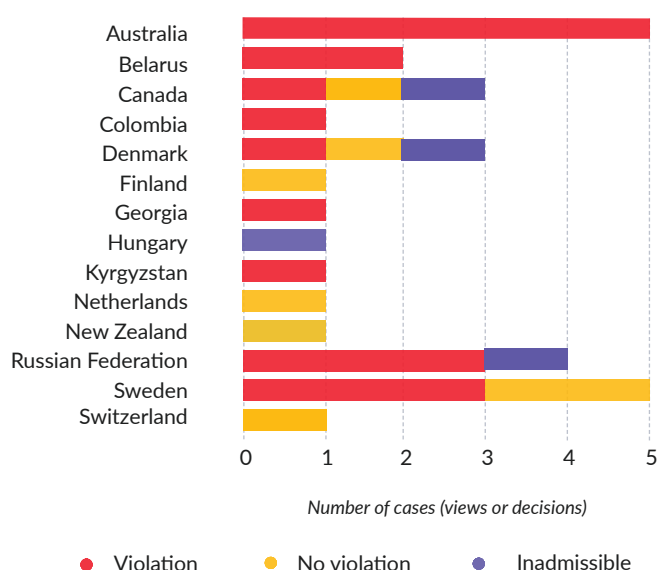


Advocates and litigators from all six ILGA World regions contributed to this toolkit: this is the first publication of its kind to specifically address SOGIESC issues, and a powerful resource in the hands of human rights defenders who wish to use international strategic litigation to bring about justice and change for their communities.

## LGBT cases reviewed by the Treaty Bodies - Countries



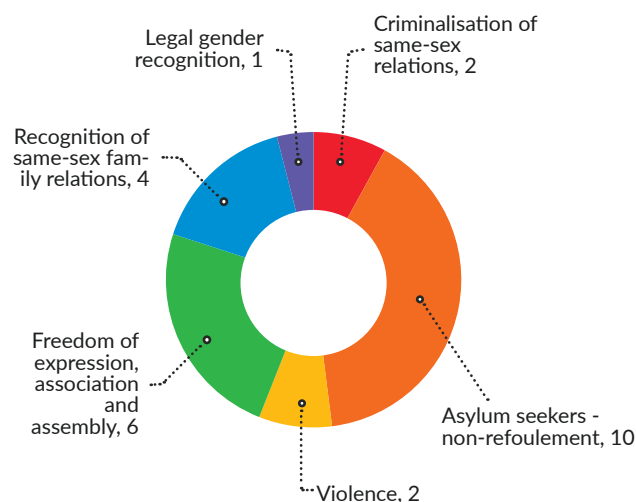
LGBT decisions by Treaty Bodies proved to be instrumental not only for international, but also national and regional advocacy. For example, the ground-breaking decision *Toonen v. Australia* (HRCtee, 1994) on criminalisation of consensual same-sex sexual acts marked a turning point in the understanding of human rights at the UN level, but also in the evolution of national legislation and jurisprudence in many countries from India to South Africa, and from Fiji to Colombia. *"The Treaty Bodies Strategic Litigation toolkit was prepared for and with LGBTI defenders from across the world"*, explains Julia Ehrt, Director of Programmes at ILGA World. *"They contributed to it, shared their experiences and lessons learnt, and explained what do international advocacy and litigation mean for local defenders."* The toolkit is available both in English and Spanish, and ILGA World will aim at making it available also in other languages to better assist human rights defenders across the world.

United Nations Treaty Bodies' individual communications mechanisms provide LGBTI advocates with opportunities to obtain justice after the exhaustion of domestic remedies, and to benefit from positive developments achieved in the field by defenders from other countries and regions. Referring to Treaty Bodies means that a case will be analysed by international human rights experts who specialise in different fields and can issue recommendations to national authorities.

However, out of more than 1,500 cases reviewed by Treaty Bodies, only 30 have yet addressed issues of sexual orientation and/or gender identity.

