

March 2011

This factsheet does not bind the Court and is not exhaustive

Homosexual rights

Marriage

Schalk and Kopf v. Austria (no. 30141/04)

24.06.2010

The applicants are a same-sex couple living in a stable partnership. They asked the Austrian authorities for permission to marry. Their request was refused on the ground that marriage could only be contracted between two persons of opposite sex; this view was upheld by the courts.

The Court first held that the relationship of the applicants fell within the notion of "family life", just as the relationship of a different-sex couple in the same situation would. However, the European Convention on Human Rights did not oblige a State to grant a same-sex couple access to marriage. The national authorities were best placed to assess and respond to the needs of society in this field, given that marriage had deep-rooted social and cultural connotations differing greatly from one society to another. No violation of Article 12 (right to marriage), and no violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

Pending case

Chapin and Charpentier v. France (no. 40183/07) - statement of facts

Marriage of two men conducted by the mayor of Bègles and subsequently declared null and void by the courts.

Adoption

Fretté v. France (no. 36515/97)

26.02.2002

Refusal of a request by a homosexual man for prior authorisation to adopt a child.

The Court held that the national authorities had been legitimately and reasonably entitled to consider that the right to be able to adopt, on which the applicant had relied, was limited by the interests of children eligible for adoption, notwithstanding the applicant's legitimate aspirations and without calling his personal choices into question. No violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private life). In addition, violation of Article 6 - right to a fair hearing.

E.B. v. France (no. 43546/02)

22.01.2008

Refusal of a request by a single woman in a stable relationship with another woman for prior authorisation to adopt a child.

The Court observed that the applicant's homosexuality had been a determining factor in refusing her request, whereas French law allowed single persons to adopt a child, thereby opening up the possibility of adoption by a single homosexual. Violation of Article 14 of the Convention, taken in conjunction with Article 8.

Measures taken following the judgment.

Pending cases

Gas and Dubois v. France (no. 25951/07) – statement of facts – admissible – hearing on 12.04.2011 at 9.00.

Refusal of request by first applicant to adopt her partner's child.

X and Others v. Austria (no. 19010/07) – statement of facts

Refusal of request by first applicant to adopt her partner's child.

Parental rights

Salgueiro da Silva Mouta v. Portugal (no. 33290/96)

21.12.1999

Joint custody withdrawn from a father on account of his homosexuality.

The Portuguese courts' decision had been largely based on the fact that the applicant was a homosexual and that "the child should live in a traditional Portuguese family". The Court held that that distinction, based on considerations relating to sexual orientation, was not acceptable under the Convention. Violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private and family life).

Measures taken following the judgment.

J.M. v. the United Kingdom (no. 37060/06)

28.09.2010, **not final**

Following her divorce, the applicant's former husband became the parent with care of their children and she was required to contribute financially to the cost of their upbringing. In 1998, she started living with another woman in an intimate relationship. The regulations that applied at that time - prior to the introduction of the Civil Partnership Act - provided for reduced child maintenance where the absent parent had entered into a new relationship, married or unmarried, but took no account of same-sex relationships.

The Court held that the rules on child maintenance prior to the introduction of the Civil Partnership Act had discriminated against those in same-sex relationships. Violation of Article 14 (prohibition of discrimination) in conjunction with Article 1 of Protocol No. 1 (protection of property).

Employment

Lustig-Prean and Beckett v. the United Kingdom (nos. 31417/96 and 32377/96) and Smith and Grady v. the United Kingdom (nos. 33985/96 and 33986/96)

27.09.1999

Perkins and R. v. the United Kingdom (nos. 43208/98 and 44875/98) and Beck, Copp and Bazeley v. the United Kingdom (nos. 48535/99, 48536/99 and 48537/99)

22.10.2002

Applicants discharged from the armed forces solely on account of their homosexuality, following investigations into their sexual orientation.

The Court held that the measures taken against the applicants had constituted especially grave interferences with their private lives and had not been justified by "convincing and weighty reasons". Violations of Article 8 (right to respect for private life). In certain cases, violation of Article 13 (right to an effective remedy). In *Beck, Copp and Bazeley*: no violation of Article 3 (prohibition of inhuman or degrading treatment).

Measures taken following these judgments (law changed)

Social rights

Mata Estevez v. Spain (no. 56501/00)

10.05.2001 (decision on the admissibility)

Ineligibility of a homosexual couple for a survivor's pension.

Spanish legislation relating to eligibility for survivors' allowances pursued a legitimate aim (protection of the family based on the bonds of marriage), and the difference in treatment could be considered to fall within the State's margin of appreciation. The Court declared the application inadmissible.

P.B. and J.S. v. Austria (no. 18984/02)

22.07.2010

Refusal to extend sickness insurance cover to the homosexual partner of an insured person. Before a legislative amendment in July 2007, Austrian law provided that only a close relative of the insured person or a cohabitee of the opposite sex qualified as dependants.

The Court held that prior to July 2007 there had been a violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life). As a result of the July 2007 legislative amendment, the relevant law was now neutral as regards the sexual orientation of cohabitees, which, in the Court's view, had put an end to the violation.

Right to a lease

Karner v. Austria (no. 40016/98)

24.07.2003

Refusal to allow a homosexual to succeed to a tenancy following the death of his partner. The Court could not accept that a blanket exclusion of persons living in a homosexual relationship from succession to a tenancy was necessary for the protection of the family. Violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for home).

Measures taken following this judgment.

Kozak v. Poland (no. 13102/02)

02.03.2010

Refusal to allow a homosexual to succeed to a tenancy following the death of his partner. The Court could not accept that a blanket exclusion of persons living in a homosexual relationship from succession to a tenancy was necessary for the protection of the family. Violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for home).

Execution of this judgment pending.

Freedom of assembly and association

Bączkowski and Others v. Poland (no. 1543/06)

03.05.2007

The applicants campaign for homosexual rights. In 2005 the local authorities refused permission for them to organise a march in the streets of Warsaw to raise public awareness of discrimination against minorities, women and people with disabilities. The march was eventually held anyway.

The Court observed that while it was true that the march had eventually been held, the applicants had taken a risk since it had not been officially authorised at the time. They had had only *post hoc* remedies available in respect of the decisions refusing permission

for the event. It could reasonably be surmised that the real reason for the refusal had been the local authorities' opposition to homosexuality. Violation of Articles 11 (freedom of assembly and association), 13 (right to an effective remedy) and 14 (prohibition of discrimination).

Execution of this judgment pending.

Alekseyev v. Russia (no. 4916/07, 25924/08 and 14599/09)

21.10.2010, **not final**

The case concerned the complaints by a Russian gay-rights activist about repeated rejections (2006, 2007, 2008) by the Moscow authorities of his requests to organise gay-pride marches.

The Court held that the bans imposed on the holding of the impugned marches and pickets had not been necessary in a democratic society. It further held that Mr Alekseyev had no effective remedy to challenge those bans, and that they had been discriminatory because of his sexual orientation. Violation of Articles 11 (freedom of assembly and association), 13 (right to an effective remedy) and 14 (prohibition of discrimination).

Pending cases

Genderdoc-M v. Moldova (no. 9106/06) - statement of facts

Refusal of permission to hold a march in Chişinău.

Homophobia and ill-treatment in prison

Pending case

Vincent Stasi v. France (no. 25001/07) - statement of facts

Alleged homophobia and ill-treatment in prison.

X. v. Turkey (no. 24626/09) – statement of facts

The applicant complains among other things, of discrimination based on his homosexuality, in the context of his detention alone in a 5 m² cell, without any contact with the other detainees or access to walks in fresh air.

