June 2018
This Factsheet does not bind the Court and is not exhaustive

Gender equality

"... [T]he advancement of gender equality is today a major goal in the member States of the Council of Europe and very weighty reasons would have to be put forward before such 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 are insufficient justification for a difference in treatment on grounds of sex." (*Konstantin Markin v. Russia*, Grand Chamber judgment of 22 March 2012, § 127)

Article 14 (prohibition of discrimination) of the European Convention on Human Rights of 4 November 1950:

"The enjoyment of the rights and freedoms set forth in this 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."

Article 1 (general prohibition of discrimination) of Protocol No. 12 to the Convention of 4 November 2000:

"1. The enjoyment of any right set forth by law 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.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

Right to life and prohibition of torture and inhuman or degrading punishment or treatment

Domestic violence

Opuz v. Turkey

9 June 2009

The applicant alleged that the Turkish authorities had failed to protect the right to life of her mother, who had been killed by the applicant's husband, and that they had been negligent in the face of the repeated violence, death threats and injury to which she herself had been subjected by him. She further complained about the lack of protection of women against domestic violence under Turkish domestic law.

The European Court of Human Rights held that there had been a **violation of Article 2** (right to life) of the European Convention on Human Rights concerning the murder of the applicant's mother and a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention concerning the State's failure to protect the applicant. It also held – for the first time in a domestic violence case – that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Articles 2 and 3**. In this respect, the Court observed in particular that domestic violence affected mainly women, while the general and discriminatory judicial passivity in Turkey created a climate that was conducive to it. The violence suffered by the applicant and her mother could therefore be regarded as having been gender-based and discriminatory against women. Furthermore, despite the reforms carried out by the

Turkish Government in recent years, the overall unresponsiveness of the judicial system and the impunity enjoyed by aggressors, as in the applicant's case, indicated an insufficient commitment on the part of the authorities to take appropriate action to address domestic violence.

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

14 October 2010

This case concerned the applicant's complaint that the authorities had failed to protect her against the domestic violence of her mentally-ill ex-husband despite her having alerted them about his repeated physical and verbal assaults and death threats. She also alleged that the relevant laws in Croatia regarding domestic violence were discriminatory.

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

Eremia and Others v. the Republic of Moldova

28 May 2013

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

The Court held that there had been a **violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention in respect of the first applicant in that, despite their knowledge of the abuse, the authorities had failed to take effective measures against her husband and to protect her from further domestic violence. The Court also held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **read in conjunction with Article 3**, finding that the authorities' actions had not been a simple failure or delay in dealing with violence against the first applicant, but had amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards her as a woman. In this respect, the Court observed that the findings of the United Nations Special Rapporteur on violence against women, its causes and consequences only went to support the impression that the authorities did not fully appreciate the seriousness and extent of the problem of domestic violence in the Republic of Moldova and its discriminatory effect on women.

See also: ***B. v. the Republic of Moldova (no. 61382/09)*** and ***Mudric v. the Republic of Moldova***, judgments of 16 July 2013; ***N.A. v. the Republic of Moldova (no. 13424/06)***, judgment of 24 September 2013; ***T.M. and C.M. v. the Republic of Moldova***, judgment of 28 January 2014.

Rumor v. Italy

27 May 2014

The applicant complained that the authorities had failed to support her following the serious incident of domestic violence against her or to protect her from further violence. She also alleged that these failings had been the result of the inadequacy of the legislative framework in Italy in the field of the fight against domestic violence, and that this discriminated against her as a woman.

The Court held that there had been no **violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention, **alone and in conjunction with Article 14** (prohibition of discrimination). It found that the Italian authorities had put in place a legislative framework allowing them to take measures against persons accused of domestic violence and that that framework had been effective in punishing the

perpetrator of the crime of which the applicant was victim and preventing the recurrence of violent attacks against her physical integrity.

M.G. v. Turkey (no. 646/10)

22 March 2016

This case concerned the domestic violence experienced by the applicant during her marriage, the threats made against her following her divorce and the subsequent proceedings. In particular the applicant criticised the domestic authorities for failing to prevent the violence to which she had been subjected. She also complained of permanent and systematic discrimination with regard to violence against women in Turkey.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the manner in which the Turkish authorities had conducted the criminal proceedings could not be considered as satisfying the requirements of Article 3. It also held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **read in conjunction with Article 3**, finding that after the divorce was pronounced (on 24 September 2007) and until the entry into force of a new Law (no. 6284) on 20 March 2012, the legislative framework in place did not guarantee that the applicant, a divorcée, could benefit from protection measures, and noted that for many years after applying to the national courts, she had been forced to live in fear of her ex-husband's conduct.

Halime Kılıç v. Turkey

28 June 2016

This case concerned the death of the applicant's daughter, who was killed by her husband despite having lodged four complaints and obtained three protection orders and injunctions.

The Court held there had been a **violation of Article 2** (right to life) and a **violation of Article 14** (prohibition of discrimination) **taken together with Article 2** of the Convention. It found in particular that the domestic proceedings had failed to meet the requirements of Article 2 of the Convention by providing protection for the applicant's daughter. By failing to punish the failure by the latter's husband to comply with the orders issued against him, the national authorities had deprived the orders of any effectiveness, thus creating a context of impunity enabling him to repeatedly assault his wife without being called to account. The Court also found it unacceptable that the applicant's daughter had been left without resources or protection when faced with her husband's violent behaviour and that in turning a blind eye to the repeated acts of violence and death threats against the victim, the authorities had created a climate that was conducive to domestic violence.

Talpis v. Italy

2 March 2017

This case concerned the conjugal violence suffered by the applicant, which resulted in the murder of her son and her own attempted murder.

The Court held that there had been a **violation of Article 2** (right to life) of the Convention on account of the murder of the applicant's son and her own attempted murder. It also held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention on account of the failure of the authorities in their obligation to protect the applicant against acts of domestic violence. Lastly, the Court held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Articles 2 and 3**, finding that the violence inflicted on the applicant should be considered as being grounded on sex and that it consequently amounted to a form of discrimination against women. In this respect, the Court noted in particular that the applicant had been the victim of discrimination as a woman on account of the inaction of the authorities, which had underestimated the violence in question and thus essentially endorsed it.

