LEGAL RECOGNITION OF SAME-SEX COUPLES' FAMILY RELATIONSHIPS IN RESIDENCE PERMIT ISSUANCE

Tsisia Okropiridze
Ketevan Bakhtadze

I. Introduction

Marriage equality for same-sex couples remains a significant challenge in contemporary legal systems.[1] Same-sex partners encounter substantial barriers when seeking residence permits for family reunification purposes.[2] The existence of these barriers is particularly problematic in the context of globalization, when transnational mobility and interaction between different legal systems assumes an increasingly intensive character. Inconsistent state approaches to this issue create risks of fragmentation in legal relationships, which substantially impede the realization of individual rights beyond borders. Georgia's 2024 law "On Family Values and Protection of Minors" not only prohibits the registration of same-sex marriages,[3] but also excludes the possibility of recognizing marriages registered abroad or other alternative unions.[4] This legislative change significantly affects the legal status of

[1] Bell, 614; "Marriage Equality Around the World," Human Rights Campaign, accessed May 15, 2025, https://www.hrc.org/resources/marriage-equality-around-the-world; "Same-Sex Marriage Around the World," Pew Research Center, https://www.pewresearch.org/religion/fact-sheet/gay-marriage-around-the-world/.

[2] Fundamental Rights Agency, Making EU Citizens' Rights a Reality: National Courts Enforcing Freedom of Movement and Related Rights (Luxembourg: Publications Office of the European Union, 2018), 22.

[3] Law of Georgia "On Family Values and Protection of Minors," Art. 4(1).

[4] Ibidem, Art.4(2).

same-sex couples, particularly their ability to obtain residence permits on grounds of family reunification.[5]

The European Court of Human Rights jurisprudence recognizes same-sex couples' right to family life,[6] though, at the national level, the realization of this right encounters significant obstacles.[7] This dualistic approach generates systemic contradiction between international standards and national implementation, resulting in ineffective legal protection mechanisms. National legal systems' resistance to the European Court's progressive interpretations becomes even more acute in those countries where conservative value paradigms dominate socio-political discourse. Migration statistics show a growing trend in migratory flows to Georgia,[8] though specific data on residence permits issued to same-sex couples do not exist and this absence complicates the assessment of the scale of the problem.[9] The deficit of empirical data represents not only a methodological challenge from a research perspective, but reflects a systemic problem – the "invisibility" of same-sex couples in official statistical records, which, in turn, impedes institutional recognition of the problem.

States' refusal to recognize same-sex couples' family relationships, particularly in the context of residence permits, may be considered dis-

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5 *Pajić v. Croatia*, App. No. 68453/13, European Court of Human Rights, 23 February 2016, para. 72.

6 *Schalk and Kopf v. Austria*, App. No. 30141/04, European Court of Human Rights, 24 June 2010, para. 94; *Oliari and Others v. Italy*, App. Nos. 18766/11 and 36030/11, European Court of Human Rights, July 21, 2015, para. 171; *Orlandi and Others v. Italy*, App. No. 26431/12, European Court of Human Rights, 14 December 2017, para. 210; Hodson, 174–175; Ragone, 452.

7 "Legal Frameworks Same-Sex Marriage and Civil Unions," ILGA World, accessed May 15, 2025, https://database.ilga.org/same-sex-marriage-civil-unions.

8 National Statistics Office of Georgia, "Migration Statistics 2024," https://www.geostat.ge/ka/modules/categories/322/migratsia.

9 Public information was requested within the framework of the research, though the LEPL State Services Development Agency did not respond to the application. Ketevan Bakhtadze's Public information request statement N01/4450, 20 February 2025.

criminatory practice,[10] which violates not only the principle of equality but also the right to respect for private and family life.[11] Such practice is particularly problematic from the perspective of the proportionality principle, since the state's legitimate interest – to protect the traditional family model – cannot justify the extensive restrictions that same-sex couples experience. Moreover, the indirect discriminatory effects of migration regulations transcend the purely legal sphere and penetrate into individuals' economic, social and psychological well-being.

The present research aims to analyze the legal barriers and practical challenges that same-sex couples encounter when obtaining residence permits. The research framework examines both national legislation and practice, as well as international standards and other countries' experiences. Particular attention is devoted to the case law of the European Court of Human Rights and the Court of Justice of the European Union. Additionally, the research seeks to contribute to public discourse in order to promote the depoliticization of the issue and its rational consideration within a human rights-based approach framework.

The research employs normative and comparative legal research methods. Within the normative analysis framework, the paper examines Georgian legislation, its implementation practice, and compliance with international standards. Through the comparative legal method, it also analyzes the approaches of individual European states regarding recognition of same-sex couples' family relationships and issuance of residence permits. The methodological framework also incorporates the elements of legal hermeneutics, which enables analysis of the peculiarities of norm interpretation in different jurisdictions and reveals those implicit value preconditions that determine legislators' and the European courts' positions.