Risk arising from the return of homosexuals to their country of origin

Pending cases

D.B.N. v. the United Kingdom (no. 26550/10)

Alleged risks of death, ill-treatment and violation of the right to private life for a lesbian woman in the event of her being returned to Zimbabwe.

K.N. v. France (no. 47129/09)

Alleged risks of death and ill-treatment for a homosexual man in the event of his being returned to Iran.

Media Contact : Frédéric Dolt
+33 (0) 3 90 21 42 08



November 2010

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Transsexuals' rights

Rees v. The United Kingdom, 17.10.1986

Female-to-male transsexual complained that United Kingdom law did not confer on him a legal status corresponding to his actual condition.

No violation of Article 8 (right to respect for private and family life): the changes demanded by the applicant would involve fundamentally modifying the system for keeping the register of births, which would have important administrative consequences and impose new duties on the rest of the population. Furthermore, the Court attached importance to the fact that the United Kingdom had borne the costs of Mr Rees's medical treatment.

However, the Court was conscious "of the seriousness of the problems affecting transsexuals and of their distress" and recommended "keeping the need for appropriate measures under review, having regard particularly to scientific and societal developments".

No violation of Article 12 (right to marry and found a family): the traditional concept of marriage was based on union between persons of opposite biological sex. States had the power to regulate the right to marry.

Cossey v. The United Kingdom, 27.09.1990

The Court came to similar conclusions as in *Rees v. the United Kingdom* and did not find new facts or particular circumstances that would lead it to depart from the earlier judgment.

No violation of Article 8

The Court reiterated that "gender reassignment surgery did not result in the acquisition of all the biological characteristics of the other sex" (§40). It also noted that an annotation in the birth register would not be an appropriate solution.

No violation of Article 12

Attachment to the traditional concept of marriage provided "sufficient reason for the continued adoption of biological criteria for determining a person's sex for the purposes of marriage" and it was for the States to regulate by national law the exercise of the right to marry.

X, Y et Z v. The United Kingdom, 22.04.1997

Whilst the Court concluded that there had been no violation of Article 8 (right to respect for private and family life), it did nonetheless acknowledge the existence of family life between a transsexual and his partner's child (§ 37: "X has acted as Z's "father" in every respect" since the birth. In these circumstances the Court considers that the [de facto] family ties link the three applicants.")

In *B. v. France* (25.03.1992) the Court concluded for the first time that there had been a violation of Article 8 in a case concerning the recognition of transsexuals.

A male-to-female transsexual, Ms B, complained of the refusal of the French authorities to amend the civil-status register in accordance with her wishes.

Violation of Article 8 (right to respect for private and family life)

Factsheet -Transsexual Rights

The Court took into consideration factors distinguishing the case of *B.* from *Rees v. the United Kingdom* and *Cossey v. the United Kingdom*, particularly the differences between the UK and the French civil status systems. Whilst there were major obstacles in the United Kingdom preventing birth certificates from being amended, in France these were intended to be updated throughout the life of the person concerned. The Court observes that in France many official documents reveal "a discrepancy between [the] legal sex and [the] apparent sex of a transsexual" (§ 59), which also appear on social-security documents and payslips.

The Court accordingly held that the refusal to amend the civil status register in her regard placed the applicant "in a daily situation which was not compatible with the respect due to her private life".

Sheffield and Horsham v. The United Kingdom, 30.07.1998

The Court was not persuaded that it should depart from its *Rees v. the United Kingdom* and *Cossey v. the United Kingdom* judgments: transsexualism continues to raise complex scientific, legal, moral and social issues in respect of which there is no generally shared approach among the Contracting States" (§ 58).

No violation of Articles 8 (right to respect of private and family life), 12 (right to marry and found a family) and 14 (prohibition of discrimination).

However, "the Court reaffirms that the area needs to be kept under permanent review by the Contracting States" (§ 60), in the context of "increased social acceptance of the phenomenon and increased recognition of the problems which post-operative transsexuals encounter".

Christine Goodwin case

Christine Goodwin v. The United Kingdom, Grand Chamber, 11.07.2002

The applicant complained of the lack of legal recognition of her changed gender and in particular of her treatment in terms of employment and her social security and pension rights and of her inability to marry.

Violation of Article 8 (right to respect for private and family life) owing to a clear and continuing international trend towards increased social acceptance of transsexuals and towards legal recognition of the new sexual identity of post-operative transsexuals.

"Since there are no significant factors of public interest to weigh against the interest of this individual applicant in obtaining legal recognition of her gender re-assignment, the Court reaches the conclusion that the notion of fair balance inherent in the Convention now tilts decisively in favour of the applicant."

Violation of Article 12 (right to marry and found a family)

"The Court is not persuaded that it can still be assumed that [the terms of Article 12] must refer to a determination of gender by purely biological criteria" (§ 100).

The Court held that it was for the State to determine the conditions and formalities of transsexual marriages but that it "finds no justification for barring the transsexual from enjoying the right to marry under any circumstances."

Following the Grand Chamber judgment in the case of Christine Goodwin, the United Kingdom introduced a system whereby transsexuals could apply for a gender recognition certificate. The two cases below both concerned a transsexual who was married before the sex reassignment surgery and who wanted to make use of this gender recognition procedure.

Factsheet - Transsexual Rights

Wena and Anita Parry v. the United Kingdom (November 2006)

R. and F. v. the United Kingdom (November 2006)

The applicants were respectively married and had children. In each case, one of them underwent gender reassignment surgery and remained with his/her spouse as a married couple. Following the introduction of the Gender Recognition Act 2004, the applicants who had undergone gender reassignment surgery made an application for the issue of a Gender Recognition Certificate, which could not be obtained unless they terminated their marriage. The applicants complained in particular under Articles 8 (right for respect to private and family life) and 12 (right to marry) that they had been unable to obtain legal recognition of their acquired gender without terminating their marriage.

Applications declared inadmissible (rejected as manifestly ill-founded):

The applicants were requested to annul their marriage because same-sex marriages were not permitted under English law. The United Kingdom had not failed to give legal recognition to gender re-assignment and the applicants could continue their relationship through a civil partnership which carried almost all the same legal rights and obligations.

The Court observed that, when the new system was introduced following the Christine Goodwin judgment, the legislature was aware of the fact that there were a small number of transsexuals in subsisting marriages but deliberately made no provision for those marriages to continue in the event that one partner made use of the gender recognition procedure. The Court found that it could not be required to make allowances for that small number of marriages.

Recent cases

Schlumpf v. Switzerland, 08.01.2009

Refusal by the applicant's health insurers to pay the costs of her sex-change operation on the ground that she had not complied with a two-year waiting period before gender reassignment surgery, as required by the case-law as a condition for payment of the costs of such operations

Violation of Article 8 (right to respect for private and family life): the waiting period had been applied mechanically without having regard to the age (67) of the applicant, whose decision to undergo an operation was likely to be affected by that delay, thus impairing her freedom to determine her gender identity.

P.V. v. Spain, French only, 30.11.2010

Male-to-female transsexual who, prior to her gender reassignment, had had a son with his wife in 1998. They separated in 2002 and the applicant complained of the restrictions that had been imposed by the court on the contact arrangements with her son on the ground that her emotional instability after her change of sex entailed a risk of disturbing the child, then aged six.

No violation of Article 8 in conjunction with Article 14: the restriction on contact had not resulted from discrimination on the ground of the applicant's transsexualism. The decisive ground for the restriction imposed by the Spanish courts, having regard to the applicant's temporary emotional instability, had been the child's well-being. They had therefore made a gradual arrangement that would allow the child to become progressively accustomed to his father's gender reassignment.

