



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

Communicated on 3 March 2015

**FIRST SECTION**

Application no. 28475/12  
Helga RATZENBÖCK and Martin SEYDL  
against Austria  
lodged on 11 May 2012

**STATEMENT OF FACTS**

The applicants, Ms Helga Ratzenböck (“the first applicant”) and Mr Martin Seydl (“the second applicant”), are Austrian nationals, who were born in 1966 and 1964 respectively and live in Linz. They are represented before the Court by Mr H. Graupner, a lawyer practising in Vienna.

**A. The circumstances of the case**

The facts of the case, as submitted by the applicants, may be summarised as follows.

The applicants have been living in a stable relationship for many years and are the parents of a daughter.

On 21 February 2010 they lodged an application with the Linz Municipality (*Magistrat der Landeshauptstadt Linz*) to enter into a registered partnership pursuant to the Registered Partnership Act (*Eingetragene Partnerschaft-Gesetz*). The applicants stated that the traditional civil marriage did not correspond with their idea of an institutionalised partnership, whereas the modern Registered Partnership Act did. Limiting the application of this law to same-sex couples violated their constitutional right to be treated equal before the law, pursuant to Article 2 of the Basic Law (*Staatsgrundgesetz*), Article 7 of the Federal Constitution (*Bundes-Verfassungsgesetz*), Articles 8 and 14 of the Convention, and Article 21 of the EU Charter of Fundamental Rights.

On 17 March 2010 the Linz Municipality dismissed their application pursuant to sections 1, 2 and 5 § 1 (1) of the Registered Partnership Act, stating that a registered partnership may not be concluded between two persons of the opposite sex. It is exclusively reserved for same-sex partnerships.

On 29 March 2010 the applicants appealed, arguing that the Linz Municipality had not interpreted the relevant provisions of the Registered Partnership Act in accordance with fundamental rights and the Austrian Constitution.

On 18 August 2010 the Upper Austria Regional Government (*Amt der oberösterreichischen Landesregierung*) dismissed the appeal, stating that they were bound to execute the Registered Partnership Act as it stood. They had to assume that it was in conformity with the Constitution. Further, they argued that the Court in its judgment in the case *Schalk and Kopf v. Austria* (no. 30141/04, ECHR 2010) had come to the conclusion that it was not discriminatory if two different legal institutions existed for same-sex couples and for different-sex couples respectively. Under Article 12 of the Convention as well as under Article 8 of the Convention read in conjunction with Article 14, the contracting States were free to decide that civil marriage was only open to different-sex couples. Consequently, the member States should also be allowed to exclude different-sex couples from registered partnerships.

On 6 October 2010 the applicants lodged a complaint with the Constitutional Court, arguing that the institution of civil marriage was not a suitable option for them. In their view, the registered partnership was in many ways more modern and “lighter” than a civil marriage. The applicants cited several examples, for instance that the statutory period for a divorce pursuant to section 55 § 3 of the Marriage Act (*Ehegesetz*) was six years (with exceptions), whereas the statutory period to dissolve a registered partnership was three years maximum (section 15 § 3 of the Registered Partnership Act). The divorce reasons of unfaithfulness or “dishonorable or immoral lifestyle” (section 49 of the Marriage Act) did not exist under the Registered Partnership Act. There were differences in the provisions for alimony payments after divorce (sections 66, 67 and 69 § 2 of the Marriage Act) and dissolution of the registered partnership (sections 18 § 3 and 20 of the Registered Partnership Act). Further, while married couples are obliged to be (sexually) faithful to each other (§ 90 § 1 of the Marriage Act), registered partners are only obliged to base their relationship on trust (section 8 § 2 of the Registered Partnership Act). The latter therefore granted the possibility to more sexual freedom than the former. Also, while married couples were able to have a common “family name” (section 93 § 2 of the Civil Code (*Allgemeines Bürgerliches Gesetzbuch*)), registered partners only could have a common “last name” (section 7 of the Registered Partnership Act).

