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Oliari v. Italy: a missed opportunity for equality in Strasbourg

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Proponents of same-sex marriage must feel like the proverbial person sitting at a bus stop. You wait for ages, then three decisions on same-sex marriage come at once. First there was the [overwhelming affirmation](#) of the Irish people to grant their gay brothers and sisters marriage in May, then one month later came the [poetically written](#) decision of the US Supreme Court that dignity can be gained only if marriage is available to all. The third instalment came last Tuesday, when the European Court of Human Rights in Strasbourg held that Italy violates the human rights of same-sex couples by its failure to officially recognise their relationships. The upshot of this decision, [Oliari v. Italy](#), is that Italy must pass a civil partnership law, but there is no right to marry for same-sex couples.



*Marchers at Milan Pride 2015 say 'yes' to same-sex marriage
(image: Alessandro Liguori)*

While the Strasbourg Court's decision gives some reason to rejoice for same-sex couples in Italy, and in other European states where same-sex couples are treated as if they are strangers, the decision is a disappointment. The fact that the judgment was framed in terms of a right to material benefits, which are obtainable via civil partnership, was an unimaginative compromise that missed the opportunity to recognise the full equality of lesbian and gay people. The Strasbourg Court determined that a same-sex couple's right to a family life is breached by the lack of recognition of their relationship, and that civil partnership fixes this problem. Having reached this conclusion, the court felt that there was no need to make a finding on the additional ground of discrimination. The Strasbourg Court has missed an important opportunity, or one might say shirked its responsibility, to declare that LGBT (lesbian, gay, bisexual and transgender) people are fully equal to their heterosexual peers. LGBT people's rights to [family life and private life](#) were established by the Strasbourg Court long ago. Yet, the global debate has moved on to a conversation about dignity and equality, as demonstrated by the US Supreme Court last month in [Obergefell v. Hodges](#). While the Strasbourg Court's decision is a step forward, its thought process remains in the past. The decision appeals to the lowest common denominator, as it gives the impression that LGBT rights are to be exercised behind closed doors.

More concerning still, the decision to grant civil partnership, as opposed to nothing at all, was premised on the general acceptance of same-sex relationships within Italian society. Those who wish to keep LGBT people in the shadows will no doubt seize upon this. The Strasbourg Court is simply wrong to link rights with acceptance. The rights to family life and privacy and to dignity and equality do not evaporate due to the putative social conservatism of the privileged majority who surround gay men and lesbians. The Strasbourg Court has shown its timidity in this decision. Is the court just following the lead of society, rather than upholding human rights for what they are, namely something that intrinsically attaches to each and every one of us without discrimination?

A court in the UK [must soon answer the same question](#), when Northern Ireland's courts determine whether to follow other parts of the UK by offering same-sex marriage. That court has a choice to adopt Strasbourg's approach of side-stepping the issue of equality, or to follow the US Supreme Court – its common law cousin – to recognise that LGBT people are fully equal members of society. Whether full equality requires equal marriage is open to debate, and this debate will continue in legislatures and courtrooms for years to come.

Until the Strasbourg Court recognises that equality is imperative and not optional, LGBT people will continue to petition it. The process could have been shortened via a bolder judgment of the Strasbourg Court, but its judges chose not to take it.

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