Pending cases

A.K. v. Poland, (no. 7705/05)

Communicated in April 2008.

Relying on Article 14, the applicant considers that the opinion expressed by the District Court in its judgment (convicting her of paedophilia) was discriminatory. According to that opinion, her freedom of choice of profession should have been limited on grounds of her transsexualism and she should have confessed her sexual orientation to her employer.

P. v. Portugal, (no. 56027/09)

Communicated in December 2009.

Relying on Articles 8 and 14, the applicant complains of the lack of legal recognition of her gender reassignment.

Y. Y. v. Turkey, (no. 14793/08)

Communicated in March 2010.

Refusal of the domestic courts to authorise the applicant to undergo gender reassignment surgery on the ground that she did not meet the statutory condition that required her to have been diagnosed as permanently infertile. She relies in particular on Article 8.

H v. Finland (n°37359/09)

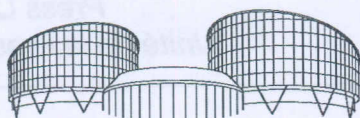
Communicated in April 2010.

The applicant complains that recognition of her gender change was subject to the transformation of her marriage into a civil partnership. She relies on Articles 8, 12 and 14.

Press unit contact: Céline Menu-Lange
+33 3 90 21 42 08

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Violence against Women

Domestic Violence

Kontrovà v. Slovakia (no. 7510/04)

31.5.2007

On 2 November 2002 the applicant filed a criminal complaint against her husband for assaulting her and beating her with an electric cable. The police later assisted her in withdrawing her complaint when she returned to the police station accompanied by her husband. On 31 December 2002 her husband shot dead their daughter and son, born in 1997 and 2001. The applicant received no compensation.

The European Court of Human Rights found a violation of Article 2 (right to life) of the European Convention on Human Rights, concerning the authorities' failure to protect the children's lives, and a violation of Article 13 (right to an effective remedy) of the Convention, concerning the impossibility for their mother to obtain compensation. Execution of this judgment is ongoing.

Bevacqua and S. v. Bulgaria (no. 71127/01)

12.6.2008

The applicant, who claimed she was regularly battered by her husband, left him and filed for divorce, taking their three-year-old son (also an applicant) with her. However, she maintained that her husband continued to beat her. She spent four days in a shelter for abused women with her son but was allegedly warned that she could face prosecution for abducting the boy, leading to a court order for shared custody, which, she stated, her husband did not respect. Pressing charges against her husband for assault allegedly provoked further violence. Her requests for interim custody measures were not treated as priority and she finally obtained custody only when her divorce was pronounced more than a year later. The following year she was again battered by her ex-husband and her requests for a criminal prosecution were rejected on the ground that it was a "private matter" requiring a private prosecution.

The Court found a violation of Article 8 (right to respect for family life) given the Bulgarian authorities' failure to adopt the measures necessary to punish and control the applicant's husband. The Court also stressed that considering the dispute to be a "private matter" was incompatible with the authorities' obligation to protect the applicants' family life. Execution of this judgment is ongoing.

Branko Tomašić and Others v. Croatia (no. 46598/06)

15.1.2009

The applicants are the relatives of a baby and mother whose husband/father killed both them and himself one month after being released from prison, where he had been held for making those same death threats. He was originally ordered to undergo compulsory psychiatric treatment while in prison and after his release, as necessary, but the appeal court ordered that his treatment be stopped on his release.

The Court found a violation of Article 2 (right to life) concerning the deaths of the mother and child: the Croatian authorities had not followed the order for continued psychiatric treatment; the Government had failed to show that the husband had even received psychiatric treatment in prison; and, he did not undergo a psychiatric assessment prior to his release. Execution of this judgment is ongoing.

Opuz v. Turkey (no. 33401/02)

9.6.2009

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

The Court found a violation of Article 2 (right to life) concerning the murder of H.O.'s mother-in-law and a violation of Article 3 (prohibition of inhuman or degrading treatment) concerning the State's failure to protect his wife. Turkey had failed to set up and implement a system for punishing domestic violence and protecting victims. The authorities had not even used the protective measures available and had discontinued proceedings as a "family matter" ignoring why the complaints had been withdrawn. There should have been a legal framework allowing criminal proceedings to be brought irrespective of whether the complaints had been withdrawn.

The Court also found – for the first time in a domestic violence case - violations of Article 14 (prohibition of discrimination), in conjunction with Articles 2 and 3, as the violence suffered by the two women was gender-based; domestic violence mainly affected women and it was encouraged by discriminatory judicial passivity. Despite reforms in the field (Law no. 4320), the unresponsiveness of the judicial system and impunity enjoyed by aggressors indicated that Turkey was not committed to tackling the problem: police officers tried to persuade women to drop their complaints, delays were frequent and courts mitigated sentences on the grounds of honour or tradition. Execution of this judgment is ongoing.

E.S. and Others v. Slovakia (no. 8227/04)

15.9.2009

In 2001 the applicant left her husband and lodged a criminal complaint against him for ill-treating her and her children and sexually abusing one of their daughters. He was convicted of violence and sexual abuse two years later. Her request for her husband to be ordered to leave their home was dismissed, however, the court finding that it did not have the power to restrict her husband's access to the property (she could only end the tenancy when divorced). The applicant and her children were therefore forced to move away from their friends and family.

The Court found that Slovakia had failed to provide the applicant and her children with the immediate protection required against her husband's violence, in violation of Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private and family life). Execution of this judgment is ongoing.

A. v. Croatia (no. 55164/08)

14.10.2010

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

The Court found a violation of Article 8 (right to respect for private and family life) in that the Croatian authorities had failed to implement many of the measures ordered by the courts to protect the applicant or deal with her ex-husband's psychiatric problems, which appeared to be at the root of his violent behaviour. It was also unclear whether he had undergone any psychiatric treatment.

Hajduová v. Slovakia (no. 2660/03)

13.11.2010

The applicant's (now former) husband was detained in hospital for psychiatric treatment after he attacked her in public and threatened to kill her. Injured and fearing for her life and safety, the applicant moved to a refuge with her children. Her ex-husband was released, without having undergone the required treatment, and renewed his threats. Her complaint about the failure to treat him in hospital was rejected.

The Court reiterated that Slovakia had a duty to protect the physical and psychological integrity of individuals, particularly vulnerable victims of domestic violence. It found a violation of Article 8 (right to respect for private and family life), in that, although the applicant's ex-husband had not actually assaulted her following his release from hospital, her fear that his threats might be carried out were well-founded and the authorities had failed in their duty to ensure his detention for psychiatric treatment.

Genital Mutilation

Pending Case

Izevbekhai v. Ireland (no. 43408/08)

The applicant and her two daughters claim the girls risk female genital mutilation (FGM) if the family is returned to Nigeria, in violation of Article 3 (prohibition of inhuman or degrading treatment). The mother's eldest daughter died aged one from profuse bleeding after FGM was performed by an "elder". The family left Nigeria for Ireland in the face of pressure from the father's family to perform FGM on the two younger girls. Their request for asylum has so far been unsuccessful.

Pending Case

Omeredo v. Austria (no. 8969/10)

The applicant, born in 1973, fled Nigeria in 2003 to avoid FGM. Her sister had already died of the consequences and she alleged there was a risk villagers would kill her if she refused and that her mother had told her she must co-operate. Her request for asylum has so far been unsuccessful.

Rape

X and Y v. the Netherlands (no. 8978/80)

26.3.1985

A girl with a mental handicap was raped, in the home for children with mental disabilities where she lived, the day after her sixteenth birthday (which was the age of consent for sexual intercourse in the Netherlands) by a relative of the person in charge. She was traumatised by the experience but deemed unfit to sign an official complaint given her low mental age. Her father signed in her place, but proceedings were not brought against the perpetrator because the girl had to make the complaint herself. The courts recognised that there was a gap in the law.

