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

THIRD SECTION

CASE OF KOILOVA AND BABULKOVA v. BULGARIA

(Application no . 40209/20)

STOP

Art 8 • Positive obligations • Private and family life • Refusal to register in the civil status of a woman her status as a married person as established by the marriage certificate of her homosexual couple concluded abroad • Absence of any form of recognition and legal protection of same-sex couples • Application of the principles established in the *Fedotova and others v. Russia* [GC] • Jurisprudence of the European Court clarified and consolidated in *Fedotova and others* and corroborated by a clear and continuous trend within the States parties and the converging positions of several international bodies • Grounds invoked under the general interest not prevailing not on the essential interests of the applicants • Reduced margin of appreciation exceeded

STRASBOURG

September 5, 2023

This judgment will become final under the conditions defined in Article 44 § 2 of the Convention. It may undergo shape adjustments.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Koilova and Babulkova v. Bulgaria,

The European Court of Human Rights (third section), sitting in a chamber composed of:

Pere Pastor Vilanova, *president,*
Jolien Schukking,
Yonko Grozev,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Oddný Mjöll Arnardóttir, *juges,*
and Milan Blaško, *section clerk,*

Having regard to the application (no. 40209/20) directed against the Republic of Bulgaria and of which two nationals of that State, Ms Darina Nikolaeva Koilova ("the first applicant") and Lilia Petrova Babulkova ("the second applicant"), have submitted to the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on September 3, 2020,

Considering the decision to bring the request to the attention of the government Bulgarian ("the Government"),

Having regard to the observations communicated by the respondent government and those communicated in reply by the applicants,

Considering the request for relinquishment in favor of the Grand Chamber made by the parties in their observations and the decision taken by the Chamber not to grant it, the conditions provided for in this regard by Article 30 of the Convention are not found assembled, and to continue the examination of the present case accordingly,

Considering the comments submitted by the Bulgarian Helsinki Committee and the Institute *Ordo Iuris,* whom the president of the section had authorized to act as third party intervener,

After having deliberated in private on July 4, 2023,

Renders the following judgment, adopted on this date:

INTRODUCTION

1. The present application concerns the refusal of the Bulgarian authorities to include in the civil status registers, in respect of the marital status of the first applicant, her status as a married person as established by the marriage certificate concluded in abroad by the applicants, and therefore the question of the recognition and legal protection of their union as persons of the same sex. At issue are Articles 8 and 12, taken alone and combined with Article 14 of the Convention.

ACTUALLY

2. Both applicants were born in 1986 and live in Sofia. They were represented by Me D. Lyubenova, lawyer in Sofia.

3. The Government was represented by its agent, Ms M. Dimitrova, of the Ministry of Justice.

4. On November 15, 2016, the applicants, who had been living as a couple since 2009, entered into a marriage in the United Kingdom.

5. On 15 May 2017, the first applicant requested from the municipal administration of Lulin (Sofia) the entry in the civil status registers, in respect of her marital status, of the mention “married”. On June 5, 2017, the mayor of Lulin refused to make the requested modification based on the documents presented. He explained, invoking in particular Article 5 of the Family Code read in conjunction with paragraph 1 of Article 4, that the Bulgarian legal order expressly provided that marriage was the union of a man and a woman. female.

6. The first applicant appealed against this decision before the administrative courts. By a decision of January 8, 2018, the administrative court of the city of Sofia rejected the appeal. He declared that a civil marriage concluded in the manner and according to the requirements of the Bulgarian family code constituted a necessary condition for the administration to authorize a modification of civil status registers. He explained that this condition was not met in the present case, as the Bulgarian legal system did not allow the marriage contracted in the United Kingdom by the applicants, in the case of persons of the same sex, to produce effects in Bulgaria. . He added that such an approach to domestic law could not be held to be contrary to European Union rules, the European Convention on Human Rights or private international law.

7. By a decision of 12 December 2019, the Supreme Administrative Court, hearing an appeal lodged by the first applicant, fully confirmed the decision of the first instance.

THE LEGAL FRAMEWORK AND INTERNAL PRACTICE RELEVANT

I. THE BULGARIAN CONSTITUTION

8. The relevant provisions of the Bulgarian Constitution read as follows:

Article 5

“1) The Constitution is the supreme law and other laws cannot contradict it.

2) The provisions of the Constitution are directly applicable. (...)

4) International agreements ratified according to the constitutional order, published and entered into force with respect to the Republic of Bulgaria, form part of the internal law of the State. They have priority over the norms of internal legislation which are in contradiction with them. »

Article 6

“1) All individuals are born free and equal in dignity and rights.

2) All citizens are equal before the law. Any limitation of rights and any attribution of privileges based on a distinction of race, nationality, ethnicity, sex, origin, religion, education, belief, political affiliation, condition are inadmissible. personal or social or financial situation. »

Article 14

“The family, motherhood and children are protected by the State and by society. »

Article 46

“1) Marriage is a union freely concluded between a man and a woman. Only civil marriage is legal. (...)

3) The form of marriage, the conditions and methods of its conclusion and dissolution and the individual and property relations between the spouses are regulated by law. »

9. On February 8, 2018, seventy-five deputies of the National Assembly seized the Constitutional Court, with a view to ratification by the State of the Council of Europe Convention on preventing and combating violence against women and domestic violence (“the Istanbul Convention”) signed by Bulgaria on April 21, 2016, of a request to examine the conformity of the said convention with the provisions of the Bulgarian constitution. The Constitutional Court thus had the opportunity, in reasoning which led it to conclude, in a decision of July 27, 2018, that there was non-compliance, to express its position in relation to the constitutional definition of marriage. She said that according to Bulgarian legal tradition, as expressed by Article 46, paragraph 1 of the Constitution, marriage constitutes “a voluntary union between a man and a woman”.
She clarified that the constitutional framework for marriage is based on the existence of two biologically defined sexes – man and woman – and that the Constitution only allows marriage between people of different biological sexes. She thus recalled that the concept of marriage as the relationship between a man and a woman, a definition placed at the heart of the constitutional framework, is deeply anchored in Bulgarian jurisprudence.

10. Called upon to deliver its interpretation of the word “sex” as it appears in the Constitution, the Constitutional Court showed itself to be faithful, in a decision rendered on October 26, 2021, to the argument summarized above . She in fact concluded in the strictly biological sense of the word in question following reasoning based on what she presented as

a deep conviction: that of the attachment of the Bulgarian people to traditional family values, that is to say to a society based on the idea according to which only the union of a man and a woman can compose a family unit within which each person fulfills the specific role clearly assigned to them by biological and social factors.

