

November 2013

Vallianatos and Others v. Greece [GC] - 29381/09 and 32684/09

Judgment 7.11.2013 [GC]

Article 14

Discrimination

Exclusion of same-sex couples from "civil unions": *violation*

Facts – The first application was lodged by two Greek nationals, and the second by six Greek nationals and an association whose aims include providing psychological and moral support to gays and lesbians. On 26 November 2008 Law no. 3719/2008, entitled "Reforms concerning the family, children and society", entered into force. It introduced an official form of partnership for unmarried couples called a "civil union", which was restricted to different-sex couples, thereby excluding same-sex couples from its scope.

Law – Article 14 in conjunction with Article 8

(a) *Applicability* – The applicants had formulated their complaint under Article 14 taken in conjunction with Article 8, and the Government did not dispute the applicability of those provisions. The Court found it appropriate to follow that approach. Furthermore, the applicants' relationships fell within the notion of "private life" and that of "family life", just as would the relationships of different-sex couples in the same situation. Article 14 taken in conjunction with Article 8 was therefore applicable.

(b) *Merits* – The applicants were in a comparable situation to different-sex couples with regard to their need for legal recognition and protection of their relationships. However, section 1 of Law no. 3719/2008 expressly reserved the possibility of entering into a civil union to two individuals of different sex. Accordingly, by tacitly excluding same-sex couples from its scope, the Law in question introduced a difference in treatment based on the sexual orientation of the persons concerned.

The Government relied on two sets of arguments to justify the legislature's choice not to include same-sex couples in the scope of the Law. Firstly, they contended that if the civil unions introduced by the Law were applied to the applicants, this would result for them in rights and obligations – in terms of their property status, the financial relations within each couple and their inheritance rights – for which they could already provide a legal framework under ordinary law, that is to say, on a contractual basis. Secondly, the Law in question was designed to achieve several objectives, including strengthening the legal status of children born outside marriage and making it easier for parents to raise their children without being obliged to marry. That aspect, they argued, distinguished different-sex couples from same-sex couples, since the latter could not have biological children together. The Court considered it legitimate from the standpoint of Article 8 of the Convention for the legislature to enact legislation to regulate the situation of children born outside marriage and indirectly strengthen the institution of marriage within Greek society, by promoting the notion that the decision to marry

would be taken purely on the basis of a mutual commitment entered into by two individuals, independently of outside constraints or of the prospect of having children. The protection of the family in the traditional sense was, in principle, a weighty and legitimate reason which might justify a difference in treatment. It remained to be ascertained whether the principle of proportionality had been respected in the present case.

The legislation in question was designed first and foremost to afford legal recognition to a form of partnership other than marriage. In any event, even assuming that the legislature's intention had been to enhance the legal protection of children born outside marriage and indirectly to strengthen the institution of marriage, the fact remained that by enacting Law no. 3719/2008 it had introduced a form of civil partnership which excluded same-sex couples while allowing different-sex couples, whether or not they had children, to regulate numerous aspects of their relationship.

The Government's arguments focused on the situation of different-sex couples with children, without justifying the difference in treatment arising out of the legislation in question between same-sex and different-sex couples who were not parents. The legislature could have included some provisions dealing specifically with children born outside marriage, while at the same time extending to same-sex couples the general possibility of entering into a civil union. Lastly, under Greek law, different-sex couples – unlike same-sex couples – could have their relationship legally recognised even before the enactment of Law no. 3719/2008, whether fully on the basis of the institution of marriage or in a more limited form under the provisions of the Civil Code dealing with *de facto* partnerships. Consequently, same-sex couples would have a particular interest in entering into a civil union since it would afford them, unlike different-sex couples, the sole basis in Greek law on which to have their relationship legally recognised.

Lastly, although there was no consensus among the legal systems of the Council of Europe member States, a trend was currently emerging with regard to the introduction of forms of legal recognition of same-sex relationships. Of the nineteen States which authorised some form of registered partnership other than marriage, Lithuania and Greece were the only ones to reserve it exclusively to different-sex couples. The fact that, at the end of a gradual evolution, a country found itself in an isolated position with regard to one aspect of its legislation did not necessarily imply that that aspect conflicted with the Convention. Nevertheless, in view of the foregoing considerations, the Court found that the Government had not offered convincing and weighty reasons capable of justifying the exclusion of same-sex couples from the scope of Law no. 3719/2008.

Conclusion: violation (sixteen votes to one).

Article 41: EUR 5,000 to each of the applicants, apart from the applicant association in application no. 32684/09, in respect of non-pecuniary damage.