



Strasbourg, February 2016

## COMPILATION OF CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS ON GENDER EQUALITY ISSUES

---

**Please note that:**

- The text of the summaries of case law included in this compilation comes from different thematic Factsheets published by the Press Service of the European Court of Human Rights.
- This compilation does not include case law from the European Court on Human Rights concerning violence against women, domestic violence and human trafficking affecting women (other than in relation with a violation of Article 14). For information from the Court on relevant case-law on those topics, please visit:
  - Domestic violence: [http://www.echr.coe.int/Documents/FS\\_Domestic\\_violence\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Domestic_violence_ENG.pdf)
  - Violence against women: [http://www.echr.coe.int/Documents/FS\\_Violence\\_Woman\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Violence_Woman_ENG.pdf)
  - Trafficking in human beings: [http://www.echr.coe.int/Documents/FS\\_Trafficking\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Trafficking_ENG.pdf) ;
- This document does not include pending cases.

## **INDEX**

<b>I. DISCRIMINATION ON THE GROUND OF SEX (ARTICLE 14).....</b>	<b>3</b>
<b>II. RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE (ARTICLE 8) .....</b>	<b>18</b>
<b>IV. PROHIBITION OF INHUMAN OR DEGRADING TREATMENT (ARTICLE 3) .....</b>	<b>28</b>
<b>V. FREEDOM OF EXPRESSION (ARTICLE 10) .....</b>	<b>30</b>
<b>VI. RIGHT TO RESPECT FOR FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION (ARTICLE 9) .....</b>	<b>31</b>

## I. DISCRIMINATION ON THE GROUND OF SEX (ARTICLE 14)

### In conjunction with Article 8 - right to respect for private and family life:

Emel Boyraz v. Turkey

**2 December 2014**

The applicant, a Turkish national, was appointed to the post of security officer in a branch of a State-run electricity company. She worked on a contractual basis for almost three years before being dismissed in March 2004 on account of her sex. She was informed that she would not be appointed because she did not fulfil the requirements of "being a man" and "having completed military service". In February 2006, the courts dismissed Ms Boyraz's case, taking into consideration an earlier decision by the Supreme Administrative Court which had held that the requirement regarding military service demonstrated that the post in question was reserved for male candidates and that this requirement was lawful given the nature of the post and the public interest.

The Court held that there have been a **violation of Article 14** of the Convention (prohibition of discrimination) read **in conjunction with Article 8** (right to respect for private and family life), as well as **a violation of Article 6(1)** (right to a fair trial), on account of the excessive length of the proceedings, the conflicting decisions rendered by the Supreme Administrative Court, and the absence of adequate reasoning in the Supreme Administrative Court's decisions.

Tuncer Güneş v. Turkey

**3 September 2013**

The applicant complained that she had not been allowed to keep just her maiden name after her marriage in March 2005. She claimed that the fact that Turkish law allowed married men, but not married women, to use only their own surname after marriage amounted to discrimination based on sex.

The Court found **a violation of Article 14** (prohibition of discrimination), of the Convention **in conjunction with Article 8** (right to respect for private and family life).

Hulea v. Romania

**2 October 2012**

The applicant had been in the army since 1991. In 2001, his second child was born. In September 2002, the applicant applied to his hierarchical superior for parental leave. The Ministry of Defence refused on the ground that the legislation defining the status of army personnel provided for parental leave only for women. In 2003, the applicant brought an action against the Ministry of Defence before the county court, as he considered this refusal discriminatory. The applicant's appeal was dismissed in 2005.

The Court found **a violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 8** (right to respect for private and family life).

Genovese v. Malta

**11 October 2011**

The applicant is a British national and was born out of wedlock in the United Kingdom in 1996 to a British mother and a Maltese father. Maltese citizenship for the child was

rejected on the basis of the relevant sections of the Maltese Citizenship Act, which stated that children born out of wedlock were only eligible for Maltese citizenship if their mother was Maltese. The Maltese Constitutional Court held that the right to citizenship was not a substantive Convention right and that granting or denying citizenship would not affect the applicant's family life, as his father refused to have any contact with him.

The Court was not convinced by the Government's argument that children born in wedlock had a link with their parents resulting from their parents' marriage, which did not exist in cases of children born out of wedlock. It was precisely a distinction in treatment based on such a link which Article 14 prohibited, unless it was otherwise objectively justified, and no reasonable or objective grounds had been given to justify that difference in treatment. The Court therefore found **a violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 8** (right to respect for private and family life).

#### Losonci Rose and Rose v. Switzerland

**9 November 2010**

The applicants are a Hungarian national and his wife, who has joint Swiss and French nationality. The applicants, who were intending to get married, asked to keep their own surnames rather than having a double-barrelled surname for one of them. They cited the difficulties in changing name in Hungarian and French law. They also pointed out that they intended to live together in Switzerland following their marriage. On 24 May 2005, the Federal Court held that the applicant's first request to use his wife's surname as his family name had rendered obsolete the option of having his name governed by Hungarian law.

The Court concluded that the rules in force in Switzerland gave rise to discrimination between bi-national couples according to whether the man or the woman had Swiss nationality, and found **a violation of Article 14** (prohibition of discrimination), of the Convention **in conjunction with Article 8** (right to respect for private and family life).

#### A. v. Croatia

**14 October 2010**

The applicant's now ex-husband (suffering from post-traumatic stress disorder, paranoia, anxiety and epilepsy) allegedly subjected her to repeated physical violence causing bodily injury and death threats over many years and also regularly abused her in front of their young daughter. After going into hiding, the applicant requested a court order preventing her ex-husband from stalking or harassing her. It was refused on the ground that she had not shown an immediate risk to her life.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention in that the Croatian authorities had failed to implement many of the measures ordered by the courts to protect the applicant or deal with her ex-husband's psychiatric problems, which appeared to be at the root of his violent behaviour. It was also unclear whether he had undergone any psychiatric treatment. The Court further declared the applicant's **complaint under Article 14** (prohibition of discrimination) of the Convention **inadmissible**, on the ground, in particular, that she had not given sufficient evidence (such as reports or statistics) to prove that the measures or practices adopted in Croatia against domestic violence, or the effects of such measures or practices, were discriminatory.

Konstantin Markin v. Russia**7 October 2010**

The applicant, a Russian military serviceman, had custody of his children after his divorce. He subsequently applied to his head of unit for three years' parental leave, but the request was rejected because this leave could only be granted to women. His appeals were rejected by the military court. He was then granted by his unit two years of parental leave with financial aid. The military court issued a decision criticising the military unit for disregarding the court's judgment. The applicant applied to the Constitutional Court claiming that the provisions of the military service act concerning the three-year parental leave were incompatible with the equality clause in the Constitution. His application was rejected, holding that the military required special conditions.

The Court found **a violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 8** (right to respect for private and family life), as it was not reasonably justified that only service-women were entitled to such leave.

Schwizbegel v. Switzerland**10 June 2010**

The applicant is a single Swiss national, who was authorised to adopt a child in 2000. From 2002 onwards, the applicant sought authorisation to adopt a second child. Her various applications were rejected and her appeals were dismissed. In the last instance, in 2006, the Federal Court dismissed the applicant's appeal, on the basis that it would be in the child's best interests given the applicant's age and her age difference in relation to the child (between 46 and 48 years, which was regarded as excessive). The applicant claimed that she had been discriminated against in comparison with other women of her age who were able to give birth to children on their own.

The Court found that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 8** (right to respect for private and family life).

Wagner and J.M.W.L. v. Luxembourg**28 June 2007**

This case concerned a civil action seeking to have an adoption decision pronounced in Peru declared enforceable in Luxembourg. The Luxembourg courts had dismissed the application as the Civil Code made no provision for full adoption by a single woman.

The Court held, in particular, that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention because of the Luxembourg courts' failure to acknowledge the family ties created by the full adoption granted in Peru, and a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 8**, the child (and her mother as a result) having been penalised in her daily life on account of her status as the adoptive child of an unmarried mother of Luxembourg nationality whose family ties created by a foreign judgment were not recognised in Luxembourg.

Unal Tekeli v. Turkey**16 November 2004**

The applicant took her husband's name following her marriage. As she was known by her maiden name in her professional life, she continued using it in front of her legal surname but could not use both names together on official documents. In 1995, the applicant's

request to the Court of First Instance to bear only her maiden name was dismissed on the ground that under the Turkish Civil Code, married women had to bear their husband's name throughout their married life. This law was reformed in 1997 to allow married women to add their maiden name in front of their husband's name, but not to have their maiden name alone.

The Court found **a violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 8** (right to respect for private life and family life), given the "difference of treatment" on the ground of sex between persons in an analogous situation.

#### Odièvre v. France

**13 February 2003**

The applicant complained about the rules governing confidentiality on birth, which had prevented her from obtaining information about her natural family. Her biological mother requested that the birth be kept secret and abandoned her rights to the child. The applicant was subsequently adopted. She later consulted her file and obtained non-identifying information about her natural family. She applied to the Tribunal de Grande Instance for an order "for disclosure of confidential information concerning her birth and permission to obtain copies of any documents, public records or full birth certificates". The court registrar returned the case to the applicant's lawyer referring to a statute that lays down that an application for disclosure of details is inadmissible if confidentiality was agreed at birth.

The Court found **no violation of Article 8** (right to respect for private and family life) of the Convention because the French legislation sought to strike a balance and to ensure sufficient proportion between the competing interests. The Court also found **no violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8**.

