

## Activists and Lawyers in the ECtHR: The Struggle for Gay Rights

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The ECtHR has emerged as a central site upon which important social and political struggles are played out in Europe. Activism in litigation before it though has largely been overlooked; the Court is an institution typically studied through a legalistic lens. While academics such as Upendra Baxi<sup>2</sup> and Neil Stammers<sup>3</sup> have long insisted that rights have their genesis in social movements rather than formal legal documents, only recently have writers such as Dembour<sup>4</sup> began to pay special attention to the European Convention on Human Rights (ECHR) as a site upon which social activists conduct their struggles. In this chapter, I suggest that whilst litigation before the Court is still heavily individualistic and consequently the role that NGOs play in shaping it should not be exaggerated, there are notable spaces or niches in it in which NGOs are prominent in claiming rights. In particular, this study examines how lawyers and activists have used litigation before the ECtHR as a tool through which to mobilise on behalf of LGBT (lesbian, gay, bi-sexual and transgender) minorities. It also highlights the transformative role of NGOs in framing and shaping rights claims in circumstances where their very nature is contested.

The history of legal struggles by gay rights activists has shaped the Court's interpretation of the Convention's rights. As Bunch notes: 'The concept of human rights, like all vibrant visions, is

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<sup>2</sup> U Baxi, *The Future of Human Rights* (Oxford, OUP, 2002).

<sup>3</sup> See, for example, N Stammers, *Human Rights and Social Movements* (London, Pluto Press, 2009).

<sup>4</sup> M Dembour, *Who Believes in Human Rights? Reflections on the European Convention* (Cambridge, CUP, 2006).

not static or the property of any one group: rather, its meaning expands as people reconceive of their needs and hopes in relation to it.’<sup>5</sup> Hence our understanding of the rights protected under the ECHR is subject to continual change. The ECtHR’s adopted process of teleological interpretation requires it to pronounce upon legal, social, political, and cultural developments as it establishes the scope of the Convention’s rights, regardless of whether or not it is adequately equipped to do so. The questions raised in many of the cases that come before it have no immediately obvious answer that can be derived from universally accepted human rights standards. In recent cases — which serve only as examples of the myriad important and complex issues that have been placed before the Court for resolution — the Court has been asked to address questions relating to the pre-implantation screening of embryos at risk of inheriting cystic fibrosis,<sup>6</sup> extending testimonial privilege in criminal proceedings to long-term co-habiting partners,<sup>7</sup> the refusal of parental leave to military servicemen when such leave is available to servicewomen.<sup>8</sup> In delivering judgments upon issues such as these, the Court has the potential to play a dynamic role in sculpting the social landscape of Europe.

While the Court has typically been viewed through a legal lens, the ramifications of its judgments are clearly not constrained to the legal sphere. NGOs in particular recognise that the ECtHR’s judgments have the potential to foster social transformation — albeit on a modest and incremental scale — and several organisations have consequently become involved in applications to the Court with this aim in mind. It is particularly noteworthy that groups that

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<sup>5</sup> C Bunch, ‘Women’s Rights as Human Rights: Towards a Re-vision of Human Rights’ (1990) 12(4) *Human Rights Quarterly* 486, 487.

<sup>6</sup> *Costa and Pavan v Italy*, 54270/10, 28 August 2012.

<sup>7</sup> *van der Heijden v Netherlands*, 42857/05, 3 April 2012.

<sup>8</sup> *Konstantin Markin v Russia*, 30078/06, 22 March 2012.

have a narrow political focus and a clear agenda to promote social change (‘pressure groups’ or ‘single-issue groups’) have a tendency to instigate litigation that demands a (re)interpretation of the Convention’s rights. This chapter presents an issue-based case study that focuses on ‘gay rights’<sup>9</sup> cases before the Court and considers the role that NGOs have played in them. By presenting data relating to LGBT rights claims that have been heard by the Court (concentrating on admissible cases only), I examine the level and nature of NGO involvement in these cases and analyse the impact of this involvement in shaping the Court’s jurisprudence. The analysis raises questions about the impact that gay rights activists have had on the nature and direction of the Court’s jurisprudence, as well as about the effectiveness of ECHR litigation strategies as a means of securing gay rights.

## **THE ECHR AND RIGHTS MOBILISATION**

The ECtHR, I suggest, does not predominantly operate as a forum for rights mobilisation. In many respects the European system of rights protection epitomises the liberal ideal of resolving discrete individual rights claims that have no significance beyond the applicant and state concerned. Indeed, the Court’s procedures have been adapted over the years with the specific purpose of placing the individual victim in a more central position. As it is noted, the Court has generally “refrained from considering the broader laws and institutional structures, to which the issues raised by the individual case at hand may be linked”.<sup>10</sup> The Court’s proceedings are

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<sup>9</sup> Using the catch-all term ‘gay rights’, I mean to refer to all LGBT rights claims.

<sup>10</sup> D Anagnostou, ‘Does European Human Rights Law Matter? Implementation and Domestic Impact of Strasbourg Court Judgments on Minority-Related Policies’ (2010) 14(5) *International Journal of Human Rights* 721, 724.

technocratic and legalistic in nature, rendering it meaningfully accessible to an elite few. Taking a case to Strasbourg is costly and slow – and thus it is a high-risk strategy for time-poor, cash-strapped organisations.

Thus there are a number of reasons why social activists' engagement with the Court's litigation is limited from a quantitative perspective.<sup>11</sup> However, certainly some activists and lawyers *have* used it in their struggles to effect, and the transformative potential of its judgments are now starting to be better appreciated. This coincides with the Court's constitutional role recently being stressed by a number of commentators, most notably Steven Greer, as the individualistic model of justice comes under growing strain.<sup>12</sup> In recent years the Court has shown greater willingness to look behind the individual facts presented in a case and to acknowledge the broader systemic issues that place those facts in a meaningful context. Alongside this trend towards 'constitutionalisation', the Convention's enforcement mechanisms have been strengthened, which makes it a more attractive focal point for the limited resources of NGOs. In particular, the Committee of Ministers supervises more intensely the execution of judgments since the amendment of Article 46 under Protocol 11. This inevitably adds considerable political

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<sup>11</sup> See L Hodson, *NGOs and the Struggle for Human Rights in Europe* (Oxford, Hart Publishing, 2010), especially Chapter 3.

<sup>12</sup> S Greer, *The European Convention on Human Rights: Achievements, Problems and Prospects* (Cambridge, Cambridge University Press, 2006); S Greer, 'What's Wrong with the European Convention on Human Rights?' (2008) 30 *Human Rights Quarterly* 680. See also: R Berhardt, 'Human Rights and Judicial Review: The European Court of Human Rights' in D M Beatty (ed), *Human Rights and Judicial Review: A Comparative Perspective* (Dordrecht, Kluwer, 1994); R Ryssdal, 'On the Road to a European Constitutional Court' (1992) 12 *Collected Courses of the Academy of European Law* 1; C Warbrick, '"Federal" Aspects of the European Convention on Human Rights' (1989) 10 *Michigan Journal of International Law* 698.