[10] *Pajić v. Croatia*, App. No. 68453/13, European Court of Human Rights, 23 February 2016, para. 70.

[11] Krickova, 10.

The paper is structured into four main parts. The first and last parts are devoted to the introduction and conclusion, respectively. Part two examines procedural issues of residence permit issuance in the context of family reunification; part three analyzes the issues of discriminatory treatment toward same-sex couples when issuing residence permits for family reunification purposes.

II. Residence Permits for Family Reunification Purposes

1. Establishment of Family Relationship by Same-Sex Partner

Same-sex partners, as well as opposite-sex partners, apply to the State Service Development Agency for obtaining residence permits for the purpose of family reunification[12] either personally or through an authorized representative.[13] Along with the application, a person is obligated to submit a whole series of documentation, which is defined by the decree of the Government of Georgia.[14] Among the documents to be submitted, the main evidence confirming family connection is a document confirming kinship.[15] The court practice has established that a document confirming kinship may, in individual cases, be a marriage certificate.[16]

Current legislation, in the case of both same-sex and opposite-sex partners, according to the literal interpretation of the norm, would consider it possible to submit not only a marriage certificate as a document confirming kinship, but also other documents, including a document confirming civil partnership. Kinship is a broad concept and includes, among others, birth records or other relevant documents.[17] This

[12] Law N2045-IIს of Georgia "On Legal Status of Aliens and Stateless Persons", 5 March 2014, Art. 15(„ჹ").

[13] Ibidem, Art. 17(1).

[14] Decree N520 of the Government of Georgia, 1 September 2014, Art. 7.

[15] Ibidem, Art. 7(d).

[16] Decision N3/413–18 of the Tbilisi City Court, 24 April 2018, 5.

[17] Ruling N3ბ/2484–19 of the Tbilisi Court of Appeals, 20 November 2019, 5.

broad legal interpretation, on one hand, enabled administrative bodies to make flexible decisions taking into account the diversity of family units, while on the other hand, ensured legal recognition of actual family connections even in the absence of formal documentation. Such an approach, in turn, reflected the practice established by the European Court, according to which "family life" constitutes an autonomous concept[18] and is not limited to formal legal relationships.[19]

In the case of same-sex couples, it is precisely the civil partnership certificate[20] that may be the only document by which it is possible to confirm the couple's kinship.[21] This reality is conditioned by the lack of alternatives to the civil partnership institution from the perspective of legal regulation of same-sex couples' family life in many jurisdictions. Civil partnership, although not identical to marriage, provides similar legal guarantees in such areas as property rights, inheritance, social security, and immigration status.[22] The refusal to recognize civil partnership for immigration purposes effectively excludes same-sex couples' possibility to maintain family unity in a transnational context.

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[18] *Marckx v. Belgium*, App. No. 6833/74, European Court of Human Rights, 13 June 1979, para. 31.

[19] In the view of the European Court, "family life" protected by Article 8 is not limited only to families created on the basis of marriage, but may include other factual relationships. *Keegan v. Ireland*, App. No. 16969/90, European Court of Human Rights, 26 May 1994, para. 44; *Kroon and Others v. The Netherlands*, App. No. 18535/91, European Court of Human Rights, 27 October 1994, para. 30; *X, Y and Z v. the United Kingdom*, App. No. 21830/93, European Court of Human Rights, 22 April 1997, para. 36; *Schalk and Kopf v. Austria*, App. No. 30141/04, European Court of Human Rights, 24 June 2010, para. 91; *Paradiso and Campanelli v. Italy*, App. No. 25358/12, European Court of Human Rights, 24 January 2017, para. 140; same-sex couples in stable relationships fall within the scope of conventional "family life." *Vallianatos and Others v. Greece*, App. Nos. 29381/09 and 32684/09, European Court of Human Rights, 7 November 2013, para. 73; *Pajić v. Croatia*, App. No. 68453/13, European Court of Human Rights, 23 February 2016, para. 65; Costello, 215.

[20] "Marriages and Civil Partnerships in England and Wales," GOV.UK, https://www.gov.uk/marriages-civil-partnerships.

[21] Ryan, 214.

[22] Tryfonidou, 102.

Currently, given that marriage equality remains a challenge worldwide, civil union registration is available in considerably more countries.[23] This global trend demonstrates that civil partnership often represents an incremental, intermediate step toward the full legal recognition.[24] The civil partnership institution fulfills a significant function in the process of social and legal transformation, as it ensures legal protection for same-sex couples even when full marriage rights are politically or socially unattainable.[25] In this context, migration law acquires particular importance, as it often represents the sphere where transnational recognition of legal relationships acknowledged in other jurisdictions occurs.[26] Accordingly, when granting residence permits to same-sex couples, this circumstance should be taken into consideration, and in addition to marriage certificates, civil partnership certificates should be accepted for obtaining residence permits.[27] Such an approach corresponds to international legal principles that require respect for family life in its diverse forms.[28] This issue is particularly relevant for transnational families who are compelled to migrate periodically between different legal regimes. It is noteworthy that the European Court of Human Rights has repeatedly established, in relation

[23] "Legal Frameworks Same-Sex Marriage and Civil Unions," ILGA World, https://database.ilga.org/same-sex-marriage-civil-unions.