#### Owens v. the United Kingdom

**13 January 2004**

The applicant is a widower with two children. The applicant applied for the Widowed Mother's Allowance, to which a widow whose husband had died in similar circumstances to those of the applicant's wife, would have been entitled. His request and appeals were rejected. He complained of discrimination on the ground of sex relying on Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for family life) and Article 1 of Protocol No. 1 (protection of property).

The case was struck out following a friendly settlement.

#### Atkinson v. the United Kingdom

**8 April 2003**

The applicant is a widower and applied in 2000 for a Widow's Payment and a Widowed Mother's Allowance. His claim was considered invalid because the regulations governing the payment of widow's benefits were specific to women and since his claim had not been considered he was denied the right of appeal. The applicant complained that British social-security legislation had discriminated against him on the ground of sex, in breach of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for family life) and Article 1 of Protocol No. 1 (right of property).

The case was struck out following a friendly settlement.

Rice v. the United Kingdom**1 October 2002**

The applicant is a widower and applied in 2000 for social security benefits equivalent to those to which a widow would have been entitled. His claim was considered invalid and his right of appeal was denied since the claim had not been considered. In 2001 the Welfare Reform and Pensions Act 1999 came into force making bereavement benefits available to both men and women. The applicant complained that British social-security and tax legislation had discriminated against him on the ground of sex, in breach of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for family life) and Article 1 of Protocol No. 1 (right of property).

[The case was struck out following a friendly settlement.](#)

Loffelman v. the United Kingdom**26 March 2002**

The applicant is a widower. In 1998, the applicant applied for social security benefits equivalent to those to which a widow would have been entitled. His claim was considered invalid because the benefits applied only to women, and his right of appeal was denied since the claim had not been considered. In 2001 the Welfare Reform and Pensions Act 1999 came into force, making bereavement benefits available to both men and women. The applicant complained that British social-security and tax legislation had discriminated against him on the ground of sex, in breach of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for family life) and Article 1 of Protocol No. 1 (right of property).

[The case was struck out following a friendly settlement.](#)

Sawden v. the United Kingdom**12 March 2002**

The applicant is a widower. In 1997, the applicant applied for social security benefits equivalent to those to which a widow would have been entitled. His claim was considered invalid because the benefits applied only to women, and his right of appeal was denied since the claim had not been considered. In 2001 the Welfare Reform and Pensions Act 1999 came into force, making bereavement benefits available to both men and women. The applicant complained that British social-security and tax legislation had discriminated against him on the ground of sex, in breach of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for family life) and Article 1 of Protocol No. 1 (right of property). He further complained under Article 13 (right to an effective remedy).

[The case was struck out following a friendly settlement.](#)

Leary v. the United Kingdom**25 April 2000**

The applicant is a widower. In 1997, the applicant applied for social security benefits equivalent to those to which a widow would have been entitled. His claim was considered invalid because the benefits applied only to women, and his right of appeal was denied since the claim had not been considered. The applicant complained that British social-security and tax legislation had discriminated against him on the ground of sex, in breach of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for family life) and Article 1 of Protocol No. 1 (right of property).

The case was struck out following a friendly settlement.

Petrovic v. Austria

**27 March 1998**

In 1989, the applicant applied for a parental leave allowance to look after his child while his wife worked. The application was turned down on the ground that only mothers could claim such an allowance under the Unemployment Benefit Act 1977. The applicant's appeals and complaints were dismissed. In 1990, an amendment to the Act took effect, allowing fathers to claim parental leave allowance in respect of children born after 1989, which therefore did not apply to the applicant.

The Court found **no violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 8** (right to respect for private and family life), considering that the Austrian authorities' refusal to grant the applicant a parental leave allowance had not exceeded their margin of appreciation. The Court also concluded that it appeared difficult to criticise the Austrian legislature for having introduced progressive legislation in a gradual manner, reflecting the evolution of society in that sphere.

Burghartz v. Switzerland

**22 February 1994**

The applicants were married in Germany in 1984. The husband is a Swiss citizen and the wife has both Swiss and German nationality. They chose the wife's surname as the family name while the husband had both surnames. The Swiss registry office had only recorded the husband's name as their joint surname, so the couple applied to register the wife's surname as the family surname. The application was turned down. They applied later in 1988 but both the application and the appeal were refused.

The Court found **a violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 8** (right to respect for private and family life).

Marckx v. Belgium

**13 June 1979**

The applicant was legally recognised by her unmarried mother after her birth. Subsequently, the mother adopted the applicant in pursuance of the Belgian Civil Code. Under Belgian law, an unmarried mother could establish the maternal affiliation of her child only by recognition while the maternal affiliation of a "legitimate" child was established by birth. The "illegitimate" child who was recognised or adopted by his mother remained in principle outside the latter's family. In 1978, the Belgian Government introduced a Bill which sought "to institute equality in law between all children".

The Court found **a violation of Article 14** (prohibition of discrimination) of the Convention as regards the discrimination between "illegitimate" and "legitimate" children. The Court also found **a violation of Article 8** (right to private and family life) and **a violation of Article 1 of Protocol No. 1** (protection of property) read in **conjunction with Article 14**.



## **In conjunction with Article 3 - prohibition of inhuman and degrading treatment:**

Rumor v. Italy

**27 May 2014**

The applicant complained that the authorities had failed to support her following the serious incident of domestic violence against her in November 2008 or to protect her from further violence. She alleged in particular that her former partner had not been obliged to have psychological treatment and continued to represent a threat to both her and her children. She further claimed that the reception centre chosen for his house arrest, situated just 15km from her home, had been inadequate, submitting that she had been intimidated twice by employees of the reception centre which was in breach of a court order prohibiting any form of contact with her former partner. Lastly, she alleged that these failings had been the result of the inadequacy of the legislative framework in Italy in the field of the fight against domestic violence, and that this discriminated against her as a woman.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman and degrading treatment) **alone and in conjunction with Article 14** (prohibition of discrimination) of the Convention. It found that the Italian authorities had put in place a legislative framework allowing them to take measures against persons accused of domestic violence and that that framework had been effective in punishing the perpetrator of the crime of which the applicant was victim and preventing the recurrence of violent attacks against her physical integrity.

Eremia and Others v. the Republic of Moldova

**28 May 2013**

The first applicant and her two daughters complained about the Moldovan authorities' failure to protect them from the violent and abusive behaviour of their husband and father, a police officer.

The Court held that there had been **a violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention in respect of the first applicant in that, despite their knowledge of the abuse, the authorities had failed to take effective measures against her husband and to protect her from further domestic violence. It further held that there had been **a violation of Article 8** (right to respect for private and family life) of the Convention in respect of the daughters, considering that, despite the detrimental psychological effects of them witnessing their father's violence against their mother in the family home, little or no action had been taken to prevent the recurrence of such behaviour. Lastly, the Court held that there had been a **violation of Article 14** (prohibition of discrimination) read **in conjunction with Article 3** of the Convention in respect of the first applicant, finding that the authorities' actions had not been a simple failure or delay in dealing with violence against her, but had amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards the first applicant as a woman. In this respect, the Court observed that the findings of the United Nations Special Rapporteur on violence against women, its causes and consequences only went to support the impression that the authorities did not fully appreciate the seriousness and extent of the problem of domestic violence in the Republic of Moldova and its discriminatory effect on women.

B.S. v. Spain**24 July 2012**

This case concerned a woman of Nigerian origin who was stopped by the police while working as a prostitute on the outskirts of Palma de Mallorca.

The applicant complained in particular that the national police officers had verbally and physically abused her when stopping her for questioning. She further alleged that she had been discriminated against because of her profession as a prostitute, her skin colour and her gender.

The Court found that the Spanish State had not conducted an adequate and effective investigation into the applicant's allegations of ill-treatment on two occasions when she was stopped and questioned in the street, in violation of Article 3 (prohibition of inhuman and degrading treatment) of the Convention under its procedural limb. It further considered that the domestic courts had not taken into account the applicant's special vulnerability inherent in her situation as an African woman working as a prostitute and had thus failed to satisfy their obligation to take all possible measures to ascertain whether or not a discriminatory attitude might have played a role in the events, in **violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 3** of the Convention. The Court lastly held that there had been no violation of Article 3 of the Convention as regards the applicant's allegations of ill-treatment.

Opuz v. Turkey**9 June 2009**

The applicant and her mother were assaulted and threatened over many years by the applicant's husband, at various points leaving both women with life-threatening injuries. With only one exception, no prosecution was brought against him on the grounds that both women had withdrawn their complaints, despite their explanations that the husband had harassed them into doing so, threatening to kill them. He subsequently stabbed his wife seven times and was given a fine equivalent to about 385 euros, payable in instalments. The two women filed numerous complaints, claiming their lives were in danger. The husband was questioned and released. Finally, when the two women were trying to move away, the husband shot dead his mother-in-law, arguing that his honour had been at stake. He was convicted for murder and sentenced to life imprisonment but released pending his appeal, whereupon his wife claimed he continued to threaten her.

The Court found **a violation of Article 2 (right to life)** of the Convention concerning the murder of the husband's mother-in-law and **a violation of Article 3 (prohibition of inhuman or degrading treatment)** of the Convention concerning the State's failure to protect his wife. Turkey had failed to set up and implement a system for punishing domestic violence and protecting victims. The authorities had not even used the protective measures available and had discontinued proceedings as a "family matter" ignoring why the complaints had been withdrawn. There should have been a legal framework allowing criminal proceedings to be brought irrespective of whether the complaints had been withdrawn. The Court also found – for the first time in a domestic violence case – **violations of Article 14 (prohibition of discrimination), in conjunction with Articles 2 and 3 of the Convention**, as the violence suffered by the two women was gender-based; domestic violence mainly affected women and it was encouraged by discriminatory judicial passivity.

