



# GREECE

## Single ECtHR Case Study Report

*Margarita Markoviti*

*v. 26 September 2017*



Funded by European Research Council  
7th Framework Programme

**1. Basic details:** Case name, date of submission, date of ECtHR judgment, full list of applicants, core issue addressed by the case

The case (*Vallianatos and Others v Greece*) originated in two applications (nos. 29381/09 and 32684/09) against Greece on 4 and 25 May 2009, respectively. The applicants in the first case (29381/09) were two Greek nationals, Mr Grigoris Vallianatos and Mr Nikolaos Mylonas, who were represented by Greek Helsinki Monitor. The second application (32684/09) was lodged by six Greek nationals, C.S., E.D., K.T., M.P., A.H. and D.N. and by the association Synthesi- Information-Awareness-raising and Research (a legal entity based in Athens), who were represented by lawyers Mr N. Alivizatos and Mr. E. Mallios, both of whom are based in Athens. Ms C. Mécarý also acted as the applicants' lawyer.

The two applications targeted Greek Law no 3719/2008, which had introduced an alternative official form of partnership to marriage, known as «civil unions». Under Section 1 of the law, only two adults of different sex could register a civil union:

«A contract between two different-sex adults governing their life as a couple ('civil union') shall be entered into by means of a notarised instrument in the present of the parties!»

The applicants (*Vallianatos and others*) argued that law no. 3719 had infringed their right to respect for their private and family life and that it amounted to unjustified discrimination between different-sex and same-sex couples, to the detriment of the latter. In the applicants' view moreover, the Law in question cast a negative moral judgment on homosexuality as it reflected an unjustifiable reserve, not to say hostility, towards same-sex couples.

The ECtHR decided, unanimously, to join the two applications. On November 7, 2013 the Grand Chamber held that exclusion of same-sex couples from the domestic civil partnership scheme violated prohibition of discrimination on grounds of sexual orientation in the enjoyment of their right to personal and family life. More specifically, it held that there had been a violation of Article 14 (against discrimination) taken in conjunction with Article 8 (right to family life) of the European Convention on Human Rights.

**2. Context of the issue:** Socio-legal, political and historical background to the issue at hand and/or practices that prompted the litigation, in the given country. (Max 1000 words).

No legal form of partnership, other than marriage, had existed in Greece prior to 2008. The law introduced in 2008 by Sotiris Chatzigakis, Minister of Justice of the conservative party New Democracy, offered couples the right to enter a union as an alternative to marriage, known as civil union or civil partnership. According to the explanatory report on Law 3719/2008, the introduction of civil unions reflected a social reality – namely cohabitation outside marriage – and allowed the persons concerned to register their relationship within a more flexible legal framework than that provided by marriage. The report considered, moreover, that the institution of marriage would not be weakened by the new legislation, as the former was governed by a different set of rules.

The deliberation on the introduction of this very bill sparked various reactions in Greek society, particularly amongst members of the Orthodox Church (O.C.) and amongst conservative MPs. On 17 March 2008, the Holy Synod described civil unions as «prostitution» (which, to their view, also applied to the case of civil marriage, introduced in 1982), with the majority of Bishops expressing their concern over the impact of such a law on the holy institution of the

---

<sup>1</sup> Law no. 3719/2008, Section 1 "Conclusion of a civil union".

family. More progressive voices in the Greek media criticized the intervention of the O.C. and claimed that the Minister's decision to proceed with the introduction of civil unions should be seen not as brave, but as a logical and much-needed one. Other parts of the media emphasized the incompatibility of the bill under deliberation with other legislative arrangements in European states (such as in France, Belgium, the Netherlands, Denmark, the UK, Norway and Sweden<sup>2</sup>), as the Greek law reserved the right to civil unions exclusively to different-sex couples. Similarly, the Scientific Council of Parliament – a consultative body reporting to the Speaker of Parliament – including a number of speakers in Parliament stressed that with the proposed bill, Greece would be violating its international obligations and, in particular, Articles 8 and 14 of the Convention by excluding same-sex couples.

According to one of the applicants in *Vallianatos* and their lawyer, Law 3719/2009 had deliberately excluded same-sex couples from its provisions. Indeed, during the Parliamentary debate that preceded the implementation of the law, on 11 November 2008, the Minister of Justice referred to same-sex couples and, alluding to political reasons, claimed that:

«...We believe that we should not go any further. Same-sex couples should not be included [...]. In its law-making role, the ruling political party is accountable to the people of Greece. [...] Society today [is] not yet ready to accept cohabitation between same-sex couples».

The applicants in *Vallianatos* share the impression that the Minister of Justice had regretted the fact that the law excluded adults of same sex. He acknowledged at the same time that «this is as far as he could take it [the law]» at that point and he – rather directly – told the activists and they should handle the issue, themselves. According to the applicants, his stance suggested awareness of the fact that litigation to the ECtHR over the issue was a likely option.

