



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3031/2017*, **, ***

<i>Communication submitted by:</i>	V.W.G. and E.H. (represented by counsel, Theodoros Alexandridis and Dorian Matlija)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Albania
<i>Date of communication:</i>	28 July 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 31 October 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	18 July 2023
<i>Subject matter:</i>	Failure to recognize same-sex partnership
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to privacy and family life; non-discrimination; right to an effective remedy
<i>Articles of the Covenant:</i>	2 (1)–(3), 17, 23 (1) and 26
<i>Articles of the Optional Protocol:</i>	3 and 5 (2) (b)

1.1 The authors of the communication are V.W.G., a national of the Kingdom of the Netherlands born in 1983, and E.H., a national of Albania born in 1991. They claim that the State party's failure to take the necessary measures to allow them the enjoyment of their right to family life amounts to a violation of their rights under articles 17, 23 (1) and 26, read alone and in conjunction with article 2 (1)–(3), of the Covenant. The Optional Protocol entered into force for the State party on 4 January 2008. The authors are represented by counsel.

1.2 On 4 January 2018, the State party requested that the admissibility of the communication be examined separately from the merits. On 29 May 2018, the Committee,

* Adopted by the Committee at its 138th session (26 June–26 July 2023).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu. Pursuant to rule 108 of the Committee's rules of procedure, Yvonne Donders did not participate in the examination of the communication.

*** A joint opinion by Committee members Carlos Gómez Martínez, Laurence R. Helfer, Hernán Quezada Cabrera, José Manuel Santos Pais and Soh Changrok (dissenting) is annexed to the present decision.



acting through its Special Rapporteurs on new communications and interim measures, in accordance with rule 93 (1) of its rules of procedure, decided to reject that request and to examine the admissibility of the communication together with its merits.

Facts as submitted by the authors

2.1 The authors note that they met in Albania, and were married in the Kingdom of the Netherlands in June 2016. Thereafter they decided to relocate to Albania, where the first author was already living and working as a journalist.

2.2 The authors, citing domestic legislation, note that they cannot have their marriage recognized in Albania, either as a marriage or as a civil union. Under the Albanian Family Code, a marriage or a civil partnership (referred to in arts. 163 and 164 of the Family Code as cohabitation) can be entered into only between a man and a woman.¹ Similarly, under the Albanian Law on Private International Law No. 10428/2011, a marriage contracted abroad can be recognized in Albania only if it meets the requirements for marriage under Albanian law, namely that it is a marriage between a man and a woman.²

2.3 The authors argue that the violation of their rights under the Covenant stems directly from the wording of the pertinent legislation in Albania.³ They note that the authorities have been made aware of the need to amend the legislative framework in Albania. They further note that despite numerous recommendations addressed to the Government by the Ombudsman⁴ to amend the relevant legal framework to offer civil partnerships for same-sex couples, the State party has refused to adopt such amendments.

Complaint

3.1 The authors claim a violation of their rights under articles 17 and 23 (1), read alone and in conjunction with article 2 (1)–(3), of the Covenant. They argue that, for the purposes of the Covenant, their relationship constitutes family life within the meaning of articles 17 and 23 of the Covenant.⁵ They note that their complaint does not concern the fact that the marriage they have contracted in the Kingdom of the Netherlands is not recognized in Albania, nor that Albania does not recognize same-sex marriages in general.⁶ Rather, they consider that their rights under articles 17 and 23 (1) have been violated because the State party has failed to take all measures necessary to enable them to have their relationship recognized in a form that would afford them the same set of rights and obligations as those flowing from a marriage, such as a registered partnership. The authors further argue that the lack of recognition of same-sex partnerships affects their right to family life because they are

¹ Sect. 2, title 1, chap. 1, art. 7 of the Family Code (Law No. 9062/2003) reads: “Marriage can be concluded between a man and a woman who are 18 years or older.” Sect. 2, title 5, arts. 163 and 164 of the Family Code read: “Cohabitation is a factual union between a man and a woman living as a couple, with a common life that is stable and continuous in nature. The cohabitating individuals can sign an agreement in the presence of a public notary, whereby they determine the consequences resulting from cohabitation in relation to children and assets acquired during the cohabitation.”