## **In conjunction with Article 4(3)(d) - prohibition of slavery and forced labour:**

Zarb Adami v. Malta

**20 June 2006**

The applicant was placed on the list of jurors in Malta from 1971 until 2002. He served as both a juror and foreman on three different occasions. In 1997 he was called again but failed to appear and was fined EUR 240. He failed to pay the fine and pleaded that it was discriminatory since other people in his position were not subjected to the burdens and duties of jury service, and the law and domestic practice exempted women from jury service. His requests to be exempted from jury service and appeals were refused until 2005 when his request was accepted.

The Court found **a violation of Article 14** (prohibition of discrimination) **in conjunction with Article 4(3)(d)** (prohibition of slavery and forced labour), given the disproportionate prejudicial effects of the policy on a group of people, and the difference of treatment between men and women.

Karlheinz Schmidt v. Germany

**18 July 1994**

In Baden-Württemberg, where the applicant lives, fire service is compulsory and there is an obligation to pay fire service levy for men. In 1982 the applicant was required to pay a fire service levy. The applicant's appeal against this decision was rejected. His subsequent appeals alleging sex discrimination were dismissed.

The Court found **a violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 4(3) (d)** (prohibition of slavery and forced labour), considering that the difference of treatment on the ground of sex in the imposition of a financial burden could hardly be justified.

## **In conjunction with Article 6 - right to a fair trial:**

García Mateos v. Spain

**19 February 2013**

The applicant worked full time in a supermarket. In 2003, she asked her employer to reduce her working time as she had custody of her son, who was under six years old. As her employer refused, she brought proceedings before the Employment Tribunal. In 2007, the Constitutional Court found that the principle of non-discrimination on the ground of sex had been breached in respect of the applicant, as her employer had prevented her from reconciling her professional and family lives. In 2009, the Constitutional Court found that its judgment of 15 January 2007 had not been properly enforced, but a new decision of the Employment Tribunal would be without object as, in the meantime, the applicant's son had reached the age of six, and it found that the fixing of compensation as an alternative was not permitted by the Institutional Law on the Constitutional Court.

The Court found that the violation of the principle of non-discrimination on the ground of sex, as established by the ruling in favour of the applicant, had never been remedied on account of the non-enforcement of the relevant decision and the failure to provide her with compensation. The Court found that **a violation of Article 6 (1)** (right to a fair

trial within a reasonable time) **in conjunction with Article 14** (prohibition of discrimination).

Mizzi v. Malta

**12 January 2012**

The applicant's wife became pregnant in 1966. In 1967, they separated. Their daughter was automatically considered to be the applicant's and as such, the applicant was registered as her natural father. Following a DNA test which established that he was not the father, the applicant tried unsuccessfully to bring civil proceedings to repudiate his paternity. According to the Maltese Civil Code, a husband could challenge the paternity if he could prove the adultery of his wife and that the birth had been concealed from him. The latter condition was dropped when the law was later amended. In 1997, the Civil Court accepted the applicant's request. That judgment was later revoked by the Constitutional Court.

The Court found **a violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 6(1)** (right to a fair trial within a reasonable time) and **Article 8** (right to respect for private and family life), as it considered that the applicant had been subject to time-limits which did not apply to other "interested parties" when bringing an action to contest his paternity.

Schuler-Zraggen v. Switzerland

**24 June 1993**

In 1979, the applicant was granted a half-pension because she had contracted tuberculosis. She was then dismissed on account of her illness and granted a full pension. Two years later she gave birth to a son. Her pension was cancelled two years later as the Invalidity Insurance Board of her Canton ruled that her family and health circumstances had changed appreciably. The applicant's appeal for a full pension, or alternatively a half-pension, was dismissed. The Federal Insurance Court held that she was entitled to a half-pension if she was in financial difficulties and transferred the case to the Compensation Office to determine whether this condition had been satisfied. The Court considered to what extent the applicant was restricted in her activities as a housewife but not her ability to work in her former job, as it proceeded on the assumption that, having a young child, she would have given up gainful employment even if she had not had health problems.

The Court found **a violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 6(1)** (right to a fair trial within a reasonable time) as the assumption made by the Federal Insurance Court that once she became a mother the applicant would have given up work even if she had not had health problems, amounted to discrimination on the ground of sex.

Rasmussen v. Denmark

**28 November 1984**

The applicant and his wife had a child in 1971. Although doubts arose as to the paternity of the child, the applicant refrained from bringing any action to contest paternity. The couple divorced in 1975. In accordance with an agreement concluded with his wife, the applicant undertook not to institute any proceedings to contest paternity and his wife abandoned any claim for maintenance of the child. In 1976, the former wife contended that she was not bound by this agreement. The applicant thereupon applied to the Court of Appeal for leave to institute proceedings to contest paternity, the time-limits having expired. But his request was refused on the ground that there were no special

circumstances to warrant granting any exemption from the requisite time-limits. The applicant's subsequent appeals were refused.

The Court found a difference of treatment between the applicant and his former wife based on the ground of sex, but the Court considered that this difference of treatment was justified, notably in the interest of the child. The Court found **no violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 6** (right to a fair trial) or with Article 8 (right to respect for private and family life).

### **In conjunction with Article 8 - right to respect for private and family life:**

Di Trizio v. Switzerland

**2 February 2016**

The case concerns the refusal by the Swiss Disability Insurance Office to continue to pay Ms Di Trizio a 50% disability allowance after the birth of her twins. She had had to leave her full-time employment in June 2002 because of back problems and in February 2004 she gave birth to twins and suffered increased back pain as a result. She continued working half-time for financial reasons and due to her wish to devote time to caring for her children and home. In 2006, the Insurance Office awarded her a disability allowance for a period of time and decided that she did not qualify for any allowance after August 2004. Ms Di Trizio complained of the fact that her degree of disability had been calculated using the "combined method", which resulted in her allowance being stopped because of her part-time work.

The Court noted that the « combined method » of calculation is not in accordance with the aim of gender equality in modern society, where women increasingly have the legitimate desire of reconciling family life and professional interests. The Court considered that the application of the "combined method" is discriminatory for the majority of women wishing to work part-time after giving birth. The Court found a violation of **Article 14** (prohibition of discrimination) of the Convention in conjunction with **Article 8** (right to respect for private and family life).

### **In conjunction with Article 13 - right to an effective remedy:**

Abdulaziz, Cabales and Balkandali v. the United Kingdom

**28 May 1985**

Mrs Abdelaziz was born in Malawi. The applicant lived in the UK and was then given leave to remain there indefinitely. She married a Portuguese national who was in the UK with leave to remain for a limited period. The authorities refused him leave to remain permanently. The appeal was unsuccessful.

Mrs Cabales was born in the Philippines. She has lived in the UK and was then given leave to remain there indefinitely. She married a citizen from the Philippines in this country. The UK authorities refused to give him a visa to join his wife for settlement. The appeal was unsuccessful. The UK considered the Philippines marriage as invalid and the parties married in the UK. The applicant's husband was granted a twelve months leave to remain, and was informed that he would be eligible to apply for indefinite leave after this period.

Mrs Balkandali was born in Egypt. By virtue of her marriage with a UK citizen, she obtained indefinite leave to remain in the country. The marriage was dissolved and she then married a Turkish citizen who was in the UK without leave. The authorities refused

an application for leave for him to remain in the country. He remained in the country without leave. His wife became a British citizen by virtue of intervening legislation, and as such, her husband was then granted indefinite leave. The immigration rules in force at the relevant time held that a foreign husband wishing to join or remain with his wife lawfully settled in the UK would not be granted leave to enter or stay unless she was a citizen of the UK. On the other hand, a foreign wife could obtain leave to enter or stay.

The Court found **a violation of Article 14** (prohibition of discrimination) of the Convention since wives could be accepted for settlement in the UK more easily than husbands, which constituted discrimination on the ground of sex. The Court also found **a violation of Article 13** (right to an effective remedy) of the Convention.

### **In conjunction with Article 1 of Protocol No. 1 (protection of property):**

Andrle v. the Czech Republic

**17 February 2011**

Divorced, the applicant was awarded custody of his two children until they reached the age of majority. At the age of 57, he applied to the Czech social security authorities for a retirement pension. His request was dismissed as he had not attained the age required. Unlike women, that age could not be lowered according to the number of children raised.

The perception of the roles of the sexes has evolved and the Czech Government is progressively modifying its pension system to reflect social and demographic change. The very nature of that change is, however, gradual.

The Court found **no violation of Article 14** (prohibition of discrimination) **in conjunction with Article 1 of Protocol No. 1** (protection of property), emphasising that the national authorities could not be criticised for the pace of complete equalisation of the retirement age, and were the best placed to determine such a complex issue relating to economic and social policies. Therefore, the Court found that the Czech Republic's approach concerning its pension scheme was reasonably and objectively justified and would continue to be so until such time as social and economic change in the country removed the need for special treatment of women.

J.M. v. the United Kingdom

**28 September 2010**

After the applicant and her husband divorced, the applicant left the family home. Her former husband became the parent with care of their two children and the applicant, as the non-resident parent, was required to contribute financially to the cost of their upbringing. Since 1998, the applicant has been living with another woman in an intimate relationship. Her child maintenance obligation was assessed in September 2001 in accordance with the regulations that applied at that time. These provided for a reduced amount where the absent parent had entered into a new relationship, married or unmarried, but took no account of same-sex relationships. The applicant complained that the difference was appreciable. Her complaint was upheld by three levels of jurisdiction, but the case was overturned by a majority ruling in the House of Lords in 2006.