Bălşan v. Romania

23 May 2017

The applicant alleged that the authorities had failed to protect her from repeated domestic violence and to hold her husband accountable, despite her numerous complaints. She also submitted that the authorities' tolerance of such acts of violence had made her feel debased and helpless.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention because of the authorities' failure to adequately protect the applicant against her husband's violence, and a **violation Article 14** (prohibition of discrimination) of the Convention **read in conjunction with Article 3** because the violence had been gender-based. The Court noted in particular that the applicant's husband had subjected her to violence and that the authorities had to have been well aware of that abuse, given her repeated calls for assistance to both the police as well as the courts. Furthermore, although there was a legal framework in Romania with which to complain about domestic violence and to seek the authorities' protection, which the applicant had made full use of, the authorities had failed to apply the relevant legal provisions in her case. The authorities even found that the applicant had provoked the domestic violence against her and considered that it was not serious enough to fall within the scope of the criminal law. Such an approach had deprived the national legal framework of its purpose and was inconsistent with international standards on violence against women. Indeed, the authorities' passivity in the current case had reflected a discriminatory attitude towards the applicant as a woman and had shown a lack of commitment to address domestic violence in general in Romania.

Prohibition of slavery and forced labour

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

Zarb Adami v. Malta

20 June 2006

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 240 euros. As he had failed to pay the fine he was summoned before the Criminal Court. The applicant complained that he had been the victim of discrimination on the ground of sex, as the percentage of women requested to undertake jury service in Malta was negligible, and that he had been obliged to face criminal proceedings in relation to the imposition of a discriminatory civic obligation.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **read in conjunction with Article 4 § 3 (d)** (prohibition of forced labour) of the Convention. It noted in particular that the Maltese 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 however 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.

Men exempted from military service made subject to a special tax

Pending application

Kung v. Switzerland (no. 73307/17)

Application communicated to the Swiss Government on 15 May 2018

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

Karlheinz Schmidt v. Germany

18 July 1994

The applicant claimed to be the victim of discrimination on the ground of sex in so far as in the Land of Baden-Württemberg only men were subject to the obligation to serve as firemen or pay a financial contribution in lieu of such service.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 4 § 3 (d)** (prohibition of forced labour) of the Convention. It noted in particular that some German Länder did not impose different obligations for the two sexes in this field and that even in Baden-Württemberg women were accepted for voluntary service in the fire brigade. Furthermore, irrespective of whether or not there could exist any justification for treating men and women differently as regards compulsory service in the fire brigade, what was finally decisive in the present case was that the obligation to perform such service was exclusively one of law and theory. In view of the continuing existence of a sufficient number of volunteers, no male person was in practice obliged to serve in a fire brigade. Lastly, the financial contribution had – not in law but in fact – lost its compensatory character and had become the only effective duty. In the imposition of a financial burden such as this, a difference of treatment on the ground of sex could hardly be justified.

Right to liberty and security

Alleged discrimination in provisions governing liability to life imprisonment

Khamtokhu and Aksenchik v. Russia

24 January 2017 (Grand Chamber)

The applicants in this case alleged that, as adult males serving life sentences for a number of serious criminal offences, they had been discriminated against as compared to other categories of convicts – women, persons under 18 when their offence had been committed or over 65 when the verdict had been delivered – who were exempt from life imprisonment by operation of the law.

The Grand Chamber held that there had been **no violation of Article 14** (prohibition of discrimination), **taken in conjunction with Article 5** (right to liberty and security) of the Convention, as regards the difference in treatment in life sentencing in Russia on account of age, and that there had been **no violation of Article 14**, **taken in conjunction with Article 5**, as regards the difference in treatment on account of sex. It found that the justification for the difference in treatment between the applicants and

certain other categories of offenders, namely to promote principles of justice and humanity, had been legitimate. The Grand Chamber was also satisfied that exempting certain categories of offenders from life imprisonment had been a proportionate means to achieving those principles. In coming to that conclusion, it bore in mind the practical operation of life imprisonment in Russia, both as to the manner of its imposition and to the possibility of subsequent review. In particular, the life sentences imposed on the applicants themselves had not been arbitrary or unreasonable and would be reviewed after 25 years. Moreover, the Grand Chamber also took account of the considerable room for manoeuvre given to Contracting States to decide on such matters as penal policy, given the lack of any European consensus on life sentencing apart from as concerned juvenile offenders, who were exempted from life imprisonment in all Contracting States without exception. Indeed, it would be difficult to criticise the Russian legislature for exempting certain groups of offenders from life imprisonment, that exemption representing, all things considered, social progress in penological matters.

Right to a fair trial

Action for disavowal of paternity

See below under "Right to respect for private and family life".

Reasoning in support of a judgment based on difference of sex

Schuler-Zgraggen v. Switzerland

24 June 1993

The applicant, who had applied for an invalidity pension, submitted in particular that the Federal Insurance Court had based its judgment in her case on an "assumption based on experience of everyday life" namely that many married women give up their jobs when their first child is born and resume it only later. It inferred from this that the applicant would have given up work even if she had not had health problems. The applicant claimed that such assumption amounted to discrimination on the ground of sex.

For want of any reasonable and objective justification, the Court held that there had been a **violation of Article 14** (prohibition of discrimination) **taken together with Article 6 § 1** (right to a fair trial) of the Convention. It noted in particular that the Federal Insurance Court had adopted in its entirety the Appeals Board's assumption that women gave up work when they gave birth to a child and had not attempted to probe the validity of that assumption itself by weighing arguments to the contrary. As worded in the Federal Court's judgment, the assumption could therefore not be regarded – as asserted by the Swiss Government – as an incidental remark, clumsily drafted but of negligible effect. On the contrary, it constituted the sole basis for the reasoning, thus being decisive, and introduced a difference of treatment based on the ground of sex only.

