of individual privacy and the protection of family life while balancing this right with the needs of society as a whole. (*European Convention on Human Rights - Article 8*, 2022)

Article 14 of the European Convention on Human Rights establishes the prohibition of discrimination in the enjoyment of the rights and freedoms guaranteed by the Convention. (*European Convention on Human Rights - Article 14, 2022*)

These cases point out the interplay between national sovereignty and international human rights obligations, revealing both progress and resistance in the legal recognition of same-sex partnerships.

In addition to examining specific cases, this paper will situate these developments within the broader socio-political context of Europe, where attitudes toward LGBTQ+ rights remain diverse and, at times, polarized. While some countries have embraced same-sex marriage and full equality, others have resisted extending even basic legal recognition to same-sex couples, citing cultural, religious, or political reasons.

By tracing the evolution of civil partnership recognition through the lens of key ECHR cases, this paper seeks to contribute to the understanding of how international human rights law influences domestic policies and societal norms in Europe.

Literature review

In the context of the European Union, a **registered partnership** is defined as "a form of union

other than marriage, which is institutionally sanctioned by the registration of the partnership with a public authority." This definition distinguishes registered partnerships from de facto cohabitation, emphasizing their official recognition. (*Regulation - 2016/1104 - EN - EUR-LEX*, n.d.-b) In most EU countries, civil unions and registered partnerships are treated as equivalent or comparable to marriage. Countries that allow same-sex marriages typically recognize same-sex registered partnerships established abroad. In countries where same-sex marriage is not permitted but registered partnerships are available, a same-sex marriage performed abroad is usually granted the same rights as a registered partnership. However, the following EU countries do not offer registered partnership provisions: Bulgaria, Latvia, Lithuania, Poland, Romania, and Slovakia. (*Civil Unions and Registered Partnerships: Recognition in Different EU Countries - Your Europe*, 2022) The European Court of Human Rights, a body of the Council of Europe, has the authority to adjudicate individual or state applications claiming violations of the rights established in the European Convention on Human Rights. This court has addressed numerous cases involving local and regional authorities. (*The European Court of Human Rights*, 2023)

The European Convention on Human Rights is a distinctive international treaty, signed on November 4, 1950, in Rome. It came into effect in 1953 and has been ratified by all 46 member states of the Council of Europe. This convention ensures fundamental civil and political rights for not only the citizens of these member states but also for all individuals within their jurisdiction. (European Court of Human Rights, n.d.)

The ECHR's Jurisprudence on Civil Partnerships

The ECHR has contributed significantly to the discourse on civil partnerships through landmark cases such as *Schalk and Kopf v. Austria* (2010), *Vallianatos and Others v. Greece* (2013), and *Oliari and Others v. Italy* (2015). These cases reflect the evolving jurisprudence of the Court and its influence on advancing LGBT rights in Europe.

In *Schalk and Kopf v. Austria*, the applicants, a same-sex couple, sought legal recognition of their relationship, arguing that the absence of such recognition violated their rights under Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination). The Court's application of the

margin of appreciation doctrine allowed Austria discretion in determining how to address legal recognition, but the judgment nonetheless set a precedent for future cases (*Schalk and Kopf v. Austria*, 2010).

The case of *Vallianatos and Others v. Greece* addressed the exclusion of same-sex couples from civil unions, a legal framework established in Greece for opposite-sex couples. The applicants

argued that this exclusion violated Articles 8 and 14. The Court ruled in their favor, finding that such exclusion constituted unjustifiable discrimination and failed to serve a legitimate aim. The judgment emphasized the importance of ensuring equal treatment in legal frameworks designed to recognize personal relationships. This case reinforced the principle that states must avoid discriminatory practices in laws governing family and private life (*Vallianatos and Others v. Greece*, 2013).

In *Oliari and Others v. Italy* (2015), the Court took a more assertive stance by finding that Italy's failure to provide any form of legal recognition for same-sex couples violated Articles 8 and 14. The applicants highlighted the legal uncertainty and lack of rights they faced due to the absence of civil unions or marriage for same-sex couples. The Court ruled that Italy's inaction was incompatible with its obligation to ensure respect for private and family life, especially in light of the growing European consensus on recognizing same-sex partnerships. (*Oliari and Others v. Italy*, 2015).

These cases collectively demonstrate the ECHR's evolving stance on civil partnerships, highlighting a trajectory toward greater protection and recognition of same-sex relationships.

