

E.B. v. France (application no. 43546/02)

1) Reference Details

Jurisdiction: European Court of Human Rights (Grand Chamber)

Date of decision: 22 January 2008

Case Status: Concluded

2) Facts

The applicant (E.B.) was a French nursery teacher and also a lesbian. The applicant had been living with other women since 1990. In February 1998 the applicant applied to the Jura Social Services Department for authorisation to adopt a child. In her application she mentioned that she was in a stable lesbian relationship with her partner. In November 1998 the adoption board made a recommendation that E.B.'s application be rejected.

The applicant lodged a successful appeal against the decision in the Besançon Administrative Court. This decision was overturned by the Nancy Administrative Court of Appeal who opined that the rejection by the adoption board had not been based on the applicant's choice of lifestyle and therefore did not violate Article 8 or Article 14 of the European Convention on Human Rights. In June 2002 the Conseil d'Etat dismissed her appeal.

On 2 December 2002 an application was made to the Strasbourg Court. On 19 September 2006 a Chamber composed of 7 judges relinquished jurisdiction in favour of the Grand Chamber. Neither of the parties objected to the relinquishment. The case was heard before a Grand Chamber of 17 judges.

3) Law

National Law

- The Civil Code: Article 343 and Article 343-1
- The Family and Social Welfare Code: Article 63

European Convention of Human Rights

- Article 8 (right to respect for private and family life)
- Article 14 (prohibition of discrimination)

4) Legal Arguments

The applicant argues that at every stage of her adoption application she had suffered discriminatory treatment that had been based on her sexual orientation and had interfered with her right to respect for her private life. On this basis the applicant argued a violation of Article 14 in conjunction with Article 8.

The Government argued that the case was inadmissible as the case fell outside the scope of Article 8 and subsequently Article 14.

5) Decision

The court accepted that Article 14 taken in conjunction with Article 8 was applicable in the present case. In a 10 to 7 majority it further accepted the arguments of the applicant in respect to Article 14. The Court discerned the present case from a previous case of *Fretté v. France* put forward as supporting jurisprudence by the French government. In distinguishing between the two cases the Court set out as significant the fact that E.B. was in a stable relationship, unlike in the facts of the *Fretté* case, and that unlike the applicant in the *Fretté* case E.B. was not deemed to have “*difficulties in envisaging the practical consequences of the upheaval occasioned by the arrival of a child*”.

The Court observed that the Government carried the burden of proof and their inability to produce statistical evidence, on adoption applicants' known or declared sexual orientation, necessary to discharge this burden meant that it failed to establish an accurate picture of their administrative practices and establish an absence of discrimination.

In regards to the significance the applicant's sexual orientation played in the adoption decision-making process the court stated:

“The Court therefore notes that the administrative courts went to some lengths to rule that although regard had been had to the applicant's sexual orientation, it had not been the basis for the decision in question and had not been considered from a hostile position of principle..... However, in the Court's opinion the fact that the applicant's homosexuality featured to such an extent in the reasoning of the domestic authorities is significant.....It observes that the manner in which certain opinions were expressed was indeed revealing in that the applicant's homosexuality was a determining factor.”

The court concluded that whilst efforts were taken by the French judicial authorities to justify taking into account the applicants “*lifestyle*”, the ‘inescapable conclusion’ was that the applicants sexual orientation was at the centre of the deliberations and that it was a decisive factor leading to the decision to refuse her authorisation to adopt.

In rejecting the suggestion that the discrimination was a consequence of the pursuit of a legitimate aim the court reiterated that where sexual orientation is involved “*there is a need for particularly convincing and weighty reasons to justify a difference in treatment*”.