The Court found **a violation of Article 14** (prohibition of discrimination) of the Convention, **in conjunction with a violation of Article 1 of Protocol No. 1** (protection of property), because the applicant's maintenance obligation towards her children had been assessed differently on account of the nature of her new relationship.

Muñoz Díaz v. Spain**8 December 2009**

The applicant, a Spanish national belonging to the Roma community, married in 1971 according to the Roma community's own rites. The marriage was solemnised in accordance with Roma customs and cultural traditions and was recognised by that community. The applicant had six children, who were registered in the family record book. On 24 December 2000, the applicant's husband died and the applicant applied for a survivor's pension, which was refused on the ground that she had not been married to the deceased. In 2002, a Labour Court granted the applicant an entitlement to receive a survivor's pension with a base rate of 903.29 euros per month, her Roma marriage thus being recognised as having civil effects, but the Higher Court of Justice quashed the judgment.

The Court found that it was disproportionate for the Spanish State, which had provided the applicant and her family with health coverage and collected social security contributions from her husband for over 19 years, to refuse to recognise her Roma marriage when it came to granting her a survivor's pension on her husband's death. The Court found a **violation of Article 14** (prohibition of discrimination) together with **Article 1 of Protocol No. 1** (protection of property).

Pearson v. the United Kingdom**22 August 2006**

The applicant, aged 63, complained that he would not be eligible for a State pension until he was 65, whereas a woman could claim it from the age of 60. He was unemployed at the time but if he returned to work he and any potential employer would be liable to make national insurance contributions. The applicant issued proceedings for damages in the UK for discrimination, but his claim was struck out and permission to appeal was refused.

The Court found **no violation of Article 14** (prohibition of discrimination) **in conjunction with Article 1 of Protocol No. 1 of the Convention** (protection of property), given the original justification for the measure as correcting financial inequality between the sexes and considering that the policy adopted by the legislature in deferring equalisation of the pension age for men and women until 2020 fell within the State's margin of appreciation.

Zeman v. Austria**29 June 2006**

Following his wife's death, the applicant was granted a survivor's pension, which would amount to one-third of the survivor's pension in the first months and increase to the full pension a few years later. On due date, an amendment came into force reducing the applicant's entitlement from full to 40% of his late wife's pension. The applicant complained for discrimination, because had he been a woman in a similar position he would have been entitled to 60%. His appeals were dismissed.

The Court concluded that the difference of treatment between men and women was not based on any "objective and reasonable justification", and as such, found a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 1 of Protocol No. 1** (protection of property). In 2007, the Austrian Government informed the Court that a settlement had been reached between the competent authorities and the applicant.



Stec and Others v. the United Kingdom**12 April 2006**

The four applicants complained about sex-based differences in eligibility for reduced earnings allowance (REA) and retirement allowance (RA). All applicants used to receive REA. One applicant's REA was replaced by RA a lower payment when she reached 60, while had she been a man she would have continued to receive REA. Two applicants' REA were replaced by RA while had they been a woman in the same circumstances they would have been entitled to a frozen rate of REA for life. The last applicant's REA was frozen to life, while had she been a man she would have received unfrozen REA. In 2000, the Commissioner, following a European Court of Justice ruling, struck out the applicant's cases where they were the appellants.

The Court found that the difference in State pensionable age between men and women in the United Kingdom was originally intended to correct the disadvantaged economic position of women. This difference continued to be justified on that ground until such time that social and economic changes removed the need for special treatment for women. The United Kingdom's decisions as to the timing and means of putting right the inequality were not unreasonable. Therefore, the Court found **no violation of Article 14** (prohibition of discrimination) **in conjunction with Article 1 of Protocol No. 1** (protection of property) of the Convention.

Michael Matthews v. the United Kingdom**15 July 2002**

In 1997, the applicant applied at his local post office for an elderly person's travel permit. He was aged 64. His application was refused because under British law at the time, such a permit could only be provided to men who were aged 65 or over, whereas women were eligible to receive such a permit at the age of 60 or over. The applicant complained of discrimination on the ground of sex in relation to his right to property, contrary to Article 14 (prohibition of discrimination) and Article 1 of Protocol No. 1 (protection of property).

The case was struck out following a friendly settlement.

Willis v. the United Kingdom**11 June 2002**

After his wife died, in 1996, the applicant applied for benefits equivalent to those which a widow whose husband had died in similar circumstances to those of the applicant's wife would have been entitled, namely a Widow's Payment and a Widowed Mother's Allowance, payable under "the 1992 Act". His claim was rejected.

The Court found **a violation of Article 14** of the Convention (prohibition of discrimination), **in conjunction with Article 1 of Protocol No. 1** (protection of property), given that the difference in treatment between men and women regarding entitlement to benefits was not based on any objective and reasonable justification.

Wessels-Bergervoet v. the Netherlands**4 June 2002**

The applicant and her husband have always lived in the Netherlands. The applicant's husband was granted a married person's old age pension but this pension was reduced by 38% as he had not been insured under the Dutch Pension Act for 19 years when he worked in Germany. The applicant was granted the same kind of pension that was also reduced by 38%. She complained that the only reason for such reduction was that she



was married to a man who was not insured under the Pension Act, on the grounds of his employment abroad, and that a married man in the same situation would not have had his pension reduced for this reason.

The Court found **a violation of Article 14** (prohibition of discrimination), **in conjunction with Article 1 of Protocol No. 1** (protection of property).

#### Downie v. the United Kingdom

**21 May 2002**

The applicant's wife died in 1993. In 1997, the applicant applied for social security benefits equivalent to those to which a widow would have been entitled. His claim was considered invalid because the benefits applied only to women, and his right of appeal was denied since the claim had not been considered. The applicant received Child Benefit payments at the Lone Parent rate. In 2001, the Welfare Reform and Pensions Act 1999 came into force, making bereavement benefits available to both men and women. The applicant complained that British social-security and tax legislation had discriminated against him on the ground of sex, in breach of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for family life) and Article 1 of Protocol No. 1 (right of property).

The case was struck out following a friendly settlement.

#### Van Raalte v. the Netherlands

**21 February 1997**

The applicant had never been married and had no children. In 1987 the tax authorities issued an assessment of contributions payable by the applicant for 1985 under various compulsory social security schemes, including the scheme set up by the General Child Allowance Act. The applicant filed an objection arguing that this Act exempted unmarried childless women over the age of 45 from the obligation to pay contributions, as opposed to unmarried men of such age. His objection was rejected and a subsequent appeal was dismissed. The exemption for women over 45 had in the meantime been abolished with effect from 1989, and the Supreme Court held, *inter alia*, that there was no reason to declare that the exemption also applied for the year 1985 to unmarried men over 45.

The Court found **a violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 1 of Protocol No. 1** (protection of property). in that the exemption from the obligation to pay contributions under a child benefits scheme enjoyed by unmarried childless women aged 45 or over did not also apply to unmarried childless men of that age.

#### Marckx v. Belgium

**13 June 1979**

The applicant was legally recognised by her unmarried mother after her birth. Subsequently, the mother adopted the applicant in pursuance of the Belgian Civil Code. Under Belgian law, an unmarried mother could establish the maternal affiliation of her child only by recognition while the maternal affiliation of a "legitimate" child was established by birth. The "illegitimate" child who was recognised or adopted by his mother remained in principle outside the latter's family. In 1978, the Belgian Government introduced a Bill which sought "to institute equality in law between all children".

The Court found **a violation of Article 14** (prohibition of discrimination) of the Convention as regards the discrimination between "illegitimate" and "legitimate"

children. The Court also found **a violation of Article 8** (right to private and family life) and **a violation of Article 1 of Protocol No. 1** (protection of property) read in **conjunction with Article 14**.

## II. RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE (ARTICLE 8)

### Canonne v. France

#### **2 June 2015 (decision on the admissibility)**

In this case, the applicant complained about the fact that the domestic courts had inferred his paternity of a young woman from his refusal to submit to the genetic tests ordered by them. He emphasised in particular that under French law individuals who were the respondents in paternity actions were obliged to submit to a DNA test in order to establish that they were not the fathers. He alleged a breach of the principle of the inviolability of the human body which, in his view, prohibited any enforcement of genetic tests in civil cases.

**The Court declared inadmissible as manifestly ill-founded the applicant's complaints under Article 8** (right to respect for private and family life) of the Convention. It found that the domestic courts had not exceeded the room for manoeuvre ("wide margin of appreciation") available to them when they took into account the applicant's refusal to submit to court-ordered genetic testing and declared him the father of the young woman, and in giving priority to the latter's right to respect for private life over that of the applicant.

### Gözüm v. Turkey

#### **15 January 2015**

This case concerned the refusal of the applicant's request, as a single adoptive mother, to have her own forename entered on the personal documents for her adopted son in place of the name of the child's biological mother. The applicant alleged in particular that the rules of civil law, as applied to her at the relevant time, had infringed her right to respect for private and family life.

The Court held that there had been **a violation of Article 8** (right to respect for private and family life) of the Convention, finding that civil-law protection, as envisaged at the relevant time, had been inadequate in respect of Turkey's obligations under Article 8. It noted in particular that there had been a vacuum in Turkish civil law in relation to single-parent adoption, since at the time the applicant had made her request, there had been no regulatory framework for recognition of the adoptive single parent's forename in place of that of the natural parent. This had left the applicant in a situation of distressing uncertainty regarding her private and family life with her son.