II. THE FAMILY CODE

11. The relevant provisions of the 2009 Family Code read as follows:

Civil marriage
Article 4

"1) Only civil marriage concluded according to the forms prescribed in this code leads to the consequences intended by the laws relating to marriage. (...) »

Consent to marriage
Article 5

"Marriage is concluded on the basis of mutual, free and explicit consent, expressed personally and simultaneously by a man and a woman before the civil registrar. »

III. THE CODE OF PRIVATE INTERNATIONAL LAW

12. The relevant provisions of the code of private international law 2005 are worded as follows:

Conclusion of marriage
Article 6

« (...)

3) A marriage between Bulgarian nationals may be concluded abroad with the competent body of the State concerned if the domestic law of that State so permits. »

Form of marriage
Article 75

"(1) The form of marriage is determined by the law of the State to which the body before which the marriage is concluded belongs. (...)

3) A marriage concluded abroad is recognized in the Republic of Bulgaria if the form provided for by the applicable law with regard to paragraph 1 (...) is respected. »

Conditions required to enter into marriage
Article 76

"1) The conditions required to be able to contract marriage are determined, for each of the persons concerned, by the law of the State of which they are a national at the time the marriage is concluded. (...) »

Conditions of recognition and execution
[of a decision or an act issued by an authority of a foreign State]
Article 117

"Decisions and acts of courts and other bodies of a foreign state are recognized and executed when:

(...)

5. recognition or execution is not contrary to Bulgarian public policy. »

IV. REGULATIONS ON CIVIL REGISTERS

13. The relevant provisions of the Civil Records Act 1999 read as follows:

Article 27

"The data in the electronic personal civil status file is updated by municipal administration on the basis of:

1. civil status documents or their digital equivalents (...). »

14. The Supreme Administrative Court had the opportunity to examine appeals against the rejection by the municipal administration of requests for the issuance of certificates of marital capacity made by persons wishing to contract a marriage abroad with a person of the same sex. This court clarified that, according to Bulgarian legislation, the condition requiring that the spouses be of the opposite sex was imperative, and that the municipal administration received a request for the issuance of a certificate of custom or marital capacity did not have any discretionary power in this regard, the said condition being provided for in the Constitution *(ÿÿÿÿÿÿÿÿ ÿ 6260 ÿÿ 18.05.2017 ÿ. ÿÿ ÿÿÿ ÿÿ aÿÿ. ÿ. ÿ 6474/2016 ÿ., III* ÿ.).

15. In another case relating to an application for a residence permit filed by the spouse of a national of a Member State of the European Union with whom the applicant, a national of a third State, was united by a marriage contracted abroad, the immigration authorities initially refused to grant the request. Based on the principle of free movement within the territory of the European Union for nationals of Member States and on a decision rendered on June 5, 2013 by the Court of Justice of the European Union in case C-673/16, the administrative court of the city of Sofia and then the Supreme Administrative Court overturned the administration's refusal and ordered the issuance of a residence permit. In its final judgment, the said court explicitly indicated that the case did not concern the recognition of a marriage concluded between two people of the same sex – a possibility which it recalled on this occasion that Bulgarian law incontestably excluded – but the respect of a European Union standard authorizing stay in the territory of a Member State

of a family member of a person who resides there legally *(ÿÿÿÿÿÿÿÿ*
No. 11351 of 24.07.2019 of the Supreme Administrative Court under adm. e. No. 11558/2018, VII o.).

INTERNATIONAL LAW AND PRACTICE RELEVANT

16. Relevant documents from the United Nations (in particular its Office of the High Commissioner for Human Rights and the Committee on Economic, Social and Cultural Rights), various bodies of the Council of Europe (Committee of Ministers, Parliamentary Assembly, European Commission against Racism and Intolerance and Commissioner for Human Rights), of the European Union, as well as the Inter-American Court of Human Rights, were presented in the Fedotova and Others v . *Russia* ([GC], nos. 40792/10, 30538/14 and 43439/14, §§ 46-64, January 17, 2023).

17. The European Commission against Racism and Intolerance of the Council of Europe (the "ECRI") also published on March 1 , 2021 a "Thematic sheet on issues relating to LGBTI people" summarizing the main recommendations of said commission in relation to issues of sexual orientation, gender identity and sex characteristics. Its relevant part in this case reads as follows:

> **"Legislation relating to cohabitation and marriage**
>
> 6. The authorities should define a legal framework which would allow homosexual couples, without any discrimination, to have their relationship recognized and protected officially and legally in order to remedy the concrete problems they encounter on a daily basis. The authorities should examine whether there is an objective and reasonable justification for each of the differences in the regulations concerning married and same-sex couples, and eliminate any unjustified differences. »

18. In its sixth report concerning Bulgaria, adopted on June 28 2022 and published on October 4, 2022, ECRI expressed itself as follows:

> "13. ECRI observes that there are no official data on the LGBTI population in Bulgaria. Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination based on sexual orientation or gender identity indicates that personal data mentioning sexual orientation Sexual or gender identity may be collected if justified by specific, legal and legitimate purposes. The definition and implementation of policies to combat intolerance and discrimination against LGBTI people cannot rest on a solid basis without this type of information.
>
> 14. Furthermore, despite the recommendation made by ECRI in its previous report, the Bulgarian authorities informed the Commission that they had not carried out any study or research on the situation of LGBTI people or on the problems of discrimination and intolerance that they may face. In this regard, the authorities mentioned some work carried out by NGOs and in particular by groups defending LGBTI people, but they also indicated that these activities (with one exception) had not benefited from any form of public support. .

15. NGOs have informed ECRI that they have identified more than 200 legal situations in which LGBTI people could be considered victims of discrimination. According to these organizations, the legal problems identified particularly concern everyday life and affect, for example, family law (it is not possible in Bulgaria to register partnerships between people of the same sex), property rights , contract law, inheritance rules and health issues. (...)

18. In its latest report, ECRI recommended that the authorities prepare and adopt an action plan against homophobia and transphobia in all areas of daily life, including education, employment and health, drawing on Recommendation CM/ Rec(2010)5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination based on sexual orientation or gender identity. However, to date, no such action plan has been developed and no initiatives have been taken to this end. ECRI recalls that it is necessary to establish such an action plan, which should be based on a national strategy, and that the first step to achieve this consists of establishing a working group responsible for issues relating to LGBTI people, group in which organizations from the LGBTI community should participate.

19. ECRI recommends that the Bulgarian authorities establish as soon as possible a working group responsible for issues relating to LGBTI people, a group in which organizations from the LGBTI community should participate, in order to carry out research into the forms currently taken by discrimination against LGBTI people, to then establish on this basis a national strategy and an action plan to combat intolerance and discrimination against LGBTI people. »

19. With regard more particularly to European Union law, the Grand Chamber of the Court of Justice of the European Union (“the CJEU”), seized of a request for a preliminary ruling lodged by the administrative court of the city of Sofia, recently ruled on the interpretation to be given to several provisions of European Union law in the case of a minor child, citizen of the European Union, whose birth certificate established by the Member State of residence designates two people of the same sex as parents. The CJEU ruled that the Member State of which this child was a national was obliged to issue him an identity card or a passport and to recognize, like any other Member State, the document emanating from the State member of residence allowing said child to exercise, with each of the two persons designated as his parents, his right to move and reside freely in the territory of the Member States (case VMA v. Stolichna Obshtina, “Pancharevo” *department* », C-490/20, judgment of December 14, 2021, ECLI:EU:C:2021:296, paragraph 69 and operative part).