The Court itself has referred to the Convention as a constitutional 'instrument of European public order' on several occasions. See, for example, *Loizidou v Turkey* (preliminary objections) Series A no 310 (1995) 20 EHRR 99 [75] and *Cyprus v Turkey* ECHR 2001-IV (2002) 35 EHRR 30 [78].

authority to the Court's judgments, whose legal authority is already rated highly by many commentators.

As the Court gains confidence in its 'constitutional' role and flexes its jurisprudential muscles in order to breathe life into the Convention's decades-old language, so, inevitably, the social and political – as well as legal – impact of its decisions is greater. This is not to argue that the Court no longer demonstrates a cautious approach in its decision-making; rather, it is to suggest that when the Court finds itself adopting a 'controversial' or 'radical' judgment, the ensuing ripples *can* spread very widely. In the words of Anagnostou, '...ECtHR case law does matter and it matters in a variety of ways. Its potential to exert influence over domestic laws and policies ranges from negligible to substantial.'<sup>13</sup>

NGOs are playing a significant role in this trend towards constitutionalisation. In particular, those NGOs wishing to expand and re-frame human rights norms have increasingly paid attention to the task of re-shaping the Court's jurisprudence. Such involvement typically takes place 'behind the scenes' in a supportive or advisory role, although NGOs can also intervene as a third party, submitting written (and occasionally oral) observations as a non-party.<sup>14</sup> From the perspective of activists, the potential gains that come from a 'win' in Strasbourg are considerable. In short, in recent years there has been greater awareness of the important

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<sup>13</sup> Anagnostou, 'Does European Human Rights Law Matter?' (2010), 735.

<sup>14</sup> Article 36 of the Convention provides:

1. In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.
2. The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.
3. In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.

opportunity that the ECHR provides for activist and lawyers to mobilise and to make rights claims – also it has opened the door to studies of social movements and activists before it.

While the degree of NGO involvement should not be exaggerated, it is clear that they play a prominent part in ‘issue emergence’ in the Court’s litigation.<sup>15</sup> In a recent study of NGO involvement in ECHR litigation I found that one area in which NGOs ‘cluster’ is at the ‘margins’ of the Court’s litigation, in those difficult grey areas in which battles over the Convention’s meaning are fought.<sup>16</sup> While some NGOs aim to have a stabilising role that seeks to support the status quo established under the Convention system, the primary aims of others is to expand the Convention’s meaning or to challenge the Court’s established case-law and take the Convention in new directions. This is the more radical and potentially transformative role that NGOs play in litigation before the Court and one usually performed by ‘single issue’ groups or pressure groups. Such transgressive activities are particularly challenging because they highlight the potentially radical implications of NGO involvement in human rights law, raising hard questions about the nature and legitimacy of organisations and strategies that aim to transform rather than entrench the Court’s case law. The ethical questions raised by any shift away from a victim-centred focus in the Court’s litigation are also deeply challenging.

Conversely, for those NGOs who look to the Convention with transformation in mind, the question will be how far transformation is actually possible within the confines of the Strasbourg system. If the Court is sought by social actors as a place to challenge entrenched legal and

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<sup>15</sup> Issue emergence ‘is the conceptual link between the myriad bad things out there and the persuasive machinery of advocacy politics in world affairs’. R Charli Carpenter, ‘Setting the Advocacy Agenda: Theorizing Issue Emergence and Nonemergence in Transnational Advocacy’ (2007) 51 *International Studies Quarterly* 99, 102.

<sup>16</sup> Hodson, *NGOs* (2011).

political norms, how successful can such challenges be given the notoriously conservative nature of the institution in question? If the Court is a place where hegemonic and counter-hegemonic forces meet, what outcome can be expected from such a potentially combustible collision point? I turn now to consider this question through an examination of ECHR cases aimed at furthering gay rights.

## **MOBILISING FOR GAY RIGHTS BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS**

Rapid legal and social developments have taken place in recent years throughout Europe concerning sexual minorities, developments that have been associated with organised activism and legal mobilisation on the part of pressure groups.<sup>17</sup> Human rights discourse has become ‘one of the most effective vehicles for mobilizing a range of moral and political claims that contest the widespread social and legal discrimination experienced by sexual minorities.’<sup>18</sup> A number of activist organisations have recognised the potential the Court’s judgments have to bring pressure to bear on Council of Europe Member States to establish equal rights for sexual minorities. Consequently, there have been a number of key ECHR cases in which the struggle for gay rights has been played out, and significant victories for those mobilising for change.<sup>19</sup> From the table included at the end of this chapter, the scale of NGO involvement can be assessed. In short, of

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<sup>17</sup> Anagnostou, ‘Does European Human Rights Law Matter?’ (2010).

<sup>18</sup> P Johnson, *Homosexuality and the European Court of Human Rights* (Abingdon, Routledge, 2013) 2.

<sup>19</sup> For a full discussion, see, for example: R Wintermute, *Sexual Orientation and Human Rights: The United States Constitution, the European Convention and the Canadian Charter* (Oxford, Clarendon Press, 1995); E Heinze, *Sexual Orientation: A Human Right: An Essay on International Human Rights Law* (Dordrecht : Martinus Nijhoff Publishers, 1995); L Thomas, *Sexual Orientation and Human Rights* (Lanham, Md., Rowman & Littlefield, 1999).

the 45 key LGBT cases in which the Court has delivered judgment at the time of writing, I identified NGO involvement in 29. That figure, naturally, is *far* higher than would be found in a random selection of the Court's cases.<sup>20</sup> I turn now to consider the role that some of these NGOs have played in greater depth.

### *Privacy Rights: out of the closet and into the Court*

Initially, the Court was engaged with cases involving criminal law provisions that discriminated against gay men, the first of which was *Dudgeon v UK*.<sup>21</sup> In that case the Court held that the criminalisation of male homosexual acts under the Offences against the Person Act 1861 in Northern Ireland amounted to a violation of Article 8 of the Convention. Jeffrey Dudgeon, who brought that case before the Court after being interrogated by the Ulster Constabulary about his sexual activities, is a prominent activist and politician in Belfast. The Court noted of Mr Dudgeon that 'he and others have been conducting a campaign aimed at bringing the law in Northern Ireland into line with that in force in England and Wales and, if possible, achieving a minimum age of consent lower than 21 years.'<sup>22</sup> Specifically, the case was initiated by the Northern Ireland Gay Rights Association - an organisation established in 1975 - which had chosen one member to act as the named victim.<sup>23</sup> We can, therefore, see in this case evidence of the central role law has played in the framing of gay rights mobilisation: here embryonic activist groups specifically organised around the task of challenging particular discriminatory laws.

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<sup>20</sup> Hodson, *NGOs* (2010), chapter 3.

<sup>21</sup> *Dudgeon v UK*, Series A/49 23 September 1981, (1982) 4 EHRR 149.

<sup>22</sup> Ibid, para. 32.