Failure to enforce a judgment acknowledging gender discrimination

García Mateos v. Spain

19 February 2013

As a mother with legal custody of her son, who was under six years old at the time, the applicant requested permission to reduce the number of hours she worked at a supermarket. Her employers refused. She complained that the Spanish Constitutional Court had failed to repair the violation of the principle prohibiting gender-based discrimination which it had found in her case. She alleged that her right to a fair hearing within a reasonable time had been violated, and that she had been the victim of gender-based discrimination.

The Court held that there had been a **violation of Article 6 § 1** (right to a fair hearing within a reasonable time) **combined with Article 14** (prohibition of discrimination) of the Convention. It found that the violation of the principle of non-discrimination on grounds of sex, as established by the Spanish Constitutional Court's ruling in favour of the applicant, had never been remedied on account of the non-enforcement of the relevant decision and the failure to provide her with compensation.

Right to respect for private and family life

Action for disavowal of paternity

Rasmussen v. Denmark

28 November 1984

This case concerned the fact that the applicant was prevented from bringing proceedings to challenge his paternity of a child, following his separation from his wife, because of a 1960 Act that placed a time-limit on a father's right to challenge paternity of a child born in wedlock but permitted the mother to challenge the paternity of a child at any time.

The Court held that there had been **no violation of Article 14** (prohibition of discrimination) **combined with Articles 6** (right to a fair trial) **and 8** (right to respect for private and family life) of the Convention, finding that the difference of treatment established on this point between husbands and wives was based on the notion that time-limits for challenging filiation were less necessary for wives than for husbands since the mother's interests usually coincided with those of the child, she being awarded custody in most cases of divorce or separation. The rules in force had been modified by the Danish Parliament in 1982 because it considered that the thinking underlying the 1960 Act was no longer consistent with the developments in society; it could not be inferred from this that the manner in which it had evaluated the situation twenty-two years earlier was not tenable.

Mizzi v. Malta

12 January 2006

In 1966, the applicant's wife became pregnant. The following year, the couple separated. The applicant, under Maltese law, was automatically considered to be the father of the child born in the meantime and was registered as her natural father. Following a DNA test which, according to the applicant, established that he was not the child's father, he tried unsuccessfully to bring civil proceedings to repudiate his paternity of the child. The applicant complained that he had been denied access to a court and that the irrefutable presumption of paternity applied in his case had amounted to a disproportionate interference with his right to respect of private and family life. He also submitted that he had suffered discrimination, because other parties with an interest in establishing paternity in the case had not been subject to the same strict conditions and time limits.

The Court held that there had been a **violation of Article 6 § 1** (right to a fair trial), a **violation of Article 8** (right to respect for private and family life) and a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Articles 6 and 8** of the Convention. In the latter respect, observing that in bringing an action to contest his paternity the applicant had been 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 Maltese Constitutional Court's refusal to allow an exception had deprived the applicant of the exercise of his rights guaranteed by Articles 6 and 8 of the Convention which had been and still were, on the contrary, enjoyed by the other interested parties.

Amount of compensation awarded for a medical error

Carvalho Pinto de Sousa Morais v. Portugal

25 July 2017

This case concerned a decision of the Portuguese Supreme Administrative Court to reduce the amount of compensation awarded to the applicant, a 50-year-old woman suffering from gynaecological complications, as a result of a medical error. An operation in 1995 had left her in intense pain, incontinent and with difficulties in having sexual relations. The applicant alleged in particular that the decision to reduce the amount of compensation was discriminatory because it had disregarded the importance of a sex life for her as a woman.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **read together with Article 8** (right to respect for private and family life) of the Convention. It found in particular that the applicant's age and sex had apparently been decisive factors in the Portuguese courts' final decision not only to lower the compensation awarded for physical and mental suffering but also for the services of a maid. The decision had moreover been based on the general assumption that sexuality was not as important for a 50-year-old woman and mother of two children as for someone of a younger age. In the Court's view, those considerations showed the prejudices prevailing in the judiciary in Portugal. In this case the Court also recalled that gender quality was today a major goal for the member States of the Council of Europe, meaning that very good reasons would have to be put forward before a difference of treatment on grounds of sex could be accepted as compatible with the Convention. In particular, references to traditions, general assumptions or prevailing social attitudes in a country were insufficient for a difference in treatment on grounds of sex.

Choice of family name and transmission of parents' surnames to their children

Burghartz v. Switzerland

22 February 1994

The applicants were married in Germany in 1984 and, in accordance with German law they chose the wife's surname, "Burghartz", as their family name, the husband availing himself of his right to put his own surname in front of that and thus call himself "Schnyder Burghartz". The Swiss registry office (*Zivilstandsamt*) having recorded "Schnyder" as their joint surname, the couple applied to substitute "Burghartz" as the family surname and "Schnyder Burghartz" as the second applicant's surname. Before the Court, the applicants complained that the Swiss authorities had withheld from the second applicant the right to put his own surname before their family name although Swiss law afforded that possibility to married women who had chosen their husbands' surname as their family name. They said that this resulted in discrimination on the ground of sex.

The Court held that the difference of treatment complained of lacked an objective and reasonable justification and accordingly **contravened Article 14** (prohibition of discrimination) **taken together with Article 8** (right to respect for private and family life) of the Convention. In particular, it was not persuaded by the Swiss Government argument which, in support of the system complained of, relied on the Swiss legislature's concern that family unity should be reflected in a single joint surname. Indeed, family unity would be no less reflected if the husband added his own surname to his wife's, adopted as the joint family name, than it is by the converse arrangement allowed by the Civil Code. In the second place, it could not be said that a genuine tradition was at issue here: married women had enjoyed the right from which the applicant sought to benefit only since 1984. In any event, the Convention must be interpreted in the light of present-day conditions, especially the importance of the principle of non-discrimination. Nor was there any distinction to be derived from the spouses' choice of one of their

surnames as the family name in preference to the other. Contrary to what the Government contended, it could not be said to represent greater deliberateness on the part of the husband than on the part of the wife. It was therefore unjustified to provide for different consequences in each case. Lastly, as to the other types of surname, such as a double-barrelled name or any other informal manner of use, the Federal Court itself had distinguished them from the legal family name, which was the only one that may appear in a person's official papers. They therefore could not be regarded as equivalent to it.