20. The Court also carried out a comparative study of the methods of legal recognition of same-sex couples within the member States of the Council of Europe in the context of the Fedotova and others case (cited above judgment , §§ 65-67).

PLACE

I. ON THE ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

21. The applicants complain about the refusal of the Bulgarian authorities to include in the civil status registers, under the marital status of the first applicant, her status as a married person, and that as a result they cannot enjoy of the legal protection they believe is due to them as a married couple. They invoke Article 8 of the Convention, which is worded as follows:

> “1. Everyone has the right to respect for their private and family life (...).
>
> 2. There can only be interference by a public authority in the exercise of this right to the extent that this interference is provided for by law and that it constitutes a measure which, in a democratic society, is necessary for security national security, public safety, the economic well-being of the country, the defense of order and the prevention of criminal offenses, the protection of health or morals, or the protection of the rights and freedoms of 'others. »

A. On admissibility

1. Arguments des parties

22. The Government first recognizes the existence of family ties between the applicants. He then argues for non-compliance with the six-month rule and presents two means to this end. He considers, on the one hand, that given that the Constitution itself proclaims that marriage is only possible between two people of the opposite sex and that the courts could not be expected to contravene the principle of the primacy of the Constitution over the Convention by applying the latter directly, the appeal brought by the first applicant against the refusal of the municipal administration to modify the civil status registers had no chance of success. It considers, on the other hand, that even if the relevance of such an appeal is accepted, the final internal decision to be taken into account for the purposes of setting the six-month deadline is that rendered by the Supreme Administrative Court on December 12 2019, and that consequently the request, filed on September 3, 2020, must be rejected as late, any justification for such a delay by the health crisis linked to the Covid-19 pandemic being, according to him, to be ruled out.

23. The applicants reply that the violations which they allege before the Court are of a continuous nature given, they explain, that same-sex unions are not recognized by Bulgarian law. This assertion is supported in their view by the fact that the administrative courts, in their response to the appeal brought by the first applicant, based their refusal to recognize the marriage of the interested parties on the state of the contested legislation. The applicants add

that in any event, the time limit within which their complaint was lodged is fully consistent with the six-month rule as adjusted according to the instructions issued by the Court in the context of the exceptional measures relating to the processing of applications during the Covid-19 pandemic in 2020.

2. Assessment of the Court

24. The Court notes at the outset that the Government has not contested the applicability to the facts of the present case of Article 8 insofar as it protects both “private life” and “family life” . For its part, it repeats, with regard to the first part, that the absence of a legal system of recognition and protection open to same-sex couples affects both the personal and social identity of the people concerned, and with regard to the second, that a same-sex couple engaged in stable relationships enjoys a “family life” deserving recognition and protection *(Fedotova and others v. Russia* [GC], os 40792/10, 30538/14 and 43439/14, [n] §§141-151, January 17, 2023). It concludes that in view of the circumstances of the case and the applicants' allegations, Article 8 is applicable.

25. As regards the objection of lateness of the application, the Court considers it necessary to first examine the argument presented by the Government which consists of saying that the six-month deadline has been exceeded without any link can be established between the delay with which the application was filed and the Covid-19 pandemic (paragraph 22 above). The Court recalls that it recently ruled that due to the said pandemic, which occurred in spring 2020, and the exceptional restrictive measures then taken by a majority of Member States, it was appropriate, in the event that the six-month period provided for in Article 35 § 1 of the Convention was to begin to run or expire in the period from March 16, 2020 to June 15, 2020, to consider that the running of this period had been suspended exceptionally for a period of three calendar months *(Saakashvili v. Georgia* (dec.), nos. 6232/20 and 22394/20, §§ 52-58, March 1 , 2022). Accepting that in this case it is the date of the judgment of the Supreme Administrative Court, namely December 12, 2019, which constitutes the starting point of the six-month period, the latter should in principle have expired on June 12 2020. The present case was therefore covered by the exceptional measures to suspend deadlines announced following the Covid-19 pandemic. It follows that the application, lodged on September 3, 2020, must be considered to have respected the time limit provided for by Article 35 § 1 of the Convention. Consequently, there is reason to reject the objection raised by the Government insofar as it is based on this ground.

26. The Court also notes the Government's argument that, to the extent that the applicants complain about a situation resulting from the state of national legislation, they did not have any domestic remedy which would enable them to contest with any chance of success of the violations they allege, so that it is not appropriate, according to him, to take into account in this case

of the procedure initiated by the first applicant before the administrative courts, which concluded with the judgment of the Supreme Administrative Court of December 12, 2019. It also observes that the applicants, for their part, claim to be victims of an continued violation. The Court specifies in this regard that in the case of a situation of continuing violation, the time limit begins to run again each day, and that it is only when the situation ceases that the last period of six months actually begins to run (Varnava *and others v. Turkey* [GC], nos. 16064/90 and 8 others, § 159, ECHR 2009). She recalls that she concluded in the existence of a "continuing situation" – that is to say a state of affairs resulting both from continuous actions carried out by the State or in its name and of which the applicants are victims of omissions on the part of the authorities *(Oliari and Others v. Italy,* nos. 18766/11 and 36030/11, § 94, 21 July 2015, with the references cited therein) – in a case relating the possibility or not for the applicants, with regard to the rights guaranteed by Articles 8, 12 and 14 of the Convention, to contract a marriage or a civil union. To reach such a conclusion, it then explained that the complaints raised in this regard by the interested parties did not relate to an act occurring at a given time, nor even to the lasting effects of such an act, but to provisions or a lack of provisions resulting in a permanent state of affairs – namely the impossibility for them to have their union recognized, with all the practical consequences that such a situation entailed on a daily basis – against which there was in fact no internal remedy effective. As for the time limit for lodging the application in such a case, the Court then relied on the case law of the organs of the Convention according to which the question of the six-month time limit only arises from the moment when the state fact in dispute has ceased to exist, since "in these circumstances, everything happens as if the alleged violation was repeated daily, preventing the time limit from running" (Oliari *and others,* cited above, § 96).

