Gender Equality

Zarb Adami v. Malta - 17209/02 (French) (Arabic)
Judgment 20.6.2006 [Section IV]

Article 14

Discrimination

Discrimination against men to negligible percentage of women requested to undertake jury service: *violation*

Article 4

Article 4-3-d

Normal civic obligations

Discrimination against men due to negligible percentage of women requested to undertake jury service: *violation*

Facts : From 1971 the applicant was placed on the list of jurors in Malta and remained on the list until at least 2002. Between 1971 and 1997 he served as both a juror and foreman in three different sets of criminal proceedings. In 1997 he was called again to serve as a juror, but failed to appear and was fined approximately EUR 240. As he had failed to pay the fine he was summoned before the Criminal Court. He pleaded that the fine imposed on him was discriminatory as others in his position were not subjected to the burdens and duties of jury service and the law and/or the domestic practice exempted women from jury service, but not men. His case was referred to the First Hall of the Civil Court, where the applicant alleged that the Maltese system penalised men and favoured women; during the preceding five years only 3.05% of women had served as jurors as opposed to 96.95% of men. Moreover, the burden of jury service was not equitably distributed; in 1997 the list of jurors represented only 3.4% of the list of voters. The First Hall of the Civil Court rejected the applicant's claims. He appealed, stressing that jury service was a burden, as jurors were required to leave their work to attend court hearings regularly. It also imposed a moral burden to judge the innocence or guilt of a person. His appeal was rejected by the Constitutional Court. In 2003 and 2004, as a university lecturer, he sought exemption from jury service but his two applications were refused. His further request in 2005 was accepted on account of his full-time position as lecturer.

Law:Article 14 read in conjunction with Article 4(3)(d) – Compulsory jury service as it exists in Malta is one of the "normal civic obligations" envisaged in Article 4(3)(d). The applicant had not offered himself voluntarily for jury service and his failure to appear had led to the imposition of a fine, which could be converted into a term of imprisonment. On account of its close links with the obligation to serve, the obligation to pay the fine also fell within the scope of Article 4(3)(d). Article 14 was accordingly applicable.

Maltese law in force at the relevant time made no distinction between sexes, both men and women being equally eligible for jury service. The discrimination at issue was based on what the applicant described as a well-established practice, characterised by a number of factors, such as the manner in which the lists of jurors were compiled and the criteria for exemption from jury service. As a result, only a negligible percentage of women were called to serve as jurors. Although statistics were not by themselves sufficient to disclose a practice which could be classified as discriminatory, discrimination potentially contrary to the Convention might result not only from a legislative measure, but also from a *de facto* situation. In 1997 the number of men enrolled on the lists of jurors had been three times the number of women. In 1996 that difference had been even more significant as 174 men but only five women had served as jurors. Those figures showed that the civic obligation of jury service had been placed predominantly on men. Hence there had been a difference in treatment between two groups which, with respect to jury service, were in a similar situation.

Since 1997 an administrative process had been set in motion in order to bring the number of women registered as jurors in line with that of men. As a result, in 2004, over 6,000 women and over 10,000 men had been enrolled on the list of jurors. However, that did not undermine the Court's finding that at the relevant time only a negligible percentage of women had been enrolled and had actually been requested to perform jury service.

If a policy or general measure had disproportionate prejudicial effects on a group of people, the possibility of its being considered discriminatory could not be ruled out even if it was not specifically aimed or directed at that group. Moreover, very weighty reasons would have to be put forward before the Court could regard a difference of treatment based exclusively on the ground of sex as compatible with the Convention. The Government had argued that the difference in treatment depended on a number of factors. Jurors were chosen from the part of the population which was active in the economy and in the professions. Moreover, an exemption from jury service might be granted to those taking care of their family and more women than men could successfully rely on the relevant legal provision. Finally, "for reasons of cultural orientation", defence lawyers might have had a tendency to challenge female jurors.

The Court doubted whether the factors indicated by the Government were sufficient to explain the significant discrepancy in the repartition of jury service. The second and third factors related only to the number of females who actually had performed jury service and did not explain the very low number of women enrolled on the lists of jurors. In any event, the factors highlighted by the Government only constituted explanations of the mechanisms which had led to the difference in treatment complained of. No valid argument had been put before the Court in order to provide a proper justification for it. In particular, it had not been shown that the difference in treatment had pursued a legitimate aim and that there had been a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

Conclusion: violation (six votes to one).

***Karlheinz Schmidt v. Germany* - 13580/88 (French) (Arabic)**
Judgment 18.7.1994

Article 14

Discrimination

Obligation imposed solely on men to serve in the fire brigade or pay a financial contribution in lieu: *violation*

[This summary is extracted from the Court's official reports (Series A or Reports of Judgments and Decisions). Its formatting and structure may therefore differ from the Case-Law Information Note summaries.]

I. ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 4 § 3 (D)

A. Applicability

Compulsory fire brigade service one of the "normal civic obligations" within the meaning of Article 4 § 3 (d) – obligation to pay levy also fell within scope of that Article on account of its close links with obligation to serve.

Conclusion: applicable (unanimously).

B. Compliance

Obligation to perform service exclusively one of law and theory since, in view of continuing existence of sufficient number of volunteers, no male in practice obliged to serve in fire brigade.

Financial contribution had therefore become the only effective duty – difference of treatment on ground of sex could hardly be justified for its payment.

Conclusion: violation (six votes to three).

II. ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1

Unnecessary to examine complaint (unanimously).

III. ARTICLE 50 OF THE CONVENTION

Fire service levy and costs and expenses incurred before national courts – reimbursed.

Conclusion: respondent State to pay the applicant a specified sum (eight votes to one).

***Khamtokhu and Aksenchik v. Russia [GC]* - 60367/08 and 961/11 (French) (Arabic)**
Judgment 24.1.2017 [GC]

Article 14

Discrimination

Alleged discrimination in provisions governing liability to life imprisonment: *no violations*

- *Facts* – Article 57 of the Russian Criminal Code provides that a sentence of life imprisonment may be imposed for certain particularly serious offences. However, such a sentence cannot be imposed on women, or on persons under 18 when the offence was committed or over 65 at the date of conviction. The Russian Constitutional Court has repeatedly declared inadmissible complaints of alleged incompatibility of that provision with the constitutional protection against discrimination, *inter alia*, on the grounds that any difference in treatment is based on principles of justice and humanitarian considerations and allows age, social and physiological characteristics to be taken into account when sentencing.

- In their applications to the European Court, the applicants, who were both adult males serving life sentences for criminal offences, complained under Article 14 of the Convention read in conjunction with Article 5 of discriminatory treatment *vis-à-vis* other categories of convicts who were exempt from life imprisonment as a matter of law.

- On 1 December 2015 a Chamber of the Court decided to relinquish jurisdiction in favour of the Grand Chamber.

- *Law* – Article 14 in conjunction with Article 5

- (a) *Applicability* – Although Article 5 of the Convention does not preclude the imposition of life imprisonment where such punishment is prescribed by national law, the prohibition of discrimination enshrined in Article 14 extends beyond the enjoyment of the rights and freedoms which the Convention and Protocols require each State to guarantee and applies also to those additional rights, falling within the general scope of any Convention Article, for which the State has voluntarily decided to provide. It followed that where national legislation exempted certain categories of convicted prisoners from life imprisonment, this fell within the ambit of Article 5 § 1 for the purposes of the applicability of Article 14 taken in conjunction with that provision.

- Article 57 of the Russian Criminal Code established a sentencing policy which differentiated on the basis of sex and age with regard to life imprisonment, both of which were prohibited grounds of discrimination for the purposes of Article 14 of the Convention.

- Article 14 taken in conjunction with Article 5 was therefore applicable.

- (b) *Compliance* – The sentencing policy which exempted female offenders, juvenile offenders and offenders aged 65 or over from life imprisonment amounted to a difference in treatment on grounds of sex and age. The Government's stated aim of promoting the principles of justice and humanity through taking into account the age and "physiological characteristics" of various categories of offenders could be regarded as legitimate in the context of

sentencing policy and for the purposes of applying Article 14 in conjunction with Article 5 § 1.

- As regards proportionality, life imprisonment was reserved in the Russian Criminal Code for the few particularly serious offences in respect of which, after taking into account all the aggravating and mitigating circumstances, the trial court was satisfied that a life sentence was the only punishment that would befit the crime. It was not a mandatory or automatic sentence for any offence, no matter how serious. The outcome of the applicants' trials was decided on the specific facts of their cases and their sentences were the product of individualised application of the criminal law by the trial court whose discretion in the choice of appropriate sentence was not curtailed. In these circumstances, in view of the penological objectives of the protection of society and general and individual deterrence, the life sentences imposed on the applicants did not appear arbitrary or unreasonable. Moreover, provided they abided by the prison regulations, the applicants would be eligible for early release after the first twenty-five years so that no issues comparable to those in *Vinter and Others v. the United Kingdom* ([GC], 66069/09 et al., 9 July 2013, Information Note 165; and *Murray v. the Netherlands* ([GC], 10511/10, 26 April 2016, Information Note 195) arose in their case.

- (i) *Difference in treatment on grounds of age* – There was no reason to question the difference in treatment between the applicants and juvenile offenders. The exemption of juvenile offenders from life imprisonment was consonant with the approach common to the legal systems of all the Contracting States. It was also consistent with international standards* and its purpose was evidently to facilitate the rehabilitation of juvenile delinquents. The Court considered that when young offenders were held accountable for their deeds, however serious, this had to be done with due regard for their presumed immaturity, both mental and emotional, as well as the greater malleability of their personality and their capacity for rehabilitation and reformation.