[24] Scherpe, 86. For example, Kees Waaldijk divided the national-level legal recognition of homosexual couples' relationships into a five-stage process: 1. Legalization of intimate relationships 2. Equalization of age of consent (between heterosexual and homosexual couples), 3. Introduction of anti-discrimination legislation, 4. Legal recognition of partnership, 5. Recognition of parental rights. See: Waaldijk, 51–52.

[25] When equal marriage rights are not available, civil union or registered partnership provides legal recognition for same-sex couples' relationships. For them, civil unions have inherent, essential value. *Oliari and Others v. Italy*, App. Nos. 18766/11 and 36030/11, European Court of Human Rights, 21 July 2015, para. 174.

[26] Wintemute, 767.

[27] Parliamentary Assembly of the Council of Europe, Recommendation No. 1470 (2000), "Situation of Gays and Lesbians and Their Partners in Respect to Asylum and Immigration in the Member States of the Council of Europe" (Council of Europe, 2000), para. 6.

[28] Tryfonidou, 105.

to various countries' legislation, that civil unions provide the possibility to obtain legal status that is in many aspects equal to or similar to marriage.[29] These decisions constitute significant guidance for national legal systems and establish minimum standards for recognizing same-sex couples' right to family life. The European Court practice indicates that despite the broad margin of appreciation that states enjoy in regulating family relationships, this authority is not unlimited and is subject to the principles of proportionality and non-discrimination.[30]

The 2024 law "On Family Values and Protection of Minors" explicitly prohibited the registration of same-sex partnerships as marriage and/or their recognition as marriage through legal acts,[31] as well as the legalization of marriages registered and/or recognized abroad.[32] Simultaneously, the registration and/or legal recognition of alternative partnerships to marriage and the legalization of partnerships registered and/or recognized abroad were declared inadmissible in Georgia.[33] This legislative act represents a significant transformation in the legal system and establishes a specific legal regime that differs from the more flexible approach of the previous period. These provisions of the law created legal barriers not only for local recognition of same-sex couples' legal partnerships, but also for the recognition of transnational legal relationships. Particularly noteworthy is the fact that the law prohibits not only marriage, but also the registration and legalization of "alternative partnerships to marriage," which directly affects the recognition of civil partnerships and similar institutions. According to

[29] *Schalk and Kopf v. Austria*, App. No. 30141/04, European Court of Human Rights, 24 June 2010, para. 109; *Hämäläinen v. Finland, Application No. 37359/09*, European Court of Human Rights, 16 July 2014, para. 83; *Chapin and Charpentier v. France*, Application No. 40183/07, European Court of Human Rights, 9 June 2016, paras. 49 and 51.

[30] Elfving, 174–75.

[31] Law N4437-XVIმს-Xმპ of Georgia "On Family Values and Protection of Minors", 17 September 2024, Art. 4(1).

[32] Ibidem.

[33] Ibidem, Art. 4(2).

this regulation, documents confirming kinship presented by same-sex couples seeking residence permits, such as foreign-registered marriage certificates or civil partnership certificates, do not carry legal force in Georgia. This normative framework creates a complex legal problem, as it generates conflict with fundamental principles of private international law, specifically the principle of recognition of foreign legal acts. Traditionally, despite different domestic legal regulations, countries recognize legal statuses created in other sovereign jurisdictions to avoid duplication of work and reduce administrative burden.[34] The new law represents a significant deviation from this principle and creates a situation where individuals who are fully recognized as a legitimate family unit in one jurisdiction completely lose this status on the Georgian territory.

Georgia's legal regime transformation in the sphere of transnational family relationship regulation is undergoing significant structural change as a result of the 2024 legislative initiative, which establishes a new normative framework and explicitly prohibits the legalization of foreign-registered same-sex marriages and alternative family partnerships in Georgia.

2. Individual Administrative-Legal Act on Granting Residence Permits for Family Reunification Purposes

The agency's decision regarding the issuance of a residence permit for family reunification purposes or the refusal to issue such a permit constitutes an individual administrative-legal act.[35] The administrative

[34] Mattioli, 74.