27. However, this reasoning also applies in the present case. Having regard, on the one hand, to the fact that the state of domestic law (paragraphs 11-15 above) and the conclusions of the administrative courts which ruled on the first applicant's appeal (paragraphs 6 and 7 above) lead to the conclusion of the absence of an effective domestic remedy and, on the other hand, to the observation that the state of affairs complained of has clearly not ceased, the situation of which the applicants complain must be considered as continuing (Oliari *and others,* cited above § 98). Consequently, the Court in any event rejects the objection raised by the Government insofar as it is based on this ground.

28. Noting that the complaint of violation of Article 8 of the Convention is not manifestly ill-founded nor inadmissible on any other ground referred to in Article 35 of the Convention, the Court declares it admissible.

B. On the merits

1. Arguments des parties

a) The applicants

29. The applicants bring to the attention of the Court two points which they consider essential. They complain firstly that the marriage they contracted in a State party to the Convention cannot be transcribed in the civil status registers in Bulgaria, the lack of recognition of their marriage placing them, according to them, on the territory of the Republic of Bulgaria, in a situation of legal uncertainty which would result from the absence in Bulgarian law of standards applicable to their situation. Secondly, they explain that the lack of recognition by the respondent State, in any form whatsoever, of same-sex couples, deprives them of any legal protection, or even exposes the members of the same-sex couples to risks, where applicable. their family. Regardless of these two points, the applicants consider that the Government has not justified the absence of legislation in the matter, the simple assertion according to which Bulgarian domestic law only admits marriage between a man and a woman seem insufficient to them in this regard. As for the Government's argument that same-sex couples already benefit from a certain level of protection in domestic law, particularly in matters of property, inheritance, insurance, filiation or in civil or legal proceedings criminal, they consider it unfounded, unmarried couples, and *a fortiori* same-sex couples, do not benefit, according to them, from any of the rights granted to married couples. They add that they cannot benefit from medically assisted procreation allowances granted to married couples, nor claim such allowances as single people, such a status not corresponding to their real legal situation.

30. Referring to the findings of the Court in the cases of *Vallianatos and others v. Greece* ([GC], nos. 29381/09 and 32684/09, ECHR 2013 (extracts)), *Dadouch v. Malta* (no. 38816/07, 20 July 2010) and *Oliari and others* (cited above), the applicants insist on the idea that the legal recognition of family life and the status associated with such recognition constitute fundamental aspects of existence of each individual, capable of contributing to the well-being of the person and to reinforcing in them the feeling of their dignity. The applicants do not understand how the recognition of the marriage they concluded in the United Kingdom could be contrary to the Bulgarian constitutional order even though international treaties – including the Convention – and the legal order of the European Union, by which Bulgaria is bound, recognize people of the same sex the right to found a family. They criticize the Bulgarian Government for not adopting an analysis which takes into account the dynamics which, according to them, are manifested by public policies which are increasingly favorable to the rights of

people of the same sex wishing to form stable relationships. They specify that recognition by the State of the status of people involved in such relationships cannot have the slightest negative repercussions on "traditional" families.

31. Like the applicants in the *Oliari and others* case cited above, the applicants in the present case note that prejudices against homosexuality are still current in Europe, and that they manifest themselves more powerfully in certain countries where the view on this subject would be determined by traditional, even archaic, convictions, and where democratic ideals and practices have only recently become established. The lack of recognition of same-sex couples in a given state would therefore correspond to a lower degree of social acceptance of homosexuality. It would follow, according to the applicants, that by simply leaving it to the national authorities to establish standards in this area, the Court would not take into account that certain national choices would in reality be determined by the predominance of discriminatory attitudes towards homosexuals rather than being the result of a genuine democratic process guided by the consideration of what is strictly necessary in a democratic society.

b) The Government

32. The Government accepts that there exist between the applicants in this case personal ties equivalent to real family life, as is the case for many same-sex couples, and that such situations give rise in many cases to European countries of political debates on the legal recognition to be granted to these unions and on the profound evolution that the traditional model of marriage is experiencing in modern society. It maintains, however, that no norm in the Convention or any other binding instrument of international law imposes on Bulgaria a positive obligation to recognize or regulate marriage or another form of same-sex relationship. He explains that such an analysis cannot be considered contrary to Article 8 of the Convention, as this provision does not, in his view, guarantee the right to marriage for persons of the same sex. He adds that his position in the present case does not consist of maintaining that the recognition of marriage between people of the same sex would affect the rights of traditional families, but of considering that the subject concerns social policies as developed by the legislative body of the States and must as such be left entirely to their discretion. Indeed, he specifies, the case submitted to the Court concerns the sovereign power of the State to legislate in matters of marriage and, possibly, other forms of family relations. The Government considers more particularly that questions relating to the recognition of a marriage concluded abroad are regulated by the mandatory provisions of the Constitution, private international law and national law as adopted by Parliament

Bulgarian (paragraphs 11-15 above), which provide that marriage is the union of a woman and a man. By virtue of this mandatory system, he explains, Bulgarian law does not allow the transcription of marriages concluded abroad by same-sex couples. The Government maintains that this regulation falls exclusively within the margin of appreciation granted to the States, especially given the fact that, according to it, it manifests the will expressed by the legislator following open, pluralist and democratic debates. He considers that it substantially reflects the cultural and political developments that Bulgaria is experiencing, and recalls that such developments are specific to each nation. He admits that it is possible that the fact that people of the same sex can conclude a marriage abroad while there are no regulations in this regard in Bulgaria could generate legal insecurity, lead to unequal treatment and produce confusion.

He asserts, however, that we are observing in Bulgaria a process of natural acceptance of these questions, capable of leading to a common agreement on a real fundamental change in society, and that any intervention by an international court in this process would be premature.

33. The Government adds that the Bulgarian authorities have already embarked on the path of protection against discriminatory treatment based on sexual orientation by adopting legislation prohibiting in particular any treatment of this type, by founding a Commission for protection against discrimination and by establishing in this matter, through its courts, a solid case law inspired by the principles established by the Court. He further argues that domestic law makes no distinction, in the treatment of de facto unions, between homosexual couples and heterosexual couples, people falling into one or the other of these situations being able, according to him, in a very to a large extent, regulate the legal consequences of their relations on the basis of common law.