² Chap. 4, art. 21 of Law No. 10428/2011 reads: “(1) The terms of marriage shall be governed by the law of the State of which each of the spouses has the nationality at the time of the marriage. ... (4) A marriage that has been celebrated pursuant to paragraph 1 of this article may be recognized in Albania if it meets the conditions for marriage under Albanian law.”

³ In this respect, the authors consider that their situation is similar to that of the author in *Toonen v. Australia*, communication No. 488/1992.

⁴ See, for example, the press release from the Albanian Ombudsman’s Office entitled “The People’s Advocate on the International Day against Homophobia and Transphobia”, 17 May 2016.

⁵ The authors refer to European Court of Human Rights, *Schalk and Kopf v. Austria* (application No. 30141/04), judgment of 24 June 2010, para. 94, in which the Court noted: “In view of this evolution, the Court considers it artificial to maintain the view that, in contrast to a different-sex couple, a same-sex couple cannot enjoy “family life” for the purposes of article 8. Consequently, the relationship of the applicants, a cohabiting same-sex couple living in a stable de facto partnership, falls within the notion of “family life”, just as the relationship of a different-sex couple in the same situation would.”

⁶ The authors note that this is why they are not alleging a violation of article 23 (2) of the Covenant, which provides: “The right of men and women of marriageable age to marry and to found a family shall be recognized.”

unable to address legal issues that may arise in the couple's life, such as the right to inheritance.

3.2 The authors further note that a different-sex married couple in their situation would be able to have their marriage recognized under Albanian law. Similarly, an unmarried different-sex couple would have the opportunity of either contracting a marriage or entering into a cohabitation agreement under article 163 of the Family Code. The authors submit that the fact that none of these options are available to them, solely due to their sexual orientation, amounts to a violation of their rights under article 26, read alone and in conjunction with articles 17 and 23 (1), of the Covenant.

3.3 The authors assert that there is no available or effective domestic remedy to address the lack of legal protection of their relationship. They are not seeking to have the relevant provisions of the Family Code declared unconstitutional. Rather, they argue that the only means by which their situation could be addressed would be legislative amendments to the Albanian Family Code that would provide, at the very least, the possibility for same-sex couples to have their family life recognized.⁷ The authors argue that their situation is similar to that of the same-sex couples in *Oliari and others v. Italy*⁸ and *Vallianatos and others v. Greece*,⁹ where the European Court of Human Rights held that the applicants, who under the Italian and Greek legal orders had no opportunity to either enter into a marriage or a registered same-sex partnership, had no domestic remedy available insofar as the national courts could adopt only declaratory judgments, grant damages or recommend that Parliament adopt appropriate legislation. With regard to the State party, the authors assert that there is no domestic mechanism, such as review by the Constitutional Court, to oblige Parliament to consider or adopt the relevant amendments to the Family Code or to create registered partnerships for same-sex couples.

State party's observations on admissibility

4.1 On 4 January 2018, the State party submitted its observations on admissibility. It submits that the communication should be found inadmissible for failure to exhaust domestic remedies.

4.2 The State party notes that it is committed to fulfilling its international obligations concerning respect for and protection of human rights, in accordance with international human rights standards. It states that it has a comprehensive system for the protection of human rights and fundamental freedoms, and that, at the national level, it has undertaken several legislative measures to protect the rights of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community and to combat violence and discrimination based on sexual orientation and gender identity.