### Hanzelkovi v. the Czech Republic

#### **11 December 2014**

This case concerned a court-ordered interim measure requiring the return to hospital of a new-born baby and its mother, who had just given birth and had immediately gone home, and the lack of any remedy by which to complain about that measure. The applicants – the mother and the child – complained of a violation of their right to respect for their private and family life, alleging that the measure whereby the child's return to the hospital had been ordered a few hours after his birth was neither lawful nor necessary. They also complained about the lack of an effective remedy, as they had

been unable to challenge the interim measure, and, not being able to obtain its annulment, they were not entitled to any redress or damages.

The Court held that there had been **a violation of Article 8** (right to respect for private and family life), and **a violation of Article 13** (right to an effective remedy) of the Convention. It reiterated in particular that the taking into care of a new-born baby at birth was an extremely harsh measure and that there had to be unusually compelling reasons for a baby to be removed from the care of its mother against her will immediately after the birth and following a procedure which involved neither the mother nor her partner. In the present case, the Court found in particular that when the domestic court was considering the interim measure it should have ascertained whether it was possible to have recourse to a less extreme form of interference with the applicants' family life at such a decisive moment in their lives. The Court took the view that this serious interference with the applicants' family life and the conditions of its implementation had had disproportionate effects on their prospects of enjoying a family life immediately after the child's birth. While there may have been a need to take precautionary measures to protect the baby's health, the interference with the applicants' family life caused by the interim measure could not be regarded as necessary in a democratic society.

#### Konovalova v. Russia

**9 October 2014**

The applicant complained about the unauthorised presence of medical students during the birth of her child, alleging that she had not given written consent to being observed and had been barely conscious when told of such arrangements.

The Court held that there had been **a violation of Article 8** (right to respect for private and family life) of the Convention. It found in particular that the relevant national legislation at the time of the birth of the applicant's baby – 1999 – did not contain any safeguards to protect patients' privacy rights. This serious shortcoming had been exacerbated by the hospital's procedure for obtaining consent from patients to take part in the clinical teaching programme during their treatment. In particular, the hospital's booklet notifying the applicant of her possible involvement in the teaching programme had been vague and the matter had in general been presented to her in such a way as to suggest that she had no other choice.

#### Ivinović v. Croatia

**18 September 2014**

Since her early childhood the applicant – who was born in 1946 – has suffered from cerebral palsy and uses a wheelchair. The case concerned proceedings, brought by the social welfare centre where she had been partly divested of her legal capacity.

The Court held that there had been **a violation of Article 8** (right to respect for private and family life) of the Convention, finding that the Croatian courts, in depriving partially the applicant of her legal capacity, did not follow a procedure which could be said to be in conformity with the guarantees under Article 8.

#### A.K. v. Latvia

**24 June 2014**

The applicant alleged in particular that she had been denied adequate and timely medical care in the form of an antenatal screening test which would have indicated the risk of her foetus having a genetic disorder and would have allowed her to choose whether to continue the pregnancy. She also complained that the national courts, by

wrongly interpreting the Medical Treatment Law, had failed to establish an infringement of her right to respect for her private life.

The Court held that there had been **a violation of Article 8** of the Convention (right to respect for private and family life) of the Convention in its procedural aspect.

#### L.H. v. Latvia

##### **29 April 2014**

The applicant alleged that the collection of her personal medical data by a State agency without her consent had violated her right to respect for her private life.

The Court recalled the importance of the protection of medical data to a person's enjoyment of the right to respect for private life. It held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention in the applicant's case, finding that the applicable law had failed to indicate with sufficient clarity the scope of discretion conferred on competent authorities and the manner of its exercise.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It found in particular that the relevant national

#### Radu v. the Republic of Moldova

##### **15 April 2014**

The case concerned the applicant's complaint about a State-owned hospital's disclosure of medical information about her to her employer. She was a lecturer at the Police Academy and in August 2003, pregnant with twins, was hospitalised for a fortnight due to a risk of her miscarrying. She gave a sick note certifying her absence from work. However, the Police Academy requested further information from the hospital concerning her sick leave, and it replied, providing more information about her pregnancy, her state of health and the treatment she had been given. The information was widely circulated at the applicant's place of work and, shortly afterwards, she had a miscarriage due to stress. She unsuccessfully brought proceedings against the hospital and the Police Academy claiming compensation for a breach of her right to private life.

The Court found **a violation of Article 8**. It considered that the interference complained of by the applicant was not "in accordance with the law" within the meaning of Article 8.

#### Söderman v. Sweden

##### **12 November 2013**

The case concerned the attempted covert filming of a 14-year old girl by her stepfather while she was naked, and her complaint that the Swedish legal system, which at the time did not prohibit filming without someone's consent, had not protected her against the violation of her personal integrity.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. It found in particular that Swedish law in force at the time had not ensured protection of the applicant's right to respect for private life – whether by providing a criminal or a civil remedy – in a manner that complied with the Convention. The act committed by her stepfather had violated her integrity and had been aggravated

A.K. and L. v. Croatia**8 January 2013**

The first applicant is the mother of the second applicant, who was born in 2008. Soon after his birth, the second applicant was placed, with his mother's consent, in a foster family in another town, on the grounds that his mother had no income and lived in a dilapidated property without heating. The first applicant complained in particular that she had not been represented in subsequent court proceedings which had resulted in a decision divesting her of her parental rights, on the ground that she had a mild mental disability, and that her son had been put up for adoption without her knowledge, consent or participation in the adoption proceedings.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. Observing in particular that, despite the legal requirement and the authorities' findings that the first applicant suffered from a mild mental disability, she had not been represented by a lawyer in the proceedings divesting her of parental rights, and that, by not informing her about the adoption proceedings the national authorities had deprived her of the opportunity to seek restoration of her parental rights before the ties between her and her son had been finally severed by his adoption, the Court found that the first applicant had thus been prevented from enjoying her right guaranteed by domestic law and had not been sufficiently involved in the decision-making process.

P. and S. v. Poland**30 October 2012**

The case concerned the difficulties encountered by a teenage girl, who had become pregnant as a result of rape, in obtaining access to an abortion, in particular due to the lack of a clear legal framework, procrastination of medical staff and also as a result of harassment.

The Court found a **violation of Article 8** (right to respect for private and family life) of the Convention. It found in particular that the applicants had been given misleading and contradictory information and had not received objective medical counselling. The fact that access to abortion was a subject of heated debate in Poland did not absolve the medical staff from their professional obligations regarding medical secrecy.

V.C. v. Slovakia**8 November 2011**

The applicant, of Roma ethnic origin, was sterilised in a public hospital without her full and informed consent, following the birth of her second child. She signed the consent form while still in labour, without understanding what was meant or that the process was irreversible, and after having been told that, if she had a third child, either she or the baby would die. She has since been ostracised by the Roma community and, now divorced, cites her infertility as one of the reasons for her separation from her ex-husband.

The Court found that the applicant must have experienced fear, anguish and feelings of inferiority as a result of her sterilisation, as well as the way in which she had been requested to agree to it. She had suffered physically and psychologically over a long period and also in terms of her relationship with her then husband and the Roma community. Although there was no proof that the medical staff concerned had intended to ill-treat her, they had acted with gross disregard to her right to autonomy and choice as a patient. Her sterilisation had therefore been in **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. The Court further found **no violation of Article 3** as concerned the applicant's allegation that the investigation into

her sterilisation had been inadequate. Lastly, the Court found **a violation of Article 8** (right to respect for private and family life) of the Convention concerning the lack of legal safeguards giving special consideration to her reproductive health as a Roma at that time.

#### Khelili v. Switzerland

**18 October 2011**

This case concerned the classification of a French woman as a “prostitute” in the computer database of the Geneva police for five years.

The Court found **a violation of Article 8** (right to respect for private life) of the Convention.

#### R.R. v. Poland

**26 May 2011**

A pregnant mother-of-two carrying a child thought to be suffering from a severe genetic abnormality was deliberately denied timely access to the genetic tests to which she was entitled by doctors opposed to abortion. Six weeks elapsed between the first ultrasound scan indicating the possibility that the foetus might be deformed and the results of the amniocentesis, too late for her to make an informed decision on whether to continue the pregnancy or to ask for a legal abortion, as the legal time limit had by then expired. Her daughter was subsequently born with abnormal chromosomes (Turner syndrome<sup>1</sup>). She submitted that bringing up and educating a severely-ill child had been damaging to herself and her other two children. Her husband also left her following the birth of their third child.

The Court found **a violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention as the applicant, who was in a very vulnerable position, had been humiliated and “shabbily” treated, the determination of whether she should have had access to genetic tests, as recommended by doctors, being marred by procrastination, confusion and lack of proper counselling and information. The Court also found **a violation of Article 8** (right to respect for private and family life) of the Convention because Polish law did not include any effective mechanisms which would have enabled the applicant to have access to the available diagnostic services and to take, in the light of their results, an informed decision as to whether or not to seek an abortion. Given that Polish domestic law allowed for abortion in cases of foetal malformation, there had to be an adequate legal and procedural framework to guarantee that relevant, full and reliable information on the foetus’ health be made available to pregnant women. The Court did not agree with the Polish Government that providing access to prenatal genetic tests was in effect providing access to abortion. In addition, States were obliged to organise their health services to ensure that the effective exercise of the freedom of conscience of health professionals in a professional context did not prevent patients from obtaining access to services to which they were legally entitled.