- As to the difference in treatment with offenders aged 65 or over, the Court saw no grounds for considering that the relevant domestic provision excluding offenders aged 65 or over from life imprisonment had no objective and reasonable justification. The purpose of that provision in principle coincided with the interests underlying the eligibility for early release after the first twenty-five years for adult male offenders aged under 65, such as the applicants, noted in *Vinter* as being a common approach in national jurisdictions where life imprisonment can be imposed. Reducibility of a life sentence carried even greater weight for elderly offenders in order not to become a mere illusory possibility.

- (ii) *Difference in treatment on grounds of sex* – The Court took note of various European and international instruments addressing the needs of women for protection against gender-based violence, abuse and sexual harassment in the prison environment, as well as the needs for protection of pregnancy and motherhood. The Government had provided statistical data showing a considerable difference between the total number of male and female prison inmates and had also pointed to the relatively small number of persons sentenced to life imprisonment. It was not for the Court to reassess the evaluation made by the domestic authorities of the data in their possession or of the penological rationale which such data purported to demonstrate. In the particular circumstances of the case, there was a sufficient basis for the Court to conclude that there existed a public interest underlying the exemption of female offenders from life imprisonment by way of a general rule.

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- It was quite natural that the national authorities, whose duty it was also to consider, within the limits of their jurisdiction, the interests of society as a whole, should enjoy broad discretion when asked to make rulings on sensitive matters such as penal policy. Since the delicate issues raised in the present case touched on areas where there was little common ground (apart from the exemption of juvenile offenders from life imprisonment) amongst the member States and, generally speaking, the law appeared to be in a transitional stage, a wide margin of appreciation had to be left to the authorities of each State.

- It therefore appeared difficult to criticise the Russian legislature for having established, in a way which reflected the evolution of society in that sphere, the exemption of certain groups of offenders from life imprisonment. Such an exemption represented, all things considered, social progress in penological matters. In the absence of common ground regarding the imposition of life imprisonment, the Russian authorities had not overstepped their margin of appreciation.

- In sum, while it would clearly be possible for the respondent State, in pursuit of its aim of promoting the principles of justice and humanity, to extend the exemption from life imprisonment to all categories of offenders, it was not required to do so under the Convention as currently interpreted by the Court. Moreover, in view of the practical operation of life imprisonment in the Russian Federation, both as to the manner of its imposition and to a possibility of subsequent review, the interests of the society as a whole as far as they were compatible with the Convention and having regard to the wide margin of appreciation enjoyed by the respondent Government, the Court was satisfied that there was a reasonable relationship of proportionality between the means employed and the legitimate aim pursued. The impugned exemptions did not constitute a prohibited difference in treatment. In reaching that conclusion, the Court took full account of the need to interpret the Convention in a harmonious manner and in conformity with its general spirit.

- *Conclusions*: no violation on grounds of age (sixteen votes to one); no violation on grounds of sex (ten votes to seven).

- * The recommendation of the Committee on the Rights of the Child (General comment No. 10 (2007)) to abolish all forms of life imprisonment for offences committed by persons below the age of 18 and with the UN General Assembly's Resolution A/RES/67/166 of 20 December 2012 on Human Rights in the Administration of Justice inviting the States to consider repealing all forms of life imprisonment for such persons.

***García Mateos v. Spain* -** 38285/09 **(**French**) (**Arabic**)**
Judgment 19.2.2013 [Section III]

Article 14

Discrimination

Failure to enforce a judgment acknowledging gender discrimination against a working mother: *violation*

Facts – In February 2003, relying on the labour regulations, the applicant asked her employer for a reduction in her working hours as she had custody of her son, who was under the six-year age-limit. When her employer refused, she brought proceedings before the Employment Tribunal, but her complaint was dismissed. In a judgment of 2007 the Constitutional Court upheld the applicant's *amparo* complaint. It found that the principle of non-discrimination on grounds of sex had been breached in respect of the applicant, as her employer had prevented her from reconciling her professional life with her family life. It remitted the case to the Employment Tribunal for a new judgment. In 2007 the Tribunal dismissed the applicant's case and she lodged a fresh *amparo* appeal. In 2009 the Constitutional Court found that its 2007 judgment had not been properly enforced and declared null and void the Employment Tribunal's judgment. It decided, however, that it would not be appropriate to remit the case to the Employment Tribunal for a further decision, as in the meantime the applicant's son had reached the age of six. It further ruled that it could not award compensation in lieu as this was not permitted by the Institutional Law on the Constitutional Court.

Law – Article 14 in conjunction with Article 6 § 1: The State was required to enable applicants to obtain due enforcement of decisions given by the national courts. The Constitutional Court had found, in its 2009 decision, that the applicant's right to the enforcement of its first judgment, acknowledging a violation of the non-discrimination principle, had been breached. A decision or measure in an applicant's favour did not deprive him or her of "victim" status unless the authorities had recognised, expressly or in substance, and then remedied the violation of the Convention. The violation found by the Constitutional Court had not to date been remedied in spite of two judgments by that court.

The applicant's initial intention had not been to obtain compensation but to seek recognition of her right to reduced working hours so that she could look after her son when he was still under six. She subsequently submitted a compensation claim only because she no longer qualified for the reduction in working hours, as her child had passed the age-limit. The Constitutional Court, having refused her compensation in its decision of 2009, did not give her any indication about the possibility of taking her claim to any other administrative or judicial body. It was true that because of the child's age at the end of the proceedings it was no longer possible to grant alternative redress for the acknowledged breach of the applicant's right. Nor could the Court could indicate to the respondent State how redress in the context of *amparo* complaints should be provided. It simply observed that the protection provided by the Constitutional Court had proved ineffective. Moreover, the applicant's claim before the Employment Tribunal regarding the refusal to grant her a reduction in working hours had not been settled on the merits, even though the two unfavourable judgments of the Employment Tribunal had been declared null and void. In addition, her *amparo*

appeal had proved meaningless, as the Constitutional Court had considered that the law did not provide for compensation as a means of redress for a breach of a fundamental right. Accordingly, the failure to restore to the applicant her full rights had rendered illusory the protection provided through the upholding of an *amparo* complaint by the Constitutional Court.

Conclusion: violation (unanimously).

Article 41: EUR 16,000 in respect of non-pecuniary damage.

***Mizzi v. Malta* - 26111/02 (French) (Arabic)**
Judgment 12.1.2006 [Section I]

Article 8

Article 8-1

Respect for private life

Impossibility to challenge in court the legal presumption of paternity: *violation*

Article 6

Civil proceedings

Article 6-1

Access to court

Impossibility of introducing an action for disavowal of paternity: *violation*

Facts: In 1966, the applicant's wife X became pregnant. The following year, the applicant and X separated and stopped living together and, X gave birth to a daughter, Y. The applicant was automatically considered to be Y's father under Maltese law and was registered as her natural father. Following a DNA test which, according to the applicant, established that he was not Y's father, the applicant tried unsuccessfully to bring civil proceedings to repudiate his paternity of Y. According to the Maltese Civil Code, a husband could challenge the paternity of a child conceived in wedlock if he could prove both the adultery of his wife and that the birth had been concealed from him. This latter condition was dropped when the law was amended in 1993 and a time-limit of six months from the day of the child's birth was set as the cut off point for introducing such proceedings. In 1997 the Civil Court accepted the applicant's request for a declaration that, notwithstanding the provisions of the Civil Code, he had a right to proceed with a paternity action and found that there had been a violation of Article 8 of the European Convention on Human Rights. That judgment was subsequently revoked by the Constitutional Court.

Law: Article 6 (right to a court) – The applicant's allegations that he was not the biological father of Y were not manifestly devoid of substance. It could therefore be considered that the right to deny paternity claimed by the applicant was arguable and that the dispute he wished to bring was genuine and serious. Thus, Article 6 was applicable to the case. At the time of Y's birth, any action which the applicant could have brought in order to deny paternity would have had little prospects of success as he would have been unable to prove any of the elements required by the Civil Code in force at the time. After the 1993 amendments, a time-limit precluded a possible action before the courts by the applicant. While the applicant could still file an application before the Civil Court, a degree of access to a court limited to the right to ask a preliminary question could not be considered sufficient to secure the applicant's "right to a court". Moreover, the Civil Court's favourable decision was revoked by the Constitutional Court. This, coupled with the wording of the relevant domestic provisions, deprived the applicant of the possibility of obtaining a judicial determination of his claim. The Court accepted that under certain circumstances, the institution of time-limits for

the introduction of a paternity action might serve the interests of legal certainty and the interests of the children. However, the application of the rules in question should not have prevented litigants from making use of an available remedy. The practical impossibility for the applicant to deny his paternity from the day Y was born until the present day impaired, in essence, his right of access to a court. The domestic courts had failed to strike a fair balance between the applicant's legitimate interest of having a judicial ruling over his presumed paternity and the protection of legal certainty and of the interests of the other people involved in his case. The interference thus imposed an excessive burden on the applicant.

Conclusion: violation (unanimously).