4.3 The State party refers to the prohibition against discrimination under articles 15 and 18 of the Constitution, and notes that in February 2010, Law No. 10221, on protection against discrimination, was adopted, which includes, among other grounds, a prohibition of discrimination on the basis of sexual orientation and gender identity. The State party notes that the purpose of this law is to ensure each person's right to: (a) equality before the law and equal protection of the law; (b) equality of opportunity to enjoy and exercise fundamental rights and freedoms; (c) participation in public life; and (d) effective protection against discrimination and any form of conduct that incites discrimination. It further notes that in 2013, amendments to the Criminal Code relating to protection of the rights of the LGBTI community were adopted, to introduce criminal offences based on a victim's sexual orientation and gender identity as an aggravating circumstance in sentencing and by amending the definition of the criminal offences of "inciting hatred and conflict" and "denying equality of citizens" to include motivation based on a person's sexual orientation and gender identity as an aggravating factor. Article 119/a and b was also introduced into the

⁷ The authors note that in order for an amendment to the Family Code to be adopted, it would require a qualified three-fifths majority of votes in Parliament.

⁸ European Court of Human Rights, applications No. 18766/11 and No. 36030/11, judgment of 21 July 2015.

⁹ European Court of Human Rights, applications No. 29381/09 and No. 32648/09, judgment of 7 November 2013.

Criminal Code, which prohibits the dissemination of homophobic materials, while the offence of hate speech under article 253 of the Criminal Code was amended in 2013 to include sexual orientation and gender identity as additional grounds. Additionally, in 2015 the Labour Code was amended to include protections against discrimination in employment and vocational training on the grounds of sexual orientation and gender identity. Furthermore, in May 2016 the Government adopted a national action plan on the rights of LGBTI persons (2016–2020). The strategic goals of that plan are: (a) to improve the legal and institutional framework and to raise awareness on non-discrimination and protection of LGBTI rights in accordance with international standards; (b) to eliminate all forms of discrimination against the LGBTI community, through capacity-building; and (c) to improve access to employment, education, health care, housing and sports services for LGBTI persons, guaranteeing equal opportunities and rights.

4.4 Regarding the issue of exhaustion of domestic remedies, the State party notes that the Code of Administrative Procedures provides as follows: “Anyone who has a legitimate interest has the right to participate personally and/or be represented in the administrative proceedings. Pursuant to this Code, the administrative bodies take decisions concerning all cases within their jurisdiction, submitted by private citizens, which: (a) deal with private citizens directly; or (b) are related to any petition, request or claim concerning violation of the Constitution and the law or the protection of public interests.”

4.5 The State party also notes that under article 131 of the Constitution, individuals may file a request to the Constitutional Court on “issues connected to their interests”. It further notes that under article 81 of the Constitution, the Council of Ministers, every deputy, and 20,000 electors, have the right to propose legislative amendments. In order to be adopted, such amendments would need to be approved by three fifths of all Members of Parliament. The State party argues that on the basis of this constitutional provision, “individuals have domestic remedies at their disposal to propose laws, or amendments to existing legislation”. Furthermore, the State party notes that the authors have not submitted any complaint to public institutions such as the Ministry of Health and Social Protection (formerly the Ministry of Social Welfare and Youth), the Ministry of the Interior, the General Directorate of Civil Status, or other competent bodies.

4.6 The State party also notes that it is committed to improving the legal framework, including the protection of LGBTI rights. In April 2014, proposals for amendments to the Family Code were submitted to the Ministry of Justice by the former Ministry of Social Welfare and Youth, concerning domestic partnerships and with proposed amendments to articles 163 and 164 of the Family Code concerning cohabitation. The Ministry of Justice stated that those proposals would be taken into consideration at the earliest opportunity. The State party notes that while amendments to the Family Code to introduce the concept of cohabitation for same-sex couples have not yet been adopted, it is committed to further improving the domestic legislation for the protection of human rights, in line with its international commitments.