Losonci Rose and Rose v. Italy

9 November 2010

Before getting married, the applicants – a Hungarian national and his wife, a Swiss national – 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.

Since the justification put forward by the Swiss Government did not appear reasonable and the difference in treatment had been discriminatory, the Court found that the rules in force in Switzerland gave rise to discrimination between binational couples according to whether the man or the woman had Swiss nationality, and it therefore held that there had been a **violation of Article 14** (prohibition of discrimination) **taken together with Article 8** (right to respect for private and family life) of the Convention. In this case the Court noted in particular that a consensus was emerging within the Council of Europe's member States as regards 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.

Ünal Tekeli v. Turkey

16 November 2004

Following her marriage in 1990 the applicant, who was then a trainee lawyer, took her husband's surname. As she was known by her maiden name in her professional life she continued using it in front of her legal surname, which was that of her husband. She could not use both names together on official documents however. The applicant complained in particular that she had been discriminated against in that married men could continue to bear their own family name after they married.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **taken together with Article 8** (right to respect for private and family life) of the Convention. It considered that the Turkish Government's argument that the fact of giving the husband's surname to the family stemmed from a tradition designed to reflect family unity by having the same name was not a decisive factor. Family unity could result from the choice of the wife's surname or a joint name chosen by the married couple. Moreover, family unity could also be preserved and consolidated where a married couple chose not to bear a joint family name, as was confirmed by the solution adopted in other European legal systems. Accordingly, the obligation imposed on married women, in the interests 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. Observing in particular that 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, the Court noted in this judgment that Turkey appeared to be the only Member State which legally imposed the husband's surname as the couple's surname – and thus the automatic loss of the woman's own surname on her marriage – even if the couple had decided otherwise. Admittedly, reforms carried out in Turkey in November 2001 had aimed to place married women on an equal footing with their husband as regards representing the couple, economic activities and decisions to be taken affecting the family and children. However, the provisions concerning the family name after marriage, including those obliging married women to take their husband's surname, had remained unchanged.

See also: ***Tuncer Güneş v. Turkey***, judgment of 3 September 2013.

Cusan and Fazzo v. Italy

7 January 2014

This case concerned a challenge to transmission of the father's surname to his children. A married couple, the applicants complained in particular about the Italian authorities' refusal to grant their request to give their daughter her mother's surname, and about the fact that Italian legislation at the relevant time made it mandatory to give the father's surname to legitimate children. They considered that the law ought to have allowed parents to choose their children's family name.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **taken together with Article 8** (right to respect for private and family life) of the Convention, on account of the fact that it had been 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, the Court indicated, under **Article 46** (binding force and execution of judgments) of the Convention, that 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.

Calculation of a disability allowance

di Trizio v. Switzerland

2 February 2016

The applicant originally worked full time but had to give up work in June 2002 because of back problems. She was granted a 50% disability allowance for the period from June 2002 until the birth of her twins. The allowance was later stopped owing to the application of the "combined method", which presupposed that even if she had not had a disability the applicant would not have worked full time after the birth of her children. She complained that she had been discriminated against on account of her sex.

The Court was not convinced that the difference in treatment to which the applicant had been subjected had any reasonable justification and held that there had been a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 8** (right to respect for private and family life) of the Convention. The Court accepted the Swiss Government's argument that the aim of disability insurance was to insure individuals against the risk of becoming unable to engage in paid employment or perform routine tasks which they would have been able to carry out had they remained in good health. However, the Court considered that this aim had to be assessed in the light of gender equality. In the applicant's case, the Court observed that she would probably have received a partial disability allowance if she had worked full time or had devoted her time entirely to household tasks. Having previously worked full time, she had originally been granted the allowance and had continued to receive it until her

children were born. It was thus clear 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 vast majority of women wishing to work part time following the birth of their children, the combined method, which in 98% of cases was applied to women, was a source of discrimination.

Dismissal on grounds of gender

Emel Boyraz v. Turkey

2 December 2014

This case concerned a dismissal from public sector employment – a State-run electricity company – on grounds of gender. The applicant had worked as a security officer for almost three years before being dismissed in March 2004 because she was not a man and had not completed military service. She alleged that the decisions given against her in the domestic proceedings had amounted to discrimination on grounds of sex. She also complained about the excessive length as well as the unfairness of the administrative proceedings to dismiss her.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right for respect to private and family life) of the Convention. In the Court's opinion, the mere fact that security officers had to work on night shifts and in rural areas and had to use firearms and physical force under certain conditions had not in itself justified any difference in treatment between men and women. Moreover, the reason for the applicant's dismissal had not been her inability to assume such risks or responsibilities, there having been nothing to indicate that she had failed to fulfil her duties, but the decisions of Turkish administrative courts. The Court also considered that the administrative courts had not substantiated the grounds for the requirement that only male staff could be employed as security officers in the branch of the State-run electricity company. In this case the Court also held that there had been a **violation of article 6 § 1** (right to a fair trial within a reasonable time) of the Convention.

See also: ***Hülya Ebru Demirel v. Turkey***, judgment of 19 June 2018[1].

Immigration rules

Abdulaziz, Cabales and Balkandali v. the United Kingdom

28 May 1985

The applicants were lawfully and permanently settled in the United Kingdom. In accordance with the immigration rules in force at the material time, their husbands had been refused permission to remain with or join them in that country as their husbands. The applicants maintained in particular that, on this account, they had been victims of a practice of discrimination on the grounds of sex and race.

The Court held that the applicants had not been victims of discrimination on the ground of race. It found, however, that they had been victims 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), in **violation of Article 14** (prohibition of discrimination) **taken together with Article 8** (right to respect for private and family life) of the Convention.

[1]. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.