*"This instrument has not been widely used by local LGBTI defenders,"* notes Kseniya Kirichenko, Senior Officer on Women and UN Advocacy at ILGA World. *"Until now there have been almost no guidelines on how to do it, nor any comprehensive analysis of the existing jurisprudence on SOGIESC cases. Our Strategic Litigation Toolkit fills this gap: I truly believe that UN Treaty Bodies strategic litigation may become a space for the global LGBTI movement to claim our voice, exercise our creativity and ultimately bring justice back to our communities."*

## LGBT Cases Reviewed by the Treaty Bodies - Themes



## Toolkit:

### Policy Paper

- [https://ilga.org/downloads/Treaty\\_Bodies\\_Strategic\\_Litigation\\_toolkit\\_policy\\_paper\\_en.pdf](https://ilga.org/downloads/Treaty_Bodies_Strategic_Litigation_toolkit_policy_paper_en.pdf)
- the concept of strategic litigation, its aims and components, as well as some information about the use of strategic litigation by LGBTI advocates;
- basic information about Treaty Bodies, their working methods, and procedural aspects of Treaty Bodies' individual complaints mechanism;
- analysis of Treaty Bodies' SOGIESC jurisprudence and pending cases, and identifies gaps and opportunities for future developments. This chapter specifically looks into six topics: the criminalisation of same-sex relations; LGBTI asylum seekers; violence, hate crimes and hate speech; freedom of expression and freedom of assembly and association; LGBTI families; and legal gender recognition;
- region-specific background information on Treaty Bodies' jurisprudence, as well as evidence, recommendations and thoughts from activists, experts, lawyers, and attorneys working in six different regions; and
- tables with brief information about LGBTI cases reviewed by, and pending before, Treaty Bodies, as well as lists of useful resources and contacts.

### Treaty Bodies' Case Digest

- [https://ilga.org/downloads/Treaty\\_Bodies\\_Strategic\\_Litigation\\_toolkit\\_Case\\_Digest\\_United\\_Nations\\_Treaty\\_Bodies\\_jurisprudence.pdf](https://ilga.org/downloads/Treaty_Bodies_Strategic_Litigation_toolkit_Case_Digest_United_Nations_Treaty_Bodies_jurisprudence.pdf)
- Treaty Bodies' decisions on 25 LGBT cases: brief description of facts; reasoning and decision; comments; and information on follow-up.

### Regional Tribunals' Case Digest

- [https://ilga.org/downloads/Treaty\\_Bodies\\_Strategic\\_Litigation\\_toolkit\\_case\\_digest\\_regional\\_human\\_rights\\_tribunals.pdf](https://ilga.org/downloads/Treaty_Bodies_Strategic_Litigation_toolkit_case_digest_regional_human_rights_tribunals.pdf)
- Information on LGBT cases reviewed by the Inter-American Court of Human Rights and the European Court of Human Rights.

### Table of Treaty Bodies' LGBTI Decisions and Pending Cases

- <https://ilga.org/Treaty-Bodies-jurisprudence-SOGIESC>
- Information on the reviewed and pending Treaty Bodies' cases on SOGIESC (to be updated periodically).

If you have any questions or comments regarding ILGA World's UN Treaty Bodies Strategic Litigation Toolkit, or if you are interested in bringing your case to one of the UN Treaty Bodies, do not hesitate to contact us:  
[untreaties@ilga.org](mailto:untreaties@ilga.org).

## Relevant decisions:

### Asylum seekers

- ✓ *K.S.Y. v. Netherlands*, CAT, 2003 (deportation of a gay man to Iran, no violation)
- ✓ *E.J.V.M. v. Sweden*, CAT, 2003 (deportation of a bisexual man to Costa Rica, no violation)
- ✓ *Uttam Mondal v. Sweden*, CAT, 2011 (deportation of a gay man to Bangladesh, **violation**)
- ✓ *X. v. Sweden*, HRCtee, 2011 (deportation of a bisexual man to Afghanistan, **violation**)
- ✓ *M.I. v. Sweden*, HRCtee, 2013 (deportation of a lesbian woman to Bangladesh, **violation**)
- ✓ *M.K.H. v. Denmark*, HRCtee, 2016 (deportation of a gay man to Bangladesh, **violation**)
- ✓ *M.Z.B.M. v. Denmark*, HRCtee, 2017 (deportation of a trans woman to Malaysia, no violation)
- ✓ *E.A. v. Sweden*, CAT, 2017 (deportation of a gay man to Lebanon, no violation)
- ✓ *A.S. v. Denmark*, CEDAW, 2018 (deportation of a lesbian woman to Uganda, inadmissible)
- ✓ *Z.B. v. Hungary*, HRCtee, 2018 (deportation of a woman, who allegedly suffered from violence based on her sister's sexual orientation in Cameroon, to Serbia, inadmissible)
- ✓ *H.R.E.S. v. Switzerland*, CAT, 2018 (deportation of a gay man to Iran, no violation)