Article 8 – In the present case the applicant sought by means of judicial proceedings to rebut the legal presumption of his paternity on the basis of biological evidence. The Court's task was to examine whether the respondent State, in handling the applicant's paternity action, had complied with its positive obligations under this Article. The applicant had never had the possibility of having the results of his daughter's blood test examined by a tribunal. It was only after the 1993 amendments that the applicant would have had the right to contest paternity on the basis of scientific evidence and of proof of adultery, had it been possible for him to lodge the action within six months of Y's birth. However, the only means of redress open to the applicant to obtain the reopening of the time-limit was to apply to the Civil Court. Had the Civil Court and the Constitutional Court accepted his request, they would have adequately secured the interests of the applicant, who had legitimate reasons to believe that Y might not be his daughter and wished to challenge in court the legal presumption of his paternity. The Court was not convinced that such a radical restriction of the applicant's right to take legal action was "necessary in a democratic society". It found that the potential interest of Y to enjoy the "social reality" of being the daughter of the applicant could not outweigh the latter's legitimate right of having at least one occasion to reject the paternity of a child who, according to scientific evidence that the applicant alleged to have obtained, was not his own. The fact that the applicant was never allowed to disclaim paternity was not proportionate to the legitimate aims pursued. It followed that a fair balance had not been struck between the general interest of the protection of legal certainty of family relationships and the applicant's right to have the legal presumption of his paternity reviewed in the light of the biological evidence. Therefore, despite the margin of appreciation afforded to the domestic authorities, the latter had failed to secure to the applicant the respect for his private life, to which he was entitled under Article 8.

Conclusion: violation (unanimously).

Article 14 taken in conjunction with Articles 6 and 8 – In bringing an action to contest his paternity the applicant was subject to time-limits which did not apply to other "interested parties". The Court found that the rigid application of the time-limit along with the Constitutional Court's refusal to allow an exception deprived the applicant of the exercise of his rights guaranteed by Articles 6 and 8 which were and still are, on the contrary, enjoyed by the other interested parties.

Conclusion: violation (unanimously).

***Carvalho Pinto de Sousa Morais v. Portugal* -** 17484/15
(French**) (**Arabic**)**
Judgment 25.7.2017 [Section IV]

Article 14

Discrimination

Reduction in damages award on grounds of sex and age of claimant: *violation*

Facts – The applicant, who had been diagnosed with a gynaecological disease, brought a civil action against a hospital for clinical negligence following an operation for her condition. The Administrative Court ruled in her favour and awarded her compensation. On appeal the Supreme Administrative Court upheld the first-instance judgment but reduced the amount of damages.

In the Convention proceedings, the applicant complained that the Supreme Administrative Court's judgment in her case had discriminated against her on the grounds of her sex and age. She complained, in particular, about the reasons given by the court for reducing the award and about the fact that it had disregarded the importance of a sex life for her as a woman.

Law – Article 14 in conjunction with Article 8: The advancement of gender equality was a major goal for the member States of the Council of Europe and very weighty reasons would have to be put forward before a difference of treatment could be regarded as compatible with the Convention. In particular, references to traditions, general assumptions, or prevailing social attitudes in a particular country were insufficient justification for a difference in treatment on the grounds of sex. The issue with stereotyping of a certain group in society lay in the fact that it prohibited the individualised evaluation of their capacity and needs.

The Supreme Administrative Court had confirmed the findings of the first-instance court but considered that the applicant's physical and mental pain had been aggravated by the operation, rather than considering that it had resulted exclusively from the injury during surgery. It relied on the fact that the applicant was "already fifty years old at the time of the surgery and had two children, that is, an age when sexuality is not as important as in younger years, its significance diminishing with age" and the fact that she "probably only needed to take care of her husband", considering the age of her children.

The question at issue was not considerations of age or sex as such, but rather the assumption that sexuality was not as important for a fifty-year old woman and mother of two children as for someone of a younger age. That assumption reflected a traditional idea of female sexuality as being essentially linked to child-bearing purposes and thus ignored its physical and psychological relevance for the self-fulfilment of women as people. Apart from being judgemental, it omitted to take into consideration other dimensions of women's sexuality in the concrete case of the applicant. The Supreme Administrative Court had, in other words, made a general assumption without attempting to look at its validity in the concrete case.

The wording of the Supreme Administrative Court's judgment could not be regarded as an unfortunate turn of phrase. The applicant's age and sex appeared to have been decisive factors in the final decision, introducing a difference in treatment based on those grounds.

The Court noted the contrast between the applicant's case and the approach that had been taken by the Supreme Court of Justice in two judgments of 2008 and 2014 in which two male patients aged 55 and 59 respectively had alleged medical malpractice. In those judgments the Supreme Court of Justice found that the fact that the men could no longer have normal sexual relations had affected their self-esteem and resulted in a "tremendous shock" and "strong mental shock". In assessing the quantum of damages it took into consideration the fact that the men could not have sexual relations and the effect that had had on them, regardless of their age, of whether or not the plaintiffs already had children, or of any other factors.

Conclusion: violation (five votes to two).

Article 41: EUR 3,250 in respect of non-pecuniary damage.

***Losonci Rose and Rose v. Switzerland* -** 664/06 **(**French**)** **(**Arabic**)**
Judgment 9.11.2010 [Section I]

Article 14

Discrimination

Discrimination with regard to binational couple's choice of surname: *violation*

Facts – The law governing surnames in Switzerland is based on the principle that married couples share a single family name, which is automatically the husband's surname unless the couple make a joint application to use the wife's surname. Married persons of foreign origin may request to have their surname governed by their national law.

The applicants are a Hungarian national and his wife, a Swiss national. Before getting married, they notified the registry of births, deaths and marriages that they intended to keep their own surnames rather than choose a double-barrelled surname for one of them. After their request was refused by the authorities, they decided that, in order to be able to marry, they would take the wife's surname as the family name. Following the marriage the first applicant requested, in accordance with his national law, that the double-barrelled surname he had provisionally chosen be replaced in the register by his original surname alone, without any change to his wife's surname. The Federal Court rejected the request, holding that the first applicant's previous decision to take his wife's surname as his family name meant that his wish to have his name governed by Hungarian law was now invalid. In the applicants' submission, such a situation could not have arisen if their sexes had been reversed, since the husband's surname would automatically have become the family name and the wife would have been free to have her choice of surname governed by her national law.

Law – Article 14 in conjunction with Article 8: Although in the case of a Swiss man and a woman of foreign origin, the woman could choose to have her surname governed by her national law, such a choice was not possible in the case of a Swiss woman marrying a man of foreign origin where the couple chose the woman's surname as their family name, as the applicants had done. They could therefore claim to be the victims of a difference in treatment between people in similar situations. According to the national authorities, the interference in question had pursued the legitimate aim of reflecting family unity by means of a single family name. However, as regards the measures that could be taken in this sphere, only compelling reasons could justify a difference in treatment on the ground of sex. A consensus was emerging within the Council of Europe's member States regarding equality between spouses in the choice of family name, and the activities of the United Nations were heading towards recognition of the right of each married partner to keep his or her own surname or to have an equal say in the choice of a new family name. However, the first applicant had been prevented from keeping his own surname after marriage, although he could have done so had the applicants' sexes been reversed. Moreover, it could not be said that the first applicant had suffered no serious disadvantage, since a person's name, as the main means of personal identification within society, was one of the core aspects to be taken into consideration in relation to the right to respect for private and family life. Accordingly, the justification put forward by the Government did not appear reasonable and the difference in treatment had been discriminatory. It followed that the rules in force in the respondent State gave

rise to discrimination between binational couples according to whether the man or the woman was a national of that State.

Conclusion: violation (unanimously).

Article 41: EUR 10,000 to the two applicants jointly in respect of non-pecuniary damage.

***Ünal Tekeli v. Turkey* - 29865/96 (French) (Arabic)**
Judgment 16.11.2004 [Section IV]

Article 14

Discrimination

Impossibility for married woman to use only her maiden name in official documents: *violation*

Facts: After her marriage the applicant took her husband's surname in accordance with the Civil Code. She had been a trainee lawyer at the time of her marriage. As she had been known by her maiden name in her professional life, she decided to put it in front of her legal surname. However, she could not use both names together on official documents. She brought proceedings for permission to use only her maiden name, "Ünal". The applicant's request was dismissed on the ground that domestic law provided that married women had to bear their husband's surname throughout their married life. The Civil Code was then amended to allow married women to keep their maiden name in front of their family name (right confirmed by the recently enacted new Civil Code of 2001). The applicant preferred to keep her maiden name as her family name, however. She considered that she had been discriminated against because married men could keep their own surname.

The law: (a) *Preliminary objections*: The Government submitted that the obligation to change her name had not had an impact on the applicant's professional life since it was only during her traineeship that she had practised under her maiden name alone. The Court pointed out that the family name also played a role in a person's private and family life. The refusal to allow the applicant to use just her maiden name, by which she claimed to have been known in private circles and in her cultural or political activities, could have considerably affected her non-professional activities. The applicant was therefore a "victim" for the purposes of Article 8. Although, as the Government pointed out, the position complained of derived from the domestic legislation, the applicant's request had not been a futile one because the courts could have applied the Convention directly or applied the principle of non-discrimination enshrined in the Turkish Constitution.

(b) *Article 14 taken together with Article 8*: The impugned situation amounted to a difference of treatment on grounds of sex. In the Government's submission, it pursued a legitimate aim which was the need for couples to have a joint surname – reflected through the husband's surname – and thus to preserve public order. The Convention required that any measure designed to reflect family unity be applied even-handedly to both men and women unless compelling reasons were adduced. Texts adopted by the member States of the Council of Europe, and internationally, advocated the eradication of all discrimination on grounds of sex in the choice of surname. Furthermore, a consensus had emerged among the Contracting States of the Council of Europe in favour of choosing the spouses' family name on an equal footing. Turkey was the only country which legally imposed the husband's name as the couple's surname. However, Turkey did not currently position itself outside the general trend towards placing men and women on an equal footing in the family. Prior to the recent legislative amendments, particularly those of 2001, the reflection of family unity through the husband's surname had corresponded to the traditional conception of the family. The aim of the recent reforms of the Civil Code had been to place married women

on an equal footing with their husband in representing the couple. However, the provisions concerning the family name after marriage had remained unchanged. Admittedly, the tradition of reflecting family unity through the husband's surname derived from the man's primordial role and the woman's secondary role in the family as established until the new Civil Code was passed in 2001. Nowadays, the advancement of the equality of the sexes in the member States of the Council of Europe, including Turkey, and in particular the importance attached to the principle of non-discrimination, prevented States from imposing that tradition on married women.