[35] Decision N3/412-18 of the Tbilisi City Court, 27 April 2018, para. 6.1; Decision N3/788-19 of the Tbilisi City Court, 19 March 2019, para. 6.1; Decision N3/8466-19 of the Tbilisi City Court, 24 January 2020, para. 6.4; Ruling N3ბ-1691-19 of the Tbilisi Court of Appeals, 30 January 2020, para. 1.3.1; Ruling N3ბ/2693-19 of the Tbilisi Court of Appeals, 15 January 2020, 9; Ruling Nბს-1241(კ-22) of the Supreme Court of Georgia, 15 June 2023, 11; Ruling Nბს-799(კ-24) of the Supreme Court of Georgia, 17 September 2024.

body acts within the framework of discretionary authority when making decisions; however, "there is no absolutely discretionary authority, just as there is no absolute legislative determinacy; authority is always connected to the framework of competence defined by legislation."[36] The concept of discretionary authority does not imply the possibility of arbitrariness by the administrative body, but rather requires the resolution of matters based on objective criteria, where every factual circumstance is subject to scrupulous assessment in the light of legal norms and principles. At the same time, when exercising discretionary authority, it is inadmissible to issue an act if the harm inflicted on a person's legally protected rights substantially exceeds the benefit for which it was issued.[37]

When examining lawsuits concerning disputed acts, judicial control is exercised over the administrative body's determination of factual circumstances that served as the basis for a particular decision, and compliance with the requirements of the principles of equality, reasonableness, proportionality between public and private interests, and proportionality.[38] The exercise of judicial control[39] in this context represents a significant legal mechanism that ensures the correspondence of administrative body actions with constitutional and international legal standards. It is particularly noteworthy that the issue of family reunification concerns not only administrative law but also fundamental human rights, specifically the right to respect for family life, which places additional responsibility on the European Court when exercising control.[40]

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[36] Ruling N3ბ/2454–19 of the Tbilisi Court of Appeals, 20 November 2019, 7.

[37] Ruling Nბს-1136(კ-24) of the Supreme Court of Georgia, 18 February 2025, 10–11; Ruling Nბს-904(კ-21) of the Supreme Court of Georgia, 10 March 2022, 7.

[38] Decision Nბს-815(კ-19) of the Supreme Court of Georgia, 16 April 2020, 5; Ruling Nბს-991(კ-24) of the Supreme Court of Georgia, 26 November 2024, 12; Decision Nბს-997(კ-18) of the Supreme Court of Georgia, 20 June 2019, 28.

[39] Turava, Pirtskhalashvili, Kardava, 80–81.

[40] Kharshiladze, Ghvamichava, 25.

In certain cases, the basis for refusing to issue a residence permit is precisely the incomplete submission of documents as defined by the government decree, which typically constitutes grounds for refusing to satisfy the lawsuit.[41] In turn, the precedence of formal criteria over substantive ones may cause disproportionate results in the context of the legitimate purpose of family reunification. Even in cases where the European Court establishes the invalidity of an individual administrative-legal act issued regarding the refusal to grant a residence permit for family reunification purposes, it only partially satisfies the lawsuit and returns the matter to the administrative body for reconsideration without resolving the disputed issue.[42] This tendency demonstrates the Court's practice of self-restraint in the sphere of discretionary authority, which formally serves the protection of the principle of separation of powers, but substantively often fails to ensure effective legal protection.[43] The Court's avoidance of decision-making capacity through returning cases to administrative bodies primarily prolongs the final resolution of disputes, increases procedural costs, and may cause the initiation of repetitive legal processes on the same issue. Accordingly, this approach by the European Court contradicts the principles of legal stability and efficient justice.[44] Despite this, a tendency is widespread in the practice of general courts where incomplete formal documentation results in negative decisions, and even when the Court establishes the invalidity of such acts, it refrains from substantive resolution of the disputed issue and returns the matter to the administrative body, thereby emphasizing the prerogative of executive power. This ap-

[41] Decision N3/7351-18 of the Tbilisi City Court, 29 January 2019; Decision N3/413-18 of the Tbilisi City Court, 24 April 2018; Ruling N3ბ/2484-19 of the Tbilisi Court of Appeals, 20 November 2019.

[42] Decision N3/9091-19 of the Tbilisi City Court, 24 January 2020; Ruling N3ბ/2454-19 of the Tbilisi Court of Appeals, 20 November 2019.

[43] Kalichava, 14.

[44] Oppermann, Classen, Nettesheim, 424–425.

proach represents a clear demonstration of judicial formalism by the Court that fails to see human rights beyond forms.[45]

Analysis of judicial practice regarding the invalidity of individual administrative-legal acts concerning the issuance of residence permits for family reunification purposes reveals a delicate balance between the discretionary authority of administrative bodies and the legal limitations of this authority. In practice, this balance is often skewed in favor of broad administrative authority, which sometimes fails to ensure adequate protection of the right to family reunification. It is noteworthy that the assessment of the legality of acts is based on a comprehensive approach that encompasses both the establishment of factual circumstances and compliance with the principles of proportionality and equality. In this context, it is crucial that courts focus more attention on substantive aspects and interpret formal criteria in the light of human rights standards and constitutional values.[46] It is recommended that courts themselves resolve disputed issues and instruct administrative bodies to issue corresponding acts in accordance with the requirements of Georgia's General Administrative Code.[47]

III. Qualifying the Refusal to Grant Residence Permits for Family Reunification to Same-Sex Couples as Discrimination

International human rights instruments protect the family[48] as the foundation of society and the state.[49] Nowadays, it is generally acknowledged that the family is one of the main factors influencing the deci-

45 Zoidze, 124.

46 Partsvania, 100.

47 General Administrative Code of Georgia, 25 June 1999, Art. 33(2).

48 Family as a "natural and fundamental group unit" that deserves protection by society and the state. Universal Declaration of Human Rights, 10 December 1948, Art. 16(3); International Covenant on Civil and Political Rights, 16 December 1966, Art. 23(1).

