



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Liechtenstein
<b>Title:</b>	Annulment of a legal provision in the granting of a residence permit to de facto civil partner on the grounds of violating the principle of constitutional equality
<b>Date:</b>	12 September 2018
<b>Expert:</b>	Patricia Hornich
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Liechtenstein's Administrative Court applied to the Constitutional Court for annulment of a legal provision in the granting of a residence permit to the de facto civil partner on the grounds that this provision violates the principle of constitutional equality and is not compatible with Article 8 ECHR in conjunction with the prohibition of discrimination under Article 14 ECHR
<b>Ground of discrimination:</b>	Other (Family relationship)
<b>Source:</b>	National court decision
<b>Field:</b>	Other (family reunification)
<b>Applicable law:</b>	Law on the Free Movement of Persons (Personenfreizügigkeitsgesetz; PFZG)

### Content

**Case law:** Art. 48 para. 1 letter d of the Law on the Free Movement of EEA and Swiss Nationals (Law on the Free Movement of Persons; PFZG) LGBI. 2009, No. 348 excludes the granting of a residence permit to a civil partner whenever one of the two partners, has a criminal record or is recorded in the garnishment register. In the government's view, this provision "in the sense of immigration control" serves to safeguard national security, public peace and order as well as the defence of order, the prevention of domestic criminal acts and the protection of the rights and freedoms of others.

The Administrative Court applied to the Constitutional Court for annulment of this legal provision arguing that the provision creates a disadvantage for civil partners in comparison with the provisions for the reunion of a spouse or partner from a registered partnership, since this provision does not apply there.

Therefore, the administrative Court considers that Article 48 para. 1 let. d PFZG violates Article 8 ECHR in conjunction with Article 14 ECHR. This legal provision also violates the constitutional requirement of equality, because there is no viable and justifiable reason for this unequal treatment. Therefore, the legal provision is to be regarded as arbitrary.

The provision was therefore judged to be unconstitutional or contrary to the ECHR by the Constitutional Court in accordance with the request of the Administrative Court and annulled.<sup>1</sup>

**Key points of analysis:** In its decision of July 2018, the Constitutional Court states in detail that differential treatment between spouses and registered partners on the one hand and de facto civil partners on the other hand in connection with family reunification is permissible, provided that the unequal treatment is linked with substantial differences and if it can be justified by objective reasons which are pursued with overall necessary and proportionate means with regard to the obligation to respect family life.

With regard to the constitutional principle of equality (Art. 31 para. 1 Liechtenstein Constitution), a violation of the principle of equal treatment only exists if groups of persons are treated unequally without a justifiable reason and thus in an arbitrary manner; the legislature may not make any objectively unjustified differentiations which favour or disadvantage certain categories of persons.

With regard to the family reunification of de facto civil partners, registration in the criminal record or in the garnishment register is an automatic unconditional obstacle to residence, even in situations where the livelihood of the partners or their children is not endangered per se and there is no risk of a financial burden on public finances. Thus, the Constitutional Court found that it had not been proven that there is sufficient legitimate public interest to keep such immigration condition which result in denying family reunion solely for the reason that one of the persons concerned has an entry in the garnishment register.

Comparable reservations are also directed against the fact that every entry in the criminal record precludes the granting of a residence permit, irrespective of whether it concerns the partner entitled to reside or the partner moving in, and irrespective of the nature and seriousness of the offence.

Thus, the statutory provision prevents the appropriate reconciliation of interests in accordance with the principles of proportionality and taking into account the circumstances of the individual case, as is the case in the light of Art. 8 ECHR and as required by Union law, which is implemented by the PZFG.

The Constitutional Court came to the conclusion that there are no viable objective reasons which can justify the fact that, in the case of de facto civil partners, every entry in the criminal or garnishment register prevents the granting of a residence permit for joint residence, whereas the legislature does not provide a comparable reason for exclusion in the case of other family relationships.

Thus, the legal provision of Art. 48 para. 1 letter d PFZG constitutes unjustified unequal treatment of partners in a de facto civil partnership in comparison with other partners in a family relationship. Thus, this regulation infringes Article 8 ECHR in conjunction with Article 14 ECHR. The statutory provision also violates the constitutional requirement of equality, because there is no viable and justifiable reason for this unequal treatment, so that it must be regarded as arbitrary.

The Constitutional Court concludes that the provision is to be repealed as unconstitutional or contrary to the ECHR in accordance with the application of the Administrative Court.

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<sup>1</sup> Repeal of Art. 48 para. 1 let. d of the Freedom of Movement of Persons Act by the judgment of the Princely Liechtenstein State Court of 3 July 2018 (StGH 2017/189), LGBl-Nr. 2018.176, edition 30.08.2018.

**Internet link source:** Announcement of 28 August 2018 of the repeal of Art. 48 para. 1 let. d of the Freedom of Movement of Persons Act by the judgment of the Princely Liechtenstein State Court of 3 July <https://www.gesetze.li/chrono/neueste-lgbl>, all accessed 05/09/2018.