According to the practice of the Contracting States and the systems applicable in Europe, it was perfectly conceivable that family unity would be preserved and consolidated where a married couple chose not to bear a joint family name. The Government had not shown in the present case that concrete or substantial hardship for married partners and/or third parties or detriment to the public interest would be likely to flow from the lack of reflection of family unity through a joint family name. In those circumstances the Court considered that the obligation on married women, in the name of family unity, to bear their husband's surname – even if they could put their maiden name in front of it – had no objective and reasonable justification. A transition from the above-mentioned traditional system to other systems allowing married partners either to keep their own surname or freely choose a joint family name, would have a considerable effect on keeping registers of births, marriages and deaths. However, society could reasonably be expected to tolerate a certain inconvenience to enable individuals to live in dignity and worth in accordance with the name they had chosen. In sum, the objective of reflecting family unity through a joint family name could not provide a justification for the difference in treatment on grounds of sex.

Conclusion: violation (unanimous).

Article 41 – The Court considered that it was for the Turkish State to implement in due course such measures as it considered appropriate to fulfil its obligations, in accordance with the present judgment, to secure to each married partner, including the applicant, the right to keep their own surname or to have an equal say in the choice of their family name.

The applicant was awarded the amount she had claimed for costs and expenses.

***Cusan and Fazzo v. Italy* - 77/07 (French) (Arabic)**
Judgment 7.1.2014 [Section II]

Article 14

Discrimination

Inability for married couple to give their legitimate child the wife's surname: *violation*

Article 46

Article 46-2

Execution of judgment

Measures of a general character

Respondent State required to reform domestic legislation and/or practice to enable the legitimate child of a married couple to be given its mother's surname

Facts – The applicants are a married couple. In April 1999 their first child was born. Their request that she be entered in the register of births, marriages and deaths under her mother's surname was dismissed and the child was registered under her father's surname. In 2012 the parents were authorised by the Milan Prefect to add the mother's surname to the child's name.

Law – Article 14 taken together with Article 8: Under the domestic legislation, "legitimate children" were given the father's surname at birth. The domestic legislation allowed for no exception to this rule. Admittedly, a presidential decree provided for the option of changing one's surname, and in the present case the applicants had been authorised to add to the child's surname. However, it was necessary to distinguish between the decision on a child's surname at his/her birth and the possibility of changing a surname in the course of one's life. Persons in similar situations, namely the two applicants, respectively the child's father and mother, had therefore been treated differently. Unlike the father, the mother had been unable to have her surname transmitted to the new-born, in spite of her spouse's agreement.

The Court had had the opportunity to examine somewhat similar issues in the *Burghartz*, *Ünal Tekeli* and *Losonci Rose and Rose* cases. The first concerned the dismissal of a husband's request to have a surname – his wife's – placed before his own surname. The second concerned the rule in Turkish law whereby a married woman could not use her maiden name alone after marriage, although a married man retained his surname as it was prior to marriage. The case of *Losonci Rose and Rose* concerned the requirement, under Swiss law, to submit a joint request to the authorities where both spouses wished to take the woman's surname, failing which the husband's surname was automatically attributed to the couple as the new family name after marriage. In all of those cases, the Court had reiterated the importance of moving towards gender equality and eliminating all discrimination on grounds of sex in the choice of surname. In addition, it considered that the tradition whereby family unity was reflected by giving all of its members the father's surname could not justify discrimination against women.

The conclusions were similar in the present case, in which the choice of the surname of "legitimate children" was determined solely on the basis of

discrimination arising from the parents' sex. The rule in question required that the given surname was to be that of the father, without exception and irrespective of any alternative joint wish on the part of the spouses. While the rule that the husband's surname was to be handed down to "legitimate children" could be necessary in practice and was not necessarily incompatible with the Convention, the fact that it was impossible to derogate from it when registering a new child's birth was excessively rigid and discriminatory towards women.

Conclusion: violation (six votes to one).

Article 41: no claim made.

Article 46: The Court had found a violation of Article 14 of the Convention, taken together with Article 8, on account of the fact that it was impossible for the applicants, when their daughter was born, to have her entered in the register of births, marriages and deaths under her mother's surname. This impossibility arose from a flaw in the Italian legal system, whereby every "legitimate child" was entered in the register of births, marriages and deaths under the father's surname as his/her own family name, without the option of derogation, even where the spouses agreed to use the mother's surname. In consequence, reforms to the Italian legislation and/or practice were to be adopted, in order to ensure their compatibility with the conclusions of the present judgment, and to secure compliance with the requirements of Articles 8 and 14 of the Convention.

(See *Burgharz v. Switzerland*, 16213/90, 22 February 1994; *Ünal Tekeli v. Turkey*, 29865/96, 16 November 2004, Information Note 69; and *Losonci Rose and Rose v. Switzerland*, 664/06, 9 November 2010, Information Note 135)

***Di Trizio v. Switzerland* - 7186/09 (French) (Arabic)**
Judgment 2.2.2016 [Section II]

Article 14

Discrimination

Method of calculation of invalidity benefits which in practice was discriminatory against women: *violation*

Article 8

Article 8-1

Respect for family life

Respect for private life

De facto discrimination against women arising out of method of calculation of invalidity benefits: *Article 8 applicable*

- *Facts* – The applicant worked full time. In 2002 she was obliged to stop work because of back problems. In October 2003 she applied for a disability allowance on account of lower back and spinal pain. In February 2004 she gave birth to twins, following a pregnancy during which her back pain had worsened. In 2005, during a household assessment carried out at her home, the applicant stated in particular that she would have to work half time because her husband's income alone was insufficient. She was granted a disability allowance for the period from 2002 to May 2004. As of May 2004, however, the "combined" method was applied, on the grounds that even if she had not had a disability the applicant would not have worked full time after the birth of her children. The decision to apply this method was based, among other considerations, on the applicants' statements to the effect that she felt able to work half time only and wanted to devote the remainder of her time to her household and children. As a result of the application of this means of calculation, the applicant did not receive any disability allowance.

- In the proceedings before the Court the applicant complained that the application of the combined method discriminated against those concerned in comparison with persons who were not in paid employment and with those who did not have a household or children to care for and could therefore work full time, since the combined method did not apply in either of those cases.

- *Law* – Article 14 taken in conjunction with Article 8

- (a) *Applicability* – Measures enabling one parent to stay at home to look after the children promoted family life and thus had an impact on the way it was organised; such measures therefore came within the ambit of Article 8. The present case also concerned issues relating to the organisation of family life, albeit in a different manner. The available statistics demonstrated that the combined method, in the great majority of cases, concerned women who wished to work part time after the birth of their children. In its judgment in the applicant's case, the Federal Court had acknowledged that the combined method could in some cases result in the loss of the allowance, especially for women who worked part time following the birth of their children. The application of the combined method to the applicant had been apt to influence her and her husband

in deciding how they divided up tasks within the family and, accordingly, to have an impact on the organisation of their family life and careers. Furthermore, the Federal Court had explicitly recognised that the combined method could have negative repercussions for individuals working part time for family reasons, if they became disabled. These considerations were sufficient for the Court to find that the complaint came within the ambit of Article 8, under the heading of "family life". The "private life" aspect of Article 8 also came into play in so far as it guaranteed the right to personal development and autonomy. To the extent that the combined method placed persons wishing to work part time at a disadvantage compared with those in full-time paid employment and those who did not work at all, it could not be ruled out that this method of calculating disability benefits would limit the first category of persons in their choice as to how to divide their private life between work, household tasks and caring for their children.

- The overwhelming majority of people affected by the combined method were women who wished to reduce their working hours after the birth of a child. Accordingly, the applicant could claim to be the victim of discrimination on grounds of gender. It followed that Article 14 taken in conjunction with Article 8 was also applicable. It was not necessary to ascertain whether the refusal to grant the applicant a disability allowance also amounted to discrimination on grounds of disability.

- (b) *Compliance with Article 14 taken in conjunction with Article 8 of the Convention*

- (i) *Existence of a presumption of indirect discrimination in the present case* – In 2009 the combined method had been applied in 7.5% of all decisions on disability benefit. Of those cases, 97% had concerned women. These figures could be considered sufficiently reliable and telling to give rise to a presumption of indirect discrimination.

- (ii) *Whether there had been an objective and reasonable justification for the difference in treatment* – The aim of disability insurance was to insure individuals against the risk of becoming unable, owing to a disability, to engage in paid employment or perform routine tasks which they had been able to perform previously and which they would still be able to carry out had they remained in good health. This constituted a legitimate aim capable of justifying the differences observed. In itself, it was consistent with the essence and constraints of such an insurance scheme, which had limited resources and one of whose guiding principles therefore had to be the control of expenditure. Nevertheless, this goal had to be assessed in the light of gender equality. Very weighty reasons would have to be put forward before a difference in treatment based on this ground could be regarded as compatible with the Convention. The authorities' margin of appreciation had therefore been very narrow.