Case analysis

Legal Analysis of *Oliari and Others v. Italy*

The case of *Oliari and Others v. Italy* (2015) marks a significant moment in the European Court of Human Rights' jurisprudence concerning the rights of same-sex couples. The Court held that Italy's failure to provide any legal framework for the recognition of same-sex relationships violated Article 8 of the European Convention on Human Rights, which guarantees the right to respect for private and family life (*Oliari and Others v. Italy*, 2015).

The applicants, same-sex couples in stable relationships, argued that the lack of recognition for their unions left them in a state of legal uncertainty and infringed upon their dignity. They claimed violations of both Article 8 and Article 14 (prohibition of discrimination) of the ECHR. The Court primarily analyzed the issue under Article 8, considering the state's positive obligation to ensure respect for private and family life (*Oliari and Others v. Italy*, 2015). In Italy's case, the Court found that despite increasing public acceptance of same-sex relationships and acknowledgment by the Italian Constitutional Court of the need for legal protection, the legislature had failed to act. This legislative inertia resulted in the applicants' relationships remaining unrecognized, leaving them vulnerable to discrimination and exclusion from fundamental rights afforded to heterosexual couples (*Oliari and Others v. Italy*, 2015).

The “Oliari and Others v. Italy” ruling is a landmark decision in the ECHR’s case law on sexual minority rights. It establishes a positive obligation for states to create a legal framework recognizing same-sex relationships, regardless of whether such frameworks already exist for different-sex couples or when they are enacted. This judgment advances the principles established in “Schalk and Kopf v. Austria” and “Vallianatos and Others v. Greece” (Zago, 2015). However, the methodology used by the Court has been criticized. The analysis focused solely on Article 8, even though most applicants argued violations of Article 8 in conjunction with Article 14. By doing so, the Court avoided assessing the right to private and family life alongside the principle of nondiscrimination. This narrowed the reasoning to the interpretation of

“respect” in the Italian context, overlooking the proportionality test under Article 14, which would have examined whether individuals in similar situations were treated differently due to their sexual orientation and, if so, whether such treatment was justified by legitimate reasons. The judgment also left unresolved the essential rights and obligations that should accompany civil unions distinct from marriage. While it recognized the need for legal protections (§177), it deferred to individual states to determine these details, risking inconsistencies and potentially discriminatory outcomes across Europe. Additionally, questions remain about how similar cases might be decided in states with less favorable public opinion toward homosexuality or limited domestic court pressure on legislators to act. (Zago, 2015)

Legal Analysis of Schalk and Kopf v. Austria (2010)

The European Court of Human Rights (ECtHR) delivered a significant judgment in 2010 in the case of *Schalk and Kopf v. Austria*, addressing the refusal of Austrian authorities to grant marriage rights to a same-sex couple. This case was a turning point in the development of LGBTQ+ rights under the European Convention on Human Rights, raising complex questions about the interpretation of Articles 8 (right to respect for private and family life) and 12 (right to marry). This essay examines the background of the case, the legal issues it presented, the Court’s reasoning, and its broader implications for the recognition of same-sex relationships in Europe.

Karl Schalk and Johann Kopf, an Austrian same-sex couple, sought a marriage license in 2002. Their application was denied based on Austrian law, which defined marriage exclusively as a union between a man and a woman. The couple challenged the denial, asserting violations of their rights under Articles 8, 12, and 14 (prohibition of discrimination) of the ECHR. After exhausting domestic remedies, the case was brought to the ECHR for adjudication.

The legal issues before the Court centered on three key questions. First, the Court examined whether the refusal to allow same-sex marriage violated Article 12, which guarantees the right to marry. Second, it considered whether the denial breached the applicants' right to private and family life under Article 8. Lastly, the Court evaluated whether the refusal amounted to discrimination contrary to Article 14 when read in conjunction with Articles 8 and 12. By a narrow majority of 4-3, the ECHR ruled that Austria's refusal did not violate the ECHR. Under Article 12, the Court highlighted that the provision grants the right to marry "according to the national laws governing the exercise of this right." It concluded that the definition of marriage as a heterosexual institution fell within the margin of appreciation afforded to states. While acknowledging the evolving understanding of marriage, the Court refrained from expanding the scope of Article 12 to include same-sex couples at that time, emphasizing the lack of a European consensus on the matter. With respect to Article 8, the Court took an important step by recognizing for the first time that same-sex relationships fall within the scope of "family life." This acknowledgment aligned with the Court's evolving jurisprudence on LGBTQIA rights and reflected changing social attitudes. However, the Court found no violation of Article 8, reasoning that Austria's introduction of the Registered Partnership Act in 2010 provided same-sex couples with a legal framework for recognition, even if it did not equate to marriage. The applicants also argued that the distinction between heterosexual and same-sex couples amounted to discrimination under Article 14. The Court rejected this claim, citing the absence of a uniform European approach to same-sex marriage. It reiterated that states retain discretion in balancing the rights of same-sex couples with societal views on marriage, reinforcing its reliance on the margin of appreciation. Dissenting judges criticized the majority's approach, arguing that it undermined the universality of human rights by deferring excessively to national legislatures. They contended that the Court missed an opportunity to advance equality for same-sex couples and to redefine marriage as an evolving institution that accommodates diverse family forms. (ECHR, 2010)