<sup>23</sup> S Jeffery-Poulter, *Peers, Queers & Commons: The Struggle for Gay Law Reform from 1950 to the Present* (London & New York, Routledge, 1991), 148.

Significantly, counsel in this case was the prominent human rights academic and activist, Kevin Boyle, who would go on to represent applicants in a huge number of Strasbourg cases, perhaps most prominently supporting Kurdish victims of gross human rights violations by the Turkish State. The early use made of those voiced in the technocratic legalistic language of human rights illustrates the perceived need gay rights activists had to at once root their campaign in the current core of human rights discourse while at the same time articulating an alternative vision of that core. Indeed, there is some evidence that the supporting networks behind the *Dudgeon* case had a transnational dimension (albeit limited): while no formal third party intervention was submitted, the applicant, although under the Rules of Court at the time not formally party to the proceedings, requested the Court to hear evidence from Dr Dannacker, Assistant Professor at the University of Frankfurt in the field of human sexuality (although no further reference to this person is made in the judgment). Following Mr Dudgeon's case, homosexuality was decriminalised in Northern Ireland.<sup>24</sup>

South of the border, the campaigning baton passed to David Norris, another high-profile politician and activist.<sup>25</sup> The Court described the applicant as 'an active homosexual [who] has been a campaigner for homosexual rights in Ireland since 1971; in 1974 he became a founder member and chairman of the Irish Gay Rights Movement.'<sup>26</sup> Significantly, he was also a founder of the Campaign for Homosexual Law Reform in Ireland, signalling his recognition of the transformative potential of campaigning strategies with a legal dimension. His application to

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<sup>24</sup> The Homosexual Offences (Northern Ireland) Order 1982, No. 1536 (N.I. 19)

<sup>25</sup> *Norris v Ireland*, Series A/142 26 October 1988, (1991) 13 EHRR 186.

At the time his case was before the Court, Mr Norris was a member of the Seanad Éireann (the second chamber of the Irish Parliament), where he continues to hold a seat. In 2011 he stood for election as President of Ireland.

<sup>26</sup> *ibid*, para. 9.

Strasbourg, similarly to Mr Dudgeon's, challenged legislation criminalising male homosexual activity (although, unlike Mr Dudgeon, the relevant legislation had not been enforced in any way against him personally). Illustrating the difficulties that organisations have in being accommodated within the formal confines of the ECHR framework, it is interesting to note and little reported that the National Gay Federation was joined in the application at the Commission stage, although complaints made on its behalf were dismissed.<sup>27</sup> The applicant was represented by Mary Robinson, herself a member of the Campaign for Homosexual Law Reform. The Criminal Law (Sexual Offences) Act 1993, which entered into force on 7 July 1993, modified the Irish criminal legislation regarding homosexual acts. These cases were followed by *Modinos v Cyprus*<sup>28</sup>, in which the anti-sodomy provision in Section 171 of the Cypriot Criminal Code was successfully challenged. Similarly to the Irish cases preceding it, the applicant is referred to by the Court as the President of the 'Liberation Movement of Homosexuals in Cyprus'. While the Cypriot response to the judgment was rather slow, homosexual acts were eventually decriminalised in 1998.

These cases represent a kind of legal awakening, they are the product of driven individuals supported by embryonic campaigning organisations. They serve to demonstrate why gay rights legal campaigns might have emerged: the potential impact of a 'win' in Strasbourg for these movements was considerable and transnational in effect. The Court's individualistic procedures inevitably shaped these early gay rights campaigns into isolated individual complaints; behind the scenes of these cases, however, were numerous nameless others driving the mobilisation efforts. While the cost of litigation was in personal terms for the named applicants undoubtedly

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<sup>27</sup> *Norris v Ireland*, Decision of 16 May 1985 (1986) 8 EHRR CD75 p.135.

<sup>28</sup> *Modinos v Cyprus*, Series A/259 22 April 1993, (1993) 16 EHRR 485.

high (David Norris continued to face questions about his homosexuality during his 2011 Presidential campaign), the gains were considerable. These cases heralded the start of an ongoing relationship between gay rights organisations and the ECtHR. Although the Court did not embrace the involvement of NGOs and organised social movements (we see the NGOs, of which the applicants were a part, only operating behind the scenes of the cases), locating their campaigns both in the human rights core and in a counter-hegemonic vision of rights, was nonetheless critical in getting gay rights on to the Court's agenda.

However, the outcome of these cases was not invariably positive, at least not immediately, and it is clear that the Court's judgments are not a panacea. Following *Modinos*, for example, the government's response was not approved by the Committee of Ministers until December 2001<sup>29</sup>, pursuant to legislative changes adopted on 16 June 2000 (under Amending Law 77 (1)/2000). Trimikliniotis and Karayanni note that 'the significant delay in responding to the recommendations of the European Court of Human Rights was the result of strong opposition from some Christian organisations and church leaders'.<sup>30</sup> Revealingly, Mr Dudgeon was less than enthusiastic about his personal experience before the Strasbourg court, describing the process as one in which governments export power to a system free from democratic constraints, yet maintain the capacity to stall progress.<sup>31</sup> This perhaps reflects the too-heavy demands that the individualistic procedures of the Courts make on the individual applicant. The psychological discomfort experienced by many rights litigants may also raise questions about the choice of strategy that these early gay rights campaigners adopted, in which the individual applicant is

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<sup>29</sup> Resolution ResDH(2001)152.

<sup>30</sup> N Trimikliniotis and S Stavrou Karayanni, *The situation concerning homophobia and discrimination on grounds of sexual orientation* (SIMFILIOSI Policy Paper, Cyprus, March 2008).

<sup>31</sup> Jeffery-Poulter, *Peers, Queers & Commons* (1991), 154.

effectively reduced through the process of rights articulation to a single - essential, yet private - aspect of his being. On a normative level, Johnson notes the Court's early tendency to conceptualise the claims of sexual minorities as a matter concerning private life has a 'tendency to reinforce the social relations of the closet'.<sup>32</sup>

*Professionalising Dissent: Stonewall and the ECtHR*<sup>33</sup>

Stonewall was formed in 1989 as a professional lobby organisation that would strive to achieve legal equality and social justice for lesbians, gay men, bisexual and transgender (LGBT) people in the UK.<sup>34</sup> The experience of those who had campaigned against the introduction of the notorious 'Section 28', which prohibited local authorities from intentionally 'promoting homosexuality', highlighted the need for such an organisation.<sup>35</sup> Stephen Jeffery-Poulter, in his study of the UK movement for gay law-reform, writes:

The establishment of Stonewall as a modern, streamlined, professional non-partisan lobbying outfit designed to react quickly and effectively without being hamstrung by reference to a mass membership and yet aiming to work within the broad consensus of its constituency, suggests that the campaigning movement has finally come of age.<sup>36</sup>

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<sup>32</sup> Johnson, *Homosexuality* (2013), 212.

<sup>33</sup> An earlier version of this discussion of Stonewall's litigation was published in Hodson, *NGOs* (2010) chapter 6.