- If the applicant had worked full time or had devoted her time entirely to household tasks she would have received a partial disability allowance. It followed clearly that the decision refusing her entitlement to the allowance had been based on her assertion that she wished to reduce her working hours in order to take care of her children and her home. In practice, for the great majority of women wishing to work part time following the birth of their children, the combined method was a source of discrimination.

- Furthermore, the application of the combined method had been the subject of criticism for some time from certain domestic authorities and commentators. These were clear indications of a growing awareness that the combined method was no longer consistent with efforts to achieve gender

equality in contemporary society, in which women legitimately sought increasingly to reconcile family life and career. Moreover, alternative methods of calculation were possible which would take greater account of women's choice to work part time following the birth of a child. This would make it possible to pursue the aim of greater gender equality without jeopardising the purpose of disability insurance.

- In addition to these general considerations, the refusal to grant the applicant even a partial disability allowance had significant practical repercussions for her, even assuming that she could work part time. In view of the foregoing, there had been no reasonable justification for the difference in treatment to which the applicant had been subjected.

- *Conclusion*: violation (four votes to three).

- Article 41: EUR 5,000 in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

- (See also the judgment of the Court of Justice of the European Union in *Lourdes Cachaldora Fernández v Instituto Nacional de la Seguridad Social (INSS) and Tesorería General de la Seguridad Social (TGSS),* C-527/13, 14 April 2015, Information Note 184)

***Emel Boyraz v. Turkey* - 61960/08 (French) (Arabic)**
Judgment 2.12.2014 [Section II]

Article 14

Discrimination

Woman dismissed from post of security officer on grounds of her sex: *violation*

Facts – In 1999 the applicant, a Turkish woman, successfully sat a public-servant examination for the post of security officer in a branch of a State-run electricity company. The company initially refused to appoint her because she did not fulfil the requirements of "being a man" and "having completed military service", but that decision was annulled by the district administrative court and the applicant started work in 2001. In 2003 the Supreme Administrative Court quashed the lower court's judgment and in 2004 the applicant was dismissed. The district administrative court ruled that the dismissal was lawful in a decision that was upheld by the Supreme Administrative Court. The applicant's request for rectification was ultimately dismissed in 2008.

Law – Article 14 in conjunction with Article 8

(a) *Applicability* – The applicant had complained about the difference in treatment to which she had been subjected, not about the refusal of the domestic authorities to appoint her as a civil servant as such, which was a right not covered by the Convention. She had thus to be regarded as an official who had been appointed to the civil service and was subsequently dismissed on the ground of her sex. This constituted an interference with her right to respect for her private life because a measure as drastic as a dismissal from work on the sole ground of a person's sex must have adverse effects on his or her identity, self-perception and self-respect, and, as a result, his or her private life.

Conclusion: preliminary objection dismissed (unanimously).

(b) *Merits* – The domestic authorities had sought to justify their initial refusal to hire the applicant and her subsequent dismissal on the ground that the tasks of security officers involved risks and responsibilities which they considered women were unable to assume. However, they had not substantiated that argument and in a similar case concerning another woman decided only three months before the judgment regarding the applicant another domestic court had held that there was no obstacle to the appointment of a woman to the same post in the same company. Moreover, the mere fact that security officers had to work night shifts and in rural areas and could be required to use firearms or physical force could not in itself justify the difference in treatment between men and women. Furthermore, the applicant had worked as a security officer between 2001 and 2004. She was only dismissed because of the judicial decisions. Nothing in the case file indicated that she had in any way failed to fulfil her duties as a security officer because of her sex. As it had not been shown that the difference in treatment suffered by the applicant pursued a legitimate aim, it amounted to discrimination on grounds of sex.

Conclusion: violation (six votes to one).

The Court also found, unanimously, a violation of Article 6 § 1 on account of the excessive length of the domestic proceedings and the lack of adequate reasoning in the Supreme Administrative Court's decisions but no violation of Article 6 § 1

on account of the conflicting decisions rendered by the Supreme Administrative Court.

Article 41: EUR 10,000 in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

(See *Konstantin Markin v. Russia* [GC], 30078/06, 22 March 2012, *Information Note 150*; and, more generally, the Factsheet on Work-related rights)

***Petrovic v. Austria* -** 20458/92 **(**French**) (**Arabic**)**
Judgment 27.3.1998

Article 14

Discrimination

Authorities' refusal to grant parental leave allowance to a father, on ground that allowance was only available to mothers: *no violation*

[This summary is extracted from the Court's official reports (Series A or Reports of Judgments and Decisions). Its formatting and structure may therefore differ from the Case-Law Information Note summaries.]

A. Applicability

Recapitulation of Court's case-law – allowance paid by State was intended to promote family life and necessarily affected way in which latter was organised – allowance enabled States to demonstrate their respect for family life and therefore came within scope of Article 8.

Conclusion: Article 14 taken together with Article 8 applicable.

B. Compliance

Recapitulation of Court's case-law – existence of difference in treatment on grounds of sex and mother and father similarly placed as far as taking care of child concerned – Contracting States enjoyed a certain margin of appreciation, whose scope varied according to circumstances, subject matter and background – in that respect, one of the relevant factors might be the existence or non-existence of common ground between laws of Contracting States – no common standard in that field at material time, as majority of Contracting States had not provided for parental leave allowances to be paid to fathers – gradual introduction by Austrian legislature of legislation which was very progressive in Europe – there still remained very great disparity between legal systems of Contracting States in that field – Austrian authorities' refusal to grant applicant parental leave allowance had not, therefore, exceeded margin of appreciation allowed to them.

Conclusion: no violation of Article 14 taken together with Article 8 (seven votes to two).

***Konstantin Markin v. Russia [GC]* - 30078/06 (French) (Arabic)**
Judgment 22.3.2012 [GC]

Article 14

Discrimination

Difference in treatment between male and female military personnel regarding rights to parental leave: *violation*

Facts – Under Russian law civilian fathers and mothers are entitled to three years' parental leave to take care of their minor children and to a monthly allowance for part of that period. The right is expressly extended to female military personnel, but no such provision is made in respect of male personnel. The applicant, a divorced radio intelligence operator in the armed forces, applied for three years' parental leave to bring up the three children of the marriage, but this was refused on the grounds that there was no basis for his claim in domestic law. He was subsequently granted approximately two years' parental leave plus financial aid by his superiors in view of his difficult personal circumstances. He nevertheless lodged a complaint with the Constitutional Court in which he submitted that the legislation was incompatible with the constitutional guarantee of equal rights. Dismissing that complaint, the Constitutional Court held that the prohibition on servicemen taking parental leave was based on the special legal status of the military and the need to avoid large numbers of military personnel becoming unavailable to perform their duties. It noted that servicemen assumed the obligations connected with their military status voluntarily and were entitled to early termination of service should they decide to take care of their children personally. The right for servicewomen to take parental leave had been granted on an exceptional basis and took into account the limited participation of women in the military and the special social role of women associated with motherhood.

In a judgment of 7 October 2010 (see Information Note 134), a Chamber of the Court held by six votes to one that there had been a violation of Article 14 in conjunction with Article 8.

Law – Article 14 in conjunction with Article 8: Parental leave and parental allowances came within the scope of Article 8, as they promoted family life and necessarily affected the way it was organised. Article 14 of the Convention was thus applicable (in conjunction with Article 8). Men were in an analogous situation to women with regard to parental leave (as opposed to maternity leave) and parental-leave allowances. Accordingly, as a serviceman, the applicant had been in an analogous situation to servicewomen. The Court therefore had to determine whether the difference in treatment between servicemen and servicewomen with respect to the right to parental leave was objectively and reasonably justified.

In that connection, it noted that the advancement of gender equality was now a major goal in the member States of the Council of Europe and very weighty reasons would have to be put forward before a difference of treatment on the grounds of sex could be regarded as compatible with the Convention. In particular, references to traditions, general assumptions or prevailing social attitudes in a particular country would be insufficient.

The Court did not accept that justification for the difference in treatment in the applicant's case could lie, as the Government had alleged, in the special social role of women in the raising of children. Contemporary European societies had moved towards a more equal sharing between men and women of responsibility

for the upbringing of their children and men's caring role had gained recognition. The majority of European countries, including Russia, now allowed both civilian men and women to take parental leave and a significant number of countries also extended that right to both servicemen and servicewomen. The difference in treatment in the applicant's case could not be seen as positive discrimination in favour of women, as it was clearly not intended to correct the disadvantaged position of women in society. Instead, it had the effect of perpetuating gender stereotypes and was disadvantageous both to women's careers and to men's family life. In sum, the reference to the traditional distribution of gender roles in society could not justify the exclusion of men, including servicemen, from the entitlement to parental leave.

The Court was not persuaded either by the Government's argument that extending parental leave to servicemen would have a negative effect on the fighting power and operational effectiveness of the armed forces. The Russian authorities had not carried out any expert study or research to evaluate the number of servicemen who would be able or willing to take three years' parental leave in order to assess how that might affect operational effectiveness. Such statistical information as they had submitted was inconclusive. The mere fact that all servicemen were of "childbearing age" was insufficient to justify the difference in treatment between servicemen and servicewomen. The Court nevertheless accepted that, given the importance of the army for the protection of national security, certain restrictions on the entitlement to parental leave could be justifiable provided they were not discriminatory. Thus, for instance, military personnel, whether male or female, could be excluded from parental-leave entitlement if they were not easily replaceable owing to their hierarchical position, rare technical qualifications, or involvement in active military actions. However, in Russia the exclusion from entitlement to parental leave applied automatically to all servicemen, irrespective of their position in the army, the availability of a replacement or their individual situation. In the Court's view, such a general and automatic restriction applied to a group of people on the basis of their sex fell outside any acceptable margin of appreciation of the State.