Ineligibility for a stay of execution of one's prison sentence and right to respect for private and family life

Alexandru Enache v. Romania

3 October 2017

This case concerned in particular a prisoner's complaint about discrimination on grounds of sex stemming from the fact that, under Romanian legislation, only convicted mothers of children under the age of one can obtain a stay of execution of their prison sentences until their child's first birthday. The application for a stay of execution of prison sentence lodged by the applicant, the father of a child under the age of one, had been dismissed by the Romanian courts on the grounds that the provision in question had to be interpreted restrictively.

The Court held, by five votes to two, that there had been **no violation of Article 14** (prohibition of discrimination) **read in conjunction with Article 8** (right to respect for private and family life) of the Convention as regards the applicant's complaint about discrimination on grounds of sex. It found in particular that the impugned exclusion did not amount to a difference in treatment and that there was a reasonable relation of proportionality between the means used and the legitimate aim pursued (the best interests of the child and the special bonds between a mother and her child during the first year of the latter's life). The Court noted, in particular, that granting female prisoners the benefit of a stay of execution of sentence was not automatic, and that the Romanian criminal law in force at the relevant time provided all prisoners, regardless of sex, with other channels for requesting a stay of execution of sentence. It also observed that the aim of the legal provisions in question had been to cater for particular personal situations, especially concerning the unique bond between mother and child during pregnancy and the first year of the baby's life. The Court took the view that that aim could be considered legitimate within the meaning of Article 14 of the Convention, and that the Romanian Government's submissions were not manifestly ill-founded or unreasonable. The Court therefore considered that in the particular sphere to which the present case related, those considerations might form an adequate basis to justify the difference in treatment afforded to the applicant. Motherhood presented specific characteristics which should be taken into account, among other things, by means of protective measures.

Parental leave and parental leave allowances

Petrovic v. Austria

27 March 1998

At the material time, the applicant was a student and worked part time. His wife, who had already finished her university studies and was a civil servant in a federal ministry, gave birth in February 1989. She carried on working while the applicant took parental leave to look after the child. The applicant complained of the Austrian authorities' refusal to award him a parental leave allowance under the Unemployment Benefit Act 1977, which provided that only mothers were entitled to receive such payments. He alleged that he was the victim of discrimination on grounds of sex.

The Court held that there had been **no violation of Article 14** (prohibition of discrimination) **read in conjunction with Article 8** (right to respect for private life) of the Convention, finding that the Austrian authorities' refusal to grant the applicant a parental leave allowance had not exceeded the margin of appreciation allowed to them and that the difference in treatment complained of had therefore not been discriminatory within the meaning of Article 14. In particular, it was clear that, at the material time, the majority of the Contracting States did not provide for parental leave allowances to be paid to fathers. The idea of the State giving financial assistance to the mother or the father, at the couple's option, so that the parent concerned can stay at home to look after the children was relatively recent. Originally, welfare measures of this sort – such

as parental leave – were primarily intended to protect mothers and to enable them to look after very young children. Only gradually, as society has moved towards a more equal sharing between men and women of responsibilities for the bringing up of their children, have the Contracting States introduced measures extending to fathers, like entitlement to parental leave. In this respect Austrian law had evolved in the same way, the Austrian legislature enacting legislation in 1989 to provide for parental leave for fathers. In parallel, eligibility for the parental leave allowance was extended to fathers in 1990. It therefore appeared difficult to criticise the Austrian legislature for having introduced in a gradual manner, reflecting the evolution of society in that sphere, legislation which was, all things considered, very progressive in Europe. In addition, there still remained a very great disparity between the legal systems of the Contracting States in this field. While measures to give fathers an entitlement to parental leave had been taken by a large number of States, the same was not true of the parental leave allowance, which only a very few States granted to fathers.

Konstantin Markin v. Russia

22 March 2012 (Grand Chamber)

This case concerned the refusal by the Russian authorities to grant the applicant, a divorced radio intelligence operator in the armed forces, parental leave. The applicant complained of a difference in treatment in relation to the female personnel of the armed forces and to civilian women.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) in conjunction with **Article 8** (right to respect for private and family life) of the Convention, finding that the exclusion of servicemen from the entitlement to parental leave, while servicewomen were entitled to such leave, could not be said to be reasonably or objectively justified. This difference in treatment, of which the applicant was a victim, had therefore amounted to discrimination on grounds of sex. In particular, looking at the situation across the Convention States, the Court noted that in the majority of European counties, including Russia itself, the laws allowed civilian men and women alike to take parental leave. In addition, in a significant number of States both servicemen and servicewomen were entitled to parental leave. Consequently, that showed that contemporary European societies had moved towards a more equal sharing between men and women of the responsibility for the upbringing of their children. In this judgment, the Court 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 (for example, military personnel, be it male or female, could be excluded from parental leave entitlement if they could not be easily replaced because of their particular hierarchical position, rare technical qualifications, or involvement in active military actions). In Russia, by contrast, the entitlement to parental leave depended exclusively on the sex of the person. By excluding servicemen from that entitlement, the legal provision imposed a blanket restriction. The Court found that, as such a general and automatic restriction applied to a group of people on the basis of their sex, it fell outside of any acceptable margin of appreciation of the State. Given that the applicant could easily have been replaced by servicewomen in his function as a radio operator, there had been no justification for excluding him from the entitlement to parental leave.

Hulea v. Romania

2 October 2012

This case concerned the refusal to award compensation to a serviceman for discrimination with respect to his right to parental leave.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for private and family life) of the Convention, finding that the Romanian courts' 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.

Termination of widower's pension

Pending application

B. v. Switzerland (no. 78630/12)

Application communicated to theSwiss Government on 22 November 2016

Freedom of thought, conscience and religion

Wearing of religious clothing

Dahlab v. Switzerland

15 February 2001 (decision on the admissibility)

The applicant, a primary-school teacher who had converted to Islam, complained of the school authorities' decision to prohibit her from wearing a headscarf while teaching, eventually upheld by the Federal Court in 1997. She submitted in particular that the prohibition imposed by the Swiss authorities amounted to discrimination on the ground of sex, in that a man belonging to the Muslim faith could teach at a State school without being subject to any form of prohibition.