Factsheet -Violence against Women

The Court found a violation of Article 8 (right to respect for private life), emphasizing that it was "indispensable" for the Netherlands criminal legal system to provide an effective deterrent in such cases. Measures taken.

Aydın v. Turkey (no. 23178/94)

25.9.1997

The applicant, a young Turkish woman of Kurdish origin (aged 17 at the relevant time) was arrested without explanation and taken, along with two other members of her family, into detention. She was blindfolded, beaten, stripped naked, placed in a tyre and hosed with pressurised water before being raped by a member of the security forces and then again beaten for about an hour by several people. A subsequent medical examination by a doctor, who had never before dealt with a rape case, found her hymen torn and widespread bruising on her thighs. She further claimed that the family was intimidated and harassed by the authorities to coerce them into withdrawing their complaint before the European Court of Human Rights.

The Court stressed that the rape of a detainee by a State official had to be considered an especially grave and abhorrent form of ill-treatment which left deep psychological scars on the victim. The applicant must have felt debased and violated both physically and emotionally as a result of the sexual assault. The Court found that both the accumulation of acts of physical and mental violence inflicted on the applicant and the especially cruel act of rape to which she was subjected amounted to torture, in violation of Article 3 (prohibition of torture). In addition, an allegation of rape by an official in custody required that the victim be examined with all appropriate sensitivity by independent doctors with the relevant expertise. That did not occur, rendering the investigation deficient and denying the applicant access to compensation, in violation of Article 13 (right to an effective remedy). Execution is ongoing (last Interim Resolution).

M.C. v. Bulgaria (no. 39272/98)

4.12.2003

The applicant, aged 14 (which was the age of consent for sexual intercourse in Bulgaria), was raped by two men; she cried during and after being raped and was later taken to hospital by her mother, where it was found that her hymen had been torn. Because it could not be established that she had resisted or called for help, the perpetrators were not prosecuted.

The Court found violations of Articles 3 (prohibition of degrading treatment) and 8 (right to respect for private life), noting the universal trend towards recognising lack of consent as the essential element in determining rape and sexual abuse. Victims of sexual abuse, especially young girls, often failed to resist for psychological reasons (either submitting passively or dissociating themselves from the rape) or for fear of further violence. Stressing that States had an obligation to prosecute any non-consensual sexual act, even where the victim had not resisted physically, the Court found both the investigation in the case and Bulgaria law to be defective. Execution of this judgment is ongoing.

Maslova and Nalbandov v. Russia (no. 839/02)

24.1.2008

The applicant, who had been called in for questioning at her local police station, was coerced by police officers into confessing to involvement in a murder. One police officer put thumb cuffs on her, beat her, raped her and then forced her to perform oral sex. Subsequently he and another officer repeatedly hit her in the stomach, put a gas mask over her face, blocking the air to suffocate her, and ran electricity through wires attached to her earrings. When allowed to go to the lavatory, she tried to cut the veins of her wrists. Three prosecution officers, after interrogating her at the police station, drank alcohol and continued to rape her using condoms and disposal wipes. The applicant filed a complaint alleging that she had been raped and tortured. A used

condom found in the station was proven to have a 99.99% probability of having traces of her vaginal cells. Disposable wipes were found with traces of sperm and various items of clothing with traces of sperm and vaginal tissue of the same antigen group as the applicant. However, a court ruled that the evidence collected was inadmissible, as a special procedure for bringing proceedings against prosecution officers had not been followed. The case was finally discontinued for lack of evidence of a crime.

The Court noted that there had been an impressive and unambiguous body of evidence in support of the applicant's version of events. It further reiterated that the rape of a detainee by an official of the State had to be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender could exploit the vulnerability and weakened resistance of his victim. The physical violence, especially the cruel acts of repeated rape, to which the applicant had been subjected, were in violation of Article 3 (prohibition of torture). There was a further violation of Article 3 concerning the ineffective investigation. Execution of this judgment is ongoing.

Violence and social exclusion

N. v. Sweden (no. 23505/09)

20.07.2010

The applicant, an Afghan national having an extra-marital affair with a man in Sweden, maintained that she risked social exclusion, long imprisonment or even death if returned to Afghanistan. Her applications for asylum were unsuccessful.

The Court noted that women were at a particularly heightened risk of ill-treatment in Afghanistan if they were perceived as not conforming to the gender roles ascribed to them by society, tradition or the legal system. The mere fact that N. had lived in Sweden might well be perceived as her having crossed the line of acceptable behaviour. The fact that she wanted to divorce her husband, and did not want to live with him any longer, might result in serious life-threatening repercussions. The Shiite Personal Status Act of April 2009 required women to obey their husbands' sexual demands and not to leave home without permission. Reports had further shown that around 80 % of Afghani women were affected by domestic violence, acts which the authorities saw as legitimate and therefore did not prosecute. Unaccompanied women, or women without a male "tutor", faced continuous severe limitations on having a personal or professional life, and were doomed to social exclusion. It was clear that they also often lacked the means for survival if not protected by a male relative. The Court therefore found that, if N. were deported to Afghanistan, Sweden would be in violation of Article 3 (prohibition of inhuman or degrading treatment or punishment). Execution of this judgment is ongoing.

Inhuman treatment in detention

Yazgül Yılmaz v. Turkey (36369/06)

01.02.2011

The applicant, aged 16, complained that she was sexually harassed while in police detention. She was given a gynaecological examination - unaccompanied and without her or her guardian's consent - to verify whether her hymen had been broken. After being acquitted and released, she suffered from post-traumatic stress and depression. Her allegations of assault in custody were largely corroborated by subsequent medical examinations. No disciplinary proceedings were brought against the prison doctors concerned.

The Court noted that the law at that time did not provide the necessary safeguards concerning examinations of female detainees and that additional guarantees were required for gynaecological examinations, particularly for minors. The general practice of automatic gynaecological examinations for female detainees - supposed to prevent false sexual assault accusations against police officers - was not in the interests of detained women and had no medical justification. The applicant had complained of sexual

harassment, not rape, which could not be disproved by an examination of her hymen. The Court noted that the new Code of Criminal Procedure regulated gynaecological examinations, but made no specific provision for minors. The Court found two violations of Article 3 (prohibition of inhuman treatment) concerning the gynaecological examinations of the applicant while in police custody and the inadequate investigation concerning those responsible.

Violence in public places

Ebcin v. Turkey (19506/05)

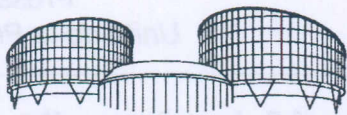
01.02.2011

The applicant, a teacher, had acid thrown in her face while walking to work, leaving her with a tumour and restricted use of her eye, ear and mouth.

The Court noted that there had been lengthy delays in the ensuing criminal proceedings and that 13 years later the case was still pending before the administrative court without the applicant having received compensation. The proceedings had therefore failed to provide adequate protection against a serious act of violence, in violation of Article 3 (prohibition of inhuman treatment) and Article 8 (right to respect for private and family life).

Media Contact: Emma Hellyer
+ 33 (0)3 90 21 42 08

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EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Unit
Unité de la Presse

Factsheet - Transsexual Rights

November 2010

This Factsheet does not bind the Court and is not exhaustive

Transsexuals' rights

Rees v. The United Kingdom, 17.10.1986

Female-to-male transsexual complained that United Kingdom law did not confer on him a legal status corresponding to his actual condition.