The applicant had served as a radio intelligence operator and could therefore have been replaced by either servicemen or servicewomen. Significantly, equivalent posts in his unit were often held by servicewomen, who, unlike him, had an unconditional entitlement to three years' parental leave. The applicant had therefore been subjected to discrimination on grounds of sex without reasonable or objective justification. In view of the fundamental importance of the prohibition of discrimination on grounds of sex, the fact that he had signed a military contract could not constitute a waiver of his right not to be discriminated against.

Conclusion: violation (sixteen votes to one).

Article 34: The applicant had complained that, while his application before the European Court was pending, he had received an unsolicited visit at his home from a prosecutor requesting information relating to the applicant's case. The Court noted that it was, in principle, not appropriate for the authorities of a respondent State to enter into direct contact with an applicant in connection with his or her case before the Court. However, in the instant case, there was no evidence that the prosecutor's visit to the applicant's home to obtain up-to-date information about the family situation had been calculated to induce the applicant to withdraw or modify his complaint, or that it had had that effect. Accordingly, the authorities could not be held to have hindered the applicant in his exercise of his right to individual petition.

Conclusion: no failure to comply with Article 34 (fourteen votes to three).

Article 41: EUR 3,000 in respect of non-pecuniary damage

***Hulea v. Romania* - 33411/05 (French) (Arabic)**
Judgment 2.10.2012 [Section III]

Article 14

Discrimination

Refusal to award compensation to serviceman for discrimination with respect to his right to parental leave: *violation*

Facts – The applicant had been in the army since 1991. In December 2001 his second child was born. For the first ten months the applicant's wife, a teacher, took parental leave, which could be extended to the child's second birthday. In September 2002 the applicant applied to his hierarchical superior for parental leave. This request was repeated on several occasions. However, the Ministry of Defence refused on the grounds that the legislation defining the status of army personnel provided for parental leave only for women. In September 2003 the applicant, who considered this refusal discriminatory, brought an action against the Ministry of Defence before the county court. His action was dismissed. In his appeal to the court of appeal against that decision the applicant raised an objection alleging the unconstitutionality of the legal provision governing the status of military personnel. By a decision of February 2005 the Constitutional Court agreed to examine the question of constitutionality, and held that the legislative provision in question infringed the principles of equality before the law and of non-discrimination on grounds of sex, both enshrined in the Constitution. The court of appeal then dismissed the applicant's appeal in a final judgment of 13 April 2005, holding that the statutory provision in question was not applicable, since the applicant had not submitted documentary evidence that he had paid the contributions necessary to benefit from parental leave. It also refused to grant compensation in respect of non-pecuniary damage, finding that his claim was unsubstantiated.

Law – Article 14 in conjunction with Article 8: For the purposes of parental leave, the applicant, a serviceman, was in a position similar to that of servicewomen. That situation led the Constitutional Court to find, at the applicant's request, that the ineligibility of servicemen for parental leave under the Military Personnel (Status) Act amounted to discrimination on grounds of sex. Furthermore, although since 2006 the legislation in Romania – as in a significant number of member States – had provided that servicemen were entitled to the same parental leave as servicewomen, the applicant had not been permitted to take such leave. In addition, his action for damages in respect of the discrimination experienced through the refusal to grant parental leave was dismissed by the court of appeal on the grounds that he had not provided evidence of having paid his social-insurance contributions or of his alleged non-pecuniary damage. With regard to non-pecuniary damage, the Court considered that the court of appeal's approach had been too formalistic; the Court had already noted that such an approach, which placed on the applicant an obligation to establish the existence of non-pecuniary damage through evidence capable of demonstrating external signs of his mental or psychological suffering, had had the result of depriving him of the compensation to which he was entitled. As to the payment of social-security contributions, the issue of parental leave, the entitlement to which was governed by the Military Personnel (Status) Act in a discriminatory manner with regard to servicemen, was distinct from that of potential benefits. Even supposing that the applicant had not paid his social contributions, the court of appeal had completely failed to examine his right to parental leave, possibly without pay. In

addition, it had not given the applicant an opportunity to demonstrate payment of such contributions to social and medical insurance schemes, especially since, as a serviceman, he belonged to a social-security scheme that was separate from the public-law scheme. Moreover, no complaints had been brought against the applicant alleging any failure to pay compulsory social contributions since joining the army in 1991. Thus, the court of appeal's refusal to award the applicant compensation for the violation of his right not to be discriminated against in the exercise of his rights concerning his family life did not appear to have been based on sufficient grounds. In this respect, it was irrelevant that the court of appeal had not advanced discriminatory grounds in its decision, since it had refused, without sufficient reasons, to compensate the non-pecuniary damage caused by the discrimination experienced by the applicant on account of the refusal to grant him parental leave.

Conclusion: violation (unanimously).

Article 41: EUR 8,000 in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

(See *Konstantin Markin v. Russia* [GC], no. 30078/06, 22 March 2012, Information Note no. 150)

Leyla Şahin v. Turkey [GC] - 44774/98 (French) (Arabic)
Judgment 10.11.2005 [GC]

Article 9

Article 9-1

Manifest religion or belief

Prohibition for a student to wear the islamic headscarf at university: *no violation*

Article 2 of Protocol No. 1

Right to education

Prohibition for a student to wear the islamic headscarf at university: *no violation*

- *Facts*: On 23 February 1998 the Vice-Chancellor of Istanbul University issued a circular directing that students wearing the Islamic headscarf would be refused admission to lectures, courses and tutorials. At the material time the applicant was a student at the faculty of medicine of the university. In March 1998 she was refused access to a written examination on one of the subjects she was studying because she was wearing the Islamic headscarf. Subsequently, on the same grounds, the university authorities refused to enrol her on a course, and to admit her to various lectures and a written examination. The faculty also issued her with a warning for contravening the university's rules on dress and suspended her from the university for a semester for taking part in an unauthorised assembly that had gathered to protest against the rules. All the disciplinary penalties imposed on the applicant were revoked under an amnesty law. The applicant lodged an application for an order setting aside the circular, but it was dismissed by the administrative courts, who found that that a university vice-chancellor had power to regulate students' dress for the purposes of maintaining order by virtue of the legislation and decisions of the Constitutional Court and the Supreme Administrative Court, and that the regulations and measures criticised by the applicant were not, under the settled case-law of those courts, illegal.

- *Law*: Article 9 – The circular issued on 23 February 1998 by Istanbul University, which placed restrictions of place and manner on the students' right to wear the Islamic headscarf, constituted an interference with the applicant's right to manifest her religion. As to whether the interference had been "prescribed by law", the Court noted that the circular had a statutory basis which was supplemented by a 1991 decision in which the Constitutional Court had followed its previous case-law. In addition, the Supreme Administrative Court had by then consistently held for a number of years that wearing the Islamic headscarf at university was not compatible with the fundamental principles of the Republic. Furthermore, regulations on wearing the Islamic headscarf had existed at Istanbul University since 1994 at the latest, well before the applicant had enrolled there. Accordingly, there was a legal basis for the interference in Turkish law, the law was accessible and its effects foreseeable so that the applicant would have been aware, from the moment she entered the university, that there were restrictions on wearing the Islamic headscarf and, from 23 February 1998, that she was liable to be refused access to lectures and examinations if she continued to wear the headscarf. The interference pursued the legitimate aims of protecting the rights and freedoms of others and of protecting public order. As to whether the interference was necessary, the Court noted that it was based in particular on

the principle of secularism, which prevented the State from manifesting a preference for a particular religion or belief and whose defence could entail restrictions on freedom of religion. That notion of secularism was consistent with the values underpinning the Convention and upholding that principle could be considered necessary to protect the democratic system in Turkey. In the Turkish context, where the values of pluralism, respect for the rights of others and, in particular, equality before the law of men and women were being taught and applied in practice, it was understandable that the relevant authorities should consider it contrary to such values to allow religious attire to be worn on university premises. As regards the conduct of the university authorities, the Court noted that it was common ground that practising Muslim students in Turkish universities were free, within the limits imposed by educational organisational constraints, to manifest their religion in accordance with habitual forms of Muslim observance. In addition, various forms of religious attire were forbidden at Istanbul University. Further, throughout the decision-making process, the university authorities had sought to avoid barring access to the university to students wearing the Islamic headscarf, through continued dialogue with those concerned, while at the same time ensuring that order was maintained on the premises. In those circumstances, and having regard to the Contracting States' margin of appreciation, the Court found that the interference in issue was justified in principle and proportionate to the aims pursued, and could therefore be considered to have been "necessary in a democratic society".

- *Conclusion*: no violation (sixteen votes to one).

- Article 2 of Protocol No. 1: On the question of the applicability of the provision, the Court reiterated that while the first sentence essentially established access to primary and secondary education, it would be hard to imagine that institutions of higher education existing at a given time did not come within its scope. Nevertheless, in a democratic society, the right to education, which was indispensable to the furtherance of human rights, played such a fundamental role that a restrictive interpretation of the first sentence of Article 2 would not be consistent with the aim or purpose of that provision. Consequently, any institutions of higher education existing at a given time came within the scope of the first sentence of Article 2 of Protocol No. 1, since the right of access to such institutions was an inherent part of the right set out in that provision. In the case before it, by analogy with its reasoning under Article 9, the Court accepted that the regulations on the basis of which the applicant had been refused access to various lectures and examinations for wearing the Islamic headscarf constituted a restriction on her right to education. As with Article 9, the restriction was foreseeable to those concerned and pursued legitimate aims and the means used were proportionate. The decision-making process had clearly entailed the weighing up of the various interests at stake and was accompanied by safeguards (the rule requiring conformity with statute and judicial review) that were apt to protect the students' interests. Further, the applicant could reasonably have foreseen that she ran the risk of being refused access to lectures and examinations if she continued to wear the Islamic headscarf. Accordingly, the ban on wearing the Islamic headscarf had not impaired the very essence of the applicant's right to education.