The Court declared the application **inadmissible** as being manifestly ill-founded. It noted in particular that the measure by which the applicant had been prohibited, purely in the context of her professional duties, from wearing an Islamic headscarf had not been directed at her as a member of the female sex but pursued the legitimate aim of ensuring the neutrality of the State primary-education system. Such a measure could also be applied to a man who, in similar circumstances, wore clothing that clearly identified him as a member of a different faith. The Court accordingly concluded that there had been no discrimination on the ground of sex in the instant case.

Leyla Şahin v. Turkey

10 November 2005 (Grand Chamber)

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

The Court held that there had been **no violation of Article 9** (freedom of thought, conscience and religion) of the Convention. It noted in particular that it is the principle of secularism, as elucidated by the Turkish Constitutional Court, which was the paramount consideration underlying the ban on the wearing of religious symbols in universities. In such a context, where the values of pluralism, respect for the rights of others and, in particular, equality before the law of men and women are being taught and applied in practice, it is understandable that the relevant authorities should wish to preserve the secular nature of the institution concerned and so consider it contrary to such values to allow religious attire, including, as in the present case, the Islamic headscarf, to be worn.

S.A.S. v. France (no. 43835/11)

26 June 2014 (Grand Chamber)

This case concerned the complaint of a French national, who is a practising Muslim, that she was no longer allowed to wear the full-face veil in public following the entry into force, on 11 April 2011, of a law prohibiting the concealment of one's face in public places.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life), **no violation of Article 9** (right to respect for freedom of thought, conscience and religion) and **no violation of Article 14** (prohibition of discrimination) **combined with Articles 8 or 9** of the Convention. In this judgment, the Court noted in particular that a State Party could not invoke gender equality in order to ban a practice that was defended by women – such as the applicant – in the context of the exercise of the rights enshrined in those Articles, unless it were to be understood that individuals could be protected on that basis from the exercise of their own fundamental rights and freedoms.

Protection of property

Elderly person's travel permits

Michael Matthews v. the United Kingdom

15 June 2002 (struck out of the list – friendly settlement)

Aged 64, the applicant applied at his local post office for an elderly person's travel permit, which would have entitled him to free travel on most public transport in Greater London. His application was refused because, under British law at the time, such a permit could only be provided to men who were aged 65 or over, whereas women were eligible to receive such a permit, subject to the provisions of their local scheme, at the age of 60 or over. The applicant complained of discrimination on grounds of sex in relation to his right to property.

The Court, after having taken formal note of a **friendly settlement** (Article 39 of the Convention) reached by the UK Government and the applicant, and having been satisfied that the settlement was based on respect for human rights as defined in the Convention or its Protocols, decided to **strike** the case **out** of its list.

Entitlement to a refugee card (and thus to housing assistance)

Vrountou v. Cyprus

13 October 2015

The applicant complained about the refusal of the authorities to grant her a refugee card, alleging that this had meant that she had been denied a range of benefits, including housing assistance. She also alleged that denying her a refugee card on the basis that she had been the child of a displaced woman rather than a displaced man had been discriminatory on the grounds of sex and that no authority in Cyprus, including the courts, had examined the merits of her complaint. After the applicant lodged her application to the European Court, the 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 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.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **read in conjunction with Article 1** (protection of property) **of Protocol No. 1** to the Convention. It first 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. 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. The Court also found a **violation of Article 13** (right to an effective remedy) of the Convention 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.

Entitlement to social security benefits

Stec v. the United Kingdom

12 April 2006 (Grand Chamber)

The applicants in this case, two men and two women, complained that they had suffered sex discrimination in eligibility for reduced earnings allowance[2] (REA) as a result of changes to the REA scheme linking it to State pensionable age[3]. 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.

The Court held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention **taken together with Article 1** (protection of property) **of Protocol No. 1**. It found that the difference in State pensionable age between men and women in the United Kingdom was originally intended to correct the disadvantaged economic position of women. It continued to be reasonably and objectively justified on that ground until such time that social and economic changes removed the need for special treatment for women. The United Kingdom Government's decisions as to the precise timing and means of putting right the inequality were not manifestly unreasonable. Similarly, the decision to link eligibility for REA to the pension system was reasonably and objectively justified, given that the benefit was intended to compensate for reduced earning capacity during a person's working life.

Barrow v. the United Kingdom, Pearson v. the United Kingdom and Walker v. the United Kingdom

22 August 2006

The applicant in the first case complained that her invalidity benefit stopped when she reached 60 years of age whereas a man in the same position would have received that benefit until he was 65. While women could claim their State pension at 60 and were exempt from national insurance contributions if they continued to work, the applicant in the second case complained the he could not collect his State pension until the age of 65 and the applicant in the third case complained that he was obliged to pay national insurance contributions after reaching the age of 60.

The Court held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention **taken together with Article 1** (protection of property) **of Protocol No. 1** in any of the three cases. It reiterated in particular that the alleged discrimination resulted from a difference in the age when men and women were

[2]. Earnings-related benefit payable to employed or formerly employed people who have suffered an impairment of earning capacity from a work-related injury or disease.

[3]. Before 1986 there was a continued right to REA after retirement, which was payable concurrently with the State pension. From 1986 a succession of legislative measures attempted to remove or reduce the REA being received by claimants no longer of working age, by imposing cut-off or limiting conditions at 65 for men and 60 for women (the ages used by the statutory old-age pension scheme).

entitled to a State pension in the United Kingdom. In the light of the original justification for the difference (to correct 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 among European States, the Court found that the United Kingdom could not be criticised for not having started earlier on the road towards a single pensionable age or for introducing the reforms slowly and in stages, especially given the extremely far reaching implications for women and the economy in general.

Obligation to pay contributions under social-welfare scheme

Van Raalte v. the Netherlands

21 February 1997

The applicant, who had never been married and had no children, alleged that he had been the victim of discriminatory treatment with regard to the obligation to pay contributions under the General Child Care Benefits Act. He claimed that the levying of contributions under the General Child Care Benefits Act from him, an unmarried childless man over 45 years of age, constituted discrimination on the ground of gender, given the fact that at the time of the events complained of no similar contributions were exacted from unmarried childless women of that age.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **taken together with Article 1** (protection of property) **of Protocol No. 1**, finding that, irrespective of whether the desire to spare the feelings of childless women of a certain age could be regarded as a legitimate aim, such an objective could not provide a justification for the gender-based difference of treatment in the present case. The Court observed in particular that, while Contracting States enjoyed a certain margin of appreciation under the Convention as regards the introduction of exemptions to such contributory obligations, Article 14 required that any such measure, in principle, applied even-handedly to both men and women unless compelling reasons had been adduced to justify a difference in treatment.