The judgment in *Schalk and Kopf v. Austria* exemplifies the ECHR's cautious approach to LGBTQIA rights. By recognizing same-sex relationships as part of family life, the Court made a significant, albeit incremental, step forward. However, its refusal to mandate marriage equality highlighted the sociopolitical complexities surrounding the issue and underscored the divergence among member states. This cautious stance reflected the realities of Europe at the time, where same-sex marriage was not yet widely accepted or legally recognized in many countries. (Hodson, 2011)

In conclusion, *Schalk and Kopf v. Austria* remains a landmark case in the landscape of LGBTQIA rights within the ECHR framework. While it stopped short of endorsing marriage

equality, its recognition of same-sex relationships within the scope of family life marked a pivotal step forward. The case illustrates the delicate balance between evolving societal values, national sovereignty, and the universality of human rights. Despite the progress made since the judgment, the struggle for full equality continues, with this case serving as a cornerstone in the ongoing advocacy for LGBTQIA rights in Europe.

Legal analysis of Vallianatos and Others v. Greece

The case *Vallianatos and Others v. Greece* (2013) represents a significant milestone in the European Court of Human Rights' efforts to address discrimination against same-sex couples and uphold their right to family life.

This judgment underscores the importance of equality and the protection of LGBTQIA rights under the European Convention on Human Rights (ECHR). In 2008, Greece enacted Law no. 3719/2008, which introduced a civil union framework designed to provide legal recognition to couples outside of traditional marriage. However, this law explicitly excluded same-sex couples. Several same-sex couples challenged this exclusion, arguing that it violated their rights under Article 8, which protects private and family life, and Article 14, which prohibits discrimination. The applicants contended that denying same-sex couples' access to civil unions amounted to unequal treatment based solely on their sexual orientation (European Court of Human Rights ECHR, 2013).

The ECHR first considered whether the exclusion of same-sex couples fell within the scope of the ECHR. The Court determined that the applicants' relationships constituted "private and family life" under Article 8. Additionally, the Court emphasized that differential treatment based on sexual orientation required particularly compelling justification under Article 14, given its protected status as a ground for discrimination (ECHR, 2013).

Greece defended its law by arguing that civil unions aimed to provide legal safeguards for children born out of wedlock. However, the Court dismissed this claim, pointing out that the law did not specifically address children's welfare nor make any such protection contingent upon the presence of children in the relationship. Consequently, the exclusion of same-sex couples lacked a legitimate aim and failed to meet the requirement of proportionality (ECHR, 2013).

The Court also examined broader trends in Europe, noting that at the time of its decision, 19 Council of Europe member states had extended legal recognition to same-sex couples through marriage or civil unions. This evolving European consensus further underscored the discriminatory nature of

Greece's legislation. The ECHR criticized Greece for not aligning with these developments and for failing to provide sufficient justification for its exclusionary stance (Khattab, 2013). Ultimately, the ECHR ruled that Greece's exclusion of same-sex couples from civil unions violated Articles 8 and 14 of the ECHR. It awarded non-pecuniary damages to the applicants, acknowledging the emotional and social harm caused by the discriminatory law (ECHR, 2013). The implications of this judgment extend beyond the immediate parties involved. It reaffirmed the principle that laws recognizing personal relationships must be inclusive and non-discriminatory. The case highlighted the ECHR's role in advancing LGBTQ+ rights and set a precedent for challenging discriminatory laws across Europe. It also signaled to member states that evolving human rights standards demand equal treatment for same-sex couples (Council of Europe, 2013).