#### A., B. and C. v. Ireland

**16 December 2010**

Three women living in Ireland who became pregnant unintentionally complained that, because of the impossibility of obtaining a legal abortion in Ireland, they had to go to the United Kingdom for an abortion and that the procedure was humiliating, stigmatising and risked damaging their health. Having or helping anyone to have an abortion is a criminal offence in Ireland. However there is a constitutional right to an abortion where there is a real and substantial risk to the life of the mother. One of the applicants, in remission

from a rare form of cancer and unaware that she was pregnant, underwent checkups contraindicated in pregnancy. She understood that her pregnancy could provoke a relapse and believed that it put her life at risk.

The Court found that Ireland had failed to implement the constitutional right to a legal abortion. There had therefore been **a violation of Article 8** (right to respect for private and family life) of the Convention concerning the applicant in remission from cancer (the Court held there had been **no violation of Article 8** concerning the other two applicants), because she was unable to establish her right to a legal abortion either through the courts or the medical services available in Ireland. The Court noted the uncertainty surrounding the process of establishing whether a woman's pregnancy posed a risk to her life and that the threat of criminal prosecution had a "significant chilling" effect both on doctors and the women concerned.

#### Ternovsky v. Hungary

**14 December 2010**

The applicant complained about being denied the opportunity to give birth at home, arguing that midwives or other health professionals were effectively dissuaded by law from assisting her, because they risked being prosecuted. (There had recently been at least one such prosecution).

The Court found that the applicant was in effect not free to choose to give birth at home because of the permanent threat of prosecution faced by health professionals and the absence of specific and comprehensive legislation on the subject, in **violation of Article 8** (right to respect for private and family life) of the Convention.

#### Özpınar v. Turkey

**19 October 2010**

This case concerned the dismissal of a judge by the National Legal Service Council for reasons relating to her private life (allegations, for example, of a personal relationship with a lawyer and of her wearing unsuitable attire and makeup). The applicant alleged that her dismissal by the National Legal Service Council had been based on aspects of her private life and that no effective remedy had been available to her.

The Court found **a violation of Article 8** (right to respect for private life) of the Convention, as the interference with the applicant's private life had not been proportionate to the legitimate aim pursued. It further found **a violation of Article 13** (right to an effective remedy) **of the Convention, in conjunction with Article 8**, as the applicant had not had access to a remedy meeting the minimum requirements of Article 13 for the purposes of her Article 8 complaint.

#### K.H. and Others v. Slovakia

**28 April 2009**

The applicants, eight women of Roma origin, could not conceive any longer after being treated at gynaecological departments in two different hospitals, and suspected that it was because they had been sterilised during their stay in those hospitals. They complained that they could not obtain photocopies of their medical records.

The Court found **a violation of Article 8** (right to private and family life) of the Convention in that the applicants had not been allowed to photocopy their medical records. It held that, although subsequent legislative changes compatible with the Convention had been introduced, that had happened too late for the applicants.



Evans v. the United Kingdom**10 April 2007**

The applicant was diagnosed with pre-cancerous condition of her ovaries and was offered one cycle of in-vitro fertilisation treatment prior to the surgical removal of her ovaries. The applicant and her husband had to sign a form consenting to the treatment and that it would be possible for either of them to withdraw his or her consent at any time before the embryos were implanted in the applicant's uterus, in line with the Human Fertilisation and Embryology Act 1990. In 2002, the couple separated and the applicant's ex-husband informed the clinic that he did not consent to the applicant using the embryos alone or their continued storage. All proceedings and appeals of the applicant were refused. The applicant complained that requiring the father's consent for the continued storage and implantation of the fertilised eggs was in breach of her rights under Articles 8 and 14 of the Convention of the rights of the embryos under Article 2.

The Court found **no violation of Article 2** (right to life) of the Convention concerning the applicant's embryos since under English law an embryo did not have independent rights or interests, and **no violation of Article 8** (right to respect for private and family life) concerning the applicant. The Court also found **no violation of Article 14** (prohibition of discrimination) concerning the applicant.

Tysi c v. Poland**20 March 2007**

The applicant was refused a therapeutic abortion, after being warned that her already severe myopia could worsen if she carried her pregnancy to term. Following the birth of her child, she had a retinal haemorrhage and was registered severely disabled.

The Court found that the applicant had been denied access to an effective mechanism capable of determining whether the conditions for obtaining a legal abortion had been met, in **violation of Article 8** (right to respect for private and family life) of the Convention.

Grant v. the United Kingdom**23 May 2006**

The applicant, a 68-year-old post-operative male-to-female transsexual, complained about the lack of legal recognition of her change of gender and the refusal to pay her a retirement pension at the age applicable to other women (60). Her application was refused on the ground that she would only be entitled to a State pension when she reached 65, this being the retirement age applicable to men. She appealed unsuccessfully. In 2002 she requested that her case be reopened in the light of the European Court of Human Rights' judgment of 11 July 2002 in *Christine Goodwin v. the United Kingdom*<sup>3</sup>. On 5 September 2002 the Department for Work and Pensions refused to award her a State pension in light of the *Christine Goodwin* judgment. In December 2002, when the applicant had reached the age of 65, her pension payments began.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. While the applicant's victim status had ceased when the Gender Recognition Act 2004 had entered into force, thereby providing her with the means on a domestic level to obtain legal recognition, she could however claim to be a victim of the lack of legal recognition from the moment, after the *Christine Goodwin* judgment, when the British authorities had refused to give effect to her claim, namely from 5 September 2002.



Y.F. v. Turkey**22 July 2003**

In 1993, the applicant and his wife were taken into police custody for four days on suspicion of aiding and abetting the PKK. His wife was held for four days and underwent violence and threats of rape. She was also taken to a doctor and examined by a gynecologist behind a curtain while police officers remained on the premises. The applicant and his wife were later acquitted, and three police officers were charged with violating the private life of the applicant's wife by forcing her to undergo a gynecological examination. They were later acquitted.

The Court found **a violation of Article 8** (right to respect for private and family life) of the Convention.

Odièvre v. France**13 February 2003**

The applicant complained about the rules governing confidentiality on birth, which had prevented her from obtaining information about her natural family. Her biological mother requested that the birth be kept secret and abandoned her rights to the child. The applicant was subsequently adopted. She later consulted her file and obtained non-identifying information about her natural family. She applied to the Tribunal de Grande Instance for an order "for disclosure of confidential information concerning her birth and permission to obtain copies of any documents, public records or full birth certificates". The court registrar returned the case to the applicant's lawyer referring to a statute that lays down that an application for disclosure of details is inadmissible if confidentiality was agreed at birth.

The Court found **no violation of Article 8** (right to respect for private and family life) of the Convention because the French legislation sought to strike a balance and to ensure sufficient proportion between the competing interests. The Court also found **no violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8**.

M.S. v. Sweden**27 August 1997**

This case concerned a transmission to a social-security body of medical records containing information about an abortion performed on the applicant.

The Court found **no violation of Article 8** considering that the women's clinic had had relevant and sufficient reasons for forwarding the applicant's medical records, since the body in question had been responsible for examining her claim for compensation for a back injury.

Halford v. the United Kingdom**25 June 1997**

The applicant, who was the highest-ranking female police officer in the United Kingdom, brought discrimination proceedings after being denied promotion to the rank of Deputy Chief Constable over a period of seven years. She alleged that her telephone calls had been intercepted with a view to obtaining information to use against her in the course of the proceedings.

The Court found **a violation of Article 8** (right to respect for private and family life) of the Convention as regards the interception of calls made on the applicant's office telephones. It further held that there had been **no violation of Article 8** as regards the

calls made from her home, since the Court did not find it established that there had been interference regarding those communications.

Z. v. Finland

**25 February 1997**

This case concerned a disclosure of medical information about the applicant, who was infected with HIV, in the context of proceedings concerning a sexual assault.

The Court found a **violation of Article 8** on account of the publication of the applicant's identity and medical condition in the Helsinki Court of Appeal's judgment.

Kroon and Others v. the Netherlands

**27 October 1994**

The applicant's husband disappeared after their marriage. The applicant established a permanent relationship with another man and had a son with him in 1987. The applicant remained legally married to her former husband until their marriage was dissolved in 1988 following divorce proceedings. The request of the applicant to declare that her former husband was not the father of her son was refused and an application to the court was refused as well.

The Court found a **violation of Article 8** (right to respect for private and family life) of the Convention, considering the impossibility under Dutch law for a married woman to deny her former husband's paternity of her child and for the establishment of legal family ties between the child and the biological father.

Keegan v. Ireland

**26 May 1994**

The applicant's girlfriend gave birth to a daughter of whom he was the father. The daughter was placed for adoption by her mother who subsequently informed the applicant. The latter instituted proceedings to be appointed guardian of the daughter and he was later awarded custody. The mother and the prospective adopters appealed to the High Court, which found that the applicant was fit to be appointed guardian. It referred the case to the Supreme Court which founds that the natural father did not have a right to be guardian but only a right to apply to be a guardian. The High Court then dismissed the applicant's request for guardianship and custody.

The Court found a **violation of Article 8** (right to private and family life) and a **violation of Article 6(1)** (right to a fair trial within a reasonable time) given the fact that Irish law permitted the secret placement of the child for adoption without the applicant's knowledge or consent.