No violation of Article 8 (right to respect for private and family life): the changes demanded by the applicant would involve fundamentally modifying the system for keeping the register of births, which would have important administrative consequences and impose new duties on the rest of the population. Furthermore, the Court attached importance to the fact that the United Kingdom had borne the costs of Mr Rees's medical treatment.

However, the Court was conscious "of the seriousness of the problems affecting transsexuals and of their distress" and recommended "keeping the need for appropriate measures under review, having regard particularly to scientific and societal developments".

No violation of Article 12 (right to marry and found a family): the traditional concept of marriage was based on union between persons of opposite biological sex. States had the power to regulate the right to marry.

Cossey v. The United Kingdom, 27.09.1990

The Court came to similar conclusions as in *Rees v. the United Kingdom* and did not find new facts or particular circumstances that would lead it to depart from the earlier judgment.

No violation of Article 8

The Court reiterated that "gender reassignment surgery did not result in the acquisition of all the biological characteristics of the other sex" (§40). It also noted that an annotation in the birth register would not be an appropriate solution.

No violation of Article 12

Attachment to the traditional concept of marriage provided "sufficient reason for the continued adoption of biological criteria for determining a person's sex for the purposes of marriage" and it was for the States to regulate by national law the exercise of the right to marry.

X, Y et Z v. The United Kingdom, 22.04.1997

Whilst the Court concluded that there had been no violation of Article 8 (right to respect for private and family life), it did nonetheless acknowledge the existence of family life between a transsexual and his partner's child (§ 37: "X has acted as Z's "father" in every respect" since the birth. In these circumstances the Court considers that the [de facto] family ties link the three applicants.")

In *B. v. France* (25.03.1992) the Court concluded for the first time that there had been a violation of Article 8 in a case concerning the recognition of transsexuals.

A male-to-female transsexual, Ms B, complained of the refusal of the French authorities to amend the civil-status register in accordance with her wishes.

Violation of Article 8 (right to respect for private and family life)

Factsheet - Transsexual Rights

The Court took into consideration factors distinguishing the case of *B.* from *Rees v. the United Kingdom* and *Cossey v. the United Kingdom*, particularly the differences between the UK and the French civil status systems. Whilst there were major obstacles in the United Kingdom preventing birth certificates from being amended, in France these were intended to be updated throughout the life of the person concerned. The Court observes that in France many official documents reveal "a discrepancy between [the] legal sex and [the] apparent sex of a transsexual" (§ 59), which also appear on social-security documents and payslips.

The Court accordingly held that the refusal to amend the civil status register in her regard placed the applicant "in a daily situation which was not compatible with the respect due to her private life".

Sheffield and Horsham v. The United Kingdom, 30.07.1998

The Court was not persuaded that it should depart from its *Rees v. the United Kingdom* and *Cossey v. the United Kingdom* judgments: transsexualism continues to raise complex scientific, legal, moral and social issues in respect of which there is no generally shared approach among the Contracting States" (§ 58).

No violation of Articles 8 (right to respect of private and family life), 12 (right to marry and found a family) and 14 (prohibition of discrimination).

However, "the Court reaffirms that the area needs to be kept under permanent review by the Contracting States" (§ 60), in the context of "increased social acceptance of the phenomenon and increased recognition of the problems which post-operative transsexuals encounter".

Christine Goodwin case

Christine Goodwin v. The United Kingdom, Grand Chamber, 11.07.2002

The applicant complained of the lack of legal recognition of her changed gender and in particular of her treatment in terms of employment and her social security and pension rights and of her inability to marry.

Violation of Article 8 (right to respect for private and family life) owing to a clear and continuing international trend towards increased social acceptance of transsexuals and towards legal recognition of the new sexual identity of post-operative transsexuals.

"Since there are no significant factors of public interest to weigh against the interest of this individual applicant in obtaining legal recognition of her gender re-assignment, the Court reaches the conclusion that the notion of fair balance inherent in the Convention now tilts decisively in favour of the applicant."

Violation of Article 12 (right to marry and found a family)

"The Court is not persuaded that it can still be assumed that [the terms of Article 12] must refer to a determination of gender by purely biological criteria" (§ 100).

The Court held that it was for the State to determine the conditions and formalities of transsexual marriages but that it "finds no justification for barring the transsexual from enjoying the right to marry under any circumstances."

Following the Grand Chamber judgment in the case of Christine Goodwin, the United Kingdom introduced a system whereby transsexuals could apply for a gender recognition certificate. The two cases below both concerned a transsexual who was married before the sex reassignment surgery and who wanted to make use of this gender recognition procedure.

Pending cases

A.K. v. Poland, (no. 7705/05)

Communicated in April 2008.

Relying on Article 14, the applicant considers that the opinion expressed by the District Court in its judgment (convicting her of paedophilia) was discriminatory. According to that opinion, her freedom of choice of profession should have been limited on grounds of her transsexualism and she should have confessed her sexual orientation to her employer.

P. v. Portugal, (no. 56027/09)

Communicated in December 2009.

Relying on Articles 8 and 14, the applicant complains of the lack of legal recognition of her gender reassignment.

Y. Y. v. Turkey, (no. 14793/08)

Communicated in March 2010.

Refusal of the domestic courts to authorise the applicant to undergo gender reassignment surgery on the ground that she did not meet the statutory condition that required her to have been diagnosed as permanently infertile. She relies in particular on Article 8.

H v. Finland (n°37359/09)

Communicated in April 2010.

The applicant complains that recognition of her gender change was subject to the transformation of her marriage into a civil partnership. She relies on Articles 8, 12 and 14.

Press unit contact: Céline Menu-Lange
+33 3 90 21 42 08

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Wena and Anita Parry v. the United Kingdom (November 2006)

R. and F. v. the United Kingdom (November 2006)

The applicants were respectively married and had children. In each case, one of them underwent gender reassignment surgery and remained with his/her spouse as a married couple. Following the introduction of the Gender Recognition Act 2004, the applicants who had undergone gender reassignment surgery made an application for the issue of a Gender Recognition Certificate, which could not be obtained unless they terminated their marriage. The applicants complained in particular under Articles 8 (right for respect to private and family life) and 12 (right to marry) that they had been unable to obtain legal recognition of their acquired gender without terminating their marriage.

Applications declared inadmissible (rejected as manifestly ill-founded):

The applicants were requested to annul their marriage because same-sex marriages were not permitted under English law. The United Kingdom had not failed to give legal recognition to gender re-assignment and the applicants could continue their relationship through a civil partnership which carried almost all the same legal rights and obligations.

The Court observed that, when the new system was introduced following the Christine Goodwin judgment, the legislature was aware of the fact that there were a small number of transsexuals in subsisting marriages but deliberately made no provision for those marriages to continue in the event that one partner made use of the gender recognition procedure. The Court found that it could not be required to make allowances for that small number of marriages.

Recent cases

Schlumpf v. Switzerland, 08.01.2009

Refusal by the applicant's health insurers to pay the costs of her sex-change operation on the ground that she had not complied with a two-year waiting period before gender reassignment surgery, as required by the case-law as a condition for payment of the costs of such operations

Violation of Article 8 (right to respect for private and family life): the waiting period had been applied mechanically without having regard to the age (67) of the applicant, whose decision to undergo an operation was likely to be affected by that delay, thus impairing her freedom to determine her gender identity.

P.V. v. Spain, French only, 30.11.2010

Male-to-female transsexual who, prior to her gender reassignment, had had a son with his wife in 1998. They separated in 2002 and the applicant complained of the restrictions that had been imposed by the court on the contact arrangements with her son on the ground that her emotional instability after her change of sex entailed a risk of disturbing the child, then aged six.