Authors’ comments on the State party’s observations

5.1 On 11 February 2018, the authors provided their comments on the State party’s observations. They maintain that the communication is admissible. They note that the State party has not challenged the merits of the communication nor disputed the non-existence of any legal provision on the basis of which they could have their right to family life recognized. They consider that, in the light of the nature and the source of the violation of their right to family life, namely the lack of a legal provision allowing them to have their same-sex marriage registered either as a marriage or as a civil partnership, and considering the essentially declaratory nature of any possible Constitutional Court judgment, filing a constitutional complaint would not constitute an effective remedy.

5.2 The authors note that the State party has referred to remedies that it argues were available to them to seek to address their claims. However, they argue that the State party has not provided any information as to how these remedies would be effective in their case. They note that in its observations, the State party has referred to a number of policy and legislative initiatives in the field of LGBTI rights that have been implemented in the past few years. Nevertheless, they argue that none of these initiatives relate to or can address their complaint,

which concerns the unavailability of a legal institution whereby they could have their marriage recognized in some form and registered, thus allowing them access to the same benefits and responsibilities as a married different-sex couple. They further note that the State party has not mentioned the various failed initiatives aimed at providing same-sex couples with the possibility of having their relationship regularized, and nor has it elaborated on the reasons leading to the failure to introduce such legislation. The authors note in this respect that the first effort to provide for same-sex marriage in Albania was proposed in 2009, and that in 2014 proposals to extend the institution of cohabitation/domestic partnership in the Family Code were introduced by the former Ministry of Social Welfare and Youth. However, Parliament failed to act on any of those proposals.

5.3 The authors also note that during the 2016 constitutional revision process, it was suggested that article 18 of the Constitution be expanded to encompass discrimination on the grounds of sexual orientation and sexual identity. However, this proposal was opposed by a number of Members of Parliament across the political spectrum who stated that such an amendment would pave the way for the introduction of same-sex marriage.¹⁰ As a result, the version of article 18 that was ultimately adopted and is currently in force does not include sexual orientation or gender identity among the prohibited discrimination grounds.

5.4 As to the existence of effective remedies, the authors argue that launching a national referendum on same-sex marriage after securing 20,000 electoral signatures, as suggested by the State party, can hardly be considered a remedy. Additionally, they note that such a legislative proposal would still need to attain the votes of three fifths of Members of Parliament in order to be adopted. As to their alleged failure to file complaints with different State institutions, the authors argue that the State party has failed to identify what specific form of complaint it considers that they should have filed, and how those institutions, in the absence of any relevant legislation, could provide them with appropriate redress. They reiterate their argument that the State party is aware of the need to afford protection to same-sex couples in family law matters and has at its disposal concrete recommendations submitted by the Ombudsman to amend the domestic legislation in order to provide such protection.

5.5 Regarding the possibility of filing a complaint before the Constitutional Court, the authors note that the State party does not explain whether such a course of action would have had any prospects of success, and they note that the State party has not referred to any relevant case law that would attest to the effectiveness of that remedy. The authors submit that a constitutional complaint would have no prospects of success, as it would be contrary to fundamental provisions of the Constitution and other legislative acts. The authors note that under article 131 of the Constitution, individuals can only challenge judicial decisions and acts of the public administration, laws or normative acts before the Constitutional Court. Individuals do not have any standing to challenge omissions, such as a failure to legislate. This contrasts with other potential claimants before the Constitutional Court, such as the People's Advocate, who is explicitly mandated under the Constitution to defend the rights of individuals "from unlawful acts or omissions of public administration bodies". Thus, the authors do not have the requisite legal standing to file a constitutional complaint challenging the failure of Parliament to adopt a law on same-sex partnerships.