34. Finally, the Government points out that certain studies carried out by the LGBTIQ community show, on the one hand, a growing social acceptance with regard to the idea of legal regulation of homosexual couples and, on the other on the other hand, a sensitive intolerance towards any form of harassment based on sexual orientation. He sees this as a sign that the debates on these issues are sufficiently engaged so that they will find their place on the political agenda when the time comes. He maintains that no public authority opposes this process and that influential political groups do not disseminate any propaganda likely to be interpreted as encouraging discrimination or harassment based on sexual orientation. In short, he believes that the current political process and democratic debates are favorable to the condition of LGBTIQ people, and, recalling that the issues at stake require us to consider the transformation of a social institution – marriage – which, as it is, constitutes the basis of Bulgarian society for several centuries, it invites the

Court not to intervene in this process and in these debates, which it would do if it imposed a broad positive obligation on the matter on the basis of Article 8.

c) Third party interventions

i. L'Institut Ordo Juris

35. The *Ordo Iuris* Institute (“IOI”) presented, among other things, the latest developments in the Court's case-law relating to the status of same-sex couples, and it explained, based on examples taken from the case-law National Law of Italy, Bulgaria, Hong Kong and Poland, that in countries where marriage is defined as the union of a woman and a man, the courts generally oppose the transcription of marriages concluded abroad by invoking reasons which relate to the particularity of national law, morals or public order, that is to say to all the social, economic and moral values which constitute the foundation of a society.

ii. The Bulgarian Helsinki Committee

36. The Bulgarian Helsinki Committee (“CHB”) explains that Bulgarian law only recognizes family relationships based on marriage, filiation, adoption and, in some exceptional cases, a de facto family situation . . The CHB insists that it is very doubtful whether same-sex couples can be considered to fall into the latter category. He bases this analysis on an examination of Bulgarian legislation and examples taken from national case law in which the notion of “family” is defined. This examination reveals that the different terms designating said notion, as encountered in various normative texts governing the varied field of family relations (for example "marriage", "family", "members of the family", "member of the family of a citizen of the European Union", "marital status", " *de facto* marital cohabitation" , "household", "close relative", "dependent", etc.), relate exclusively, in the context of legal provisions in which they are used, to persons forming a couple of the opposite sex and to their children. The CHB thus emphasizes that there is no procedure in Bulgaria allowing de facto family unions to be recognized or registered, so that even when the law grants certain rights to people who find themselves in such a situation, it is up to the couples in question – provided that they are couples of the opposite sex – to provide on all occasions before the institutions concerned *ad hoc* proof of the existence of such family relationships. The CHB explains that even if this legislative situation is not without creating obstacles for de facto couples of the opposite sex, the persons concerned have at least the right to marry if they wish, while couples of

same sex do not benefit from the right to marriage or any other legal recognition.

37. The CHB adds that the possible recognition of the rights of same-sex couples is the subject of such controversy in Bulgarian society and within national institutions that it is still ruled out today.
The orientation of such discussions is reflected, according to him, in the decision of the Constitutional Court of July 27, 2018, in which the high court had the opportunity to express its position on this subject, namely that marriage conceived as the union of a man and a woman, a definition placed at the heart of the constitutional framework, is deeply anchored in Bulgarian jurisprudence (paragraph 9 above).

2. Assessment of the Court

a) The applicable principles establishing the existence of a positive obligation to recognize and protect same-sex couples

38. The Court recalls at the outset that neither Article 12 nor Articles 8 and 14 of the Convention impose on the respondent government the obligation to open marriage to a homosexual couple such as that formed by the applicants. *(Schalk and Kopf v. Austria,* no. 30141/04, §§ 63 and 101, ECHR 2010, and *Orlandi and others v. Italy,* nos. 26431/12 and 3 others, § 192, December 14, 2017).

39. On the other hand, as the Court had the opportunity to confirm in the aforementioned *Fedotova and Others* case (§§ 156-181), after having summarized the state of its case-law and analyzed the degree of consensus observable in this In this regard, within the legal orders of States parties, there is a positive obligation for legal recognition and protection of same-sex couples. In the case in question, the Court clarified this obligation in particular in the following terms (§§ 178-181):

> "178. In view of its case law (...) consolidated by a clear and continuous trend within the member States of the Council of Europe (...), the Court confirms that they are required, by virtue of the positive obligations incumbent upon them on the basis of Article 8 of the Convention, to provide a legal framework allowing persons of the same sex to benefit from adequate recognition and protection of their couple relationships.
>
> 179. This interpretation of Article 8 of the Convention is dictated by the concern to ensure effective protection of the private and family life of homosexual persons. It is also in harmony with the values of the "democratic society" promoted by the Convention, foremost among which are pluralism, tolerance and a spirit of openness *(Young, James and Webster v. United Kingdom,* August 13, 1981, § 63, Series A no. 44, *Chassagnou and others v. France* [GC], nos. 25088/94 and 2 others, § 112, CEDH 1999-III, and *SAS v. France* [GC], o n 43835/11, § 128, ECHR 2014). The Court recalls in this regard that any interpretation of the rights and freedoms guaranteed by the Convention must be reconciled with its general spirit which aims to safeguard and promote the ideals and values of a "democratic society" (Soering v. United Kingdom , 7 July 1989, Series A no. 161, *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, ECHR 2014 (extracts), and *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961 /11, January 24, 2017).

180. In this case, allowing same-sex couples to benefit from legal recognition and protection undoubtedly serves these ideals and values in that such recognition and protection confer legitimacy on these couples and promote their inclusion in the society, without regard to the sexual orientation of the people who compose it. The Court emphasizes that democratic society within the meaning of the Convention rejects any stigmatization based on sexual orientation *(Bayev and others v. Russia,* nos. 67667/09 and 2 others, § 83, June 20, 2017). Its basis is the equal dignity of individuals and it is nourished by diversity, which it perceives as an asset and not as a threat *(Natchova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 145, ECHR 2005-VII).

181. The Court observes in this regard that numerous bodies and authorities consider that the recognition and protection of same-sex couples constitutes a tool for combating prejudice and discrimination against homosexual persons (...). »

40. The Court also clarified, in the following passages of the same judgment, the extent of the margin of appreciation which the States parties have in the implementation of the positive obligation set out above:

“185. (...) The Court considers that the claim by people of the same sex for legal recognition and protection of their relationship affects particularly important aspects of their personal and social identity.

186. (...) As for the existence of a consensus, the Court has already noted a clear and continuous trend at European level in favor of legal recognition and protection of same-sex couples within Member States of the Council of Europe (...).

187. Consequently, since particularly important aspects of the personal and social identity of persons of the same sex are at stake (...) and furthermore, a clear and continuous trend is observed within States members of the Council of Europe (...), the Court considers that States parties benefit from a significantly reduced margin of appreciation with regard to granting a possibility of legal recognition and protection to couples of same sex.

188. Nevertheless, as is already apparent from the Court's jurisprudence (...), States parties benefit from a wider margin of appreciation in deciding the exact nature of the legal regime to be granted to couples of the same sex, which does not necessarily have to take the form of marriage (...). Indeed, States have “the choice of means” to fulfill their positive obligations inherent in Article 8 of the Convention (...). This latitude granted to States concerns both the form of recognition to be given to same-sex couples and the content of the protection to be granted to them.

189. The Court observes in this regard that although there is a clear and continuous trend in favor of the legal recognition and protection of same-sex couples, there is no similar consensus as to the form of this recognition and the content of this protection. Also, in accordance with the principle of subsidiarity which underlies the Convention, it is primarily the responsibility of the Contracting States to decide on the measures necessary to ensure the recognition of the rights guaranteed by the Convention to any person within their "jurisdiction" and it is not up to It is not up to the Court itself to define the legal regime to be granted to same-sex couples [...].