No such type of litigation – concerning LGBT rights – had reached Strasbourg from Greece before. In fact, this appeal was simultaneous to a litigation in national courts concerning the abolishment of two same-sex marriages that had taken place on the island of Tilos in 2008. Due to delays and unexpected occurrences, one of the two same-sex married couples is no longer appealing against the decision to annul their marriage, while the case of the other couple is ongoing and has now reached the Supreme Court (Areios Pagos). Both applicants in *Vallianatos* (29381/09), as well as their lawyer, pointed out that what prompted their litigation was precisely the introduction of law 3719/2008 in Greece and its provision to exclude same-sex couples from the right to form civil unions. As their lawyer explained, their intention was to mobilize against this law, which they deemed discriminatory.

Lastly, according to one of the applicants in *Vallianatos*, their decision to mobilize is also closely linked to another appeal in Strasbourg in the case *Dimitras and Others v Greece* (2010), which challenged the long-standing tradition of having to take an Orthodox religious oath before testifying in national courts. In his view, more than simply involving the same human rights activist and lawyer – Dimitras, himself – both these cases targeted established stereotypes and institutions in Greece, which have been primarily defined on the basis of the prevailing religion of the O.C.

**3. Nature of litigation:** Strategic or not? (Elaborate). At its inception was the ECtHR an aim or was it conceived as a local/national case originally?

---

<sup>2</sup> According to the ECtHR report on *Vallianatos*, Lithuania and Greece (were) the only Council of Europe countries at the time which provided for a form of registered partnership designed solely for different-sex couples, as an alternative to marriage (which is available only to different-sex couples).

The case was originally conceived as a strategic type of litigation with the aim of reaching the ECtHR (see section 4). As one of the applicants and their lawyer explained, their objective was to directly challenge the compatibility of Law 3719/2008 with the Convention. Indeed, as soon as the law was introduced, the Greek Helsinki Monitor lawyer and human rights activist sought the support of LGBT activists, with whom he could collaborate and prepare in order to reach Strasbourg. In this sense, this type of litigation strategically focused on an individual case in order to bring about significant social change.

- 4. Pre-ECtHR history of case:** Through which local and national courts (or other administrative bodies and procedures) did the case pass; what year did the process start locally/nationally? If strategic litigation, was it prompted by any particular event?

A crucial feature of the legal course of *Vallianatos and Others* is that it bypassed all national courts and went straight to Strasbourg. This was in fact an important point of contention between the applicants and the Greek government during the trial: while the former claimed that no procedural rules existed in domestic law providing for the amendment of a legislative provision deemed to be unconstitutional, the latter submitted that the alleged impossibility for the applicants to challenge the impugned legislation in the domestic courts was not due to the absence of an effective remedy in Greek law, but rather to the fact that they had suffered no immediate and direct prejudice as a result of their exclusion from the legislation on civil unions. The Strasbourg Court eventually found that, even if a claim for damages were to be allowed by the domestic courts to the applicants in *Vallianatos*, the Greek State would be under no obligation to amend the legislation in question.

Indeed, the lawyer in *Vallianatos* specified that the ECtHR does consider that all national remedies should be exhausted, provided that these are efficient. In his own experience, he had realized that, when it came to certain issues (i.e. he specifically referred to the cases involving Roma children's attendance in public schools), no efficient appeal procedure in fact existed – as such procedures would lead simply to the granting of financial compensation, without however resolving the actual, legal issue. In *Norris v Ireland* of 1988 (involving Ireland's criminalization of certain homosexual acts between consenting adult men), the ECtHR had stated that when a specific law violates any articles of the Convention, then the exhaustion of national remedies and domestic courts is simply pointless, as national courts are meant to apply and respect national laws. This is precisely the reason why *Vallianatos* never reached national courts, as the objective in this case was to target the very law on civil unions and its violation of certain parts of the Convention.

- 5. External influences:** Was the claim supported by other local, national or transnational influences (funding, legal advice, other NGO support)? IF so, please elaborate (indicate also at what stage – e.g., from its inception or only when it reached the ECtHR?)

Other than the group of national actors, the activists and NGOs who appealed to the ECtHR over the issue of 3719/2008, Law Professor Robert Wintemute (King's College London) also intervened during the trial. On behalf of FIDH (*Fédération Internationale des Ligues des Droits de l'Homme*), ICJ (International Commission of Jurists), the AIRE Centre (Advice on Individual Rights in Europe) and ILGA-Europe (European Religion of the International Lesbian, Gay, Bisexual, Trans and Intersex Association), Prof. Wintemute submitted written comments. Amongst other ECtHR cases, he brought up the precedent of *Karner v. Austria* (24 July 2003), where the Court had concluded that there is direct discrimination based on sexual orientation when a right granted to unmarried different-sex couples is denied to unmarried

same-sex couples. He added, moreover, that the consensus among Council of Europe member states and other democratic societies is clearly that, if a legislature decides voluntarily to create a new registration system, it must be open (at least) to unmarried same-sex couples, because they are legally unable to marry (unlike unmarried different-sex couples in most countries).