In the present case the Court was not persuaded that such reasons existed. In this context it had to be borne in mind that just as women over 45 may give birth to children, there are on the other hand men of 45 or younger who may be unable to procreate. The Court further observed that an unmarried childless woman aged 45 or over could well become eligible for benefits under the Act in question; she could, for example, marry a man who already had children from a previous marriage. In addition, the argument that to levy contributions under a child care benefits scheme from unmarried childless women would impose an unfair emotional burden on them could equally well apply to unmarried childless men or to childless couples.

Pension scheme

Married person's old-age pension

Wessels-Bergervoet v. the Netherlands

4 June 2002

The applicant and her husband had lived all their lives in the Netherlands. The applicant's husband was granted a married person's old age pension under the General Old Age Pension Act (*Algemene Ouderdomswet* – "AOW") as from 1 August 1984. However, his pension was reduced by 38% as he had not been insured under the Act during a period totalling 19 years, when he had worked in Germany and had been insured under German social security legislation. No appeal was filed against this decision. The applicant was granted an old age pension under the AOW as from 1 March 1989 on the same basis as her husband's pension; reduced by 38%. She appealed unsuccessfully. The applicant claimed that the reduction in her pension under the AOW constituted discrimination on the ground of sex, in that at the relevant time a married woman was only insured under the Act for periods when her husband was insured, whereas there was no equivalent rule for married men.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **taken together with Article 1** (protection of property) **of Protocol No. 1**, finding that the difference in treatment between married women and married men as regards entitlement to benefits under the AOW, of which the applicant was a victim, was not based on any "objective and reasonable justification". The Court noted in particular that, when examining whether a difference in treatment can be regarded as justified, it does not only have regard to its aim at the time the relevant provisions were enacted, but also to its effects in the concrete case concerned. In the present case, the applicant received an old-age pension from 1 March 1989 onwards which was 38% less than that which a married man in the same situation would have received. In other words, the inequality in treatment inherent in the former legal rules materialised in 1989 when, given the prevailing social attitudes at that time, the aim pursued by the legal provisions concerned could no longer be upheld. In this connection, the Court also took into account that, when the relevant legal rules were changed in 1985 in order to bring them into conformity with more modern standards of equality between men and women, no measures were taken to remove the discriminatory effect of the former legal rules.

Pensionable age

Andrle v. the Czech Republic

17 February 2011

This case concerned the current pension scheme in the Czech Republic whereby women and men who care for children were eligible for a pension at different ages. 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. 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. He complained in particular that he has been denied a pension at an age when a woman in his position would have been able to receive it.

The Court held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention **taken together with Article 1** (protection of property) **of Protocol No. 1**, finding that the Czech Republic's approach concerning its pension scheme was reasonably and objectively justified and would continue to be so until such time as social and economic change in the country removed the need for special treatment of women. It considered in particular that the lowering of the age for which women were eligible for a pension in the Czech Republic, adopted in 1964 under the Social Security Act, was rooted in specific historical circumstances and reflected the realities of the then socialist Czechoslovakia. That measure pursued a "legitimate aim" as it was designed to compensate for the inequality and hardship generated by the expectations of women under the family model founded at the time (and which persisted today): that of working on a full-time basis as well as taking care of the children and the household. Indeed, the amount of salaries and pensions awarded to women was also generally lower in comparison to men. The Court also emphasised that the national authorities were the best placed to determine such a complex issue relating to economic and social policies, which depended on manifold domestic variables and direct knowledge of the society concerned.

Survivor's pension

Zeman v. Austria

29 June 2006

The applicant complained about the reduction of his survivor's pension under the amended Pension Act and the Pension Allowance Act. According to the provisions of this Act, widowers were entitled to receive 40% of the pension their deceased wife had

acquired before January 1995 while widows were entitled to 60% of the pension of their deceased husband. The applicant's appeals, submitting that, had he been a woman in a similar position, he would have been entitled to 60%, were unsuccessful.
The Court held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **taken together with Article 1** (protection of property) **of Protocol No. 1** in the applicant's case, finding that the difference in treatment between men and women as regards entitlement to survivor's pensions acquired prior to 1995 was not based on any "objective and reasonable justification".

Unavailability of widows' allowances to widowers

Cornwell v. the United Kingdom and Leary v. the United Kingdom

25 April 2000 (struck out of the list – friendly settlements)
Both applicants complained that the lack of benefits for widowers under British social security legislation discriminated against them on grounds of sex.
The Court, after having taken formal note of **friendly settlements** (Article 39 of the Convention) reached by the UK Government and the applicants, and having been satisfied that the settlements were based on respect for human rights as defined in the Convention or its Protocols, decided to **strike** the cases **out** of its list.

See also, among others*:* ***Crossland v. the United Kingdom***, judgment (struck out of the list) of 29 May 2000; ***Atkinson v. the United Kingdom***, judgment (struck out of the list) of 8 April 2003; ***Owens v. the United Kingdom***, judgment (struck out of the list) of 13 January 2004.

Sawden v. the United Kingdom

12 March 2002 (struck out of the list)
The applicant's wife died in August 1997, leaving him as the administrator of her estate. One month later the applicant applied for social security benefits equivalent to those to which a widow – whose husband had died in similar circumstances to his wife – would have been entitled, namely a Widow's Payment and a Widowed Mother's Allowance, payable under the Social Security and Benefits Act 1992. He was informed that his claim was invalid because the regulations governing the payment of widows' benefits were specific to women. He lodged an unsuccessful appeal against this decision. In April 2001 the Welfare Reform and Pensions Act 1999 came into force, making bereavement benefits available to both men and women. Before the Court, the applicant complained that British social security and tax legislation had discriminated against him on grounds of sex.
The Court, after having taken formal note of a **friendly settlement** (Article 39 of the Convention) reached by the UK Government and the applicant, and having been satisfied that the settlement was based on respect for human rights as defined in the Convention or its Protocols, decided to **strike** the case **out** of its list.