190. However, the Convention aims to protect concrete and effective rights and not theoretical or illusory *(Airey v. Ireland,* October 9, 1979, § 24, series A o 32, and *MA v.* n *Denmark* [GC], no. 6697 /18, § 162, July 9, 2021), it is important that the protection granted by States parties to same-sex couples is adequate (...). In this regard, the Court has already been able to refer in certain judgments to questions, notably material (maintenance, tax or inheritance) or moral (rights and duties of mutual assistance), specific to a life as a couple which would benefit from being regulated within the framework of a legal system open to same-sex couples (see *Vallianatos and Others,* cited above, § 81, and *Oliari and Others,* cited above, § 169). »

(b) Whether the respondent State has fulfilled its obligation positive

41. Having regard to the allegations made in the present case by the applicants (paragraph 29 above) and having regard in particular to the current state of its case law according to which Articles 8, 12 and 14 of the Convention do not guarantee the right to marriage to a homosexual couple (paragraph 38 above), the Court states from the outset that it will concentrate its examination on the question of whether the respondent State has satisfied the positive obligation of recognition with regard to the interested parties and protection incumbent upon it (paragraphs 39-40 above). To this end, it is necessary to examine whether, taking into account the margin of appreciation available to it, the respondent State has struck a fair balance between the overriding interests it invokes and the interests claimed by the applicants (Fedotova *and others,* cited above, § 191).

42. The Court will start from the situation as it existed at the time when the first applicant took her steps with the Bulgarian authorities with a view to obtaining recognition of her marriage concluded abroad and it will examine whether the situation that the applicants denounce has, where applicable, evolved since the application was filed *(ibid.,* § 192).

43. In this regard, it is not disputed that at the time when the first applicant requested the Bulgarian authorities, following the marriage she had contracted in the United Kingdom, to modify her marital status in the registers civil status, Bulgarian law did not permit such a modification, as the Court finds on the basis of the relevant domestic legal framework and the Government's assertions (paragraphs 8-15 and 32 above; see *Fedotova and others,* cited above , § 193). Nor is it claimed that national law evolved after the present application was filed (see, *a contrario, Schalk and Kopf v. Austria,* no. 30141/04, §§ 102-106, ECHR 2010, where , complaining about the lack of recognition of their relationship under Austrian law at the time of lodging their application in 2004 before the Court, the applicants nevertheless subsequently had the possibility of entering into a registered partnership following a modification of the applicable legislation which occurred in 2010).

44. The Court notes that the respondent State has not expressed, before it, the intention of modifying its domestic law with a view to allowing persons of the same sex who have contracted marriage in another State to have it modified

their marital status in the civil status registers and thus see their relationship benefit from official recognition and a regime of protection. On the contrary, the Government maintains that the non-recognition of a marriage concluded abroad by persons of the same sex is compatible with Article 8 of the Convention, arguing in particular in this regard that the said article does not give rise to for States a positive obligation to recognize same-sex marriages or to put in place another legal form of recognition of these unions (paragraph 32 above). The Court notes that, according to the Government, the Bulgarian legislative framework – providing that marriage is the union of a man and a woman, a definition which finds its basis in the Constitution – does not provide for any form of union for same-sex couples and societal developments do not allow the legislator to consider a modification in this area at this stage *(ibidem).*

45. Furthermore, the third party intervening the CHB confirms the position of the parties that there is no procedure in Bulgaria allowing recognition or registration of marriage contracted abroad by a same-sex couple or a de facto family union. (paragraph 36 above). He argues that no such modification of domestic law is being undertaken (paragraph 37 above).

46. The situation of the respondent State therefore differs significantly from that of a very large number of States parties which have undertaken modifications to their domestic law with a view to ensuring that persons of the same sex have effective protection of their private and family life *(Fedotova and others,* cited above, § 195, with the references cited therein).

i. The individual interests of the applicants

47. The applicants complain about the refusal of the Bulgarian authorities to include in the civil status registers, in respect of the marital status of the first applicant, her status as a married person, or another indication which takes into account the marriage that she they have validly contracted in the United Kingdom, a refusal which according to them deprives them of the legal protection due to families and associated rights. They further allege that the authorities are thus leaving their couple in a legal vacuum which prevents them from benefiting from legal protection and exposes them to significant difficulties in their daily lives. They refer by this to the impossibility where they find themselves enjoying the same rights as heterosexual couples in terms of property, inheritance, insurance, filiation, testimony in civil proceedings. or criminal law, or access to benefits for medically assisted procreation (paragraph 29 above).

48. The Government replied that the applicants benefit, like any Bulgarian citizen, from the rights provided for by Bulgarian law in matters of acquisition of property, that they enjoy certain inheritance rights and that they may conclude private law contracts. For this

which is protection in the event of death, he considers that, according to the applicable law, it is sufficient for the surviving person to prove that a close link united them with the deceased person for them to be granted compensation.

49. ECRI notes that no study or research concerning the situation of LGBTI people or the problems of discrimination and intolerance they might encounter has been carried out in Bulgaria, and it notes that non-governmental organizations working in this area receives little public support. However, she explains, these organizations have pointed out that it is particularly in areas linked to everyday life – family law, property law, contract law, inheritance rules and questions of health, for example – that the legal problems encountered by these people as they observed them are concentrated. ECRI urged the respondent State to "establish as quickly as possible a working group responsible for issues relating to LGBTI people, a group in which organizations from the LGBTI community should participate, for the purpose of carrying out research on the forms discrimination against LGBTI people is currently taking place, and then establishing on this basis a national strategy and an action plan to combat intolerance and discrimination against LGBTI people" (paragraph 18 above) .

50. The Court accepts that the official recognition of their relationship has an intrinsic value for the applicants. Such recognition contributes to the development not only of their personal identity but also of their social identity as guaranteed by Article 8 of the Convention *(Fedotova and others,* cited above, § 200).

51. The Court also affirmed that an officially recognized form of common life other than marriage has in itself a value for homosexual couples, independently of the legal effects, broad or restricted, that it produces. Thus the official recognition of a couple formed by people of the same sex confers on this couple an existence as well as legitimacy vis-à-vis the outside world *(Fedotova and others,* cited above, § 201, with the references therein cited).

52. Beyond the essential need for official recognition, a homosexual couple also has, like a heterosexual couple, "ordinary needs" for protection. The recognition of the couple cannot, in fact, be dissociated from its protection. The Court has repeatedly indicated that homosexual couples are in a situation comparable to that of heterosexual couples in terms of their need for official recognition and protection of their relationship (ibid., § 202, with references therein) . cited).

