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**The European Court of Human Rights case-law on issues
pertaining to gender, equality and discrimination**

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Introduction

Article 14 of the Convention

- 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 14 – the so-called «Cinderella provision», it has to be invoked with other substantive rights of the Convention.
- 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.”*

One of the key issues ...

- *Konstantin Markin v. Russia*, Grand Chamber judgment of 22 March 2012, § 127:
“... [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.”

Gender and private life

Carvalho Pinto de Sousa Morais v. Portugal

- **Nos. 60367/08 and 961/11**
- The Judgment of the Fourth Section delivered 24 January 2017.
- The applicant underwent surgery which resulted in, among other things, mobility problems and difficulties in having sexual relations. She was 50 years old at the time. She brought civil proceedings against the hospital, and was awarded compensation in respect of pecuniary and non-pecuniary damage. On appeal the Supreme Administrative Court upheld the first-instance judgment but reduced the amount of damages. It relied on the fact that the applicant was “already fifty years old at the time of the surgery and had two children, that is, an age when sexuality is not as important as in younger years, its significance diminishing with age” and the fact that she “probably only needed to take care of her husband”, considering the age of her children.
- The ECHR found that the decision of the Supreme Administrative Court was discriminatory – on grounds of her gender and age – and breached Article 14 of the Convention read in conjunction with Article 8.
- The judgment is noteworthy in that this is the first occasion on which the Court has found fault with the language used by a domestic court – in the instant case a superior court – when dealing with the age and gender of a litigant.
- Violation of Article 14 in conjunction with Article 8.

Parenthood, custody of a child and adoption

Salgueiro da Silva Mouta v. Portugal

- **No. 33290/96**
- The Judgment of the Fourth Section delivered 21 March 2000.
- The applicant’s former wife was awarded custody of their child by the domestic court holding that, as a general rule, a young child should not be separated from the mother, but also adding that a homosexual environment could not be considered to be the healthiest for a child’s development, given that this was an abnormal situation.
- The ECHR found that the Portuguese Court of Appeal made a distinction based on considerations regarding the applicant’s sexual orientation, a distinction which is not acceptable under the Convention. That was the decisive factor for the final domestic decision.
- Violation of Article 14 in conjunction with Article 8 of the Convention.

Mizzi v. Malta

- **No. 26111/02**
- The Judgment of the First Section delivered 12 January 2006.
- In 1966, the applicant’s wife X became pregnant. The following year, the applicant and X separated and stopped living together and, X gave birth to a daughter, Y. The applicant was automatically considered to be Y’s father under Maltese law and was registered as her natural father. Following a DNA test which, according to the applicant, established that he was not Y’s father, the applicant tried unsuccessfully to bring civil proceedings to repudiate his paternity of Y.
- Violation of Article 6: The practical impossibility for the applicant to deny his paternity from the day Y was born until the present day impaired, in essence, his right of access to a court.
- Violation of Article 8: Despite the margin of appreciation afforded to the domestic authorities, the latter had failed to secure to the applicant the respect for his private life.

- Violation of Article 14 in conjunction with Articles 6 and 8: The applicant was subject to time-limits which did not apply to other “interested parties”. The rigid application of the time-limit along with the Constitutional Court’s refusal to allow an exception deprived the applicant of the exercise of his rights guaranteed by Articles 6 and 8 enjoyed by the other interested parties.

X and Others v. Austria

- **No. 19010/07**
- The Judgment of the Grand Chamber delivered 19 February 2013.
- The first and third applicants are two women living in a stable homosexual relationship. The second applicant is the third applicant’s minor son. The first applicant wished to adopt the second applicant in order to create a legal relationship between them without severing the boy’s relationship with his mother and an adoption agreement was concluded to that end. However, the domestic courts refused to approve the agreement as the boy’s adoption by the first applicant would sever his relationship with his mother, the third applicant, not his father.
- The Grand Chamber stated that with regard to second-parent adoption the situation of a stable same-sex couple was not comparable to that of a married couple, following *Gas and Dubois v. France*; in this connection, it reiterated the special status conferred by marriage (no violation of Article 14 in conjunction of Article 8 of the Convention).
- The respondent State had failed to adduce particularly weighty and convincing reasons to show that excluding second-parent adoption in a same-sex couple, while allowing that possibility in an unmarried different-sex couple, was necessary for the protection of the family in the traditional sense or for the protection of the interests of the child. The best interests of a child was a key notion.
- Violation of Article 14 in conjunction with Article 8 of the Convention as to the comparison with an unmarried couple.