In conclusion, *Vallianatos and Others v. Greece* demonstrates the ECHR's commitment to ensuring that all individuals, regardless of sexual orientation, enjoy the full spectrum of rights guaranteed under the ECHR. This judgment not only rectified a specific instance of discrimination but also contributed to the broader recognition of LGBTQ+ rights, strengthening the foundation of equality within European human rights law.

Impact on National Legislation

The ECHR's rulings have had a profound impact on national legislation in Europe, prompting countries to reform their legal frameworks. For instance, following *Vallianatos*, Greece extended civil unions to same-sex couples in 2015. Similarly, *Oliari* influenced Italy to introduce civil unions for same-sex couples in 2016, despite significant opposition from conservative and religious groups.

These cases reveal that the influence of the ECHR is not uniform across Europe. While Western European states have generally aligned with the Court's jurisprudence, some Eastern European countries have resisted implementing reforms. For example, Poland, Romania and Hungary have faced criticism for their reluctance to recognize same-sex partnerships, citing cultural and religious values. This divergence underscores the limitations of the ECHR's influence, particularly in states with entrenched opposition to LGBTQIA rights.

Case study- Case of Buhuceanu and others V Romania

Buhuceanu v. Romania is a landmark case before the European Court of Human Rights (ECHR) addressing the issue of same-sex couples' rights in Romania.

In 2019 and 2020, 21 couples filed complaints with the European Court of Human Rights (ECHR), contending that Romanian law prevented them from marrying or entering any form

of civil union. They claimed that this differential treatment based on sexual orientation violated their right to respect for private and family life. In its ruling on the case of Buhuceanu and Others v. Romania, the ECHR found a violation of Article 8 of the European Convention on Human Rights, reaffirming the principles established in Fedotova and Others v. Russia. The Court emphasized that member states have a positive obligation to provide a legal framework that offers adequate recognition and protection for same-sex couples. Additionally, it noted that the national margin of appreciation is limited concerning the personal and social identity of same-sex couples, given the clear trend in Europe towards legal recognition of such relationships. The Court concluded that Romania exceeded its margin of appreciation and failed to meet its positive obligation to ensure the applicants' right to respect for their private and family life. (Echr, n.d.)

More significantly than the Court's finding of a violation of Article 8 in Buhuceanu is how it justified the necessity for legal recognition of same-sex couples.

The Court highlighted a single, practical reason: official recognition grants rights. These rights are tangible and practical, such as the right to hospital visitation, the right to inherit a partner's lease, and the right to joint insurance. Without official recognition, these rights are denied, leaving the couple unprotected in their private and family life. Consequently, in paragraph 78, the Court stated that "the applicants have a particular interest in obtaining the possibility of entering into a form of civil union or registered partnership," with this particular interest being practical – "to have their relationships legally recognized and protected through core rights relevant to any couple in a stable and committed relationship." While this practical perspective is understandable (as it is essential for partners to have a say in the financial, economic, and legal affairs affecting their relationship), it is surprising that this is the only perspective adopted by the Court in this case, especially considering previous case-law on the matter.

Political reactions

Although the European Court's decision clearly states Romania's urgent need for a legal recognition of the LGBTQIA community, Romanian politicians refuse to accept it. Romania's response to the European Court's ruling After the European Court's decision regarding the case, the Prime Minister of Romania, Marcel Ciolacu, was asked in an interview, what he thinks of the ruling. Ciolacu told radio station Europa FM that "the Romanian society is not ready for a decision at the moment. It is not one of my priorities and ... I don't think Romania is ready." (EuropaFm, 2023)

"I am not a closed-minded person, I ... have friends in relationships with a man, I don't have a problem with that, I am talking now from the point of view of a prime minister."

Ciolacu added it wouldn't be the first or the last time that Romania fails to enforce ECHR rulings. (Reuters, 2024)

After the Prime Minister's answer, Nicolae Ciucă, then leader of the third largest party, PNL, stated that: "Personally and within the PNL, in everything that pertains to the values we have discussed, the National Liberal Party will continue to support the family, the traditional family, faith in God, and patriotism, as these have been embraced by the party," stated Nicolae Ciucă. (Lazăr, 2023)

As seen during the 2024 parliamentary but especially presidential elections in Romania, this subject is prone to being used as political propaganda. Although the conservative Elena Lasconi, a candidate for the presidential elections, did vote in favour of the Referendum for Family in 2018, which was a clear attack against the community, her opposers used the LGBTQ community as a scapegoat, because of Lasconi's approval of a legal recognition of the community. (Pietroșel, 2024)

