



Prohibition in France of marriage between same-sex couples prior to the Law of 17 May 2013 was not contrary to the Convention

In today's Chamber judgment¹ in the case of **Chapin and Charpentier v. France** (application no. 40183/07) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 12 (right to marry) taken together with Article 14 (prohibition of discrimination) of the European Convention on Human Rights, and

no violation of Article 8 (right to respect for private and family life) taken together with Article 14 of the Convention.

The case concerned the right to marry of same-sex couples.

The Court reiterated its finding in [Schalk and Kopf v. Austria](#) delivered on 24 June 2010 that neither Article 12, nor Article 8 taken together with Article 14, could be interpreted as imposing an obligation on Contracting States to grant same-sex couples access to marriage.

The Court had reiterated that conclusion in [Hämäläinen v. Finland](#) delivered on 16 July 2014 and [Oliari and Others v. Italy](#) delivered on 21 July 2015. Given the short period of time that had elapsed since then, the Court did not see any reason not to reach the same conclusion in the present case.

Furthermore, the Court noted that the Law of 17 May 2013 had granted same-sex couples access to marriage in France; the applicants were therefore free to marry.

Principal facts

The applicants, Stephane Chapin and Bertrand Charpentier, are French nationals who were born in 1970 and 1973 respectively and live in Plassac.

In May 2004 Mr Chapin and Mr Charpentier submitted a marriage application to the civil registry department of Bègles municipal council. The municipal civil registrar published the banns of marriage. The public prosecutor at the Bordeaux *tribunal de grande instance* served notice of his objection to the marriage on the Bègles municipal civil registrar and on Mr Chapin and Mr Charpentier. Despite the objection, the mayor of Bègles performed the marriage ceremony and made an entry to that effect in the register of births, marriages and deaths. On 22 June 2004 the public prosecutor brought proceedings against Mr Chapin and Mr Charpentier in the Bordeaux *tribunal de grande instance*, seeking to have the marriage annulled. On 27 July 2004 the court annulled the applicants' marriage and ordered its judgment to be recorded in the margin of their birth certificates and the marriage certificate. The Bordeaux Court of Appeal upheld the judgment. Mr Chapin and Mr Charpentier appealed on points of law to the Court of Cassation, which on 13 March 2007 dismissed their appeal.

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 12 (right to marry) taken together with Article 14 (prohibition of discrimination), Mr Chapin and Mr Charpentier submitted that limiting marriage to opposite-sex couples amounted to a discriminatory infringement of the right to marry. Relying on Article 8 (right to respect for private and family life) taken together with Article 14, they contended that they had been discriminated against on the basis of their sexual orientation.

The application was lodged with the European Court of Human Rights on 6 September 2007.

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

Angelika Nußberger (Germany), *President*,
Khanlar Hajiyev (Azerbaijan),
Erik Møse (Norway),
André Potocki (France),
Faris Vehabović (Bosnia and Herzegovina),
Síofra O’Leary (Ireland),
Mārtiņš Mits (Latvia),

and also Claudia Westerdiek, *Section Registrar*.

Decision of the Court

Article 12 taken together with Article 14

In the judgment *Schalk and Kopf v. Austria* the Court had accepted, with reference among other things to Article 9 of the Charter of Fundamental Rights of the European Union, that Article 12 (right to marry) was applicable to the applicants’ complaint. It reached the same conclusion in the present case.

In the judgment *Schalk and Kopf v. Austria* the Court held that whilst the institution of marriage had undergone major changes since the adoption of the Convention, there was no European consensus on granting same-sex couples the right to marry. It found that Article 12 applied to the applicants’ complaint but that the question whether or not to allow same-sex marriage was left to regulation by the national law of the Contracting States. It concluded that Article 12 did not impose an obligation on the respondent Government to grant same-sex couples access to marriage. The Court reiterated that conclusion in *Hämäläinen v. Finland* delivered on 16 July 2014 and *Oliari and Others v. Italy* delivered on 21 July 2015. Given the short period of time that had elapsed since then, the Court did not see any reason not to reach the same conclusion in the present case.

Furthermore, the Court noted that the Law of 17 May 2013 had granted same-sex couples access to marriage in France; the applicants were therefore free to marry.

Accordingly, there had been no violation of Article 12 taken together with Article 14.

Article 8 taken together with Article 14

The Court reiterated that the States remained free under Article 14 taken together with Article 8 to restrict marriage to opposite-sex couples and that they had some room for manoeuvre (“margin of appreciation”) as regards the exact status conferred by alternative means of legal recognition. At the relevant time the applicants had had the possibility of concluding a civil partnership (“PACS”), provided for by Article 515-1 of the Civil Code, which conferred on the civil partners a number of rights and obligations as regards tax, property and social protection.

The present situation was distinguishable from the one in the case of [Vallianatos and Others v. Greece](#) in which Greek law limited civil unions to opposite-sex couples and from the case of *Oliari*

and Others v. Italy in which Italian law did not provide any form of legal recognition of same-sex couples.

The Court reiterated that it was not required to give a detailed ruling on the differences between marriage and the PACS, which generally corresponded to the trend observed in other member States, and that it did not see any evidence that the respondent State had exceeded its margin of appreciation.

Furthermore, the Court noted that the Law of 17 May 2013 had granted same-sex couples access to marriage in France; the applicants were therefore free to marry.

Accordingly, there had been no violation of Article 8 taken together with Article 14.

The judgment is available only in French.

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Press contacts

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

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

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

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

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.