



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

Communicated on 2 May 2016

THIRD SECTION

Application no. 40792/10

Irina Borisovna FEDOTOVA and Irina Vladimirovna SHIPITKO against
Russia
and 2 other applications
(see list appended)

The applicants are three same-sex couples of Russian nationality, Ms Irina Borisovna Fedotova and Ms Irina Vladimirovna Shipitko (“the first couple”); Mr Dmitriy Nikolaevich Chunosov and Mr Yaroslav Nikolaevich Yevtushenko (“the second couple”); and Ms Imira Mansurova Shaykharaznova and Ms Yelena Mikhaylovna Yakovleva (“the third couple”). Their details may be found in the Appendix.

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

A. The circumstances of the cases

The couples who are the applicants in these cases declared their intention to marry and applied on several occasions to local departments of the Register Office (*ЗАГС*) to have their marriage registered.

The Register Office examined their requests and dismissed them with reference to Article 1 of the Russian Family Code, which states that the regulation of family relationships is based on “the principle of a voluntary marital union between a man and a woman”. Since the couples did not consist of “a man and a woman”, their marriage applications could not be processed.

The applicants challenged the Register Office’s decisions in the courts.

1. The first couple

The first couple brought their claim before the Tverskoy District Court of Moscow. They argued that their marriage application was in full compliance with the Russian Family Code and that the refusal to register their marriage violated their Constitutional rights and the rights guaranteed by Articles 8 and 12 of the Convention.

On 6 October 2009 the District Court dismissed the claim, basing its decision on three findings. Firstly, it concluded that the impugned marriage application had not satisfied one of the conditions set down in the Family

Code as it had lacked the required “voluntary consent of a man and a woman” because the first couple did not include a man. Secondly, the court considered that neither international law nor the Russian Constitution imposed an obligation on the authorities to promote or support same-sex unions. Lastly, the court referred to a standard marriage application form, which contained two fields, “He” and “She”, and which therefore could not be used by same-sex couples.

The applicants appealed, arguing that the Family Code did not explicitly ban same-sex marriage. In particular, Article 14 of the Code contained an exhaustive list of circumstances precluding marriage which did not include same-sex partnership.

On 21 January 2010 the Moscow City Court upheld the judgment on appeal, endorsing the District Court’s reasoning. In addition, it held that the fact that Russian law did not explicitly prohibit same-sex marriage could not be construed as State-endorsed recognition of such marriage.

2. *The second couple*

The second couple brought their claim before the Gryazi District Court of the Lipetsk Region.

They argued that the Register Office had misinterpreted the provisions of the Family Code as the Code did not restrict the right of same-sex couples to marry. They also argued that various international documents, including the European Convention on Human Rights, prohibited any form of discrimination, including on the grounds of sexual orientation, and imposed an obligation on States to protect family and private life. The applicants cited the Court’s findings in *Schalk and Kopf v. Austria* (no. 30141/04, ECHR 2010).

On 2 August 2013 the District Court granted the claim in part. It acknowledged that the Register Office had acted unlawfully in dismissing the application without an examination on the merits as under Russian law it had to examine the substance of each and every marriage application.

However, the District Court further held that a same-sex marriage could not be registered. It cited the case of Mr E. Murzin (no. 496-O, 16 November 2006, see “Relevant domestic law and practice” below), in which the Russian Constitutional Court had held that Russian law did not recognise a right for same-sex couples to marry. The Constitutional Court had also noted that no such right could be deduced from the Constitution or from any international documents signed by Russia.

In addition, the District Court considered that the applicants’ intention to marry ran counter to international and national religious traditions, the understanding of marriage as a biological union between a man and a woman, the State’s policy of protecting the family, motherhood and childhood, the State-imposed ban on the promotion (*пропаганда*) of homosexuality and to laws in related fields.