53. In the present case, the Court can only note, like the situations set out in the aforementioned *Fedotova and Others* judgment , that in the absence of official recognition, couples formed by persons of the same sex are simple *de facto* unions under Bulgarian law, even if – as

this is the case for the applicants – a marriage was validly contracted abroad. These people can only resolve property, family or inheritance issues inherent to their life as a couple as individuals concluding common law contracts between them, if this is possible, and not as an officially recognized couple (see, *mutatis mutandis, Vallianatos and others,* cited above, § 81, and *Fedotova and others,* cited above, § 203). They cannot assert the existence of their relationship before judicial and administrative authorities, or third parties. Assuming that Bulgarian law allows the applicants to apply to the domestic courts to obtain protection for the ordinary needs of their couple, the Court recalls that the need for such steps constitutes, in itself, an obstacle to respect for their private and family life *(Oliari and others,* cited above, § 172, and *Fedotova and others,* cited above, § 203).

54. In view of the above, the Court can only consider the protection granted in Bulgaria to same-sex couples engaged in a stable relationship, as described by the Government and as it emerges from the analysis of domestic law and documents from international sources, meets the fundamental needs of the persons concerned (see, *mutatis mutandis, Fedotova and others,* cited above, § 204).

ii. The reasons invoked by the respondent State in the general interest

55. The Court notes that the Government cites a growing acceptance by Bulgarian society of the idea of recognition of the rights of LGBTIQ persons and argues that public debates are being conducted with a view to protecting the rights of couples of the same gender. gender wishing to establish family relationships and, more broadly, the rights of LGBTIQ people (paragraph 34 above). Such assertions are, however, not such as to show which interests of the community as a whole would be contrary to the interests which the applicants seek to defend on their behalf. The Court thus observes that the Government does not maintain, as did the respondent State in the *Fedotova and others* case

cited above, that the recognition of same-sex couples conflicts with the need to preserve the values linked to the traditional conception of the family, that Bulgarian public opinion is largely hostile to homosexual relationships, or that the requirement for protection of minors implies the need to prohibit the promotion of homosexual relations (see, *a contrario, Fedotova and others,* cited above, §§ 116 and 118). It notes that, on the contrary, it limits itself to contesting the existence of a positive obligation of legal recognition of homosexual couples arising from Article 8 and that it invites the Court to give free rein to the social and legislative evolution that he says he is observing in Bulgaria, a development which he believes should lead, in the future, to such recognition (paragraphs 32 and 34 above).

56. In this regard, the Court, first of all, recalls that it has already concluded, in the light of its corroborated case-law *(Fedotova and others,* cited above, §§ 156-164)

by a clear and continuous trend within the member States of the Council of Europe *(ibidem,* § 175), that they are required, by virtue of the positive obligations incumbent upon them on the basis of Article 8 of the Convention, to provide a legal framework allowing people of the same sex to benefit from adequate recognition and protection of their couple relationships *(ibidem,* § 178).

57. It notes, secondly, that the Government's observations do not contain any element capable of showing what general interest the State intends to safeguard by refusing to protect the individual interests of the applicants. The Government nevertheless affirmed that "we observe in Bulgaria a process of natural acceptance of these questions, capable of leading to a common agreement on a real fundamental change in society, and that any intervention by an international court in this process would be premature" (paragraph 32 above), and he also clarified that "these questions force us to consider the transformation of a social institution – marriage – which, as it is, has constituted the basis of Bulgarian society since several centuries ".

58. At the same time, the Government has categorically denied that the absence of a specific legal framework which would provide for the recognition and protection of unions between persons of the same sex aims to protect the family in its traditional conception. He simply argued, explaining that he was best placed to assess, when the time came, the feelings of the national community on the matter, that the determination, on the one hand, of the appropriate moment for the development of a specific legal framework for this purpose and, on the other hand, the modalities of such development, fell within its margin of appreciation.

59. With regard to this margin of appreciation, the Court recently affirmed that it is now significantly reduced with regard to the granting of a possibility of recognition and legal protection to same-sex couples (Fedotova *and others,* cited above, §§ 183-187). On the other hand, in response to the Government's argument according to which the Court cannot intervene in the social, political or legislative debates to which such a possibility would currently give rise in Bulgaria (paragraph 32 above), it should be emphasized that the margin The respondent government's assessment is broader with regard to the “choice of means” to ensure the effective protection of the rights of these couples *(ibidem,* §§ 188-189; see also paragraph 40 above). The Court recalls in this regard its subsidiary role which is based on the idea that, thanks to their “direct and constant contacts with the active forces of their country”, the national authorities are in principle better placed than the international judge to rule on the “precise content of the requirements of morality” as well as on the need for a restriction intended to respond to them (see, *mutatis mutandis, Vo v. France* [GC], o 53924/00, § 82, ECHR 2004-VIII, and *A, B and C v. Ireland* [GC], o 25579/05, § 223, ECHR 2010, n as well as *Handyside v. United Kingdom,*
n

December 7, 1976, § 48, Series A no. 24, *Müller and others v. Switzerland,* May 24, 1988, § 35, Series A no. 133 and *Open Door and Dublin Well Woman v. Ireland,* October 29, 1992, § 68, Series A no. 246-A).

60. Furthermore, the Court notes that in this case it is not a question of certain "additional" specific rights (thus designated in contrast to fundamental rights) possibly arising from such a union, which may be the subject of heated controversy due to their sensitive nature *(Oliari and others,* cited above, § 177): on this point, the Court has already ruled that States enjoy a certain margin of appreciation with regard to the exact status conferred by the means of recognition and the rights and obligations associated with such a registered union or partnership *(Fedotova and others,* cited above, § 188, *Schalk and Kopf,* cited above, §§ 108-109, as well as paragraph 40 above). On the contrary, the present case concerns only the general need for legal recognition and the essential protection of the applicants as same-sex partners. This is therefore an important aspect of the identity of the applicants, with regard to which the relevant margin should be applied *(Oliari and Others,* cited above, § 177).

61. Furthermore, the Court considers it appropriate to recall that it was recently able to observe, in its judgment in the aforementioned *Fedotova and Others* case , that the European dynamic in matters of legal recognition same-sex couples that she had already observed in previous cases is clearly confirmed today. The facts on the question, as the Court presented them in this judgment, are as follows: thirty States parties to the Convention currently provide for the possibility of legal recognition of same-sex couples; eighteen states open marriage to people of the same sex; twelve other states have established alternative forms of recognition to marriage; among the eighteen States authorizing the marriage of same-sex couples, eight States also offer the possibility for these couples to enter into other forms of union *(Fedotova and others,* cited above, § 175). In these conditions, the Court can only repeat in this case that it is permissible to speak currently of a clear and continuing trend within the States parties in favor of the legal recognition of the union of persons of the same sex (by the institution of marriage or a form of partnership), a majority of thirty States parties having legislated to this effect *(ibidem).* This clear and continuous trend observed within the States parties is consolidated by the converging positions of several international bodies (see, for more information, Fedotova *and others,* cited above, § 177, with the relevant references).