49 Banda, Eekelaar, 835.

sion to change residence.[50] While every person has the right to seek and enjoy asylum in other countries,[51] states retain the authority over migration matters.[52] The European Convention does not confer an absolute right to enter or reside for non-nationals. However, the ECtHR has consistently affirmed that, within the framework of their international obligations, states possess the sovereign power to regulate the entry and residence of non-citizens on their territory.[53] Although the principle is firmly rooted in international law, the Court has explained that such discretion is not without limits.[54] The Court grants contracting states a wide margin of appreciation, often supporting stricter immigration controls.[55] While persons do not ordinarily possess an absolute right to enter a foreign country, a family reunification may be recognized as a limited exception to this principle.[56] It is cumulative interpretation of the ECHR and other international instruments[57] that forms the basis of the common European policy on migrants, which reinforces the obligation of Council of Europe member states to ensure the issuance of residence permits for the purpose of family reunification.

Across the European continent, there is no uniform or consistent approach to the legal protection of same-sex couples and their families.[58] This perhaps comes as no surprise, given the longstanding chal-

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50 See: Rossi.

51 Universal Declaration of Human Rights, 10 December 1948, Art. 14.

52 *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, App. Nos. 214/80, 9473/81, 9474/81, European Court of Human Rights, 28 May 1985, para. 67.

53 *M.A. v. Denmark*, App. No. 6697/18, European Court of Human Rights, 9 July 2021, para. 131.

54 Klaasen, 158.

55 Elfving, 150.

56 Farcy, 741.

57 Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, 2007/C 306/01, signed at Lisbon, 13 December 2007, Official Journal of the European Union C 306 (December 17, 2007), Art. 63a(2)(a).

58 Willems, 151; for example, as of June 2025, same-sex marriage is legalized in 22 states of CeO https://www.pewresearch.org/religion/fact-sheet/same-sex-marriage-around-the-world/

lenges associated with the recognition of their rights.[59] The Strasbourg Court has progressively interpreted de facto family ties and the right to respect for family life as extending beyond the confines of marriage and biological kinship.[60] This reflects the Court's view that the concept of "family" under the ECHR is an inclusive and evolving concept, grounded not in formal interpretations provided by national legislatures, but in the social and emotional realities of human relationships.[61] While the European Commission of Human Rights extended the concept of "family life" to include relationship between unmarried heterosexual couples[62] – thus moving beyond a strictly traditional concept of marriage[63] – same-sex relationships, for a significant period, remained confined to the realm of private life.[64] Consequently, differential treatment between these two groups (based on sexual orientation) was deemed permissible.[65] A significant shift occurred in 2010 with the case of Schalk and Kopf vs Austria[66], in which the ECtHR, for the very first time, expressly affirmed that two men in stable, de facto relationship may also enjoy protection under the notion of the "family life" within the

[59] Shahid, 399.

[60] *Marckx v. Belgium*, App. No. 6833/74, European Court of Human Rights, 13 June 1979; *Keegan v. Ireland*, App. No. 16969/90, European Court of Human Rights, 26 May 1994; *L. v. the Netherlands*, App. No. 45582/99, European Court of Human Rights, 1 September 2004.

[61] Fawcett, Shuilleabhain, Shah, 583.

[62] *Johnston and Others v. Ireland*, App. No. 9697/82, European Court of Human Rights, 18 December 1986, para. 56.

[63] Keegan v. Ireland, App. No. 16969/90, European Court of Human Rights, 26 May 1994, para. 44; *X, Y and Z v. the United Kingdom*, App. No. 21830/93, European Court of Human Rights, 22 April 1997, para. 36.

[64] *X and Y*, App. No. 9369/81, European Commission of Human Rights, 3 May 1983; *W.J. & D.P. v. The United Kingdom,* App. No. 12513/86, European Commission of Human Rights, 13 July 1987.

[65] *S. v. The United Kingdom*, App. No. 11716/85, European Commission of Human Rights, 14 May 1986, paras. 3–7.

[66] *Schalk and Kopf v. Austria*, App. no. 30141/04, European Court of Human Rights, 24 June 2010.

meaning of Article 8 of the ECHR.[67] As the ECtHR concluded, drawing a distinction between the cohabitation of two men in a committed relationship and that of a heterosexual couple was increasingly artificial and incompatible with the principle of equality.[68] This evolution was influenced partly by the introduction of civil and registered partnerships, as these alternative forms of marriage created a new dimension in the concept of 'family.'[69] Due to the fact that the Strasbourg Court has interpreted the notion of family as a factual, rather than exclusively legal concept, it has linked it to the existence of close personal ties.[70] As a result, it has found it necessary to establish that the absence of the legal recognition does not automatically preclude the existence of family life for purposes of the ECHR. By explicitly recognizing the right to family life for same-sex couples, the Court has once again affirmed that the European convention is a "living Instrument"[71] that must be interpreted in accordance with existing social realities.[72] This conceptual transformation is of great importance for the development of legal pluralism in the European context, as it significantly redefines the normative boundaries of the notion of family.

