



September 2010

This Information Note does not bind the Court and is not exhaustive

Homosexuality in the Court's case-law: criminal aspects

Criminalisation of homosexual relations in general

Dudgeon v. the United Kingdom (no. 7525/76)

22.10.1981

The legislation then in force in Northern Ireland classified homosexual relations between males as a criminal offence. The applicant, who was a homosexual, complained that he experienced feelings of fear, suffering and psychological distress as a result of the very existence of the laws at issue, including fear of harassment and blackmail. He also complained that he had been subjected to an investigation into certain homosexual activities.

The Court found that the restriction imposed on Mr Dudgeon, by reason of its breadth and absolute character, was, quite apart from the severity of the possible penalties, disproportionate to the aims sought to be achieved, namely the protection "of the rights and freedoms of others" and "of morals". Violation of Article 8 (right to respect for private life) of the European Convention on Human Rights.

Measures taken following the judgment (law changed).

Norris v. Ireland (no. 8225/78)

26.10.1988

The legislation then in force in Ireland classified male homosexual relations as a criminal offence. The applicant, who was a homosexual, complained about this legislation, which in his view entailed an excessive interference with his right to respect for his private life – including his sexual relationships.

The Court found that it could not be maintained that in Ireland there was a "pressing social need" to make homosexual acts criminal offences. In particular, although members of the public who regarded homosexuality as immoral might be shocked, offended or disturbed by such acts, this could not on its own warrant the application of penal sanctions when consenting adults alone were involved. Violation of Article 8 (right to respect for private life).

Measures taken following the judgment (law changed).

Modinos v. Cyprus (no. 15070/89)

22.04.1993

The applicant was a homosexual in a relationship with another male adult. He was the President of the "Liberation Movement of Homosexuals in Cyprus". He stated that he had suffered great strain, apprehension and fear of prosecution by reason of the legal provisions which criminalised certain homosexual acts.

The Court found that the existence of this legislation continuously and directly affected the applicant's private life. Having regard to the Court's above-mentioned judgments, the Cypriot authorities had not sought to show that the legislation had met a "pressing social need". Violation of Article 8 (right to respect for private life).

[Measures](#) taken following the judgment (law changed).

[A.D.T. v. the United Kingdom \(no. 35765/97\)](#)

31.07.2000

The applicant mainly argued that his prosecution and conviction for participating, in private and in his own home, in sexual acts with more than one consenting adult of the male sex, constituted interference with his private life.

In the Court's view, the acts in question were purely private in nature and so the respondent State's margin of appreciation was narrow. There was no "pressing social need" to justify the legislation in question or its application in the proceedings against the applicant. Violation of Article 8 (right to respect for private life).

[Measures](#) taken following the judgment (law changed).

Criminalisation of homosexual relations between an adult and an adolescent; age of consent

[L. and V. v. Austria \(nos. 39392/98 and 39829/98\) and S.L. v. Austria \(no. 45330/99\)](#) (and several other similar cases)

09.01.2003

The applicants were convicted for having homosexual intercourse with young males of 14 to 18. Austrian legislation classified as a criminal offence homosexual acts of adult men with young males between 14 and 18, but not with young females in the same age bracket.

The Court found no sufficient justification for the difference in treatment complained of. Violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life).

[Measures](#) taken following the judgment (law changed).

Pending cases

[F.J. v. Austria \(no. 2362/08\) - statement of facts](#) ; [E.B. v. Austria \(no. 26271/08\) - statement of facts](#) ; [H.G. v. Austria \(no. 48098/07\) - statement of facts](#) (and several other similar cases)

The applicants complain that the police continue to keep files containing information that was recorded under the law that constituted a violation in L. and V. v. Austria and S.L. v. Austria.

[B.B. v. the United Kingdom \(no. 53760/00\)](#)

10.02.2004

The applicant was prosecuted for having sexual intercourse with an adolescent of 16. The legislation in force at the time (1998-1999) made it a criminal offence to engage in homosexual activities with men under 18 years of age, while the age of consent for heterosexual relations was 16.

Violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life).

[Measures](#) taken following the judgment (law changed. See also [Sutherland v. the United Kingdom \(no. 25186/94\)](#), 27.03.2001, struck out after new legislation fixed the same age of consent for both heterosexual and homosexual relations).

Pending case

[Fernando dos Santos Couto v. Portugal \(no. 31874/07\) - statement of facts](#)

The applicant was given a suspended prison sentence of one year and six months for two offences of homosexual acts with adolescents. The offence is made out simply by the commission of such acts. The law makes heterosexual acts with adolescents a criminal offence only where there is abuse of the adolescent's lack of experience.

Detention on account of homosexuality

Pending case

[Adrian Costin Georgescu v. Romania \(no. 4867/03\) - statement of facts](#)

The applicant was detained by police, questioned, photographed, fingerprinted, etc. because of his homosexuality.

Media Contact: Frédéric Dolt
frederic.dolt@echr.coe.int