5.6 Additionally, the authors note that any complaint before the Constitutional Court could only result in the Court either rejecting the petition, or accepting it and, if applicable, invalidating the impugned law in whole or in part.¹¹ The Constitutional Court does not have the power to assume the role of the legislator and address a regulatory vacuum, nor can it order Parliament to adopt a law or a normative act.¹² The authors therefore argue that even if

¹⁰ The authors refer to a Balkan Insight news portal article, "Gay marriage threat worries Albanian conservatives", of 11 July 2016; and United Nations Development Programme and United States Agency for International Development, *Being LGBTI in Eastern Europe: Albania Country Report*, October 2017.

¹¹ The authors refer to art. 51/a of Law No. 8577/200 on the organization and functioning of the Constitutional Court of the Republic of Albania.

¹² The authors refer to the Constitutional Court's response to a questionnaire by the fourteenth Congress of European Constitutional Courts (2008) on problems of legislative omission in constitutional

it were hypothetically possible that the Constitutional Court could rule that their right to family life had been violated and that the Family Code should be amended or a new piece of legislation introduced, the judgment would not be binding on Parliament, which would have the discretion to decide whether to amend the legislation or adopt a new law. The authors refer to article 87 of the rules of procedure of the Parliament of Albania, which, they note, stipulates that Parliament's Council on Legislation is not obligated to amend legislation found unconstitutional by the Constitutional Court or to introduce a new law to address the Court's concerns.¹³ They also reference a judgment of the Constitutional Court regarding Law No. 96/2016 – in which the Court concluded that some provisions of the law were unconstitutional and ought to be repealed, but did not request Parliament to amend them by a certain deadline nor indicate the consequences of Parliament's failure to do so.¹⁴

Additional submissions

From the authors

6. On 29 October 2019 and 5 June 2020, the authors submitted further information on developments in the State party. They note that on 7 April 2020, the European Commission against Racism and Intolerance, established by the Council of Europe, adopted its sixth report on Albania. In the report, it expressed concern regarding the implementation of the LGBTI Action Plan and called on the Government to institute a legal and regulatory framework to allow same-sex couples to have their relationship "recognized and protected in order to address the practical problems related to the social reality in which they live".¹⁵ The authors reiterate that in its comments on the report, the Government did not address the issue of same-sex partnerships, which the authors argue indicates that the State party does not intend, at least for the foreseeable future, to take any measure towards allowing same-sex couples to have their relationship registered.

From the State party

7. On 21 April 2023, the State party submitted further observations on the communication. It notes that the Government is engaged in improving legislation towards non-discrimination based on sexual orientation, and in undertaking legislative measures for the protection of the LGBTI community. It further notes that it has prepared a national action plan for LGBTI persons for 2021–2027, which was approved by the Council of Ministers on 18 November 2021. The action plan contains measures relating to the analysis and revision of the Family Code to ensure marriage or cohabitation rights for same sex-couples on an equal basis with different-sex couples, as well as revisions to regulate the recognition of family ties in cross-border situations. The State party notes that any such proposal would subsequently need to be adopted by Parliament, and that the activities under the action plan are expected to be carried out starting from the first six months of 2024, until the second six months of 2027.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

jurisprudence, in which the Constitutional Court cited its judgment No. 75/2002 in which it had stated that it "does not undertake to play the role of the positive legislator, stipulating one by one all the cases that might fall within the group of these constitutional reasons".

¹³ The authors refer to art. 87 of the rules of procedure of the Assembly of the Republic of Albania.

¹⁴ Albanian Constitutional Court judgment No. 24, 10 April 2017, annexed to the authors' complaint.

¹⁵ See para. 20 of the report.

