



Grand Chamber hearing concerning second-parent adoption in a same-sex relationship

The European Court of Human Rights is holding a Grand Chamber¹ hearing today **Wednesday 3 October 2012 at 9.15 a.m.** in the case of **X and Others v. Austria** (application no. 19010/07)

The case concerns the complaint by two women, who live in a stable homosexual relationship, about the Austrian courts' refusal to grant one of the partners the right to adopt the son of the other partner without severing the mother's legal ties with the child (second-parent adoption).

The hearing will be broadcast from 2.30 p.m. on the Court's Internet site (www.echr.coe.int). After the hearing the Court will begin its deliberations, which will be held in private. Its ruling in the case will, however, be made at a later stage.

The applicants are two Austrian women ("the first and the third applicant"), both born in 1967, who live in a stable homosexual relationship, and the son of one of them ("the second applicant"). The latter was born out of wedlock in 1995 and his mother has sole custody of him. The applicants live together and the two women jointly care for the child.

Wishing to create a legal relationship between the first applicant and the child without severing the relationship with his mother, they concluded an adoption agreement in February 2005 and submitted it to the competent district court for approval. Being aware that the relevant provisions of the Civil Code could be understood to exclude the adoption of the child of one partner of a homosexual couple by the other partner without severing the relationship with the natural parent, the applicants requested the Constitutional Court to declare those provisions unconstitutional as discriminating against them on account of their sexual orientation. The Constitutional Court rejected the request as inadmissible in June 2005, pending the decision of the district court.

In October 2005, the district court refused to approve the adoption agreement, holding that the Civil Code envisaged that in case of an adoption by one person the adopting parent replaced the natural parent of the same sex, thus severing the child's relationship with him or her. In the case at hand, the child's adoption by the first applicant would sever his relationship with his mother, not with his father.

The applicants' appeal was dismissed by the regional court in February 2006. In addition to the considerations of the district court, it observed that Austrian law, while not giving a precise definition of the term "parents", plainly envisaged two people of different sex. Where, as in the present case, a child had both parents there was no need to replace one of them by an adoptive parent. In that connection, the court noted that the child had regular contacts with his father. In September 2006, the Supreme Court dismissed the applicants' appeal on points of law, holding that the relevant provisions of the Civil Code did not disclose any appearance of being unconstitutional.

¹ Under Article 30 of the European Convention on Human Rights, "Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects."

The applicants complain under Article 14 (prohibition of discrimination) of the European Convention on Human Rights taken in conjunction with Article 8 (right to respect for private and family life) that they are being discriminated against on account of their sexual orientation. They submit that there is no reasonable and objective justification for allowing adoption of one partner's child by the other partner if heterosexual couples are concerned, be they married or unmarried, while prohibiting the adoption of one partner's child by the other partner in the case of homosexual couples.

Procedure

The application was lodged with the European Court of Human Rights on 24 April 2007. A hearing took place in Strasbourg on 1 December 2011. On 5 June 2012, the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber.

Under Article 36 of the Convention, the President of the Grand Chamber authorised the following organisations and institutions to submit written comments as third parties:

- *Federation International des ligues des Droits de l'Homme* (FIDH), International Commission of Jurists (ICJ), the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe), British Association for Adoption and Fostering (BAAF), Network of European LGBT Families Associations (NELFA) and European Commission on Sexual Orientation Law (ECSOL), jointly,
- European Centre for Law and Justice (ECLJ),
- Attorney General for Northern Ireland,
- Amnesty International (AI) and
- Alliance Defending Freedom.

Composition of the Court

The case will be heard by a Grand Chamber, composed as follows:

Nicolas **Bratza** (the United Kingdom), *President*,
 Josep **Casadevall** (Andorra),
 Dean **Spielmann** (Luxembourg),
 Nina **Vajić** (Croatia),
 Lech **Garlicki** (Poland),
 Ineta **Ziemele** (Latvia),
 Peer **Lorenzen** (Denmark)
 Anatoly **Kovler** (Russia),
 Elisabeth **Steiner** (Austria),
 Khanlar **Hajiyev** (Azerbaijan),
 Egbert **Myjer** (the Netherlands),
 Danutė **Jočienė** (Lithuania),
 Ján **Šikuta** (Slovakia),
 Vincent A. **de Gaetano** (Malta),
 Linos-Alexandre **Sicilianos** (Greece),
 Erik **Møse** (Norway),
 André **Potocki** (France), *judges*,
 Guido **Raimondi** (Italy),
 Ledi **Bianku** (Albania),
 Corneliu **Bîrsan** (Romania),
 Dragoljub **Popović** (Serbia), *substitute judges*,

and also Johan **Callewaert**, *Deputy Grand Chamber Registrar*.

Representatives of the parties

Government

Brigitte **Ohms**, *Deputy Agent*,
Michael **Stormann** and Anna **Jankovic**, *Advisers*;

Applicants

Helmut **Graupner**, *Counsel*.

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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.