No violation of Article 8 in conjunction with Article 14: the restriction on contact had not resulted from discrimination on the ground of the applicant's transsexualism. The decisive ground for the restriction imposed by the Spanish courts, having regard to the applicant's temporary emotional instability, had been the child's well-being. They had therefore made a gradual arrangement that would allow the child to become progressively accustomed to his father's gender reassignment.



February 2011

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Roma and Travellers

Article 14 (prohibition of discrimination)

The European Convention on Human Rights states that Article 14 guarantees all the rights and freedoms set forth in it¹ regardless of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 1 of Protocol No. 12 (general prohibition of discrimination)

The enjoyment of any right set forth by law shall be secured without discrimination on any ground (See *Sejdic and Finci v. Bosnia and Herzegovina* judgment, p. 4)

Aksu v. Turkey – pending before Grand Chamber

Grand Chamber hearing 13.04.2011

Applicant, of Roma origin, alleges that two government-funded publications (an academic study and a dictionary) included remarks and expressions that reflect anti-Roma sentiment.

Article 14 (prohibition of discrimination)

In its Chamber judgment of 27.7.2010 the Court concluded that the applicant was not discriminated against (no violation of Article 14). In particular it found that the study had no intention of insulting the Roma community and the dictionary was prefaced with the comment that the definitions were of a metaphorical nature.

Alleged forced or coerced sterilisations of Roma women

V. C. v. Slovakia – pending

Declared admissible on 16.06.2009

Chamber hearing 22.03.2011

Complaint by applicant, a Slovakian national of Roma ethnic origin, that she was sterilised without her full and informed consent, that the authorities' ensuing investigation into her sterilisation was not thorough, fair or effective and that she was discriminated against on the grounds of her race and sex.

Articles 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for private and family life), 12 (right to found a family), 13 (right to an effective remedy) and 14 (prohibition of discrimination) of the Convention

Similar pending cases

I.G., M.K. and R.H. v. Slovakia - declared admissible 22.09.2010

M.V. v. Slovakia – registered on 24.11.2009

N.B. v. Slovakia – registered on 31.05.2010

R.K. v. the Czech Republic – communicated to parties on 14.12.2009

¹ It is therefore always examined in conjunction with another Article of the Convention.

Obligation of Roma / Travellers to leave land where they had stationed their caravans

Six cases below concern applications brought by six British gypsy families complaining that they were prevented from living in caravans on their own land

Buckley v. the United Kingdom - final

25.09.1996

The Court was satisfied that the authorities had weighed up the competing issues and given relevant and sufficient reasons for their decisions, namely that the measures were taken in the enforcement of planning controls for highway safety, the preservation of the environment and public health

Chapman v. the United Kingdom, Coster v. the United Kingdom, Beard v. the United Kingdom, Lee v. the United Kingdom, Jane Smith v. the United Kingdom – final

18.01.2001

In these five cases, the Court found that the measures taken against the applicants were "in accordance with the law" and "pursued the legitimate aim" of preservation of the environment, the land in question being occupied without planning permission and in some cases on a Green Belt or Special Landscape area. Nor was the Court convinced that the UK (or any other of the Contracting States to the European Convention) was under an obligation to make available to the gypsy community an adequate number of suitably equipped sites, Article 8 not giving a right to be provided with a home (funds enabling everyone to have a home being a political, not judicial matter)

In any of the cases, no violation of Article 8 (right to respect for private and family life and home) and no violation of Article 14 (prohibition of discrimination) of the Convention

Connors v. the UK – final

27.05.2004

Eviction of applicant and his family from the local authority's gypsy site at Cottingley Springs in Leeds (England), where they had lived permanently for about 13 years, on the ground that they had misbehaved and caused considerable nuisance at the site. The Court found that the summary eviction had not been attended by the requisite procedural safeguards, namely the requirement to properly justify the serious interference with his rights

Violation of Article 8 (right to respect for private and family life and home)

Winterstein and Others v. France – pending case

Communicated on 09.09.2009

Complaint by applicants, French nationals and mostly Travellers, about their eviction from land in Herblay (Val d'Oise in France) where they had stationed their caravans or lived in "chalets" for many years, without any alternative housing offered to them

Articles 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for private and family life and home) and 14 (prohibition of discrimination)

Yordanova and Others v. Bulgaria – pending case

Declared admissible on 14.09.2010

Concerns the authorities' plans to remove a Roma settlement in Sofia

Articles 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for private and family life and home), 13 (right to an effective remedy) and 14 (prohibition of discrimination) and Article 1 of Protocol No. 1 (protection of property)

Racially biased police investigations

Nachova and Others v. Bulgaria – final

06.07.2005

Duty to investigate possible racist motives in fatal police shooting of two Roma fugitives (the applicants' relatives)

Violations of Article 2 (right to life)

Violation of Article 14 (prohibition of discrimination) together with Article 2 in that the authorities failed to investigate possible racist motives behind the deaths of the applicants' relatives (but no violation of Article 14 concerning the allegation that the deaths of the applicants' relatives constituted an act of racial violence)

Similar cases - final

Bekos and Koutropoulos v. Greece

13.12.2005

Secic v. Croatia

31.05.2007

Cobzaru v. Romania

26.7.2007

Angelova and Iliev v. Bulgaria

26.7.2007

Petropoulou-Tsakiris v. Greece

6.12.2007

Stoica v. Romania

04.03.2008

Police ill-treatment of a 14-year old during a clash between officials and Roma outside a bar and subsequent lack of adequate investigation. The applicant alleged that the ill-treatment and decision not to prosecute the police officer who had beaten him were motivated by racial prejudice.

Two violations of Article 3 (prohibition of inhuman or degrading treatment and lack of effective investigation)

Violation of Article 14 (prohibition of discrimination) on account of investigation having been racially biased

Šarišská v. Slovakia –pending case

Communicated on 25.05.2010

Alleged failure to carry out an appropriate investigation into the ill-treatment and death of the applicant's father in police custody

Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private and family life)

Attacks on Roma villages and destruction of property

Moldovan and Others v. Romania (no. 2) - final

12.07.2005

In September 1993 three Roma men were attacked in the village of Hădăreni by a large crowd of non-Roma villagers, including the local police commander and several officers: one burnt to death, the other two were beaten to death by the crowd. The applicants alleged that the police then encouraged the crowd to destroy other Roma properties: in total 13 Roma houses in the village were completely destroyed. Hounded from their village and homes, the applicants were then obliged to live in crowded and unsuitable conditions – cellars, hen-houses, stables. Following criminal complaints brought by the applicants, some were awarded damages ten years later. The Court could not examine the applicants' complaints about the destruction of their houses and possessions or their expulsion from the village, because those events took place in September 1993, before the ratification of the Convention by Romania in June 1994. However, it found violations concerning the complaints about the applicants' living conditions and noted that the applicants' ethnicity had been decisive in the excessive length and result of the domestic proceedings

Violations of Articles 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for private and family life and home)

Violation of 6 § 1 (length of proceedings)

Violation of Article 14 (prohibition of discrimination) together with Article 6 § 1 and Article 8

Moldovan and 29 Others v. Romania – declared inadmissible on 15.02.2011

Case concerned difficulties with execution – general measures – of judgment **Moldovan and Others v. Romania (no. 2)** of 12.07.2005

Similar cases:

Gergely v. Romania and Kalanyos and Others v. Romania - final

26.4.2007

Tanase and Others v. Romania - final

26.5.2009

Struck out following declaration by Romanian Government in which it recognised violations of Articles 3, 6, 8, 13 and 14 and of Article 1 of Protocol No. 1 (protection of property) and undertook to pay compensation to all applicants for the loss of their property, as well as to adopt all necessary measures to ensure that their rights would be respected in the future