The court was not convinced by the applicants’ reference to the case of *Schalk and Kopf* (cited above). It stated that the Convention did not impose an obligation on Member States to allow same-sex marriages, and that the European Court had placed the regulation of same-sex marriages within the State’s margin of appreciation.

The second couple appealed, arguing that Russian law did not give a definition of marriage and that the Family Code did not prohibit same-sex marriage. They also stressed that they had no other means of giving a legal status to their relationship as marriage was the only legally recognised union.

On 7 October 2013 the Lipetsk Regional Court dismissed the appeal. It considered that the applicants' arguments "were no more than their personal opinion based on a wrong interpretation of family law and of generally recognised national traditions of understanding the concepts of family and marriage".

On 12 March 2014 the Lipetsk Regional Court, acting in line with a new cassation procedure, upheld the judgments of 2 August and 7 October 2013, citing the reasoning of the lower courts.

3. The third couple

The third couple also brought their claim before the Gryazi District Court of the Lipetsk Region, raising essentially the same arguments as the second couple.

On 12 August 2013 the District Court dismissed the claim. It found that although it might have appeared that the third couple's marriage application had been formally rejected without being examined on the merits, that had not been the case. The Register Office had examined the application properly and had lawfully refused to register the marriage. The District Court also repeated the arguments it used in the case of the second couple.

On 18 November 2013 and 11 March 2014 the Lipetsk Regional Court dismissed an appeal by the applicants and a new cassation appeal respectively, stating that the applicants' arguments were based on a wrong interpretation of the provisions of family law and of established national traditions pertaining to the understanding of the family and marriage.

B. Relevant domestic law and practice

1. Russian Constitution

Article 15

"1. The Constitution of the Russian Federation has supreme juridical force and direct effect and is applicable throughout the territory of the Russian Federation. Laws and other legal acts adopted in the Russian Federation shall not contradict the Constitution ...

4. The universally recognised standards of international law and the international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation sets out rules which are different from those laid down by the law, the rules of the international agreement shall apply."

Article 17

"1. The Russian Federation recognises and guarantees the rights and freedoms of individuals and citizens in conformity with the universally recognised principles and standards of international law, and under the present Constitution ...

3. The exercise of individual and civic rights and freedoms may not violate the rights and freedoms of other people."

Article 19

“1. Everyone shall be equal before the law and courts of law.

2. The State shall guarantee equality of rights and freedoms regardless of sex, race, nationality, language, origin, social and official status, place of residence, religion, personal convictions, membership of public associations, or of any other ground. Any restriction on the human rights of citizens on social, racial, national, linguistic or religious grounds is forbidden ...”

2. Family Code of Russia

Article 1. Fundamental principles of family legislation

“1. The family, motherhood, fatherhood and childhood are protected by the State ...

...

3. The regulation of family relationships is based on the principles of a voluntary marital union between a man and a woman, on the equality of spouses’ rights in the family, on resolving questions which arise within the family on the basis of mutual consent, on the priority of parenting children within the family, on caring for their well-being and development, and on ensuring as a priority the protection of the rights and interests of minors and disabled family members.

4. It is prohibited to place any form of restriction on peoples’ rights to enter into marriage ... based on a person’s social, racial, national, linguistic or religious affiliation ...”

Article 12. Conditions for marriage

“1. The mutual and voluntary consent of a man and a woman who have attained the age of marriage is required for the registration of a marriage.

2. Marriage cannot be registered if any of the circumstances listed in Article 14 of the Code are present.”

Article 14. Circumstances preventing marriage

“Marriage is not allowed between:

- persons, if at least one of them is already married;
- close relatives ..., siblings, and half-siblings;
- foster parents and their foster children;
- persons, if at least one of them has been deprived of legal capacity by a court owing to a mental disorder.”

3. Decision of the Constitutional Court of Russia of 16 November 2006 no. 496-O in the case of Mr E. Murzin

“2. Having examined the documents submitted by Mr E. Murzin, the Constitutional Court does not find any grounds to proceed with the examination of the merits of his application.