<sup>34</sup> For more information, see Stonewall's web-site at [www.stonewall.org.uk](http://www.stonewall.org.uk).

<sup>35</sup> The Local Government Act 1986, s.2A(1) (as amended by Local Government Act 1988, s.28). It was repealed in September 2003.

<sup>36</sup> Jeffery-Poulter, *Peers, Queers and Commons* (1991), 260.

Jeffery-Poulter suggests that the Section 28 debate was something of a watershed as it was the ‘first time, every politician opposed to Clause 28 had framed their arguments in the context of gay rights being a matter of basic civil liberties’.<sup>37</sup>

What is interesting about Stonewall is its professionalism as a lobby group and the naturalness with which it has engaged with human rights. Stonewall certainly used rights-based arguments as a lobbying tactic from very early on, and one of its first actions was to draft an Equality Bill.<sup>38</sup> The adoption of a rights-based approach has led Stonewall to challenge discriminatory legislative provisions through a limited programme of human rights litigation, alongside more traditional lobbying methods. Although Stonewall is not a public interest litigation organisation, it sometimes brings its expertise and resources to bear in strategically important cases. Stonewall does not have in-house lawyers working on these cases; it relies instead upon a network of lawyers who are prepared to do *pro bono* work on its behalf. Neither does Stonewall have a dedicated legal advice help-line, which might be used to identify potentially important cases. Nevertheless, it is a relatively large and high-profile organisation with a wide membership body and it is regularly contacted for help and advice by people who have faced discrimination, which appears to be the primary means by which potential test cases are identified. In particular, Stonewall has a short but impressive history of challenging legislative provisions that criminalise homosexual activity, some of which has been done through litigation before the ECtHR. It was, for example, involved in *Wilde, Greenhalgh and Parry v UK*<sup>39</sup> and *Sutherland v UK*,<sup>40</sup> both of which challenged the

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<sup>37</sup> *ibid*, 240.

<sup>38</sup> *ibid*, 246.

<sup>39</sup> *Wilde, Greenhalgh and Parry v UK* (Cm dec), App no 22382/93, ECHR 19 January 1995 (1995) 19 EHRR CD86.

<sup>40</sup> *Sutherland v UK* (Cm dec), App no 25188/94, ECHR 27 March 2001 (1997) 24 EHRR CD22.

higher age of consent for sexual activity between men before the Commission. *ADT v UK*,<sup>41</sup> the first Stonewall case to reach the Court, followed this pattern of challenging specific pieces of discriminatory legislation through human rights litigation.

The *ADT* case arose following the applicant's conviction for gross indecency between men contrary to Section 13 of the Sexual Offences Act 1956. Although sexual acts between men in England and Wales were partially decriminalised under the Sexual Offences Act 1967, this did not extend to acts committed when two or more persons take part or are present. The applicant's conviction was primarily based on videotapes that showed him and up to four other men engaging in sexual acts, which were found during a police search of his home. Although the acts in question were consensual and had taken place in a private residence, because they involved more than two men they fell foul of the Sexual Offences Act. Following his conviction the applicant was sentenced and conditionally discharged for two years and he was advised that there were no prospects for a successful appeal. He immediately turned to Stonewall for help. The application to the ECmHR and the resulting proceedings before the ECtHR (in which a violation of Article 8 was found) were financed by Stonewall, which was assisted by lawyers acting *pro bono*. By this stage of the proceedings the domestic lawyer, although named as the applicant's representative, was not really involved. Angela Mason, then Executive Director of Stonewall, is referred to in the judgment as 'adviser' to the applicant.

Repeal of section 13 of the Sexual Offences Act 1956 was a central part of Stonewall's 'Equality 2000' campaign that was launched in June 1997 to eradicate specific areas of legislative

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<sup>41</sup> *ADT v UK*, 31 July 2000, (2001) 31 EHRR 33.

discrimination against gay people. Gross indecency laws, Stonewall argued, ‘led to the use of ‘pretty policemen’ acting as agents provocateurs and often poisoned relationships between the police and the gay community’.<sup>42</sup> Indeed, the *ADT* litigation undoubtedly made a considerable contribution to the British Government’s decision in January 1999 to conduct a major review of sexual offences, which was undertaken by a diverse team that included representatives from Stonewall. The review team, noting the discriminatory nature of the gross indecency laws, recommended their repeal. Behind this recommendation was a belief that ‘the criminal law should not treat people differently on the basis of their sexual orientation’.<sup>43</sup> The review team’s conclusion was based — at least in part — on the ‘indications of greater openness towards and acceptance of differing sexual orientation’.<sup>44</sup> The Sexual Offences Act 2003, which was implemented on May 2004, repealed the gross indecency provisions of the earlier Sexual Offences Act and brought this particular campaign to its conclusion.

Although on a restrictive reading the *ADT* case addressed a rather narrow legal provision prohibiting certain sexual acts between men, it goes without saying that its significance lies in the fact that it was a small but important step in gay rights organisations’ (on-going) journey towards eradicating all forms of discrimination against LGBT people and achieving social inclusion for this group. It demonstrates the potentially destabilising impact of legal mobilisation strategies: whilst LGBT people in Europe are not subjected to the same levels of discrimination and marginalisation as the Roma, for example, it is clear that they have been

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<sup>42</sup> Stonewall Press Release, ‘*Anti-Gay Law Now a Dead Letter*’, 31 July 2000 (on file with author).

<sup>43</sup> Home Office, *Setting the Boundaries: Reforming the Law on Sex Offences* Volume 1 (London, Home Office Communication Directorate, July 2000), Recommendation 44.

<sup>44</sup> *ibid*, 98.

frequently constructed as ‘undesirable’ and ‘the other’ in Europe.<sup>45</sup> Stonewall’s rooting of its struggle for gay rights in the core of human rights discourse certainly reaped many rewards in terms of legislative change. It also coincided with gay rights discrimination issues being picked up by more mainstream human rights organisation, such as Liberty<sup>46</sup>, who intervened in *Smith and Grady v UK*<sup>47</sup> (the ‘gays in the military’ case, ending the prohibition on homosexual men and women serving in the armed forces) and in *Goodwin v UK*<sup>48</sup> (leading to the rights of trans persons to have their gender recognised). Nevertheless, with the involvement of professional gay rights lobby groups the struggle for gay rights became increasingly technocratic and distanced from the grassroots. In the process of professionalising dissent, the task of destabilising the rights core looked occasionally more akin to refining - and perhaps even reaffirming - the rights core.

#### *ILGA-Europe: a transnational network is established*

The International Lesbian, Gay, Bisexual, Trans and Intersex Association (formerly the International Gay Association) was founded in 1978 and brings together hundreds of LGBT groups (and transgender, intersex and queer) to unite in the struggle for rights. Its relationship with the United Nations has been long and complex, and the organisation continues to struggle to

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<sup>45</sup> C Stychin, *A Nation by Rights: National Cultures, Sexual Identity Politics, and the Discourse of Rights* (Philadelphia, Temple University Press, 1998), 13.