62. Turning to the present case, the Court notes that the Government, while emphasizing that the legislation and judicial practice in no way authorize the legal recognition of homosexual couples, affirms in its observations that the national authorities are committed with determination to the path of combating discriminatory treatment based on sexual orientation (paragraphs 33 and 34 above) and insists

on the fact that the idea of possible legal regulation of homosexual couples is increasingly accepted by Bulgarian society (paragraph 34 above).

63. Despite this, the Court is forced to note that to date, the Bulgarian authorities have not taken any steps aimed at having adequate legal regulations adopted regarding the recognition of unions between persons of the same sex.

64. With regard in particular to the circumstances of the present case, the elements examined do not allow the Court to find the existence of a general interest which would prevail over the essential interests of the applicants as established above.

iii. Conclusion

65. In view of the arguments put forward by the Government, the jurisprudence of the Court as clarified and consolidated in the aforementioned *Fedotova and others* judgment and the elements of the present case, the Court considers that the respondent State has exceeded its margin of appreciation and failed in its positive obligation to ensure that the applicants had a specific legal framework providing for the recognition and protection of their union as persons of the same sex. Therefore, the applicants' right to respect for private and family life was not ensured in this regard.

66. There has therefore been a violation of Article 8 of the Convention.

II. ON THE ALLEGED VIOLATIONS OF ARTICLE 14 COMBINED WITH ARTICLES 8 AND 12 OF THE CONVENTION

67. The applicants allege that their inability to access a form of legal recognition of their relationship and the marriage they entered into abroad amounts to discrimination based on sexual orientation. They invoke Article 14 combined with Articles 8 and 12 of the Convention.

68. Having regard to the conclusions reached in its examination of the complaint made under Article 8 of the Convention taken in isolation (paragraphs 41-66 above), the Court considers that it is not necessary in the circumstances of the present case to examine the admissibility and merits of the complaints formulated under Article 14 taken in conjunction with Articles 8 and 12 of the Convention.

III. ON THE APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. Under Article 41 of the Convention:

"If the Court declares that there has been a violation of the Convention or its Protocols, and if the domestic law of the High Contracting Party allows only imperfect erasure

the consequences of this violation, the Court grants the injured party, if applicable, just satisfaction. »

A. Too bad

70. The applicants are seeking 3,655 euros (EUR) for material damage resulting, according to them, from the fact that the non-recognition of their union would have deprived them of the benefit of exemption from costs linked to a medically assisted procreation procedure. They are also claiming EUR 10,000 each, or EUR 20,000 in total, for the moral damage they believe they have suffered as same-sex partners due to the continued non-recognition of their union.

71. The Government disputes these claims.

72. The Court sees no causal link between the violation it found and the material damage alleged by the applicants. It therefore rejects the request made in this respect.

73. Furthermore, in view of the circumstances of the case, the Court considers that the finding of a violation of the Convention constitutes sufficient just satisfaction for any moral damage which may have been suffered by the applicants (Fedotova and others, cited above, *§* 235).

B. Fees and expenses

74. The applicants claim a lump sum of 10,000 Bulgarian levs (approximately EUR 5,120) for the representation costs which they claim to have incurred in the context of the proceedings before the Court.

75. The Government considers that these requests are excessive.

76. According to the Court's case-law, an applicant can only obtain reimbursement of his costs and expenses to the extent that their reality, their necessity and the reasonable nature of their rate are established. In the present case, taking into account the documents in its possession and the above-mentioned criteria, the Court considers it reasonable to award the applicants the sum of EUR 3,000 for the proceedings before it, plus any amount that may be due on this sum as tax.

FOR THESE REASONS, THE COURT

1. *Declares,* unanimously, the complaint based on Article 8 admissible;

2. *Holds* unanimously that there has been a violation of Article 8 of the Convention;

3. *Holds,* by six votes to one, that there is no need to examine the admissibility and merits of the complaints made under Article 14 taken in conjunction with Articles 8 and 12 of the Convention;

4. *Holds,* unanimously, that the finding of a violation constitutes in itself sufficient just satisfaction for any moral damage suffered by the applicants;

5. *Said,* unanimously,

a) that the respondent State must pay to the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) for costs and expenses, plus any amount which may be payable on this sum by the applicants as tax, to be converted into the currency of the respondent State at the rate applicable on the date of settlement;

b) that from the expiry of the said period and until payment, this amount will be increased by simple interest at a rate equal to that of the marginal lending facility of the European Central Bank applicable during this period, increased by three percentage points;

6. *Rejects,* unanimously, the request for just satisfaction for the surplus.

Done in French, then communicated in writing on September 5, 2023, in application of article 77 §§ 2 and 3 of the regulation.

Milan Blaško
Clerk

Pere Pastor Vilanova
President

Attached to this judgment, in accordance with Articles 45 § 2 of the Convention and 74 § 2 of the Rules, is the statement of the separate opinion of Judge Pavli.

P.P.V.
M.B.

PARTLY DISSENTING OPINION OF JUDGE PAVLI

(Translation)

1. I voted in favor of the unanimous finding of a violation of Article 8 of the Convention in this case. However, I regret that I cannot agree with the majority's conclusion that "there is no need to examine the admissibility and merits of the complaints made under Article 14" combined with Article 8 of the Convention (point no. 3 of the operative part of the judgment).
The reasons for my dissenting vote on this point are essentially the same as those indicated in my partly dissenting opinion, joined by Judge Motoc, in Fedotova et al. v . *Russia* ([GC], os 40792/10 and 2 others, January 17, n 2023). The decision whether or not to continue the examination of allegations made under Article 14 of the Convention, after having already concluded that there has been a violation of another provision of the Convention, is a choice to be made in the case per case by each judicial formation, and I do not think that the decision adopted by the majority of the Grand Chamber on this point in the *Fedotova* case should settle the question for all future cases.

2. I also find it interesting to note that in the recent case of *Maymulakhin and Markiv v. Ukraine* (no. 75135/14, June 1 , 2023, non-final judgment), decided after the *Fedotova* judgment , a Chamber of the Fifth Section of the Court examined a set of similar complaints based on the lack of legal recognition same-sex partnerships in this country. The chamber noted that “the applicants chose to formulate their complaint from the angle of Article 14 combined with Article 8, rather than invoking Article 8 taken in isolation. The Court considers it appropriate to follow this approach” (ibidem, § 42). On the merits of the complaint based on Article 14, the chamber said that "unjustifiably denying the applicants, as a same-sex couple, any form of legal recognition and protection in relation to heterosexual couples is analyzed in discrimination against the applicants based on their sexual orientation.