- *Conclusion*: no violation (sixteen votes to one).

- Articles 8, 10 and 14 – The regulations on the Islamic headscarf were not directed against the applicant's religious affiliation, but pursued the legitimate aim of protecting order and the rights and freedoms of others and were manifestly intended to preserve the secular nature of educational institutions.

- *Conclusion*: no violation (unanimously)

***Vrountou v. Cyprus* - 33631/06** (French) (Arabic)
Judgment 13.10.2015 [Section IV]

Article 14

Discrimination

Denial of refugee card on the basis that the applicant was the child of a displaced woman rather than a displaced man: *violation*

- *Facts* – In 2003 the applicant applied for a refugee card under a scheme introduced in 1974 for war victims and persons displaced from areas occupied by the Turkish armed forces or evacuated to meet the needs of the National Guard. Under the scheme, refugee cards made their holders eligible to a range of benefits, including housing assistance. The applicant's request was rejected because, while her mother was a displaced person, her father was not. The applicant's ensuing judicial proceedings were unsuccessful.

- After the applicant lodged her application to the European Court, the 1974 scheme was amended, so that children of displaced women became eligible for housing assistance on the same terms as the children of displaced men as of 2013.

- *Law* – Article 14 in conjunction with Article 1 of Protocol No. 1: In 2003 the primary condition of entitlement to housing assistance was that the person applying for it had to be the holder of a refugee card. Hence, had the applicant at that time had the right to be issued with a refugee card, she would also have had a right, enforceable under domestic law, to receive housing assistance. Therefore, housing assistance constituted a "benefit" for the purposes of Article 1 of Protocol No. 1 and the facts of this case fell within the ambit of that provision.

- The Court further established the existence of a difference in treatment on the grounds of sex on account of the fact that, in being entitled to a refugee card (and thus to housing assistance) the children of displaced men enjoyed preferential treatment over the children of displaced women.

- As to whether there was a reasonable and objective justification for this difference in treatment, the main argument advanced by the Government was the socio-economic differences between women and men allegedly existing in Cyprus when the scheme was introduced. However, the Court recalled that this kind of reference to "traditions, general assumptions or prevailing social attitudes" provided insufficient justification for a difference in treatment on grounds of sex. Moreover, even assuming it reflected the general nature of economic life in rural Cyprus in 1974, it did not justify regarding all displaced men as breadwinners and all displaced women as incapable of fulfilling that role. Nor could it justify subsequently depriving the children of displaced women of the benefits to which the children of displaced men were entitled, particularly when most benefits the children of displaced men were entitled to did not refer to a means test. Nor could the difference in treatment be justified simply by reference to the need to prioritise resources in the immediate aftermath of the 1974 invasion.

- As to the margin of appreciation the State allegedly enjoyed in choosing the timing and means for extending the 1974 scheme to the children of displaced women, the Court noted that the scheme had excluded the children of displaced women for almost forty years. Budgetary considerations alone could not justify such a difference in treatment based solely on gender, particularly when the

successive expansions of the scheme between 1974 and 2013 had themselves had financial consequences. Furthermore, the fact that the scheme had persisted for so long and yet continued to be based solely on traditional family roles as understood in 1974 meant that the State had exceeded any margin of appreciation it enjoyed in this field. Very weighty reasons would have been required to justify such a long-lasting difference in treatment. None had been shown to exist. There was accordingly no objective and reasonable justification for the difference in treatment.

- *Conclusion*: violation (unanimously).

- The Court also found, unanimously, a violation of Article 13 on account of the lack of effective remedies at the material time which to enable the applicant to challenge the discriminatory nature of the scheme.

- Article 41: EUR 4,000 in respect of non-pecuniary damage; EUR 21,500 in respect of pecuniary damage.

- (See also *Konstantin Markin v. Russia* [GC], 30078/06, 22 March 2012, Information Note 150)

***Stec and Others v. the United Kingdom [GC]* - 65731/01**
(French) (Arabic)
Judgment 12.4.2006 [GC]

Article 14

Discrimination

Differences in the entitlement for men and women to certain industrial injuries social security benefits: *no violation*

Article 37

formerly *Hepple and Others and Kimberv. United Kingdom*

The applicant Mrs Hepple informed the Court that for personal reasons she no longer wished to continue with the case; her application was struck out. Subsequently Mrs Hepple informed the Court that she had changed her mind. The Court decided, however, not to restore her application to the list.

Facts: The pensionable age in the United Kingdom for persons born before 6 April 1950 is 65 for men and 60 for women. The applicants, two men and two women, all suffered work-related injuries and received reduced earnings allowances as a result; all received retirement allowances when they reached their respective pensionable ages. For all applicants, this resulted in various ways in a drop in income that would have been spared them had they been of the sex opposite to theirs and hence subject to the other pensionable age. In the course of the domestic proceedings, the domestic tribunal sought a preliminary ruling from the European Court of Justice (ECJ), which on 23 May 2000 ruled that there was no incompatibility with Council Directive 79/7/EEC on Equal Treatment in Social Security.

Law: Article 14 – The Court had held already in its decision on admissibility (6 July 2005) that the applicants' interests fell within the scope of Article 1 of Protocol No. 1. All agree that it is reasonable to aim to stop paying reduced earnings benefits after the age when the beneficiaries would in any case have retired. A single cut-off date divorced from the pensionable age, as advocated by the applicants, would however not have achieved the same level of consistency with the State pension scheme, which is based on a "notional end of working life" at 60 for women and 65 for men. Nor would such a scheme have been as easy to understand and administer. It is moreover significant that the ECJ found that since the reduced earnings allowance was intended to compensate people of working age for loss of earning capacity due to an accident at work or occupational disease, it was necessary for the sake of coherence to link the age-limits. Both the policy decision to stop paying reduced earnings allowances to persons who would otherwise have retired from paid employment and the decision to achieve this aim by linking the cut-off age to the notional "end of working life", or State pensionable age, therefore pursued a legitimate aim and were reasonably and objectively justified. The remaining question is whether the underlying difference in treatment between men and women in the State pension scheme was acceptable under Article 14. It would appear that the difference in treatment was adopted in order to mitigate financial inequality and hardship arising out of the woman's traditional unpaid role of caring for the family in the home rather than earning money in the workplace. At their origin, therefore, the

differential pensionable ages were intended to correct "factual inequalities" between men and women and appear therefore to have been objectively justified under Article 14. It follows that the difference in pensionable ages continued to be justified until such time that social conditions had changed so that women were no longer substantially prejudiced because of a shorter working life. This change, must, by its very nature, have been gradual, and it would be difficult or impossible to pinpoint any particular moment when the unfairness to men caused by differential pensionable ages began to outweigh the need to correct the disadvantaged position of women. It is significant that many of the other Contracting States still maintain a difference in the ages at which men and women become eligible for the State retirement pension. In the light of the original justification for the measure as correcting financial inequality between the sexes, the slowly evolving nature of the change in women's working lives, and in the absence of a common standard amongst the Contracting States, the Court finds that the United Kingdom cannot be criticised for not having started earlier on the road towards a single pensionable age. Having once begun the move towards equality, moreover, the Court does not consider it unreasonable of the Government to carry out a thorough process of consultation and review, nor can Parliament be condemned for deciding in 1995 to introduce the reform slowly and in stages. Given the extremely far-reaching and serious implications, for women and for the economy in general, these are matters which clearly fall within the State's margin of appreciation.

Conclusion: no violation (sixteen votes to one).

***Andrle v. the Czech Republic* - 6268/08 (French) (Arabic)**
Judgment 17.2.2011 [Section V]

Article 14

Discrimination

Lower pensionable age for women who had raised children, but not for men: *no violation*

Facts – Following his divorce, the applicant obtained custody of his two minor children. In 2003 he sought to retire at the age of 57, but his request was refused on the grounds that he had not attained the pensionable age, which at the time was 60 for men. The age for women was 57 or lower, depending on the number of children they had raised (section 32 of the State Pension Insurance Act). The applicant appealed on the grounds that the fact that he had raised two children should have been taken into account in calculating his retirement age, but his appeal was dismissed after the Constitutional Court ruled in separate proceedings that the legislation was not incompatible with the Constitution.

Law – Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1: The applicant complained that, unlike the position with women, there was no lowering of the pensionable age for men who had raised children. He did not challenge the difference in pensionable age between men and women in general. The Court accepted that the measure at issue pursued the legitimate aim of compensating for factual inequalities and hardship arising out of the specific historical circumstances of the former Czechoslovakia, where women had been responsible for the upbringing of children and for the household, while being under pressure to work full time. In such circumstances, the national authorities were better placed to determine the moment at which the unfairness to men began to outweigh the need to correct the disadvantaged position of women by way of affirmative action. The Czech Government had already made the first concrete move towards equalising the retirement age by legislative amendments in 2010 which had removed the right to a lower pensionable age for women with one child and directed the reform towards an overall increase in the pensionable age irrespective of the number of children raised. Given the gradual nature of demographic shifts and changes in perceptions of the role of the sexes, and the difficulties of placing the entire pension reform in the wider context, the State could not be criticised for progressively modifying its pension system instead of pushing for a complete change at a faster pace. The applicant's case was to be distinguished from *Konstantin Markin v. Russia* (no. 30078/06, 7 October 2010, Information Note no. 134), which had concerned the issue of parental leave. Parental leave was a short-term measure which, unlike pensions, did not affect the entire lives of members of society. Changes made to the parental-leave system to eliminate differences in treatment between the sexes did not have serious financial ramifications or alter long-term planning, unlike changes to the pension system, which formed part of the State's national economic and social strategies. The original aim of the difference in pensionable age based on the number of children women raised had been to compensate for the factual inequalities between the sexes. In the specific circumstances of the case, that approach continued to be reasonably and objectively justifiable until such time as social and economic changes removed the need for special treatment for women. The timing and the extent of the measures taken to rectify the inequality in question were not manifestly unreasonable and so did not exceed the wide margin of appreciation afforded to the States in this area.