### **III. RIGHT TO A FAIR TRIAL (ARTICLE 6)**

García Mateos v. Spain

**19 February 2013**

The applicant worked full time in a supermarket. In 2003, she asked her employer to reduce her working time as she had custody of her son, who was under six years old. As her employer refused, she brought proceedings before the Employment Tribunal. In 2007, the Constitutional Court found that the principle of non-discrimination on the ground of sex had been breached in respect of the applicant, as her employer had

prevented her from reconciling her professional and family lives. In 2009, the Constitutional Court found that its judgment of 15 January 2007 had not been properly enforced, but a new decision of the Employment Tribunal would be without object as, in the meantime, the applicant's son had reached the age of six, and it found that the fixing of compensation as an alternative was not permitted by the Institutional Law on the Constitutional Court.

The Court found that the violation of the principle of non-discrimination on the ground of sex, as established by the ruling in favour of the applicant, had never been remedied on account of the non-enforcement of the relevant decision and the failure to provide her with compensation. The Court found that **a violation of Article 6 (1)** (right to a fair trial within a reasonable time) **in conjunction with Article 14** (prohibition of discrimination).

#### Cudak v. Lithuania

**23 March 2010**

The applicant, a Lithuanian national, worked as a secretary and switchboard operator with the Polish Embassy in Vilnius. In 1999 she complained to the Lithuanian Equal Opportunities Ombudsperson of sexual harassment by a male colleague. Although her complaint was upheld, the Embassy dismissed her on the grounds of unauthorised absence from work. The Lithuanian courts declined jurisdiction to try an action for unfair dismissal brought by the applicant after finding that her employers enjoyed State immunity from jurisdiction. The Lithuanian Supreme Court found that the applicant had exercised a public-service function during her employment at the Embassy and that it was apparent from her job title that her duties had facilitated the exercise by Poland of its sovereign functions, so justifying the application of the State-immunity rule.

As regards the applicability of Article 6 (right of access to court) of the Convention to the present case, the Court found that the applicant's status as a civil servant did not, on the facts, exclude her from Article 6 protection. Since the exclusion did not apply and the applicant's action before the Lithuanian Supreme Court was for compensation for wrongful dismissal, it concerned a civil right within the meaning of Article 6 § 1 of the Convention.

As regards the merits, the Court held that there had been **a violation of Article 6(1)** (right to a fair trial) of the Convention. It found that by granting State immunity and declining jurisdiction to hear the applicant's claim, the Lithuanian courts had impaired the very essence of the applicant's right of access to court.

#### Keegan v. Ireland

**26 May 1994**

The applicant's girlfriend gave birth to a daughter of whom he was the father. The daughter was placed for adoption by her mother who subsequently informed the applicant. The latter instituted proceedings to be appointed guardian of the daughter and he was later awarded custody. The mother and the prospective adopters appealed to the High Court, which found that the applicant was fit to be appointed guardian. It referred the case to the Supreme Court which founds that the natural father did not have a right to be guardian but only a right to apply to be a guardian. The High Court then dismissed the applicant's request for guardianship and custody.

The Court found **a violation of Article 8** (right to private and family life) and **a violation of Article 6(1)** (right to a fair trial within a reasonable time) given the fact that Irish law permitted the secret placement of the child for adoption without the applicant's knowledge or consent.

Airey v. Ireland**9 October 1979**

In 1972, the applicant's husband - who had previously been convicted of assaulting her - left the matrimonial home. In Ireland there was no divorce at the time but spouses could be relieved from the duty of living together either by a deed of separation concluded between them (which was not possible in the applicant's case) or by a decree of judicial separation, which could be granted only by the High Court. The applicant could not find a solicitor willing to act for her and legal aid was not available for the purpose of seeking a judicial separation.

The Court found **a violation of Article 6(1)** (right to a fair trial within a reasonable time) given the fact that the applicant did not enjoy an effective right of access to the High Court to seek a decree of judicial separation. The Court also found **a violation of Article 8** (right to respect for private and family life).

**IV. PROHIBITION OF INHUMAN OR DEGRADING TREATMENT (ARTICLE 3)**I.G., M.K. and R.H. v. Slovakia**13 November 2012**

The case concerned three women of Roma origin who complained that they had been sterilised without their full and informed consent, that the authorities' ensuing investigation into their sterilisation had not been thorough, fair or effective and that their ethnic origin had played a decisive role in their sterilisation.

The Court found **two violations of Article 3** (prohibition of inhuman and degrading treatment) of the Convention, firstly on account of the first and second applicants' sterilisation, and secondly in respect of the first and second applicants' allegation that the investigation into their sterilisation had been inadequate. The Court further found a **violation of Article 8** (right to respect for private and family life) in respect of the first and second applicants and **no violation of Article 13** (right to an effective remedy) of the Convention. As regards the third applicant, the Court decided to strike the application out of its list of cases, under Article 37(1)(c) of the Convention.

See also the decision of the Court of 27 (November 2012) in the case **R.K. v. the Czech Republic (n° 7883/08)** which was struck out of the Court's list of cases following a friendly settlement between the parties.

N.B. v. Slovakia**12 June 2012**

In this case the applicant alleged that she had been sterilised without her full and informed consent in a public hospital in Slovakia.

The Court concluded that the sterilisation of the applicant had been in **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It further found **no violation of Article 3** as concerned the applicant's allegation that the investigation into her sterilisation had been inadequate. It also found **a violation of Article 8** (right to respect for private and family life) of the Convention.

V.C. v. Slovakia**8 November 2011**

The applicant, of Roma ethnic origin, was sterilised in a public hospital without her full and informed consent, following the birth of her second child. She signed the consent form while still in labour, without understanding what was meant or that the process was irreversible, and after having been told that, if she had a third child, either she or the baby would die. She has since been ostracised by the Roma community and, now divorced, cites her infertility as one of the reasons for her separation from her ex-husband.

The Court found that the applicant must have experienced fear, anguish and feelings of inferiority as a result of her sterilisation, as well as the way in which she had been requested to agree to it. She had suffered physically and psychologically over a long period and also in terms of her relationship with her then husband and the Roma community. Although there was no proof that the medical staff concerned had intended to ill-treat her, they had acted with gross disregard to her right to autonomy and choice as a patient. Her sterilisation had therefore been in **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. The Court further found **no violation of Article 3** as concerned the applicant's allegation that the investigation into her sterilisation had been inadequate. Lastly, the Court found **a violation of Article 8** (right to respect for private and family life) of the Convention concerning the lack of legal safeguards giving special consideration to her reproductive health as a Roma at that time.

Hossein Kheel v. the Netherlands**16 December 2008**

The applicant, an Afghan national, faced being deported on her own to Afghanistan, without her husband and children, who were Dutch nationals. In the light of plentiful information on the vulnerable situation of single women in Afghanistan and the applicant's observation that she had no male relative who could protect her, the Court decided to apply Rule 39 and to request the authorities not to deport her until her application had been examined by the Court. The measure was lifted after the Dutch Government granted her a resident's permit.

N. v. the United Kingdom**27 May 2008**

The applicant, a Ugandan national, was admitted to hospital days after she arrived in the UK as she was seriously ill and suffering from AIDS-related illnesses. Her application for asylum was unsuccessful. She claimed that she would be subjected to inhuman or degrading treatment if made to return to Uganda because she would not be able to get the necessary medical treatment there.

The Court noted that the United Kingdom authorities had provided the applicant with medical treatment during the nine years it had taken for her asylum application and claims to be determined by the domestic courts and the Court. The Convention did not place an obligation on States parties to account for disparities in medical treatment in States not parties to the Convention by providing free and unlimited medical treatment to all aliens without a right to stay within their jurisdiction. Therefore, the United Kingdom did not have the duty to continue to provide for the applicant. **If she were removed to Uganda, there would not be a violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention.

Price v. the United Kingdom**10 July 2001**

A four-limb deficient thalidomide victim who also suffers from kidney problems, the applicant was committed to prison for contempt of court in the course of civil proceedings. She was kept one night in a police cell, where she had to sleep in her wheelchair, as the bed was not specially adapted for a disabled person, and where she complained of the cold. She subsequently spent two days in a normal prison, where she was dependent on the assistance of male prison guards in order to use the toilet.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It found in particular that to detain a severely disabled person in conditions where she was dangerously cold, risked developing sores because her bed was too hard or unreachable, and was unable to go to the toilet or keep clean without the greatest of difficulty, constituted a degrading treatment contrary to Article 3 of the Convention.

Jabari v. Turkey**11 July 2000**

The applicant alleged that she risked ill-treatment (including lapidation) if she was deported to Iran, on the ground that she had committed adultery. Rule 39 was applied to prevent her deportation until her application had been examined.

The Court found in its judgment that there would be **a violation of Article 3 if the decision to deport the applicant to Iran was executed.**

**V. FREEDOM OF EXPRESSION (ARTICLE 10)**Women on Waves and Others v. Portugal**3 January 2009**

The applicants are a Dutch Foundation and two Portuguese associations that are active in promoting debate on reproductive rights. In 2004, the Dutch Foundation chartered a ship and sailed toward Portugal after being invited by the other two associations to campaign, on board, in favour of the decriminalisation of abortion. The ship was banned from entering Portuguese territorial waters on the basis of maritime law and Portuguese health laws. The request by the applicant associations to enter, and a subsequent appeal, were rejected by the Administrative court.

The Court found **a violation of Article 10** (freedom of expression), as the interference by the Portuguese authorities had been disproportionate to the aims pursued by the associations.

Open Door and Dublin Well Woman v. Ireland**29 October 1992**

The applicants were two Irish companies which complained about being prevented, by means of a court injunction, from providing to pregnant women information about abortion abroad.