Herman makes the similar point that ‘the demand for “lesbian and gay rights is a struggle for membership in the “human community”’. See D Herman, ‘The Politics of Law Reform: Lesbian and Gay Rights Struggles into the 1990s’ in J Bristow and A R Wilson (eds), *Activating Theory: Lesbian, Gay, Bisexual Politics* (London, Lawrence & Wishart, 1993), 250.

<sup>46</sup> For more information about Liberty, see Hodson, *NGOs* (2010), chapter 5.

<sup>47</sup> *Smith and Grady v UK*, Reports of Judgments and Decisions 1999-VI, (1999) 27 EHRR CD42.

<sup>48</sup> *Christine Goodwin v UK*, no. 28957/95, ECHR 2002-VI.

find an effective platform there.<sup>49</sup> The European region of the organisation (ILGA-Europe), was established as a separate organisation in 1996 and enjoys participative status at the Council of Europe since 1997. It brings together 294 organisations from 40 Council of Europe States, and has been notably more influential than its parent body in instigating legal and social reform.

Part of ILGA-Europe's strategy is to develop strategic litigation targeted at identified 'gap' areas. To this end it encourages potential organisations and litigants to approach them with suitable cases, in which they can assist. Much of its litigation activity takes place in the background, and for the purposes of this research it was therefore sometimes hard to identify its role in ECtHR cases. Nonetheless, its presence as a unifying force for European gay rights organisations, a resource centre, and a centre of expertise in strategic litigation is unquestionably highly significant. ILGA-Europe's strategy of mobilisation of rights norms 'has spread transnationally, coordinating national initiatives, and transmitting relevant legal expertise, political skills, and advocacy work across states'.<sup>50</sup>

ILGA-Europe's most visible presence before the Court is as a third party intervener, in which role it provides comments in key cases, invariably joining other major human rights organisations to add weight to its arguments. Interestingly, its interventions have usually been in the area of LGBT family rights, suggesting that ILGA-Europe prefers to focus in legal expertise on those 'gap areas' in which the Court's approach has been, at best, ambiguous. For example, in *Schalk and Kopf v Austria* it argued (partly successfully) that same-sex couples can establish

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<sup>49</sup> J Swiebel 'Lesbian, gay, bisexual and transgender human rights: the search for an international strategy' (2009) 15 *Contemporary Politics* 19.

<sup>50</sup> Anagnostou, 'Does European Human Rights Law Matter?' (2010), 736.

family life and that they have a right to relationship recognition. Previously, in *E.B. v France*,<sup>51</sup> it argued (successfully) that France was not entitled to exclude a single lesbian woman from the opportunity of applying to adopt a child; in *Karner v Austria*<sup>52</sup> it argued (partly successfully) that discrimination between unmarried same-sex and opposite-sex couples in relation to tenancy succession was unlawful and that same-sex couples enjoy family life under the Convention. These cases strikingly demonstrate mobilisation strategies that continue to imagine what the Convention might mean for LGBT people and to re-imagine ways in which their rights might be argued before the Court.

Transnational networks are also important in supporting those engaged in old struggles (from an ECHR perspective) that continue to be played-out in less receptive political climates. Further to effective transnational networking among gay rights organisations, litigation strategies developed in Western European countries have spread to newer member States and are currently being used to challenge the treatment of sexual minorities in hostile and oppressive climates. Taking the lead in this is Project GayRussia. The organisation says it has initiated over 200 court cases in Russia but, with domestic courts typically unreceptive to its claims, it is making its presence felt in a number of applications to the ECtHR.<sup>53</sup> In *Alekseyev v Russia*,<sup>54</sup> which was brought by the founder and leader of GayRussia, the authorities' repeated ban on the holding of a gay pride march in Moscow was successfully challenged. By the time this case was heard, there was, of course, established case-law prohibiting discrimination on the basis of sexual orientation. In short, the legal argument was effectively already won. But cases such as this highlight the

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<sup>51</sup> *E.B. v France* (App no 43546/02) ECHR 22 January 2008, (2008) 47 EHRR 21.

<sup>52</sup> *Karner v Austria* (App no 40016/98) ECHR 24 July 2003, (2004) 38 EHRR 24.

<sup>53</sup> [www.gayrussia.eu/en/campaigns/legal-court-cases-by-gayrussia.php](http://www.gayrussia.eu/en/campaigns/legal-court-cases-by-gayrussia.php).

<sup>54</sup> *Alekseyev v Russia* (App nos. 4916/07 ; 25924/08 ; 14599/09), ECHR 21 October 2010.

importance of transnational networks in the face of regimes reluctant to keep pace with the advances in gay rights made in recent years in Europe. Thus, networks help to extend the platform that has already been built by the pioneers. However, once again it can be seen that activists' experience of the Court, even when ultimately successful, is rather mixed: prior to his win, in February 2009, Mr Alekseyev held a demonstration outside the Court building to protest against the delays to cases involving suppression of gay pride marches.<sup>55</sup> Individualised litigation still comes at considerable personal cost: the applicant in this case continues to experience harassment at the hands of the Russian authorities.<sup>56</sup>

## **NGOs AS LEGAL AND SOCIAL CHANGE ACTORS**

NGOs are far from being the 'lifeblood' of the ECtHR. Nevertheless, in this chapter I have suggested that while the dominant form of litigation before the Court is individualistic, this should not cloud the fact that the pursuit of individual justice is not the only model for understanding the Court's litigation. Gay rights organisations have clearly been central to the Court's framing of the Convention in respect of sexual minorities' claims. The involvement of pressure groups in the Court's litigation has previously received little attention from legal academics, primarily because such involvement tends to be small-scale and infrequent. However, this chapter suggests that this is an unfortunate oversight. Single-issue groups, as the gay rights cases outlined in this chapter have shown, can generate momentum towards new

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<sup>55</sup> [www.ukgaynews.org.uk/Archive/09/Feb/1401.htm](http://www.ukgaynews.org.uk/Archive/09/Feb/1401.htm).

<sup>56</sup> BBC News, 'Gay Rights Campaigner Fined in Russia for 'Propaganda'', 4 May 2012. Available at [www.bbc.co.uk/news/world-europe-17955794](http://www.bbc.co.uk/news/world-europe-17955794).

understandings of human rights. Their litigation offers a pertinent reminder of the dynamism of human rights and the Court's role, albeit tempered by the restraints of State sovereignty. Pressure groups can consequently create an interesting tension between their own utopian struggles and the Court's more cautious interpretive conventions. By infusing their litigation with comparatively radical politics they contribute to the Court's awareness of social changes and have pointed to an alternative understanding of rights. Having identified the importance of gay rights activists in re-framing the Convention's rights, it might now be useful to draw together the central strands of my analysis and consider the limitations under which NGOs operate as litigators.