### Violence | hate crimes | hate speech

- ✓ *Ernazarov v. Kyrgyzstan*, HRCtee, 2015 (death of a person convicted of "forced sodomy" in a police station as a result of inter-prisoner violence against gay men and sex-offenders, **violation**)
- ✓ *D.C. and D.E. v. Georgia*, CAT,

2017 (Vulnerability of a detained person subjected to torture, including attempted rape, by police, **violation**)

- ✓ *K.K. v. Russian Federation*, CEDAW, 2019 (discrimination, hate speech, inadmissible)

### Freedom of expression | freedom of assembly and association

- ✓ *Hertzberg et al. v. Finland*, HRCtee, 1982 (censuring radio and TV programmes dealing with sexual orientation, no violation)
- ✓ *Fedotova v. Russian Federation*, HRCtee, 2012 (administrative fine for "gay propaganda among minors" for displaying LGBT posters, **violation**)
- ✓ *Alekseev v. Russian Federation*, HRCtee, 2013 (refusal to authorise a picket against execution of gay people in Iran, **violation**)
- ✓ *Praded v. Belarus*, HRCtee, 2014 (arrest and imposition of a fine for holding of a peaceful assembly against the killing of gay people in Iran without prior authorisation, **violation**)
- ✓ *Androsenko v. Belarus*, HRCtee, 2016 (arrest and imposition of a fine for holding of a peaceful assembly against the killing of gay people in Iran without prior authorisation, **violation**)
- ✓ *Nepomnyaschiy v. Russian Federation*, HRCtee, 2018 (administrative fine for "gay propaganda among minors" for displaying LGBT posters, **violation**)

## Pending cases:

### Asylum seekers

- ✓ *A.B. v. Finland*, CRC, 51/2018, registered in 2018 (deportation of a Russian female same-sex couple and their 7-year-old child to Russia)

### Violence | hate crimes | hate speech

- ✓ *[...] v. Russian Federation*, CEDAW, 119/2017, registered in 2017 (hate crime, lack of effective investigation, sexual orientation, gender-based discrimination)
- ✓ *Krikkerik v. Russian Federation*, HRCtee, 2992/2017, registered in 2017 (hate crime, lack of effective investigation)
- ✓ *[...] v. Kyrgyzstan*, HRCtee, 2998/2017, registered in 2017 (ill-treatment in detention, forced confession, undocumented detention, discrimination based on sexual orientation)

### Freedom of expression | freedom of assembly and association

- ✓ *Savolainen v. Russian Federation*, HRCtee, 2830/2016, registered in 2016 (denial of permission to hold a trans rally to LGBT activists)
- ✓ *[...] v. Russian Federation*, HRCtee, 2943/2017, registered in 2017 (denial of permission to hold rallies on LGBT issues to LGBT activists)
- ✓ *[...] v. Russian Federation*, HRCtee, 2953/2017, registered in 2017 (LGBT activists refused authorisation to hold rallies)
- ✓ *[...] v. Russian Federation*, HRCtee, 2954/2017, registered in 2017 (LGBT activists refused authorisation to hold rallies)
- ✓ *[...] v. Russian Federation*, HRCtee, 3596/2017, registered in 2019 (freedom of assembly, discrimination on the ground of sexual orientation)

### LGBTI families

- ✓ *[...] v. Albania*, HRCtee, 3031/2017, registered in 2017 (recognition of same-sex partnership)