8.3 The Committee notes the State party's submission that the authors' claims should be found inadmissible under article 5 (2) (b) of the Optional Protocol for failure to exhaust domestic remedies. In particular, the State party asserts that the authors could have: (a) submitted a petition under the Code of Administrative Procedures; (b) filed a petition before the Constitutional Court under article 131 of the Constitution; (c) proposed legislative amendments under article 81 of the Constitution after securing 20,000 electoral signatures; or (d) submitted a complaint to institutions such as the Ministry of Health and Social Protection, the Ministry of the Interior, the General Directorate of Civil Status, or other competent bodies. The Committee notes, however, the authors' argument, set forth in their complaint, that the violation of their rights under the Covenant stems directly from existing domestic legislation and the fact that they have no effective remedy at their disposal, since any recognition of same-sex relationships by the State party would require legislative amendments to the Family Code adopted by three fifths of Parliament. The Committee further notes the authors' argument that the State party has not provided any information as to how the procedures identified would constitute an effective remedy in their case, as well as their argument that filing a petition before the Constitutional Court would have no prospect of success because individuals do not have any standing to challenge the Government's failure to adopt legislation before that Court, which lacks a mandate to address legislative omissions.

8.4 The Committee recalls its jurisprudence that although there is no obligation to exhaust domestic remedies if they objectively have no prospect of success, authors of communications must exercise due diligence in the pursuit of available remedies. Mere doubts or assumptions about the effectiveness of domestic remedies do not absolve authors of exhausting them.¹⁶

8.5 In the present case, the authors allege that the violation of their rights under the Covenant results from existing domestic legislation. They further allege that there is no available or effective domestic remedy to challenge the State party's failure to provide a legal framework under which their relationship could be recognized. In response, the State party has referred to several avenues that it considers the authors should have pursued before submitting their communication to the Committee, including various administrative and judicial challenges in which they could have claimed that the existing legislation violates their right to family life.

8.6 The Committee notes the State party's argument that the authors could have filed a complaint under article 131 of the Constitution before the Constitutional Court claiming that their right to family life had been violated by the State party's failure to provide a legal framework for recognizing their relationship. The Committee notes the authors' argument that they lack standing to challenge legislative omissions before the Constitutional Court, as well as their argument that the Constitutional Court does not have the authority to order Parliament to address a gap in domestic legislation. The Committee observes, however, that the authors have not disputed the State party's argument that the Constitutional Court could have examined the constitutionality of the Family Code provision, and ultimately invalidated it in whole or in part. In addition, the Committee's prior jurisprudence regarding challenges to national legislation has consistently required authors to avail themselves of available domestic remedies before administrative agencies, national courts or both.¹⁷ In the present case, by contrast, the authors have not made any attempt to obtain the recognition they seek within the State party's national legal system. For these reasons, the Committee finds the authors' claims under articles 17, 23 (1) and 26, read alone and in conjunction with article 2 (1)–(3), of the Covenant, to be inadmissible for failure to exhaust domestic remedies, in accordance with article 5 (2) (b) of the Optional Protocol.

9. The Committee therefore decides:

- (a) That the communication is inadmissible under article 5 (2) (b) of the Optional Protocol;
- (b) That the present decision shall be communicated to the State party and to the authors.

¹⁶ See, for example, *V.S. v. New Zealand* (CCPR/C/115/D/2072/2011), para. 6.3; *García Perea v. Spain* (CCPR/C/95/D/1511/2006), para. 6.2; and *Vargay v. Canada* (CCPR/C/96/D/1639/2007), para. 7.3.

¹⁷ See, for example, *Dafnis v. Greece* (CCPR/C/135/D/3740/2020), para. 7.7; and *Young v. Australia* (CCPR/C/78/D/941/2000), para. 9.4.

Annex

Joint opinion of Committee members Carlos Gómez Martínez, Laurence R. Helfer, Hernán Quezada Cabrera, José Manuel Santos Pais and Soh Changrok (dissenting)

1. In the present communication, Committee members reached opposing views with regard to whether the authors had failed to exhaust available domestic remedies. The Committee has, in general, strictly interpreted exceptions to the exhaustion requirement. Therefore, authors and their counsels are expected to pursue all available and effective avenues for raising Covenant violations in the relevant State party before submitting a communication to the Committee. Where a potential exception to exhaustion may apply, authors and their counsels should explain in detail the basis for the exception.