The Court found that the restriction imposed on the applicant companies had created a risk to the health of women who did not have the resources or education to seek and use alternative means of obtaining information about abortion. In addition, given that such

information was available elsewhere, and that women in Ireland could, in principle, travel to Great Britain to have an abortion, the restrictions had been largely ineffective. The Court found a **violation of Article 10** (freedom of expression) of the Convention.

## **VI. RIGHT TO RESPECT FOR FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION (ARTICLE 9)**

S.A.S. v. France

**26 June 2014**

This case concerned the complaint of a French national, who is a practising Muslim, that she is no longer allowed to wear the full-face veil in public following the entry into force, on 11 April 2011, of a law prohibiting the concealment of one's face in public places. The applicant is a devout Muslim and in her submissions she said that she wore the burqa and niqab in accordance with her religious faith, culture and personal convictions. She also emphasised that neither her husband nor any other member of her family put pressure on her to dress in this manner. The applicant added that she wore the niqab in public and in private, but not systematically. She was thus content not to wear the niqab in certain circumstances but wished to be able to wear it when she chose to do so. Lastly, her aim was not to annoy others but to feel at inner peace with herself.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life), and **no violation of Article 9** (right to respect for freedom of thought, conscience and religion) of the Convention. It emphasised in particular that respect for the conditions of "living together" was a legitimate aim for the measure at issue and that, particularly as the State had a lot of room for manoeuvre ("a wide margin of appreciation") as regards this general policy question on which there were significant differences of opinion, the ban imposed by the Law of 11 October 2010 did not breach the Convention. The Court also held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention combined with Articles 8 or 9: the ban imposed by the Law of 11 October 2010 admittedly had specific negative effects on the situation of Muslim women who, for religious reasons, wished to wear the full-face veil in public, however, that measure had an objective and reasonable justification.

Staatkundig Gereformeerde Partij v. the Netherlands

**10 July 2012**

The Dutch Reformed Protestant Party (*Staatkundig Gereformeerde Partij* - SGP), a confessional political party with a strong emphasis on religion as the inspiration of its politics, but with no formal links with any particular church, did not allow women to stand for election to public office. In June 2006, after the rulings of the Regional Court in the civil proceedings, it amended its Principles to enable women to become members of the party, but without allowing them to stand for election to public office. The Supreme Court of the Netherlands ruled that the State was under an obligation to take measures leading to the SGP granting the right to stand for election to women. It also established that the courts are not competent or able to order the State to take specific measures to put a stop to the party's discrimination as regards the right of its female members to stand for election. The SGP complained under Articles 9, 10 and 11 of the Convention that the Supreme Court deprived it and its individual members of their right to freedom of religion, their right to freedom of expression and their right to freedom of assembly and association.

The Court **declared the application inadmissible** as manifestly ill-founded, and stated that it cannot dictate action in such a decision as to what the Dutch government "should



do to put a stop to the present situation". However, the Court reiterated that "the advancement of the equality of the sexes is today a major goal in the member States of the Council of Europe. This means that very weighty reasons would have to be advanced before a difference of treatment on the ground of sex could be regarded as compatible with the Convention". In addition, the Court established that "the advancement of the equality of the sexes in the member States of the Council of Europe prevents the State from lending its support to views of the man's role as primordial and the woman's as secondary". The Court agreed with the Supreme Court of the Netherlands in that the position of SGP was "unacceptable, regardless of the deeply-held religious conviction on which it is based".

Dogru v. France and Kervanci v. France  
**4 December 2008**

The applicants, both Muslims, were enrolled in the first year of a state secondary school in 1998-1999. On numerous occasions they attended physical education classes wearing their headscarves and refused to take them off, despite repeated requests to do so by their teacher. The school's discipline committee decided to expel them from school for breaching the duty of assiduity by failing to participate actively in those classes, a decision that was upheld by the courts.

The Court held that there had been **no violation of Article 9** of the Convention in both cases, finding in particular that the conclusion reached by the national authorities that the wearing of a veil, such as the Islamic headscarf, was incompatible with sports classes for reasons of health or safety was not unreasonable. It accepted that the penalty imposed was the consequence of the applicants' refusal to comply with the rules applicable on the school premises – of which they had been properly informed – and not of their religious convictions, as they alleged.

Mann Singh v. France

**13 November 2008** (decision on the admissibility)

The applicant, a practising Sikh, submitted that the requirement for him to appear bareheaded in the identity photograph on his driving licence amounted to interference with his private life and with his freedom of religion and conscience. He complained of the fact that the regulations in question made no provision for separate treatment for members of the Sikh community.

The Court declared the application **inadmissible** (manifestly ill-founded). It noted that identity photographs for use on driving licences which showed the subject bareheaded were needed by the authorities in charge of public safety and law and order, particularly in the context of checks carried out under the road traffic regulations, to enable them to identify the driver and verify that he or she was authorised to drive the vehicle concerned. It stressed that checks of that kind were necessary to ensure public safety within the meaning of Article 9 § 2 of the Convention. The Court considered that the detailed arrangements for implementing such checks fell within the respondent State's margin of appreciation, especially since the requirement for persons to remove their turbans for that purpose or for the initial issuance of the licence was a sporadic one. It therefore held that the impugned interference had been justified in principle and proportionate to the aim pursued.



El Morsli v. France**4 March 2008** (decision on the admissibility)

The applicant, a Moroccan national married to a French man, was denied an entry visa to France, as she refused to remove her headscarf for an identity check by male personnel at the French consulate general in Marrakech.

The Court declared the application **inadmissible** (manifestly ill-founded), holding in particular that the identity check as part of the security measures of a consulate general served the legitimate aim of public safety and that the applicant's obligation to remove her headscarf was very limited in time.

Kurtulmuş v. Turkey**24 January 2006** (decision on the admissibility)

This case concerned the prohibition for a university professor to wear the Islamic headscarf in the exercise of her functions. The applicant submitted that the ban on her wearing a headscarf when teaching had violated her right to manifest her religion freely. She alleged in particular that the disciplinary hearing's decision that she should be deemed to have resigned as a result of wearing the Islamic headscarf constituted a breach of her rights guaranteed by Articles 8 (right to respect for private life), 9 and 10 (freedom of expression) of the Convention.

The Court declared the application **inadmissible** (manifestly ill-founded). It found that, in the particular context of relations between the State and religions, the role of the domestic policy-maker needed to be given special weight. In a democratic society, the State was entitled to restrict the wearing of Islamic headscarves if the practice clashed with the aim of protecting the rights and freedoms of others. In the present case, the applicant had chosen to become a civil servant; the "tolerance" shown by the authorities, on which the applicant relied, did not make the rule at issue any less legally binding. The dress code in question, which applied without distinction to all members of the civil service, was aimed at upholding the principles of secularism and neutrality of the civil service, and in particular of State education. Furthermore, the scope of such measures and the arrangements for their implementation must inevitably be left to some extent to the State concerned. Consequently, given the margin of appreciation enjoyed by the Contracting States in the matter, the interference complained of had been justified in principle and proportionate to the aim pursued.

Leyla Şahin v. Turkey**10 November 2005**

Coming from a traditional family of practising Muslims, the applicant considered it her religious duty to wear the Islamic headscarf. She complained about a rule announced in 1998, when she was a medical student Istanbul University, prohibiting students there from wearing such a headscarf in class or during exams, which eventually led her to leave the country and pursue her studies in Austria.

The Court held that there had been **no violation of Article 9** of the Convention, finding that there was a legal basis in Turkish law for the interference with the applicant's right to manifest her religion, as the Turkish Constitutional Court had ruled before that wearing a headscarf in universities was contrary to the Constitution. Therefore it should have been clear to the applicant, from the moment she entered the university, that there were restrictions on wearing the Islamic headscarf and, from the date the university rule was announced, that she was liable to be refused access to lectures and examinations if she continued to wear it. Having regard to States' margin of appreciation in this question, the Court further held that the interference could be considered as "necessary in a democratic society" for the purpose of Article 9 § 2 of the Convention. In

particular, the impact of wearing the Islamic headscarf, often presented or perceived as a compulsory religious duty, might have on those who chose not to wear it, had to be taken into consideration.

#### Phull v. France

**11 January 2005** (decision on the admissibility)

Relying on Article 9 of the Convention, the applicant, a practising Sikh, complained in particular of an interference with his right to freedom of religion by airport authorities, who had obliged him to remove his turban as part of a security check imposed on passengers entering the departure lounge. He argued that there had been no need for the security staff to make him remove his turban, especially as he had not refused to go through the walk-through scanner or to be checked with a hand-held detector.

The Court found that security checks in airports were necessary in the interests of public safety within the meaning of Article 9 § 2 of the Convention, and that the arrangements for implementing them in the present case fell within the respondent State's margin of appreciation, particularly as the measure was only resorted to occasionally. It therefore held that the complaint under Article 9 of the Convention was manifestly ill-founded and declared the application **inadmissible**.

#### Dahlab v. Switzerland

**15 February 2001** (decision on the admissibility)

The applicant, a primary-school teacher who had converted to Islam, complained of the school authorities' decision to prohibit her from wearing a headscarf while teaching, eventually upheld by the Federal Court in 1997. She had previously worn a headscarf in school for a few years without causing any obvious disturbance.

The Court declared the application **inadmissible** (manifestly ill-founded), holding that the measure had not been unreasonable, having regard in particular to the fact that the children for whom the applicant was responsible as a representative of the State were aged between four and eight, an age at which children were more easily influenced than older pupils.