Although the member states to the ECHR have frequently argued that the term "respect" in Article 8 implies solely a negative obligation, namely a duty to refrain from arbitrary interference, the Court has unequivocally clarified that the convention gives rise to positive obligations, requiring states to adopt measures that ensure the effective realization and protection of conventional rights.[73] This was fur-

[67] Ibidem, para. 94.

[68] Bamforth, 133.

[69] Scherpe, 83.

[70] *K. and T. v. Finland*, App. No. 25702/94, European Court of Human Rights, 12 July 2001, para. 150.

[71] *Tyrer v. The United Kingdom*, App. No. 5856/72, European Court of Human Rights, 25 April 1978, para. 31.

[72] *Schalk and Kopf v. Austria*, App. No. 30141/04, European Court of Human Rights, 24 June 2010, para. 57.

[73] Milios, 412.

ther developed in the case of Vallianatos and Other v. Greece,[74] where the ECtHR examined legislation establishing civil unions exclusively for heterosexual couples. The European Court emphasized that formally recognizing alternative forms of partnership possesses intrinsic importance for same-sex couples, transcending purely legal ramifications.[75] Furthermore, in addressing the right to family life, it was concluded that the absence of de facto cohabitation, when attributed to professional or social circumstances, does not in itself negate the existence of a family life warranting protection under the ECHR.[76] This sort of reasoning culminated in the conclusion that restricting access to such legal frameworks exclusively to opposite sex couples lacked objective and reasonable justification, thereby constituting a violation of Article 8 and Article 14 of the ECHR.[77] In 2015, the ECtHR highlighted the importance of legal recognition of homosexual relationships, affirming that such recognition contributes to reinforcing their sense of legitimacy and social inclusion.[78] Therefore, the ECHR took an additional step in its reasoning and concluded that Italy was under a positive obligation to ensure both legal recognition and protection of same-sex relationships. It observed that, within the Italian legal framework, these couples were unable to establish a legally protected union with meaningful recognition at the national level, thereby failing short of the requirements inherent in the light to respect for family life under Article 8 of the ECHR.[79] Subsequently, the Court extended its interpretation of "family life" to encompass same-sex couples in transnational context. In a case involving a Bosnian national who was denied residence

[74] *Vallianatos and Others v. Greece*, App. nos. 29381/09 and 32684/09, European Court of Human Rights, 7 November 2013.

[75] Ibidem, para. 84.

[76] Ibidem, para. 73.

[77] Schuster, 108.

[78] *Oliari and Others v. Italy*, App. Nos. 18766/11 and 36030/11, European Court of Human Rights, 21 July 2015, para. 174.

[79] Ibidem, para. 169.

in Croatia, where she sought to live with her female partner, it was concluded that stable, de facto same-sex relationships fall within the scope of family life in the same manner as different-sex partnerships in comparable circumstances.[80] The case of Pajić v. Croatia holds particular significance in the context of transnational legal regulation, as it highlights the fundamental tension between the traditional concept of national sovereignty and the universal standards of human rights. In this case, the Court effectively established mechanism for the horizontal harmonization of domestic legal systems – one that transcends the conventional limits of state jurisdiction. This judgment represents an important precedent for the functional compatibility of legal systems among CoE members', contributing to the development of the principle of the extraterritorial application of rights[81] and facilitating the effective realization of the right and freedom of movement. The Court took a further step in the Teddeucci case,[82] departing from its approach in Manenc[83] and Mata Estevez;[84] it concluded that same-sex de facto partners who lack access to marriage are not in a comparable situation to heterosexual de facto partners, who have the legal possibility to marry. Despite the significant difference, Italian law treated

[80] *Pajić v. Croatia*, App. No. 68453/13, European Court of Human Rights, 23 February 2016, para. 72.

[81] Ibidem, para. 79.

[82] *Taddeucci and McCall v. Italy*, App. No. 51362/09, European Court of Human Rights, 30 June 2016.

[83] The court found no violation of article 14 when France denied a s survivor's pension to a homosexual man in a civil partnership (PACS). According to court's reasoning, PACS was legally distinct from marriage and that the applicant's situation was not comparable to that of a surviving spouse. It emphasized that the absence of same-sex marriage in France did not justify equal treatment in this context. *Manenc v. France*, App. No. 66686/09, European Court of Human Rights, 21 September 2010.