#### *A Lack of Democratic Accountability?*

Julie Mertus has framed the 'dangers of NGOs' in terms of democracy and good governance. She notes that while considerable power is wielded by NGOs within the global human rights movement, they are democratically unaccountable in the exercise of that power.<sup>57</sup> The decisions of NGOs, she notes, are often taken in an opaque manner and without pluralist participation.<sup>58</sup> Certainly, none of the gay rights groups discussed in this chapter operate in a manner that could be termed democratic. Furthermore, they are typically marginal political actors who have little leverage in more democratic arenas. As Galanter has noted, 'Those who seek change through the courts tend to represent relatively isolated interests, unable to carry the day in more political

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<sup>57</sup> J Mertus, 'From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society' (1998-9) 14 *American University International Law Review* 1335.

See also K Anderson, 'The Ottawa Convention Banning Landmines, the Role of International Non-Governmental Organizations and the Idea of International Civil Society' (2000) 11(1) *European Journal of International Law* 91.

<sup>58</sup> *ibid.*, 1372-1374.

forums'.<sup>59</sup> In relation to this research, this raises the spectre of gay rights organisations influencing the Court's agenda without popular support and without being answerable to others for their actions. Certainly even relatively uncontroversial judgments such as *Modinos* raised problems of implementation at the domestic level because of its conflict with dominant morality.

A related concern is that activists' involvement in litigation can unhelpfully reduce genuinely complex political disputes into simplistic rights-based arguments. Away from the consensus that tends to emerge in more democratic fora, gay rights activists in their litigation might appear in principle to be free to pursue their ends without reference to the real concerns and dissent of others. This is likely to be of particular concern to those who understand human rights claims to be the unbending and limitless pursuit of power. Costas Douzinas argues that solutions to complex problems are unlikely to be forged through human rights arguments because 'it removes the fight from the terrain of warring interests into that of allegedly absolute truths and uncompromising entitlements'.<sup>60</sup> In other words, one could argue that cases such as *X v Austria* (calling for second-parent adoption for same-sex couples),<sup>61</sup> for example, represent baldly stated claims to entitlement that unhelpfully reduce the complex myriad interests at stake in such matters, and which are more likely to result in antagonism rather than conciliation.

No attempt has been made to judge the value of the claims made by the gay rights organisations discussed in this contribution (although I am by inclination sympathetic to them). Nevertheless,

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<sup>59</sup> M Galanter, 'Why the "Haves" Come out Ahead: Speculations on the Limits of Legal Change' (1974) 9 *Law and Society Review* 95, 135.

<sup>60</sup> C Douzinas, *The End of Human Rights: Critical Legal Thought at the Turn of the Century* (Oxford, Hart, 2000), 251.

<sup>61</sup> *X and Ors v Austria* (App no. 19010/07) ECHR 19 February 2013.

it is worth noting that the making of human rights claims requires only the barest of nods to liberal values, and the role of NGOs in ECtHR litigation is therefore not inevitably benign. In response to counter-hegemonic challenges from gay rights organisations, it has been noted that more conservative organisations have attempted to influence the Court's agenda.<sup>62</sup> This chapter demonstrates too that even progressive organisations have been, for example, very slow to represent the concerns of lesbian women before the ECtHR and to help them to articulate their claims. The lack of organisational support for trans men and women in their litigation is also apparent.

How, then, can we respond to the questions raised by gay rights activists lack of democratic accountability? We might at least begin by acknowledging that these concerns reflect a tension within the human rights movement itself. Although human rights can assist in securing democratic participation, they are also fundamentally anti-majoritarian. During the drafting of the Convention, it will be recalled, the individual application procedure itself was criticised for being anti-democratic (i.e. anti-Statist). One need only refer to decisions such as *Tyrer v UK*,<sup>63</sup> in which the Court found the practice of judicial birching — popularly-supported at the time in the Isle of Man — to be a violation of the Convention, to see that human rights can conflict with beliefs held by the majority. And this, of course, is one of the acknowledged strengths of human rights: they provide a platform for those that would dissent from majoritarian views. So it is at least questionable whether actors in human rights litigation should be judged on the extent to

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<sup>62</sup> See, for example, the third party intervention by the 'Alliance Defending Freedom' in the *X and Ors v Austria* case, *ibid*.

<sup>63</sup> *Tyrer v UK* Series A no 26 (1979-80) 2 EHRR 1.

which they are accountable to a popular will: the argument that the views of human rights NGOs are not democratically representative rather misses this point.

If human rights litigation is a space in which conflicting claims are put forward, this does not mean that NGOs involved in ECtHR litigation wield power anarchically. The cases outlined in this chapter demonstrated that while the NGOs concerned may not have been democratically accountable, they were nonetheless constrained within the ECHR system. In practice, this served to considerably curb and modify their more radical claims and to ‘professionalise’ dissent. Rather than being major power-players in ECtHR litigation, gay rights activists articulate their demands in a forum that accommodates many influences and whose judgments are invariably incremental. In *Schalk and Kopf*, for example, we saw that the careful claims of third party interveners assisted the Court to take the small but important step of recognising the right of same-sex couples to enjoy family life, while at the same time failing to articulate States’ positive obligations in respect of that right. It is therefore unhelpful to exaggerate the conditional and contingent power that NGOs have; rather, they should be acknowledged as contributors to the inevitably continuous re-framing of the Convention’s rights. Gay rights organisations themselves are generally pragmatists who are well aware of the limitations under which they operate, and most treat litigation as a welcome opportunity to present their position as coherently and convincingly as possible. As the cases in this chapter have demonstrated, they would be foolish and mistaken to believe that their views unquestioningly prevail in litigation.

*A Lack of Accountability to Applicants?*

An associated question is the nature of the relationship between NGOs and those whose interests they seek to represent in ECtHR cases. While the early cases discussed in this paper, *Dudgeon*, *Norris* and *Modinos*, emerged from authentic grassroots movements and the applicants were intimately involved in mobilisation efforts, as the efforts became more professionalised, this close connection between applicant and movement became less marked. It might consequently be argued that the struggle for gay rights has moved in a direction that renders activists less able to articulate the authentic voice of those on whose behalf they profess to litigate. Baxi's concern that 'Injustice and human violation is headline news only as the pornography of power'<sup>64</sup> is of particular relevance to those who seek to use the suffering of others to further political campaigns. The inherent danger in NGO litigation strategies is that the individual's humanity is overlooked.

Although the NGOs discussed in this paper may make no claims to democratic accountability, many do claim to represent the interests of the groups on whose behalf they litigate. Because ECHR cases are usually brought in the name of individual applicants, NGOs also have a real and direct impact on the lives of people in whose name they litigate. Without having close contact with applicants and without making attempts to be sensitive to their multifaceted characters, human rights litigation is likely to caricature the applicants in whose name a case is brought. One might reach the conclusion that in NGO litigation, the applicant, and by implication her case, cannot be released from the constraints of the ambition that NGOs have for it. As gay rights mobilisation strategies become more professionalised and distant from the communities on

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<sup>64</sup> Baxi, *The Future of Human Rights* (2002), 125.

whose behalf they work, so the divergence in aims between organisation and community is likely to increase.