2. However, in the present communication, we consider the requirements for admissibility have been met. As regards administrative challenges, the State party has not provided any specific information as to how such challenges would offer an available and effective remedy to the authors, nor has it specified to which government authority such an administrative challenge should be brought or under which circumstances. As regards judicial challenges, the State party has not submitted any information refuting the authors' claims that they lack standing to challenge legislative omissions before the Constitutional Court, or that the Constitutional Court does not have the authority to order Parliament to address a gap in domestic legislation (see paras. 5.5 and 5.6). Nor has the State party provided any information on constitutional complaints in which the complainants were provided with an effective remedy in cases comparable to the situation of the authors.

3. Having declared the communication admissible, we would have found a violation of articles 17, 23 (1) and 26, read alone and in conjunction with article 2 (3), of the Covenant.

4. The authors are a same-sex couple in a committed relationship. They were married in the Kingdom of the Netherlands and subsequently moved to Albania, the country of nationality of one of them, E.H. (see para. 2.1). The laws of the State party limit marriage to different-sex couples. The authors have not attempted to have their marriage recognized in Albania. Nor have they claimed that the State party's failure to recognize same-sex marriages violates the right to marry protected by the Covenant.¹

5. The authors instead complain that the laws of Albania do not provide any form of recognition of same-sex relationships – such as cohabitation rights, registered partnerships or civil unions – that would provide them with equivalent rights and obligations to those attaching to different-sex relationships (see para. 3.1). The absence of such recognition, the authors argue, amounts to an arbitrary interference with their family life. The authors further allege that the State party's laws discriminate against them on the basis of their sexual orientation, because a different-sex couple in their situation could have their marriage recognized or, alternatively, have the opportunity to enter into a cohabitation agreement under article 163 of the Family Code of Albania (see para. 3.2).

6. The existing legislative framework in the State party does not afford the authors any possibility to protect their relationship and thus enable them to enjoy their right to family life on an equal basis with different-sex couples. This leaves the authors in a legal vacuum that fails to take account of the social reality of their situation. For the reasons explained below, we conclude that this legal vacuum violates their family life and privacy and constitutes discrimination on the basis of sexual orientation.

¹ Article 23 (2) provides that “the right of men and women of marriageable age to marry and to found a family shall be recognized”. In *Joslin v. New Zealand* (CCPR/C/75/D/902/1999), decided in 2002, the Committee concluded that article 23 (2) applied only to different-sex couples. The authors have not alleged a violation of this provision in the present case.

7. We first recall that the Covenant is to be interpreted and applied in the light of contemporary circumstances and developments in other human rights systems.² In recent concluding observations, the Committee has expressed concern that lesbian, gay, bisexual and transgender persons are not authorized to officially enter marriage or civil partnerships,³ and has recommended the review of relevant legislation to fully ensure the equal treatment of same-sex couples.⁴ This review applies to all spheres, including marriage and family arrangements.⁵ In addition, the Inter-American Court of Human Rights and the European Court of Human Rights have held that the relationship of a same-sex couple falls within both family and private life, as would the relationship of a different-sex couple.⁶ These courts have required States subject to their jurisdiction to provide to same-sex couples recognition and protection of their relationship that is equivalent to the recognition and protection available to different-sex couples.⁷ In line with this reasoning, we conclude that a same-sex relationship, such as that of the authors, falls within the notions of both family life and privacy encompassed by articles 17 and 23 of the Covenant.

8. In the present case, we consider that the State party's failure to afford any recognition or protection of the authors' relationship amounts to an interference with their right to privacy and family life. The State party has not explained why this failure pursues a legitimate aim or is necessary or proportionate. In fact, the State party's national action plan for LGBTI persons for 2021–2027 contains a revision of the Family Code to extend marriage or cohabitation rights for same-sex couples on an equal basis with different-sex couples (see para. 7). We therefore find that the State party has violated the authors' rights to family life and privacy under articles 17 and 23 (1), read alone and in conjunction with article 2 (3), of the Covenant.