ECHR's Jurisprudence

Beyond the analysis of individual cases, scholars have critically examined the ECHR's reliance on the margin of appreciation doctrine, suggesting that excessive deference to national authorities can undermine the universality of human rights. Wintemute (2018) argues that this approach frequently delays the recognition and protection of same-sex couples, as cultural relativism is invoked to justify unequal treatment. Moreover, Wintemute notes that the Court's own doctrine of "European consensus" often works in tandem with the margin of appreciation doctrine, such that until a large number of States have adopted the same position, the Court tends to defer to national differences—

even when those differences perpetuate structural inequality. He warns that this dynamic can result in "lowest common denominator" protection for sexual orientation rights: the Court may affirm minimal protections that are acceptable to most States, rather than more robust protections that some States already provide. Finally, he argues that this slow pace of legal recognition has real consequences: same-sex couples in countries lagging behind remain without legal security for their relationships, children, inheritance, or public recognition, reinforcing a hierarchy of citizenship or civil status across Europe (Wintemute, 2018).

Helper (2008) argues that subsidiarity, while intended to respect national diversity, can result in uneven protection of fundamental rights across Europe. The Court's cautious approach thus reflects a persistent tension between moral pluralism and the universality of equality norms.

Helper further emphasizes that the Court's legitimacy depends on its ability to balance respect for national practices with the enforcement of universal human rights standards. He notes that this balancing act often requires the Court to adopt a flexible, context sensitive approach to decision-making (Helper, 2008)

The analyses of Wintemute and Helper underscores the persistent tension at the heart of the European Court of Human Rights' jurisprudence: the balance between respecting national sovereignty and upholding the universality of human rights. Both highlight that the Court's reliance on the margin of appreciation and European consensus doctrines, though intended to promote subsidiarity and legitimacy, can inadvertently entrench inequality and delay progress toward uniform rights protection. Wintemute's critique of the "lowest common denominator" outcome illustrates how excessive deference to national practices risks normalizing discrimination against same-sex couples

and maintaining structural hierarchies within Europe. Similarly, Helper's analysis of subsidiarity demonstrates how moral pluralism and contextual sensitivity, while valuable, can produce inconsistent levels of protection depending on political and cultural climates. These debates highlight a central paradox in ECHR jurisprudence: while the Court aims to advance equality and dignity, its self-restraint can entrench disparities between progressive and conservative states. In balancing universality with subsidiarity, the ECHR maintains long-term stability, yet its deference may inadvertently perpetuate systemic inequality. Together, these perspectives reveal that the Court's cautious incrementalism, though often justified as necessary for preserving institutional credibility, may compromise the transformative potential of human rights law

Conclusion

In conclusion, the European Court of Human Rights (ECHR) has played a pivotal role in advancing the legal recognition and protection of same-sex relationships across Europe. Through landmark rulings such as *Schalk and Kopf v. Austria* (2010), *Vallianatos and Others v. Greece* (2013), *Oliari and Others v. Italy* (2015), and *Buhuceanu and Others v. Romania* (2023), the Court has reinforced the principles of equality, dignity, and the right to private and family life. These cases illustrate the Court's growing willingness to challenge discriminatory practices and urge member states to align domestic laws with evolving human rights standards (European Court of Human Rights, 2010, 2013, 2015).

In *Schalk and Kopf v. Austria*, the Court's recognition of same-sex relationships as part of "family life" marked a significant shift in its interpretation of Article 8. Similarly, *Vallianatos and Others v. Greece* emphasized the necessity of equal treatment under civil union

frameworks, rejecting Greece's exclusion of same-sex couples. The decision in *Oliari and Others v. Italy* went further, compelling Italy to introduce legal recognition for same-sex unions, underscoring states' positive obligations under the European Convention on Human Rights (Johnson, 2016, Weiler, 2017) More recently, *Buhuceanu and Others v. Romania* has highlighted the practical importance of legal recognition for same-sex couples, addressing tangible rights such as inheritance, healthcare, and social security. While the ECHR reaffirmed that member states have a limited margin of appreciation in such matters, Romania's resistance reflects the persistent East-West divide in Europe regarding LGBTQIA rights (Goris, 2023).

Ultimately, the ECHR's jurisprudence has not only catalyzed legislative reforms but also provided a framework for future advocacy. By emphasizing both the practical and symbolic importance of legal recognition, the Court's rulings underscore that equality, and dignity must extend to all. As societal norms evolve, it remains imperative for states to honor their commitments to human rights, ensuring inclusivity and protection for same-sex couples.

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