Domestic violence

Opuz v. Turkey

- **No. 33401/02**
- The Judgment of the Third Section delivered 9 June 2009.
- The applicant’s husband had committed a series of assaults on his wife and mother-in-law over several years culminating in the murder of the mother-in-law, despite several complaints by the victims and the institution of various sets of proceedings by the prosecuting authorities.
- The violence endured by the applicant and her mother could be regarded as gender-based, constituting a form of discrimination against women, and for the first time found a violation of Article 14, in conjunction with Articles 2 and 3, in a case concerning domestic violence.
- A strict test (cumulative factors) to determine whether a case fell within one of the exceptions: whether the *cumulative failure* of authorities to pursue criminal investigation of the husband deprived applicant and her mother of their right to life and safety.
- Violation of Articles 2 and 3 of the Convention and of Article 14, in conjunction with Articles 2 and 3 of the Convention.

Eremia v. the Republic of Moldova

- **No. 3564/11**
- The Judgment of the Third Section delivered 28 May 2013.

- The first applicant was married to a police officer who would often come home drunk and beat her in the presence of their two teenage daughters, the second and third applicants. However, the criminal investigation was suspended for one year provided the husband did not reoffend after the prosecutor found that although there was substantive evidence of guilt the husband had committed a “less serious offence”, had no history of drug or alcohol abuse and “did not represent a danger to society”.
- In the Court’s view, the suspension of the criminal investigation in such circumstances had had the effect of shielding the husband from criminal liability rather than deterring him from committing further violence, and had resulted in his virtual impunity. The State had thus failed to observe its positive obligations under Article 3.
- The second and third applicants’ psychological well-being was being adversely affected as a result of witnessing their father’s violence against their mother: violation of Article 8.
- Article 14 in conjunction with Article 3: the authorities’ actions were not a simple failure or delay in dealing with violence against the first applicant, but amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards the first applicant as a woman.

Marriage and surnames

Losonci Rose and Rose v. Switzerland

- **No. 664/06**
- The Judgment of the First Section delivered 09 November 2010.
- Swiss Federal Court rejected male applicant’s request to regain his pre-marital surname, holding that his 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.
- Only compelling reasons could justify a difference in treatment on the ground of sex. A consensus was emerging within the Council of Europe’s member States regarding equality between spouses in the choice of family name.
- Accordingly, the justification put forward by the Government did not appear reasonable and the difference in treatment had been discriminatory. It followed that the rules in force in the respondent State gave rise to discrimination between binational couples according to whether the man or the woman was a national of that State.
- Violation of Article 14 in conjunction with Article 8 of the Convention.

Cusan and Fazzo v. Italy

- **No. 77/07**
- The Judgment of the Second Section delivered 07 January 2014.
- The applicants complained that an Italian rule disallowing a married couple from giving their child the mother’s surname violated their right to a private and family life as well as the Convention’s prohibition of discrimination.
- Only compelling reasons could justify a difference in treatment on the ground of sex. A consensus was emerging within the Council of Europe’s member States regarding equality between spouses in the choice of family name.
- Accordingly, the justification put forward by the Government did not appear reasonable and the inability to derogate from recording the father’s surname in the civil register was excessively rigid and discriminatory toward women.
- Violation of Article 14 in conjunction with Article 8 of the Convention.

Ünal Tekeli v. Turkey

- **No. 29865/96**
- The Judgment of the Fourth Section delivered 16 November 2004.
- The applicant complained that Turkish law obliged women to bear their husband's name after marriage. At most, the women could retain their maiden name in addition to their husband's name.
- Only compelling reasons could justify a difference in treatment on the ground of sex. A consensus was emerging within the Council of Europe's member States regarding equality between the two sexes.
- Therefore, the traditional primordial role of men in the family structure, and women's secondary role, could not justify States from imposing such a tradition on married women.
- Violation of Article 14 in conjunction with Article 8 of the Convention.

Legal recognition of same-sex couples***Oliari and Others v. Italy***

- **Nos. 18766/11 and 36030**
- The Judgment of the Fourth Section delivered 21 July 2015.
- The applicants are three couples living in stable same-sex relationships who were not allowed to publish marriage banns because the Italian Civil Code provided that the spouses had to be of the opposite sex.
- The Court found for the applicants. The judgment is of particular importance in that the violation relates to Article 8 of the Convention taken alone. The Court did not consider it necessary to examine the discrimination complaints of those applicants who had also relied on Article 14.
- For the Court, Italy had overstepped their margin of appreciation in this area. The Court's conclusion is of interest in that the Court clarifies that its decision is focused essentially on the situation prevailing in Italy, and that a different solution might be reached in a different domestic context, absent the above factors and notwithstanding the trends in this area at the regional and international level as identified in 2015.
- Violation of Article 8 of the Convention.