# Acceptance of individual complaint procedures\*

Country	HRCtee	CESCR	CAT	CEDAW	CRC	CRPD	CERD
Albania	2007	NA	NA	2003	2013	NA	NA
Andorra	2006	NA	2006	2002	2014	2014	2006
Armenia	1993	2009	NA	2006	2019	2007	NA
Austria	1987	NA	1987	2000	2012	2008	2002
Azerbaijan	2001	2009	2002	2001	NA	2009	2001
Belarus	1992	NA	NA	2004	NA	NA	NA
Belgium	1994	2014	1999	2004	2014	2009	2000
Bosnia and Herzegovina	1995	2012	2003	2002	2018	2010	NA
Bulgaria	1992	NA	1993	2006	NA	2008	1993
Croatia	1995	NA	1992	2001	2017	2007	NA
Cyprus	1992	NA	1993	2002	2017	2011	1993
Czech Republic	1993	NA	1996	2001	2015	2007	2000
Denmark	1972	NA	1987	2000	2015	2014	1985
Estonia	1991	NA	NA	NA	NA	2012	2010
Finland	1975	2014	1989	2000	2015	2016	1994
France	1984	2015	1988	2000	2016	2010	1982
Georgia	1994	NA	2005	2002	2016	2009	2005
Germany	1993	NA	2001	2002	2013	2009	2001
Greece	1997	NA	1988	2002	NA	2012	NA
Hungary	1988	NA	1989	2000	NA	2007	1989
Iceland	1979	NA	1996	2001	NA	2007	1981
Ireland	1989	2012	2002	2000	2014	NA	2000
Italy	1978	2015	1989	2000	2016	2009	1978
Kazakhstan	2009	2010	2008	2001	NA	2008	2008
Kyrgyzstan	1994	NA	NA	2002	NA	NA	NA
Latvia	1994	NA	NA	NA	NA	2010	NA
Liechtenstein	1998	NA	1990	2001	2017	NA	2004
Lithuania	1991	NA	NA	2004	2015	2010	NA
Luxembourg	1983	2015	1987	2003	2016	2011	1996
Malta	1990	NA	1990	NA	2012	2012	1998
Monaco	NA	NA	1991	2016	2014	2019	2001
Montenegro	2006	2013	2001	2006	2013	2009	2006
Netherlands	1978	2009	1988	2002	NA	NA	1971
North Macedonia	1994	2013	NA	2003	2012	2011	1999
Norway	1972	NA	1986	2002	NA	NA	1976
Poland	1991	NA	1993	2003	2013	NA	1998
Portugal	1983	2013	1989	2002	2013	2009	2000
Republic of Moldova	2008	NA	2011	2006	NA	2018	2013
Romania	1993	NA	NA	2003	2012	2008	2003
Russian Federation	1991	NA	1991	2004	NA	NA	1991
San Marino	1985	2015	2015	2005	2018	2008	2008
Serbia	2001	NA	2001	2003	2012	2009	2001
Slovakia	1993	2012	1995	2000	2013	2010	1995
Slovenia	1993	2009	1993	2004	2018	2008	2001
Spain	1985	2010	1987	2001	2013	2007	1998
Sweden	1971	NA	1986	2003	NA	2008	1971
Switzerland	NA	NA	1986	2008	2017	NA	2003
Tajikistan	1999	NA	NA	2014	NA	NA	NA
Turkey	2006	NA	1988	2002	2017	2015	NA
Turkmenistan	1997	NA	NA	2009	NA	2010	NA
Ukraine	1991	2009	2003	2003	2016	2010	1992
United Kingdom	NA	NA	NA	2004	NA	2009	NA
Uzbekistan	1995	NA	NA	NA	NA	NA	NA

<span style="color: green;">■</span>	Ratification/Acceptance
<span style="color: orange;">■</span>	Signature
* as of 14 October 2019	

**HRCtee** – Human Rights Committee | **CESCR** – Committee on Economic, Social and Cultural Rights | **CAT** – Committee against Torture | **CEDAW** – Committee on the Elimination of Discrimination against Women | **CRC** – Committee on the Rights of the Child | **CRPD** – Committee on the Rights of Persons with Disabilities | **CERD** – Committee on the Elimination of Racial Discrimination | **LGBTI** – lesbian, gay, bisexual, trans and intersex | **SOGIESC** – sexual orientation, gender identity, gender expression and sex characteristics