2.1... The Constitution of Russia and international legal rules are based on the principle that the main purpose of the family is to bear and bring up children.

Taking that principle into consideration, as well as the national tradition of interpreting marriage as a biological union between a man and a woman, the Family Code provides that the regulation of family relationship is based on the principles of a voluntary marital union between a man and a woman, on the priority of the parenting of children in the family and on caring for their well-being and development (Article 1). Accordingly, the federal legislator, acting within its powers, has stated that the mutual, voluntary consent of a man and a woman is one of the conditions for

marriage. That [principle] cannot be considered as a violation of the constitutional rights to which the applicant referred in his claim.

2.2. By challenging Article 12 § 1 of the Russian Family Code, the applicant asks the State to recognise his relationship with another man by ensuring their registration in the form of a union protected by the State.

At the same time, no obligation on the State to create conditions for advocating, supporting or recognising same-sex unions flows from either the Constitution or the international obligations of the Russian Federation. The lack of such recognition and registration [of same-sex unions] on its own had no effect on the level of recognition and guarantees for the applicant's individual and civil rights in the Russian Federation.

The existence of a different approach in certain European States to the treatment of demographic and social issues does not prove that the applicant's constitutional rights were infringed. This conclusion can be drawn because in accordance with Article 12 of the International Covenant on Civil and Political Rights, the right to marriage is recognised specifically for men and women. Article 12 of the Convention explicitly provides for the possibility to begin a family in line with national legislation that regulates the exercise of that right.

On the basis of all of the above ... the Constitutional Court has decided ... not to proceed with the examination of Mr E. Murzin's claim on the merits as it falls short of the requirements for admissibility set out in the Constitutional Court Act introduced by Federal constitutional law ...”

Russian domestic law does not provide for any alternative to marriage as a union, either for homosexual or heterosexual couples.

COMPLAINTS

The applicants in substance complained under Article 8 of the Convention alone and under Article 14 of the Convention taken in conjunction with Article 8 of the Convention that they had been discriminated against on the grounds of their sexual orientation because they had no means of securing a legal basis for their relationship as it was impossible for them to enter into marriage. They also had no other possibility to gain legal recognition for their relationship.

COMMON QUESTIONS

1. Has there been a violation of the applicants' right to respect for their private and family life, contrary to Article 8 of the Convention?

In particular, were the applicants able to have access to a specific legal framework capable of providing them with official recognition of their unions comparable to that guaranteed by the State to different-sex couples? If that is not the case, in what specific ways are the applicants disadvantaged by the lack of any legal recognition of their relationship?

Should the applicants be afforded a possibility to have their relationship recognised by law? If not, what are the reasons preventing such recognition? Was the issue of legal recognition of same-sex couples widely debated in society? Would legal recognition of same-sex unions in any form impose an excessive burden on the State? The Government are asked to support their submissions by authoritative studies and statistics, if applicable.

2. Have the applicants suffered discrimination in the enjoyment of their Convention rights on the ground of their sexual orientation, contrary to Article 14 of the Convention read in conjunction with Article 8 of the Convention, in respect of their inability to enter into any type of civil union recognised by the State?

APPENDIX

No.	Application no.	Lodged on	Applicant name date of birth place of residence	Represented by
1.	40792/10	20/07/2010	Irina Borisovna FEDOTOVA 10/11/1978 Volgodonsk Irina Vladimirovna SHIPITKO 16/03/1977 Sochi	Dmitriy Gennadyevich BARTENEV
2.	30538/14	05/04/2014	Dmitriy Nikolayevich CHUNOSOV 25/08/1984 Moscow Yaroslav Nikolayevich YEVTUSHENKO 11/08/1994 Moscow	
3.	43439/14	17/05/2014	Ilmira Mansurovna SHAYKHRAZNOVA 21/11/1991 Gryazi Yelena Mikhaylovna YAKOVLEVA 08/01/1990 Gryazi	