



April 2013

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Racial discrimination

Prohibition of inhuman or degrading treatment (Article 3 of the European Convention on Human Rights)

35 East African Asians v. the United Kingdom (application n°

06.03.1978 (decision of the European Commission of Human Rights)

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 (Grand Chamber)

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). The conditions in which the Karpas Greek-Cypriot population lived were debasing and violated the very notion of respect for the human dignity of its members.

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".

Abuse of rights (Article 17 of the Convention)

Glimmerveen and Hagenbeek v. the Netherlands

11.10.1979 (decision of the Commission)

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 (right to freedom of expression) and Article 3 of Protocol No. 1 (right to free elections).

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 of the Convention (prohibition of discrimination) 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.

Right to life, degrading treatment and racially biased police investigation

Nachova and Others v. Bulgaria

06.07.2005 (Grand Chamber)

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 (right to life) 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 (in particular page 3 concerning racially biased police investigation and page 5 concerning the right to education).

Osman v. Bulgaria

16.02.2006

Eviction of Bulgarian nationals belonging to the Turkish ethnic minority.

Violation of Article 3 (degrading treatment / investigation)

No violation of Article 14: even if the statements uttered by the police were manifestly insulting and thus unacceptable, they did not enable the Court to conclude that the acts of violence complained of by the applicants had been motivated by racial prejudice.

Turan Cakir v. Belgium

10.03.2009

Allegations that the applicant had been subjected to ill-treatment on the basis of racist prejudice during his arrest and while held in police custody.

Violation of Article 3 (degrading treatment / investigation).

Violation of Article 3 in conjunction with Article 14 in that the Belgian authorities had not carried out all the necessary measures to examine whether the police officers' conduct had been discriminatory.

Mižigárová v. Slovakia

14.12.2010

Death of a Roma man during a police interrogation. He was shot in the abdomen with the lieutenant's service pistol and the investigation concluded that he had forcibly taken the gun from the lieutenant and shot himself.

Violation of Article 2 (death / investigation).

No violation of Article 14. The Court was not persuaded that the objective evidence was sufficiently strong in itself to suggest the existence of a racist motive for the incident.

Fedorchenko and Lozenko v. Ukraine

20.09.2012

The applicants alleged that a police major had threatened and hit Mr Fedorchenko and then set his house on fire. Relying on Article 2 (right to life) the applicants complained that five of their relatives had died in the fire and that the State authorities had failed to conduct a thorough and effective investigation into the circumstances of their death and of the police major's involvement in the arson attack. They further relied on Article 14, alleging that the crime had had racist motives due to their Romani ethnicity.

Violation of Article 2 (investigation)

No violation of Article 2 (death)

Violation of Article 14 in conjunction with Article 2 (investigation)

Freedom of movement

Timishev v. Russia

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 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).

¹[Sampanis and Others v. Greece](#) (judgment of 5 June 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 free elections

Aziz v. Cyprus

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

22.12.2009 (Grand Chamber)

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 (right to free elections) 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. It was the first time in the *Sejdić and Finci* judgment that the Court concluded to a violation of this provision.

Right to a fair trial (Article 6 § 1 of the Convention)

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 (application no. 26827/08)

Communicated on 9 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.

Perinçek 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 (article 10 of the Convention) 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 (no. 17676/09)

Communicated on 17 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.

Also see the "[Hate speech](#)" factsheet

Discrimination on the ground of 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 was not based on any "objective and reasonable justification".

Also see [Koua Poirrez v. France](#), judgment of 30.09.2003

Kurić and Others v. Slovenia

26.06.2012 (Grand Chamber)

Case concerning persons who had been "erased" from the permanent residents register following Slovenian independence (because they had either not requested or not been granted Slovenian citizenship).

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

Violation of Article 13 (right to an effective remedy) combined with Article 8

Violation of Article 14 combined with Article 8

Languages

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 Erdagöz v. Turkey](#) (21.10.2008) and [Kemal Taşkın and Others v. Turkey](#) (02.02.2010)).

Birk-Lévy v. France

06.10.2010 (admissibility decision)

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

The Court reiterated in this decision that the European Convention on Human Rights did not protect "linguistic freedom" as such.

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