9. With regard to non-discrimination, the Committee's jurisprudence recognizes that article 26 encompasses discrimination based on sexual orientation.⁸ In this connection, the Committee has found that differences in entitlements to public benefits between married and unmarried different-sex couples are reasonable and objective, inasmuch as those couples have the choice to marry or not.⁹ In contrast, no such choice exists for same-sex couples in countries that do not recognize same-sex marriages, civil unions or partnerships. Thus, same-sex couples cannot benefit from provisions similar or identical to those applied to different-sex marriages. The Committee has thus concluded that the failure to provide rights or benefits to same-sex couples that are available to different-sex couples amounts to discrimination prohibited under article 26.¹⁰

² See, for example, *Roy v. Australia* (CCPR/C/137/D/3585/2019), para. 8.14 (describing the Covenant as a living instrument) and paras. 8.3 to 8.7 (interpreting the rights of Indigenous Peoples under art. 27 of the Covenant in the light of developments in the United Nations, African and inter-American human rights systems); and *Cáceres v. Paraguay* (CCPR/C/126/D/2751/2016), para. 7.4 (taking note of developments in other human rights courts and treaty bodies regarding the link between the protection of the environment and the enjoyment of the right to life).

³ CCPR/C/MUS/CO/5, para. 9; see also CCPR/C/VNM/CO/3, para. 15 (welcoming efforts to improve the situation of lesbian, gay, bisexual, transgender and intersex persons "by eliminating the prohibition on same-sex marriage").

⁴ CCPR/C/CZE/CO/4, para. 13; and CCPR/C/PAN/CO/4, para. 14 (c).

⁵ CCPR/C/BGR/CO/4, para. 12 (a).

⁶ See, for example, European Court of Human Rights, *Fedotova and others v. Russia* (applications No. 40792/10, No. 30538/14 and No. 43439/14), Grand Chamber, judgment of 17 January 2023, paras. 140–143; and Inter-American Court of Human Rights, Advisory Opinion OC-24/17, 24 November 2017, paras. 191 and 192.

⁷ See, for example, European Court of Human Rights, *Orlandi and others v. Italy* (applications No. 26431/12, No. 26742/12, No. 44057/12 and No. 60088/12), judgment of 14 March 2018, para. 192; and *Fedotova and others v. Russia*, para. 178; and Inter-American Court of Human Rights, Advisory Opinion OC-24/17, para. 228; and Advisory Opinion OC-24/17, paras. 197–199.

⁸ *Young v. Australia*, para. 10.4; *X v. Colombia* (CCPR/C/89/D/1361/2005), para. 7.2; and *C v. Australia* (CCPR/C/119/D/2216/2012), para. 8.4.

⁹ Human Rights Committee, *Danning v. Netherlands*, communication No. 180/1984, para. 14; and *Derksen and Bakker v. Netherlands* (CCPR/C/80/D/976/2001), para. 9.2.

¹⁰ *Young v. Australia*, para. 10.4; and *X v. Colombia*, para. 7.2. See also *G. v. Australia* (CCPR/C/119/D/2172/2012), para. 7.12.

10. In the present case, the authors describe how the failure by Albania to recognize their relationship affects their daily lives and deprives them of legal rights and obligations afforded to similarly situated different-sex couples, such as access to social security benefits, pension or inheritance rights. The State party has not contested the authors' allegations. On the contrary, its national action plan for LGBTI persons, as previously stated, foresees marriage, civil unions or cohabitation rights for same-sex couples on an equal basis with different-sex couples. We therefore consider that the differential treatment of the authors is not based on reasonable and objective criteria and therefore constitutes discrimination based on sexual orientation under article 26 of the Covenant, read alone and in conjunction with articles 17 and 23 (1), of the Covenant.