Koky and Others v. Romania –pending case

Declared admissible on 22.09.2009

Failure of authorities to carry out an effective investigation into an attack on their Roma settlement by 30 young men armed with baseball bats and iron bars during which they were subjected to violence and their property destroyed

Articles 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for private and family life and home), 13 (right to an effective remedy) and 14 (prohibition of discrimination) and Article 1 of Protocol No. 1 (protection of property)

Segregation in schools

D.H. and Others v. the Czech Republic – final

13.11.2007

Placement of applicants, schoolchildren of Roma origin, in “special schools” intended for pupils with learning disabilities had not been justified. In particular, the Czech legislation at the relevant time had had a disproportionately prejudicial effect on the Roma community and therefore also the applicants, as members of that community

Violation of Article 14 (prohibition of discrimination) together with Article 2 of Protocol No. 1 (right to education)

Sampanis and Others v. Greece

05.06.2008

Failure to provide schooling for the applicants’ children and of their subsequent placement in special classes– in an annex to the main school building – because of their Roma origin

Violation of Article 14 (prohibition of discrimination) together with Article 2 of Protocol No. 1 (right to education)

Orsus and Others v. Croatia – final

16.03.2010

The Court found that the placement of the applicants, at times, in Roma-only classes during their primary education had not been justified, holding in particular that adequate safeguards had not been put in place at that time to ensure sufficient care for the applicants’ special needs as members of a disadvantaged and vulnerable minority

Violation of Article 6 § 1 (right to a fair trial within a reasonable time) and of Article 14 (prohibition of discrimination) together with Article 2 of Protocol No. 1 (right to education)

Horváth és Vadászi v. Hungary – declared inadmissible on 09.11.2010 for non-exhaustion of domestic remedies

The case concerned the compulsory education of the applicants, who are of Roma origin, in a special class at school. They alleged that the measure applied to them was in fact one of racial segregation.

Articles 3 (prohibition of inhuman or degrading treatment), 13 (right to an effective remedy) and 14 (prohibition of discrimination) and Article 2 of Protocol No. 1 (right to education)

Validity of Roma marriage: refusal to grant survivor’s pension

Muñoz Díaz v. Spain – final

8.12.2009

Applicant, a Spanish national belonging to the Roma community, married in 1971 according to the Roma community’s own rites. Court found that it was disproportionate for the Spanish State, which had provided the applicant and her family with health coverage and collected social security contributions from her husband for over 19 years, then to refuse to recognise her Roma marriage when it came to granting her a survivor’s pension on her husband’s death

Violation of Article 14 (prohibition of discrimination) together with Article 1 of Protocol No. 1 (protection of property)

Prohibition of a Rom from standing for election

Sejdic and Finci v. Bosnia and Herzegovina – final

22.12.2009

The Court found discriminatory the constitutional arrangements, put in place by the Dayton Peace Agreement², according to which only people declaring affiliation with Bosniacs, Croats or Serbs were eligible to stand for election to the tripartite State presidency and the second chamber of the State parliament

Violation of Article 14 (prohibition of discrimination) together with Article 3 of Protocol No. 1 (right to free elections)

Violation of Article 1 of Protocol No. 12 (general prohibition of discrimination) – the first time the Court has found a violation of this Article

Other

Paraskeva Todorova v. Bulgaria - final

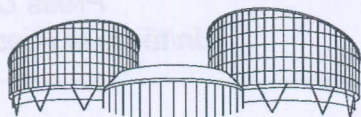
25.3.2010

Concerned Bulgarian courts' refusal to suspend the applicant's criminal sentence for fraud on account of her Roma origin. In particular, the courts referred to "an impression of impunity, especially among members of minority groups, who consider that a suspended sentence is not a sentence"

Violation of Article 14 (prohibition of discrimination) together with Article 6 § 1 (right to a fair trial)

Media Contact: Tracey Turner-Tretz
turner-tretz.tracey@echr.coe.int

² On 14 December 1995 the General Framework Agreement for Peace in Bosnia and Herzegovina, ("the Dayton Peace Agreement") entered into force which put an end to the 1992-95 war in Bosnia and Herzegovina.



March 2011

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Racial discrimination

Article 3 (prohibition of inhuman or degrading treatment)

35 East African Asians v. the United Kingdom

Decision 06.03.1978

Restrictions on admission to or leave to remain in the United Kingdom for persons of Asian origin resident in former British dependencies (Kenya, Uganda or Tanzania).

The Commission held that no further action was called for, since the applicants had subsequently been admitted to the United Kingdom. However, with regard to their complaint under Article 3 (prohibition of inhuman or degrading treatment) that they had been treated as "second-class citizens", the Commission observed that **discrimination based on race could in certain circumstances amount to degrading treatment**.

Cyprus v. Turkey

10.05.2001

In this inter-State case brought by Cyprus in 1994, concerning the situation in northern Cyprus since the division of Cypriot territory, the Court found a violation of Article 3: "with reference to the period under consideration, the discriminatory treatment attained a level of severity which amounted to degrading treatment" (§ 310).

In its judgment the Court held that:

The discrimination against the Karpas Greek Cypriots "for the very reason that they belonged to this class of persons" could only be explained "in terms of the features which distinguish[ed] them from the Turkish-Cypriot population, namely their ethnic origin, race and religion".

Turkey's attachment to the principles of bizonality and bicommunality was reflected in the conditions in which the Karpas Greek-Cypriot population lived, which were "debasing and violate[d] the very notion of respect for the human dignity of its members".

Abuse of rights (Article 17)

Glimmerveen and Hagenbeek v. the Netherlands

Decision 11.10.1979

The applicants complained that they had been convicted for having been found in possession of leaflets held to incite racial discrimination, with a view to their distribution, and also that they had been prevented from standing in municipal elections. They relied on Article 10 of the Convention (right to freedom of expression) and Article 3 of Protocol No. 1 (right to free elections).

Application inadmissible, on the ground that "the applicants were seeking to use [the European Convention on Human Rights] to engage in ... activities which [were] contrary" to it, namely to "spread ideas which [were] racially discriminatory".

Article 14 in conjunction with other Articles

Article 14: "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Immigration

Abdulaziz, Cabales and Balkandali v. the United Kingdom

28.05.1985

In accordance with the immigration rules in force at the time, the applicants' husbands were refused permission to remain with or join them in the United Kingdom, where they were lawfully and permanently settled. The applicants, of Indian, Philippine and Egyptian origin respectively, alleged on that account that they had been victims of a practice of discrimination on the grounds of sex and race. Mrs Abdulaziz had met her husband, a Portuguese national, while he had been living in the United Kingdom as a visitor. Mrs Cabales had married her husband in the Philippines, where she had met him while on holiday. Mrs Balkandali's husband was a Turkish national who had been living in the United Kingdom as a visitor – and subsequently as a student – and had a child with her and married her there.

The Court found a violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 as a result of discrimination on the ground of sex (difference in treatment between male and female immigrants as regards permission for their non-national spouse to enter or remain in the country) but not on the ground of race.

Nachova and Timishev judgments

Nachova and Others v. Bulgaria [GC], nos. 43577/98 and 43579/98

06.07.2005

The applicants alleged that prejudice and hostile attitudes towards people of Roma origin had played a decisive role in the events leading up to the fatal shooting of their close relatives, two men aged 21, by a military police officer who was trying to arrest them. Violation of Article 14 taken in conjunction with Article 2 in that the authorities had failed to investigate whether the events leading to the deaths might have been racially motivated.

For discrimination against Roma and Travellers, see the "Roma and Travellers" factsheet.