There is clearly room for gay rights organisations to take the issue of accountability to their ‘constituents’ more seriously. Julie Mertus suggests that NGOs should concentrate on building close relationships with the communities they seek to represent. She argues that the closer an organisation is with the ‘grassroots’, ‘the greater its chances at promoting positive social change because it is more likely to represent a highly engaged constituency’.<sup>65</sup> Human rights, she goes on to suggest, are most effective when they are internalised, and they generally will not succeed if they represent ‘forced impositions of outside ideas’.<sup>66</sup> The emphasis in this research on human rights as a space for dialogue between local and global actors, then, is important: it directs NGOs to build as many lines of communications as possible between themselves and the local actors they would seek to represent. As Mertus notes, this demands from NGOs a willingness to listen ‘to their less powerful counterparts’.<sup>67</sup> This is of particular relevance to international organisations such as ILGA-Europe and suggests that the move from the grassroots we have witnessed in this chapter is not unproblematic.

### *The Ineffectiveness of NGO Litigation?*

Perhaps most importantly from the perspective of NGOs themselves is the danger in exaggerating the transformation that can be achieved through human rights litigation. Baxi has

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<sup>65</sup> Mertus, ‘From Legal Transplants’ (1998-9), 1373.

<sup>66</sup> *ibid*, 1345.

<sup>67</sup> *ibid*, 1385-6.

remarked upon the ‘human rights romanticism’ that ‘leads NGOs to be over-optimistic about their achievements’.<sup>68</sup> Certainly, the litigation strategies of ILGA-Europe suggest that NGOs are well aware of the confines in which they operate, when they are active in a legal field. The ECtHR is an institution in which transformation can happen, but the individual nature of Strasbourg justice means it is a slow, incremental, and somewhat erratic process. The Court’s fragmentary approach to the question of LGBT family rights is a case in point.<sup>69</sup> Cases are in any event often subject to forces outside of the control of the organisations pursuing them. Despite the relative success of gay rights in Strasbourg, litigation strategies are piecemeal attempts at reform that cannot be a substitute for coherent policy-making.

Galanter has noted that even where a judgment is delivered that challenges institutional power relations, courts are usually not in a strong position to implement the changes they instigate. Consequently, he concludes that litigation is unlikely to be transformative.<sup>70</sup> Certainly the on-going dialogue between the Committee of Ministers and Russia in respect of the *Alekseyev v Russia* judgment might hint at the truth of this.<sup>71</sup> Scheingold’s analysis of what he refers to as ‘the myth of rights’ is even bleaker:

The continued vitality of litigation may be read as a triumph of myth over reality – as a lesson in false consciousness. Or perhaps it is symptomatic of the willingness of middle

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<sup>68</sup> Baxi, *The Future of Human Rights* (2002), 62.

<sup>69</sup> For a discussion of the court’s approach to LGBT families, see, for example, L Hodson, ‘Ties That Bind: Towards a Child-Centred Approach to Lesbian, Gay, Bi-Sexual and Transgender Families under the ECHR’ (2012) 20(4) *The International Journal of Children’s Rights* 501.

<sup>70</sup> Galanter, ‘Why the “Haves”’ (1974), 151

<sup>71</sup> P Johnson, ‘Gay Rights in Russia: Alekseyev v Russia Update’, 5 March 2013 at [http://echrso.blogspot.co.uk/2013/03/gay-rights-in-russia-alekseyev-v-russia\\_5.html](http://echrso.blogspot.co.uk/2013/03/gay-rights-in-russia-alekseyev-v-russia_5.html)

class lawyers to settle for half a loaf – at least for their clients. Either way, litigation emerges as a strategy of desperation rather than hope.<sup>72</sup>

In the context of ECtHR litigation, it seems logical to conclude that respondent States are, almost by definition, going to be reluctant to embrace any change that results from the Court's judgments.

There are, then, many reasons to be cautious when assessing the likely impact that NGO litigation can ultimately have. While this chapter establishes NGOs as important actors in gay rights cases brought under the ECHR, the litigation discussed herein is far from being a panacea. However, given the numerous factors that are outside NGOs control when taking a deliberately targeted test case, one might argue that that makes the considerable success of gay rights litigation all the more noteworthy. In fact, this research shows that, despite its drawbacks, ECtHR litigation is a highly valuable tool in the area of gay rights.

This research points to a number of reasons why gay rights litigation strategies before the ECtHR have been effective. Firstly, mechanisms for enforcing the Court's judgments are relatively strong; the Committee of Ministers has the political authority to hold member States to account, which is *generally* respected. Secondly, international human rights standards – in which gay rights claims are rooted – have a moral authority that makes the finding of a violation particularly persuasive and may generate international pressure for reform. Thirdly, gay rights

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<sup>72</sup> S Scheingold, *The Politics of Rights: Lawyers, Public Policy and Political Change* (New Haven, Yale University Press, 1974), 95.

organisations as litigators can pursue implementation, through non-legal measures, of the transformation that has been indicated in the Court's judgments. Fourthly, gay rights organisations are characterised by their single-minded focus on, and commitment to, principled causes.<sup>73</sup>

## CONCLUDING OBSERVATIONS

Although a radical liberal individualism remains deeply embedded in our understanding of the Convention, an attempt has been made in this chapter to place the Convention in an alternative analytical framework. I established a clear connection between the developing law of the ECtHR on sexual minorities and the gay rights movement, a connection that is often overlooked by lawyerly analysis of the Convention. The Convention's rights arose out of the struggles of the past, and will be shaped and determined by the struggles of the future. Human rights norms, including those developed in the jurisprudence of the ECtHR, emerge in order to challenge conventional political structures. Gay rights activists emerge in this study as important actors whose struggles have contributed to the shaping of ECHR norms. Their role, however, is contingent and they are presented as compromised actors in a symbiotic relationship with the centre of human rights power and whose claims are themselves shaped by the language of the Convention as the strictures of the Convention's institutions.

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<sup>73</sup> S Ahmed and D Potter, *NGOs in International Politics* (Bloomfield, Kumarian Press, 2006), 243.