The applicants further argued that neither the Constitutional Court, nor the European Court of Human Rights had previously dealt with the question whether it was lawful to exclude different-sex couples from concluding a registered partnership reserved for same-sex couples. In their view, the above-quoted *Schalk and Kopf* – case could not be interpreted to mean that because same-sex couples could be excluded from civil marriage, different-sex couples could be excluded from a registered partnership. The latter was a brand new legal institution, which was introduced in the 21<sup>st</sup> century and was therefore not based of thousands of years of (discriminatory) tradition, and was further not geared towards (possible) procreation. In the applicants’ view, the respective arguments were therefore not valid for the exclusion of

different-sex couples from the Registered Partnership Act. This exclusion consequently constituted a discrimination based on the applicants' gender and their sexual orientation, which was solely permissible if such a differentiation pursued a legitimate aim. However, the Upper Austria Regional Government had not brought forward that there was a necessity for a difference in treatment, neither have they even alleged that it pursued a legitimate aim.

On 22 September 2011 the Constitutional Court dismissed the applicants' complaint, stating that Article 8 of the Convention read in conjunction with Article 14 did not grant them a right to conclude a registered partnership. It reiterated that Article 12 of the Convention only applied to the traditional civil marriage between a woman and a man. Because the Court in the case *Schalk and Kopf* (cited above) held that there currently was no consensus among the member States concerning marriage for homosexual couples, and this question was therefore left for the member States to decide whether they wanted to allow it or not, this must be even more valid for the question of access of heterosexual couples to a registered partnership, as there was only a very small number of member States which provided this possibility.

The Constitutional Court went on to argue that the Convention had to be read as a whole, therefore its Articles had to be interpreted in relation to each other, and because Article 12 of the Convention did not guarantee heterosexual couples the right to a registered partnership, the prohibition of discrimination pursuant to Article 14 of the Convention read in conjunction with Article 8 could not be interpreted in a way as to oblige member States to grant rights which go beyond Article 12 of the Convention. However, because the Austrian legislator had decided to create a legal institution to recognize same-sex partnerships, other individuals concerned could rely on Article 14 of the Convention concerning alleged violations of the prohibition of discrimination. Pursuant to the jurisprudence of the Court, very weighty reasons had to be brought forward in order to justify a difference in treatment based on gender or sexual orientation. In the case *Schalk and Kopf* (cited above), however, the Court also held that the legislator was allowed to limit civil marriage to different-sex couples, because the State disposed of a certain margin of appreciation concerning the exact status it wants to accord as an alternative to same-sex couples. Further, the Court assumed that the rights accorded to homosexual couples by the Registered Partnership Act was in many ways the same or comparable to the civil marriage, hence the differences between those two institutions was small, apart from parenting rights.

In conclusion the Constitutional Court found that because the institution of civil marriage was open to different-sex couples, because the institution of the registered partnership was created in order to counteract a discrimination of same-sex couples, because different-sex couples were not a historically discriminated group, and because there was no European consensus in that area, there had been no violation of Article 8 of the Convention read in conjunction with Article 14 on the grounds that the Austrian legislator did not grant different-sex couples access to a registered partnership. Further, it held that the question whether there had been discrimination on the ground that the two legal institutions differed in

certain points in their legal effects was not to be answered in the instant case, as it solely concerned the question of a constitutionally guaranteed access to the registered partnership for different-sex couples.

The applicants thereupon lodged a complaint with the Administrative Court. However, on 27 February 2013, the Administrative Court dismissed the complaint as unfounded.

### **B. Relevant domestic law**

According to section 1 and 2 of the Registered Partnership Act (*Eingetragene Partnerschaft-Gesetz*), it applies to same-sex couples only.

Pursuant to section 5 § 1 (1) of the Registered Partnership Act, different-sex couples are not all allowed to enter into a registered partnership.

## **COMPLAINTS**

The applicants complain under Article 8 of the Convention that the Austrian authorities' decision to deny them access to a registered partnership violated their right to respect for their private and family life. Under Article 14 read in conjunction with Article 8 of the Convention they complain that their right not to be discriminated on the basis of their gender and their sexual orientation was violated by being refused access to a registered partnership.

### QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicants' right to respect for their private and family life by being denied access to a registered partnership under the Registered Partnership Act (*Eingetragene Partnerschaft-Gesetz*), within the meaning of Article 8 § 1 of the Convention? If so, was that interference in accordance with the law, pursued a legitimate aim and was also necessary in a democratic society in terms of Article 8 § 2?
2. Would there have been a positive obligation for the State under Article 8 of the Convention to grant the applicants access to a registered partnership?
3. Have the applicants suffered discrimination on grounds of their sexual orientation by being denied access to a registered partnership, contrary to Article 14 of the Convention read in conjunction with Article 8?