- 6. Pre-case mobilisations:** Give a full account of mobilisations around the case from its inception up to its airing at the ECtHR, including the initiating organization(s), alliances (pro and con) which may have taken shape around the issue, claims made at various point, etc.

LGBT rights have gained increasing momentum in Greece over the last eight years. Seen through the introduction of Gay Pride parades in 2005 in Athens and in 2012 in Thessaloniki, and largely supported by local politicians/mayors and the more progressive parties in parliament for whom human rights forms an important part of their agenda, LGBT-rights activists have been vocal and present through the media. In fact, same-sex civil unions became the motif of these LGBT demonstrations, often also leading to the question of gender identity, adoption rights for same-sex couples and marriage.

The case of *Vallianatos* became known also as a result of the personality and actions of Vallianatos, himself. A center-right politician and veteran LGBT-rights activist, Vallianatos was candidate for mayor of Athens in 2014, is highly eloquent and has persistently and successfully advocated in favour of LGBT rights, whether in Parliament, through social networks or the media. The case of *Vallianatos*, however triggered wider mobilizations – and raised the public's awareness over the issue – mainly *after* the verdict of the ECtHR and specifically after the Greek government decided to start working on the bill for the amendment of law 3719/2008, following a second round of litigation in Strasbourg (see below).

- 7. Post-case mobilisations:** Trace any mobilisations taking place in the aftermath of the case (including impact of this case on other local/national/ECtHR cases emerging in the national context).

An interesting development in the aftermath of the Court's judgment on *Vallianatos* was that, in the context of silence or any kind of action by the Greek state to change the law, there followed a second round of litigation to the ECtHR as a means to put pressure on the government. Represented once again by the lawyer of the Greek Helsinki Monitor, 300 same-sex couples appealed once again to the Court with the exact same complaint regarding law 3719/2008. It was only then that the state realized the urgency of the case, and started putting forward the procedure to amend the law. Note that the outcome of this second round of litigation is still pending.

The ECtHR judgment on *Vallianatos* spawned widespread disapproval in Greece, unleashing some of the deepest and even racist reactions. The first national actors to react were from the Orthodox Church. Following the Strasbourg Court's decision in November 2013, a leading Greek bishop, Serafeim of Piraeus, called homosexuality "an insult to God and man", warning lawmakers that they would be excommunicated if they voted in favor of legalizing same-sex partnerships. In a letter to the country's deputy prime minister, he stated: "I beseech you from the heart not to proceed. You will deny yourself the blessing of the most just Lord whose help and protection we daily need as much personally as nationally...during these critical times for our country".

Vallianatos himself stressed the significance of the Strasbourg decision in light of precisely such Church reactions, which he equated with extreme-right political views: “The ruling has been a terrific victory (...). We can see just how revolutionary it has been just by the reaction of the church. Modern Greece remains deeply homophobic. It is clear that conservatives are fishing for votes in Golden Dawn’s camp and that will make change even harder”.

Following Greece’s conviction by the ECtHR in 2013 over Law 3719/2008 – and especially after the second round of litigation in Strasbourg with the exact same complaint – the media covered the topic extensively (according to our media study, this is the most discussed topic in the newspapers with reference to the ECtHR) and politicians and social actors positioned themselves publicly over the issue. One of the applicants in Vallianatos explained to me how in the aftermath of the Court’s judgment, the media played a key role in bringing out and even in promoting this clash between LGBT activists on the one hand and conservative views, represented primarily by religious Orthodox actors, on the other. In his own words: *«every time they would invite us to TV panels, you had the feeling that everything was staged, much like with a film director : you had the good guys and the bad guys, while journalists would take either side»*. Indeed, in their very frequent references to the topic of same-sex civil unions, both TV channels and newspapers would in most cases juxtapose same-sex rights with extremist voices from the Orthodox Church.

The main instance that demonstrates how in Greek public opinion the case of Vallianatos is very often intertwined with religion was the public deliberation that preceded the adoption of the bill that would extend civil unions to same-sex couples. This online forum of public deliberation was set up by the Ministry of Justice and lasted for a bit longer than a week in November 2015. Thousands of citizens expressed their views. As the Secretary General for Transparency and Human Rights at the Ministry noticed in our interview, most of these comments were not exactly directed against the bill that would allow same-sex couples to enter into civil unions. Rather, their main concern was homosexuality altogether and the main argument they used to condemn this was the triptych motherland – religion – family.

Crucially, all actors involved in Vallianatos or LGBT rights consulted agree on the fact that this victory in Strasbourg – and the eventual amendment of the discriminatory law in 2016 – opened the way for a number of issues related to the LGBT community, such as gender identity (the bill is currently under deliberation), adoption and marriage rights for same-sex couples. Though not necessarily directly linked to Vallianatos – in spite of the favourable context the latter has helped create –, the lawyer of the same-sex marriage case informed me that, provided that the verdict of the Supreme Court is not in their favour, their objective is to eventually reach Strasbourg as well.