**Table Showing NGO Involvement in Key ECHR Gay Rights Cases**

<b>Date of Judgment</b>	<b>Name of Case &amp; Nature of Issue</b>	<b>NGO(s) Involved</b>	<b>Nature of Involvement</b>
22 October 1981	<b>Dudgeon v UK (7525/76)</b> Criminalisation of sexual activity.	Northern Ireland Gay Rights Association	Background support.
17 October 1986	<b>Rees v UK (9532/81)</b> Trans gender recognition.	—	.
26 October 1988	<b>Norris v Ireland (10581/83)</b> Criminalisation of sexual activity.	1. National Gay Federation 2. Campaign for Homosexual Law Reform 3. Irish Gay Rights Movement	1. Joined as applicant (before Commission) 2. Legal support and background support. 3. Background support
27 September 1990	<b>Cossey v UK (10843/84)</b> Trans gender recognition.		
25 March 1992	<b>B. v France (13343/87)</b>		
22 April 1993	<b>Modinos v Cyprus (15070/89)</b> Criminalisation of sexual activity.	Liberation Movement of Homosexuals in Cyprus	Background support
20 January 1997	<b>Laskey &amp; Ors v UK (21627/93, 21826/93 &amp; 21974/93)</b> Criminalisation of sexual activity.	Rights International	Third Party Intervention
22 April 1997	<b>X.,Y. &amp; Z. v UK (21830/93)</b> Trans parental rights.	Rights International Press for Change?	Third Party Intervention  Background support (not mentioned in judgment, but X is co-founded PFC in 1992).
30 July 1998	<b>Sheffield &amp; Horsham v UK (22985/93 ; 23390/94)</b> Trans gender recognition.	Liberty	Third Party Intervention
27 September 1999	<b>Smith &amp; Grady v UK (33985/96, 33986/96)</b> ‘Gays in the military’	Liberty	Legal Representation
27 September	<b>Lustig-Prean &amp; Beckett v UK (31417/96, 32377/96)</b>	—	.

1999	‘Gays in the military’		
21 December 1999	<b>Salgueiro da Silva Mouta v Portugal (33290/96)</b> Parental rights of gay man.		.
31 July 2000	<b>A.D.T. v UK (35765/97)</b> Criminalisation of sexual activity.	Stonewall	Background support
26 February 2002	<b>Fretté v France (36515/97)</b> Adoption rights.	ILGA-Europe	Third Party Intervention (possible legal representation?)
11 July 2002	<b>Christine Goodwin v UK (28957/95)</b> Trans gender recognition	Liberty	Third party intervention
11 July 2002	<b>I. v UK (25680/94)</b> Trans recognition	Liberty	Third party intervention
22 October 2002	<b>Beck &amp; Others v UK (48535/99, 48536/99, 48537/99)</b> ‘Gays in the military’		.
22 October 2002	<b>Perkins &amp; R. v UK (43208/98 ; 44875/98)</b> ‘Gays in the military’		.
9 January 2003	<b>S. L. v Austria (45330/99)</b> Unequal age of consent.	Rechtskomitee LAMBDA	Background support and legal representation.
9 January 2003	<b>L. &amp; V. v Austria (39392/98 ; 39829/98)</b> Unequal age of consent.	Rechtskomitee LAMBDA	Background support and legal representation.
24 July 2003	<b>Karner v Austria (40016/98)</b> Property rights for same-sex couples.	ILGA-Europe, Liberty & Stonewall	Third party intervention (joint)
12 June 2003	<b>Van Kück v Germany (35968/97)</b> Trans privacy and fair trial rights		
10 February 2004	<b>B.B. v UK (53760/00)</b> Unequal age of consent		
21 October 2004	<b>Woditschka &amp; Wilfling v Austria (69756/01 and 6306/02)</b> Unequal age of consent.	Rechtskomitee LAMBDA	Background support and legal representation.
3 February 2005	<b>Ladner v Austria (18297/03)</b> Unequal age of consent.	Rechtskomitee LAMBDA	Background support and legal representation.
26 May 2005	<b>Wolfmeyer v Austria (5263/03)</b> Unequal age of consent	Rechtskomitee LAMBDA	Background support and legal representation.

2 June 2005	<b>H. G. &amp; G. B. v Austria (11084/02 and 15306/02)</b> Unequal age of consent.	Rechtskomitee LAMBDA	Background support and legal representation.
23 May 2006	<b>Grant v UK (32570/03)</b> Trans gender recognition and pension rights.	Liberty	Legal representation.
19 January 2006	<b>R.H. v Austria (7336/03)</b> Unequal age of consent.	Rechtskomitee LAMBDA	Background support and legal representation.
3 May 2007	<b>Bączkowski &amp; Others v Poland (1543/06)</b> Freedom of assembly	Foundation for Equality	Joined as applicant
11 September 2007	<b>L. v Lithuania (27527/03)</b> Trans recognition.		
22 January 2008	<b>E.B. v France (43546/02)</b> Adoption rights.	<i>Fédération internationale des Ligues des Droits de l'Homme</i> (FIDH); ILGA–Europe; British Association for Adoption and Fostering (BAAF); and <i>Association des Parents et futurs parents Gays et Lesbiens</i> (APGL)	Third party intervention (joint)
8 January 2009	<b>Schlumpf v Switzerland (29002/06)</b> Trans person's right to fair hearing		
2 March 2010	<b>Kozak v Poland (13102/02)</b> Property rights, same-sex couple.		
24 June 2010	<b>Schalk and Kopf v Austria (30141/04)</b> Marriage/partnership rights for same-sex couples.	FIDH ( <i>Fédération Internationale des ligues des Droits de l'Homme</i> ), ICJ (International Commission of Jurists) AIRE Centre (Advice on Individual Rights in Europe) and ILGA-Europe	Third party intervention (joint)
22 July 2010	<b>P.B. &amp; J.S. v Austria (18984/02)</b> Employment benefits discrimination – same-sex couple.		
28 September	<b>J. M. v UK (37060/06)</b> Non-discrimination (maintenance	1. Liberty 2. Equality and Human	1. Legal representation. 2. Third party intervention

2010	payments, lesbian parent).	Rights Commission	
21 October 2010	<b>Alekseyev v Russia (4916/07, 25924/08 and 14599/09)</b> Freedom of assembly.	LGBT Human Rights Project GayRussia	Background support. Mr A is founder and leader
30 November 2010	<b>P. V. v Spain (no. 35159/09)</b> Trans family rights (contact with child).		
9 February 2012	<b>Vejdeland and Ors v Sweden (1813/07)</b> Conviction for distributing anti-homosexual leaflets in schools.	Interights and International Commission on Jurists	Joint third party intervention
15 March 2012	<b>Gas and Dubois v France (25951/07)</b> Second-parent adoption for same-sex couples.	International Commission of Jurists; ILGA-Europe; British Association for Adoption and Fostering; Network of European LGBT Families Associations; International Federation for Human Rights	Joint third party intervention
12 June 2012	<b>Genderdoc-M v Moldova (9106/06)</b> Freedom of Assembly	1. Genderdoc-M 2. International Commission of Jurists	1. Applicant 2. Third party intervention
9 October 2012	<b>X v Turkey (24626/09)</b> Conditions of detention of homosexual prisoner representing inhuman or degrading treatment		
13 November 2012	<b>H v Finland (37359/09)</b> Trans marriage rights		
19 February 2013	<b>X v Austria</b> Second-parent adoption for same-sex couples	1. International Commission of Jurists; ILGA-Europe; British Association for Adoption and Fostering; Network of European LGBT Families Associations; International Federation for Human Rights; European Commission on Sexual Orientation Law. 2. European Centre for Law and Justice	1. Joint third party intervention 2. Third party intervention 3. Third party intervention 4. Third party intervention Third party intervention

		3. Attorney-General for Northern Ireland 4. Amnesty International 5. Alliance Defending freedom	
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