Timishev v. Russia, nos. 55762/00 and 55974/00

13.12.2005

Refusal to allow the applicant to enter the territory of Kabardino-Balkaria because of his Chechen ethnic origin.

Violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 2 of Protocol No. 4 (freedom of movement): since the applicant's freedom of movement had been restricted solely on the ground of his ethnic origin, that difference in treatment constituted racial discrimination.

Violation of Article 2 of Protocol No. 1 (right to education) on account of the refusal to admit the applicant's children to school.

"Discrimination on account of, *inter alia*, a person's ethnic origin is a form of racial discrimination. Racial discrimination is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment (*Nachova and Others v. Bulgaria*; *Timishev v. Russia*). The Court has also held that no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures (*Timishev*, § 58; *D.H. and Others v. the Czech Republic*, § 176)."¹

As regards the burden of proof in such matters, the Court has held that once an applicant has shown that there has been a difference in treatment, it is for the Government to show that the difference in treatment was justified (*Timishev*, § 57).

Right to free elections

Aziz v. Cyprus, no. 69949/01

22.06.2004

Refusal to register the applicant on the electoral roll for parliamentary elections on the ground that members of the Turkish-Cypriot community could not be registered on the Greek-Cypriot electoral roll.

Violation of Article 14 taken in conjunction with Article 3 of Protocol No. 1 (right to free elections): the difference in treatment resulted from the fact that the applicant was a Turkish Cypriot and it could not be justified on reasonable and objective grounds, particularly in the light of the fact that Turkish Cypriots in the applicant's situation had been unable to vote in any parliamentary elections.

Sejdić and Finci v. Bosnia and Herzegovina [GC], nos. 27996/06 and 34836/06

22.12.2009

Ineligibility of persons of Roman and Jewish origin to stand for election to the House of Peoples of the Parliamentary Assembly and the State Presidency.

Violation of Article 14 taken in conjunction with Article 3 of Protocol No. 1 as regards the applicants' ineligibility to stand for election to the House of Peoples.

Violation of Article 1 of Protocol No. 12 (general prohibition of discrimination) as regards their ineligibility to stand for election to the Presidency.

The Court held that there existed mechanisms of power-sharing which did not automatically lead to the total exclusion of communities not belonging to the "constituent peoples" (Bosniacs, Croats and Serbs).

Whereas Article 14 prohibits discrimination in the enjoyment of the "rights and freedoms set forth in [the] Convention", Article 1 of Protocol No. 12 extends the scope of protection to "any right set forth by law". It thus introduces a general prohibition of discrimination.

¹Sampanis and Others v. Greece (05.06.2008), in which the Court found a violation of Article 14 taken in conjunction with Article 2 of Protocol No. 1 on account of the failure to provide schooling for the applicants' children and their subsequent placement in special classes because of their Roma origin.

Right to a fair trial

Remli v. France

23.04.1996

The applicant, of Algerian origin, alleged that his trial had been unfair as a member of the jury had declared himself to be a racist.

Violation of Article 6 § 1: the Assize Court had not ensured that it was an impartial tribunal, whereas "the Convention imposes an obligation on every national court to check whether, as constituted, it is 'an impartial tribunal' where this is disputed on a ground that does not immediately appear to be manifestly devoid of merit" (§ 48).

Gregory v. the United Kingdom

25.02.1997

Allegations of jury racism at the trial of the applicant, of African origin, who considered that he had been discriminated against on that basis.

No violation of Article 6 § 1: the judge had taken "sufficient steps to check that the court was established as an impartial tribunal within the meaning of Article 6 § 1" and offered "sufficient guarantees to dispel any doubts in this regard" – in particular, a "firmly worded redirection to the jury" – and had reasonably considered that "any risk of prejudice had been effectively neutralised" as a result.

Sander v. the United Kingdom

09.05.2000

The applicant, of Asian origin, complained that he had been tried by a racist jury.

Violation of Article 6 § 1 (right to a fair hearing): the allegations set out in a note sent by a juror to the judge during the trial – expressing fears that other members of the jury, who had made openly racist remarks and jokes, were not impartial – had been capable of causing the applicant and any objective observer legitimate doubts as to the court's impartiality, which could not have been dispelled either by the collective letter signed the following day by all members of the jury or by the judge's reminder to them of their duty to be impartial.

Pending cases

Abdu v. Bulgaria (no. 26827/08)

Communicated in September 2010

The applicant, a political refugee of Sudanese origin, alleges that he was the victim of a racist attack carried out in a street in Sofia by two men whom he described as "skinheads". The authorities refused to institute criminal proceedings, finding that it had not been established that the fight had been started by the two men and not the applicant and his friend, and that there was no indication that the acts of violence against them had been racially motivated.

The applicant relies on Articles 3 and 14, alleging that the authorities failed to comply with their obligation to investigate whether there was a racist motive for the attack and that their refusal to conduct such an investigation was itself racially motivated.

Perincek v. Switzerland (no.27510/08)

Communicated in September 2010

Conviction of the applicant for racial discrimination. The applicant, a doctor of law and chairman of the Workers' Party of Turkey, took part in various conferences in Switzerland at which he publicly denied the existence of any genocide of the Armenian people by the Ottoman Empire in 1915 and subsequent years.

The applicant alleges that in their judgments the Swiss courts referred to him in discriminatory terms.

Linked themes

Freedom of expression and racism

Among many other cases, the following two judgments are noteworthy:

Jersild v. Denmark

23.09.1994

Conviction of a journalist following a television interview with members of a group of extremist youths (the "Greenjackets").

Violation of Article 10 (freedom of expression)

Féret v. Belgium

16.07.2009

No violation of Article 10 in respect of the conviction of the applicant, chairman of the Front National political party, for publicly inciting discrimination or hatred, following complaints concerning leaflets distributed by the party during election campaigns.

Pending case: CICAD v. Switzerland (communicated in November 2010)

Relying on Article 10, the applicant association, the "Inter-Community Co-ordination against Anti-Semitism and Defamation" alleges that, by holding it civilly liable for having described Professor O. (a lecturer in political science at the University of Geneva) as anti-Semitic following the publication of his book "Israel and the Other" in 2005, the Swiss courts breached its freedom of expression.

Nationality

Gaygusuz v. Austria

16.09.1996

Refusal to grant emergency assistance to an unemployed person on the ground that he did not have Austrian nationality.

Violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1 (protection of property): "the difference in treatment between Austrians and non-Austrians as regards entitlement to emergency assistance is not based on any 'objective and reasonable justification'."

Language

Case "relating to certain aspects of the laws on the use of languages in education in Belgium"

23.07.1968

Violation of Article 14 taken in conjunction with Article 2 of Protocol No. 1 (right to education): certain children were prevented, solely on the basis of their parents' place of residence, from having access to the French-language schools in the six municipalities on the outskirts of Brussels enjoying special status.

Cases concerning the use of Kurdish in Turkey: Ulusoy and Others v. Turkey (03.05.2007; prohibition in performing a play in Kurdish in municipal theatres), İrfan Temel and Others v. Turkey (03.03.2009; suspension of eighteen students from university for two terms for requesting the introduction of optional Kurdish language classes), and cases concerning the spelling of forenames of Kurdish origin (Güzel Erdağöz v. Turkey (21.10.2008) and Kemal Taşkın and Others v. Turkey (02.02.2010)).

Birk-Lévy v. France

Decision 06.10.2010

Application inadmissible, concerning the prohibition on addressing the Assembly of French Polynesia in Tahitian.

The Court observed that the European Convention on Human Rights did not protect "linguistic freedom" as such.

Contact: Céline Menu-Lange
+33 3 90 21 42 08

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