[84] According to the court, the respondent state did not violate the ECHR by refusing to grant a survivor's pension to a homosexual man whose de facto partner dad died because benefit in question was limited to married partners. the fact that Same-sex partners did not have access to marriage at the time was not given adequate attention. *Mata Estevez v. Spain*, App. No. 56501/00, European Court of Human Rights, 10 May 2001.

both groups identically by denying family reunification to all de facto partners. According to the Court, this approach is incompatible with the ECHR unless the respondent state provides particularly convincing and weighty justification. Since no such justification was present in this case, the state's discretion to protect traditional family did not satisfy this high threshold.[85] Later in 2017, the European Court adopted a compromise approach, holding that the complete denial of legal recognition of same-sex marriages lawfully conducted abroad violated the Convention, as marital status forms a crucial part of personal identity and psychological integrity.[86] Although states are afforded a margin of discretion to regulate marriage as strictly conjugal union,[87] particularly in the absence of consensus among European states,[88] the ECHR held that the respondent state was nonetheless required to provide some form of legal recognition, such as civil unions since failure to do so created an unjustified legal vacuum that disregarded the applicant's social reality.[89] While in Oliari and Others v. Italy, the Court explicitly imposed obligation on Italy to provide legal recognition for same sex partners, this obligation was initially directed to the national context, and it was not until Fedetova and Others v. Russia[90] that this duty extended to all States Parties to the ECHR.[91] However, unlike Oliari case, the Court failed to establish that only comprehensive recognition would align with the ECHR.[92] The European Court has repeatedly af-

[85] *Taddeucci and McCall v. Italy*, App. No. 51362/09, European Court of Human Rights, June 30, 2016, paras. 92–93.

[86] *Orlandi and Others v. Italy*, App. Nos. 26431/12, 26742/12, 44057/12, and 60088/12, European Court of Human Rights, 14 December 2017, para. 144.

[87] Ibidem, para. 192.

[88] Ibidem, para. 205.

[89] Ibidem, para. 209.

[90] *Fedetova and Others v. Russia*, App. nos. 40792/10, 30538/14, and 43439/14, European Court of Human Rights, 17 January 2023, para. 166.

[91] Gill-Pedro, "No New Rights in Fedetova," Verfassungsblog, 2023 https://verfassungsblog.de/no-new-rights-in-fedotova/

[92] Palazzo, 222.

firmed that differential treatment based on sexual orientation requires particularly weighty justification.[93] For this reason, the protection of the traditional family structure, though recognized as a legitimate aim, has been characterized as an abstract aim.[94] In other words, the preservation of traditional family does not, in itself, justify the exclusion of same-sex couples from legal recognition. In Fedetova, the ECtHR rejected Russia's reliance on protection of traditional family structure[95] and public interest as a justification for its refusal to legally recognize family life of same-sex partners.[96] This judgment establishes valuable precedent that can be invoked by these couples in jurisdictions lacking legal protection as already evident[97] in other cases against Romania[98] and Ukraine.[99]

Unlike the ECtHR, which extends family reunification rights to same-sex de facto couples, the European law provides protection exclusively to married or registered same-sex partners.[100] An individual may obtain a residence permit if they are married to, or in another form of registered partnership with a citizen of member state.[101]According to the Court of Justice of the European Union, the term "spouse" under directive 2004/38 is gender-neutral and thus includes same-sex part-

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93 *Karner v. Austria*, App. no. 40016/98, European Court of Human Rights, 24 July 2003, para. 37.

94 Ibidem, paras. 40–41.

95 *Fedetova and Others v. Russia*, App. nos. 40792/10, 30538/14, and 43439/14, European Court of Human Rights, 17 January 2023, para. 213.

96 Hodson, 77.

97 Palazzo, 228.

98 *Buhuceanu and Others v. Romania*, App. Nos. 20081/19 and 20 others, European Court of Human Rights, 23 May 2023.

99 *Maymulakhin and Markiv v. Ukraine*, App. No. 75135/14, European Court of Human Rights, 1 June 2023.

100 Willems, 164.; Mukai, 770.

101 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, Official Journal of the European Union L 158 (April 30, 2004): 77, Art. 7(4).

ners.[102] Moreover, domestic authorities of the member states are not allowed to deny a residence permit to a third-country national solely on the basis of national law.[103] The careful analysis of the case demonstrates that the Court confined itself strictly to the issues of residence rights, deliberately avoiding consideration of other important aspects of the marriage institution, including child-rearing, inheritance, property and taxation matters.[104] The Coman judgment affirmed that the competence related to family and marriage issues rests with the member states;[105] however, it required the recognition of rainbow marriages for the limited purpose of granting residence rights to third country spouses.[106] While the ruling does not impose broader obligations, it may, however, lead to gradual expansion of rights.[107] With this decision, the CJEU attempted to struck the balance between the autonomy of member states to regulate family-related issues and the fundamental right of EU citizens to effectively exercise free movement, thereby significantly advancing EU law in the context of residence permits granted for the purpose of family reunification. This form of self-restraint reflects a kind of institutional caution aimed at avoiding political tension within member states on sensitive issues and at ensuring consistent development of legal integration within the EU.