See also, among others*:* ***Loffelman v. the United Kingdom***, judgment (struck out of the list) of 26 March 2002; ***Downie v. the United Kingdom***, judgment (struck out of the list) of 21 May 2002; ***Rice v. the United Kingdom***, judgment (struck out of the list) of 1 October 2002.

Willis v. the United Kingdom

11 June 2002
The applicant complained about the discrimination suffered by him and his late wife in respect of the decision to refuse him the Widow's Payment and Widowed Mother's Allowance, and in respect of his future non-entitlement to a Widow's Pension, notwithstanding the social security contributions made by his wife during her lifetime. He alleged that British social security legislation was discriminatory on grounds of sex.
The Court held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **taken together with Article 1** (protection of property) **of Protocol No. 1**, finding that the difference in treatment between men and

women regarding entitlement to the Widow's Payment and Widowed Mother's Allowance was not based on any objective and reasonable justification. The Court observed in particular that it had not been argued that the applicant did not satisfy the various statutory conditions for payment of the two benefits. The only reason for his being refused the benefits in question was that he is a man. A female in the same position would have had a right, enforceable under domestic law, to receive both. Concerning the applicant's non-entitlement to the Widow's Pension, the Court further found that, even if the applicant had been a woman, he would not have qualified for a Widow's Pension under the conditions set out in the 1992 Act. Indeed, a widow in the applicant's position would not qualify for the pension until at least 2006 and might never qualify due to the effect of other statutory conditions requiring, for example, that a claimant does not re-marry before the date on which her entitlement would otherwise crystallise. The Court therefore concluded that, since the applicant had not been treated differently from a woman in an analogous situation, no issue of discrimination contrary to Article 14 of the Convention arose regarding his entitlement to a Widow's Pension. The Court therefore found **no violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1** concerning the applicant's non-entitlement to a Widow's Pension.

Hobbs, Richard, Walsh and Geen v. the United Kingdom

14 November 2006

All four applicants were widowed in the mid to late nineties. They complained in particular about the United Kingdom authorities' refusal to grant them widow's bereavement allowance or equivalent on the grounds of their sex. The second, third and fourth applicants complained in addition about the non-payment to them of Widow's Pension and, initially, about the non-payment of Widow's Payment and Widowed Mothers' Allowance.

Concerning the applicants' first complaint, the Court did not consider that, during the period when the applicants were denied the allowance, the difference in treatment between men and women as regards the Widow's Bereavement Tax Allowance was reasonably and objectively justified. It therefore held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 1** (protection of property) **of Protocol No. 1** in respect of the first, second and third applicants. The Court further noted that parties had reached a friendly settlement as regards the claims for Widow's Payment and Widowed Mother's Allowance and **struck** those parts of the applications **out of its list**. Lastly, the Court found no violation in respect of the applicants' claims for Widow's Pension in respect of the second and third applicants, and adjourned its consideration of the claim for Widow's Pension in the case of the fourth applicant.

See also, among others: ***Cross v. the United Kingdom***, judgment of 9 October 2007; ***Anderson v. the United Kingdom*** and ***Crilly v. the United Kingdom***, judgments of 20 November 2007; ***Geen v. the United Kingdom***, judgment of 4 December 2007; ***Goodwin v. the United Kingdom*** and ***Higham v. the United Kingdom***, judgments of 22 January 2008; ***Szulc v. the United Kingdom***, judgment of 8 April 2008; ***Smith v. the United Kingdom***, judgment of 20 May 2008.

Runkee and White v. the United Kingdom

10 May 2007

Both applicants complained that, as men, they were not entitled to receive widows' benefits (Widow's Pension and Widow's Payment) equivalent to those available to comparable bereaved women.

The Court observed that Widow's Pension, at its origin and until its abolition on 9 April 2001 (except for women whose spouses had died before that date), was intended to correct inequality between older widows, as a group, and the rest of the population. It considered that difference to have been reasonably and objectively justified. Given the slowly evolving nature of the change in women's working lives and the impossibility of pinpointing a precise date at which older widows as a class had no longer been in need

of help, the Court did not consider that the United Kingdom could be criticised either for not having abolished the pension earlier. It followed that there had been no violation of **Article 14** (prohibition of discrimination) of the Convention **taken together with Article 1** (protection of property) **of Protocol No. 1** in connection with non-entitlement to a Widow's Pension. However, as in similar cases raising the same issue under the Convention (see above, *Willis v. the United Kingdom*), the Court decided that there had been a **violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1** concerning non-entitlement to a Widow's Payment.

See also, among others: ***Fallon v. the United Kingdom*** and ***Woods v. the United Kingdom***, judgments of 20 November 2007; ***Williams v. the United Kingdom***, judgment of 8 January 2008; ***McNamee v. the United Kingdom***, judgment of 27 March 2008; ***Cummins v. the United Kingdom***, judgment of 1 April 2008; ***Szulc v. the United Kingdom***, judgment of 8 April 2008.

Right to free elections

Lists of candidates for election to representative bodies

Staatkundig Gereformeerde Partij v. the Netherlands

10 July 2012 (decision on the admissibility)

After a ruling of the regional court in the civil proceedings brought against it by several associations and organisations requiring the State to take steps to oblige it to open its lists of candidates for election to representative bodies to women, the applicant – a highly traditional protestant political 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.

The Court declared the application **inadmissible** as being manifestly ill-founded. It reiterated in particular 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 applicant party's position was unacceptable regardless of the deeply-held religious conviction on which it was based.

Texts and documents

See in particular:

- the Council of Europe **webpage** on "Gender Equality"
- **Handbook on European non-discrimination law – 2018 edition**, European Union Fundamental Rights Agency / Council of Europe, 2018

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