Conclusion: no violation (unanimously).

***Staatkundig Gereformeerde Partij v. the Netherlands (dec.)* - 58369/10 (French) (Arabic)**
Decision 10.7.2012 [Section III]

Article 14

Discrimination

Judicial decision requiring the State to take steps to oblige a highly traditional protestant political party to open its lists of candidates for election to representative bodies to women: *inadmissible*

Facts – The applicant party professed the absolute authority of the Word of God over all areas of societal life. It rejected the idea of absolute equality of human beings. In essence, it believed that, although all human beings were of equal value as God's creatures, differences in nature, talents and place in society had to be recognised. Men and women had different roles in society. Thus, women were not inferior to men as human beings; but, unlike men, women should not be eligible for public office. After the rulings of the regional court in the civil proceedings brought against it by several associations and organisations, the applicant party amended its Principles to admit women members, though still without allowing them to stand for election to public office. In 2010 the Supreme Court found the way in which the applicant party put its convictions into practice in nominating candidates for election to general representative bodies unacceptable. It stated further that the State was wrong to take the position that its own balancing exercise entitled it not to take any measures against this practice. The Standing Parliamentary Committee for the Interior of the Lower House of Parliament then decided to await the outcome of the proceedings before the Court before deciding whether to take any action.

Law – Article 3 of Protocol No. 1: The Court reiterated that democracy was the only political model contemplated in the Convention and the only one compatible with it. Moreover, the advancement of the equality of the sexes in the member States prevented the State from lending its support to views of the man's role as primordial and the woman's as secondary. The fact that no woman had expressed the wish to stand for election as a candidate for the applicant party was not decisive. It made little difference whether or not the denial of a fundamental political right based solely on gender was stated explicitly in the applicant party's bye-laws or in any other of the applicant party's internal documents, given that it was publicly espoused and followed in practice. The applicants party's position was unacceptable regardless of the deeply-held religious conviction on which it was based.

Conclusion: inadmissible (manifestly ill-founded).

***L. and V. v. Austria* -** 39392/98 and 39829/98 **(**French**) (**Arabic**)**
Judgment 9.1.2003 [Section I]

Article 14

Discrimination

Different age of consent for homosexual and heterosexual/ lesbian acts: *violation*

Facts: Each of the applicants was convicted of engaging in homosexual acts with adolescents between 14 and 18 years old. Article 209 of the Criminal Code, which was repealed in 2002, provided that it was an offence for a male over 19 years old to engage in sexual acts with a person of the same sex between 14 and 18 years old. Consensual heterosexual or lesbian acts between an adult and a person over 14 years old were not punishable.

Law: Article 14 in conjunction with Article 8 – The amendment of the law in 2002 did not affect the applicants' status as victims, as their convictions were unaffected by it. Thus, the matter had not been resolved within the meaning of Article 37 § 1 (b) of the Convention. Sexual orientation is covered by Article 14 and differences based on sexual orientation require particularly serious reasons by way of justification. Although in previous cases concerning Article 209 of the Austrian Criminal Code the European Commission of Human Rights had found no violation, it had concluded in the more recent case of Sutherland v. the United Kingdom (no. 25186/94) that in the absence of any objective and reasonable justification the maintenance of a higher age of consent for homosexual acts violated Article 14 taken together with Article 8 of the Convention. The Commission had had regard to recent research according to which sexual orientation is usually established before puberty and to the fact that the majority of member States of the Council of Europe had recognised equal ages of consent. In the light of these developments, the Government had not in the present case offered convincing and weighty reasons justifying the maintenance in force of Article 209 of the Criminal Code and, consequently, the applicants' convictions.

Conclusion: violation (unanimously).

Article 8 – It was unnecessary to rule on the question whether there had been a violation of Article 8 taken alone.

Conclusion: not necessary to examine (unanimously).

Article 41 – The Court awarded each applicant 15,000 € in respect of non-pecuniary damage. It also made awards in respect of costs and expenses.

***Alexandru Enache c. Roumanie* - 16986/12 (French) (Arabic)**
Arrêt 3.10.2017 [Section IV]

Article 14

Législation permettant le report de peine de prison pour les mères, mais pas les pères, de petits enfants : *non-violation*

Article 8

Législation permettant le report de peine de prison pour les mères, mais pas les pères, de petits enfants : *non-violation*

- *En fait* – Le requérant, condamné à sept ans de prison, forma deux demandes de report de l'exécution de la peine. Il plaida notamment qu'il avait un enfant âgé de quelques mois dont il voulait s'occuper. Cependant ses demandes furent rejetées par les tribunaux, qui considéraient que le report de l'exécution de la peine, prévu par l'article 453 § 1 b) de l'ancien Code de procédure pénale pour les mères condamnées jusqu'au premier anniversaire de leur enfant, était d'interprétation stricte, et que l'intéressé ne pouvait pas en demander l'application par analogie.

- *En droit* – Article 14 combiné avec l'article 8

- *a) Sur le point de savoir si la situation du requérant était comparable à celle d'une femme détenue ayant un enfant de moins d'un an* : Il y avait en droit roumain une différence de traitement entre deux catégories de détenus ayant un enfant de moins d'un an : les femmes d'un côté, qui pouvaient bénéficier d'un report de l'exécution de la peine, et les hommes de l'autre, auxquels un tel report ne pouvait pas être octroyé.

- L'institution du report d'une peine privative de liberté vise en premier lieu l'intérêt supérieur de l'enfant afin d'assurer qu'il reçoive l'attention et les soins adéquats pendant sa première année de vie ; or, bien qu'il puisse y avoir des différences dans leur relation avec leur enfant, tant la mère que le père peuvent apporter cette attention et ces soins. De plus, la possibilité d'obtenir le report de la peine s'étend jusqu'au premier anniversaire de l'enfant et va donc au-delà des suites de la grossesse de la mère et de l'accouchement.

- Ainsi le requérant peut prétendre se trouver dans une situation comparable à celle des femmes détenues.

- *b) Sur le point de savoir si la différence de traitement était objectivement justifiée* : L'octroi aux femmes détenues de la mesure de report de leur peine n'était pas automatique. Les tribunaux internes procèdent à un examen circonstancié des demandes et les rejettent lorsque la situation personnelle des demanderesses ne justifie pas un report de l'exécution de la peine.

- Le droit pénal roumain en vigueur au moment des faits ménageait à tous les détenus, quel que fût leur sexe, d'autres possibilités de demander un report de leur peine. Ainsi, les tribunaux pouvaient notamment examiner si des circonstances spéciales découlant de l'exécution de la peine pouvaient avoir des conséquences graves pour la personne du détenu, mais aussi pour sa famille ou son employeur. Le requérant s'est prévalu de cette possibilité légale mais les

difficultés qu'il évoquait n'entraient pas dans la catégorie des circonstances spéciales prévues par la loi.

- Il est vrai que la progression vers l'égalité des sexes est aujourd'hui un but important des États membres du Conseil de l'Europe, et que seules des considérations très fortes peuvent amener à estimer compatible avec la Convention une telle différence de traitement.

- Le but des normes légales en question était de tenir compte de situations personnelles spécifiques, dont la grossesse de la femme détenue et la période précédant le premier anniversaire du nouveau–né, ayant notamment regard aux liens particuliers qui existent entre la mère et l'enfant pendant cette période. Dans le domaine spécifique concerné par la présente affaire, ces considérations peuvent constituer une base suffisante pour justifier la différence de traitement dont a fait l'objet le requérant.

- En effet la maternité présente des spécificités qu'il convient de prendre en compte, parfois par des mesures de protection. Les normes de droit international prévoient que l'adoption par les États parties de mesures spéciales qui visent à protéger la maternité n'est pas considérée comme un acte discriminatoire. Il en va de même lorsque la femme fait l'objet d'une mesure de privation de liberté.

- À la lumière de ce qui précède et compte tenu de l'ample marge d'appréciation de l'État défendeur dans ce domaine, il existe un rapport raisonnable de proportionnalité entre les moyens employés et le but légitime recherché. L'exclusion litigieuse ne constitue donc pas une différence de traitement prohibée aux sens de l'article 14 combiné avec l'article 8 de la Convention.

- *Conclusion* : non-violation (cinq voix contre deux).

- La Cour a aussi conclu à la violation de l'article 3 relativement aux conditions de détention du requérant.

- Article 41 : demande de somme rejetée concernant le dommage matériel ; 4 500 EUR au titre du préjudice moral.

- (Voir aussi *Petrovic c. Autriche*, 20458/92, 27 mars 1998, Note d'information ; *Konstantin Markin*, *c. Russie* [GC], 30078/06, 22 mars 2012, Note d'information 150 ; et *Khamtokhu et Aksenchik*, *c. Russie* [GC], 60367/08 et 961/11, 24 janvier 2017, Note d'information 203)