Refusal to grant residence permit for the purposes of family reunification to same-sex partners on the basis that the state does not recognize marriage equality results in unequal treatment of these couples based on sexual orientation, which is a protected ground against discrimination under both the ECHR[108] and the Constitution

[102] *Coman and Others*, Case C-673/16, Court of Justice of the European Union, 5 June 2018, para. 35.

[103] Ibidem, para. 58.

[104] Okropiridze, 140.

[105] Kochenov, Belavusau, 556.

[106] Tryfonidou, 105.

[107] Willems, 164–65.

[108] *Salgueiro da Silva Mouta v. Portugal*, App. No. 33290/96, European Court of Human Rights, 21 December 1999, para. 36; *E. B. v. France*, App. No. 43546/02, European

of Georgia,[109] as well as, Georgia's Law on Elimination of all Forms of Discrimination.[110] In order to make differential treatment on a protected ground a legitimate restriction, it requires an objective and reasonable justification.[111] The absolute prohibition established by Georgian law[112] cannot be deemed legitimate, as it disproportionately restricts the right to family life of same-sex couples while granting the possibility to obtain a residence permit for family reunification exclusively to different-sex couples. Such a restriction constitutes discrimination.[113]

IV. Conclusion

The legal recognition of same-sex partners' family relationships in the context of residence permit issuance is not merely a technical or administrative matter, but a fundamental legal issue that engages the realization of human rights, the principle of non-discrimination, and the transnational compatibility of legal systems.

The main challenge in confirming a familiar relationship for same-sex couples lies in the legal non-recognition of documents proving marriage or civil partnership registration abroad. The 2024 Law "On

Court of Human Rights, 22 January 2008, para. 93; *X and Others v. Austria*, App. No. 19010/07, European Court of Human Rights, 19 February 2013, para. 99.

109 Decision N1/13/878 of the Constitutional Court of Georgia, 13 July 2017, II-15.

110 Law N2391-IIს of Georgia "On the Elimination of All Forms of Discrimination", 2 May 2014, Art. 1.

111 Decision N1/1/493 of the Constitutional Court of Georgia, 27 December 2010, II-2; *Vallianatos and Others v. Greece*, App. Nos. 29381/09 and 32684/09, European Court of Human Rights, 7 November 2013, para. 76; *Molla Sali v. Greece*, App. No. 20452/14, , European Court of Human Rights, 19 December 2018, para. 135; *Fábián v. Hungary*, App. No. 78117/13, European Court of Human Rights, 5 September 2017, para. 113; *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, App. Nos. 214/80, 9473/81, 9474/81, European Court of Human Rights, 28 May 1985, para. 72.

112 Law N4437-XVIმს-Xმპ of Georgia "On Family Values and Protection of Minors", 17 September 2024, Art. 4(1)(2).

113 *Pajić v. Croatia*, App. No. 68453/13, European Court of Human Rights, 23 February 2016, para. 86.

Family Values and Protection of Minors" has created a significant legal obstacle, excluding the possibility of legalizing foreign-registered marriages or other alternative forms of union in Georgia.

In the exercise of discretionary powers by administrative authorities, there is a tendency to prioritize formal criteria over substantive considerations, which often fails to ensure the effective realization of the right to family reunification. When exercising judicial review, courts generally refrain from interfering with the discretionary powers of administrative body, which can decrease the effectiveness of legal protection. As a result, rather than remanding the case to the administrative authority, the Court should address the contested issue itself, relying on the standards established by the ECtHR.

The development of ECtHR's jurisprudence demonstrates that same-sex partners are entitled to the right to family life under Article 8 of the ECHR. The evolving interpretation of the concept of "family life" by the Strasbourg Court represents an essential aspect of the development of legal pluralism. The European Court's case-law establishes a positive obligation on States to ensure some form of legal recognition of same-sex couples' relationship.

Refusal to issue a residence permit to same-sex couples constitute discrimination on the grounds of sexual orientation, which is incompatible with both the ECHR and the Constitution of Georgia. The jurisprudence of CJEU establishes that member states are obliged to recognize the right to residence for same-sex couples, regardless of whether their national legislation recognizes such marriages or alternative type of registered partnerships.

The current legislation of Georgia, especially after the legislative amendments of 2024, fundamentally contradicts the standards established by the European Court of Human Rights. This contradiction becomes particularly pronounced in the context of residence permit issuance, where same-sex couples are systematically subject to unequal treatment.

Addressing this issue requires a comprehensive legal reform aimed at harmonizing domestic legislation with international standards, especially, the abolition of the ban on recognizing foreign-registered marriages and civil partnerships for the purposes of granting residence permits in the context of family reunification. It is important to refine the criteria for exercising discretionary powers of administrative bodies to ensure legal recognition of de facto family ties beyond formal documentation. Georgia's international obligations require this issue to be addressed within the framework of a human rights-based approach, which ensures the right of all persons to respect for family life regardless of their sexual orientation.

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