Orlandi and Others v. Italy

- **Nos. 26431/12, 26742/12, 44057/12 and 60088/12**
- The Judgment of the First Section delivered 14 December 2017.
- The applicants, same-sex couples who had contracted marriages abroad, sought registration of their marriages in Italy. Registration was refused on the basis that the Italian legal order did not allow for marriage between same-sex couples.
- New legislation in 2017 provided that couples who had contracted marriage, civil union or any other corresponding union abroad could register their union as a civil union (but *not* marriage) in terms of Italian law.
- The Government had not put forward a prevailing community interest against which to balance the applicants' interests nor indicated any legitimate aim for the failure to register the marriages, save for a general phrase concerning "internal public order". Unlike other provisions of the Convention, Article 8 did not enlist the notion of "public order" as one of the legitimate aims in the interests of which a State might interfere with an individual's rights.
- The State had failed to strike a fair balance between any competing interests in so far as they failed to ensure that the applicants had available a specific legal framework providing for the recognition and protection of their same-sex unions.

- Violation of Article 8 of the Convention.

Vallianatos and Others v. Greece

- **Nos. 29381/09 and 32684/09**
- The Judgment of the Grand Chamber delivered 7 November 2013.
- A Greek law introduced an official form of partnership for unmarried couples called a “civil union”, which was restricted to different-sex couples, thereby excluding same-sex couples from its scope. Applicants were Greek gay and lesbian women.
- The applicants were in a comparable situation to different-sex couples with regard to their need for legal recognition and protection of their relationships. However, Section 1 of Law no. 3719/2008 expressly reserved the possibility of entering into a civil union to two individuals of different sex. Accordingly, by tacitly excluding same-sex couples from its scope, the Law in question introduced a difference in treatment based on the sexual orientation of the persons concerned.
- Although there was no consensus among the legal systems of the Council of Europe member States, a trend was currently emerging with regard to the introduction of forms of legal recognition of same-sex relationships.
- Violation of Article 8 of the Convention.

Schalk and Kopf v. Austria

- **No. 30141/04**
- The Judgment of the First Section delivered 24 June 2010.
- In 2002 the applicants, a same-sex couple, requested the competent authorities permission to get married. Under domestic law a marriage could only be concluded between persons of opposite sex and the applicants’ request was consequently dismissed. In 2010, the Registered Partnership Act entered into force in Austria.
- The Court ruled for the first time on the issue of same-sex marriages, and concluded that Article 12 did not impose an obligation on the State to allow such persons to marry.
- It appeared that the EU Charter of Fundamental Rights left the decision whether or not to allow same-sex marriages to regulation by member States’ national law since no reference to men and women was included in the relevant provision. The Court underlined that national authorities were best placed to assess and respond to the needs of society in this field, given that marriage had deep-rooted social and cultural connotations differing largely from one society to another. The margin of appreciation was central to the Court’s findings.
- No violation of Article 12 and no violation of Articles 14 and 8 of the Convention.

Ratzenböck and Seydl v. Austria

- **No. 28475/12**
- The Judgment of the Fifth Section delivered 26 October 2017.
- The applicants, a different-sex couple, lodged an application to enter into a registered partnership under the Registered Partnership Act. Their application was refused on the basis that they did not meet the legal requirements; registered partnerships were exclusively reserved for same-sex couples.
- The Court ruled for the first time on the question of differences in treatment based on sex and sexual orientation relating to the exclusion from a legal institution for recognition of a relationship from the viewpoint of a different-sex couple.
- The applicants, as a different-sex couple, had access to marriage. That satisfied – contrary to same-sex couples before the enactment of the Registered Partnership Act – their principal need for legal recognition. They had not argued a more specific need.
- No violation of Article 14.

Pajić v. Croatia

- **No. 68453/13**
- The Judgment of the First Section delivered 23 February 2016.
- The applicant, a national of Bosnia and Herzegovina, had a stable same-sex relationship with a woman living in Croatia. In 2011 the applicant lodged a request for a residence permit in that country on the grounds of family reunification with her partner. Her request was refused as the relevant domestic law excluded such a possibility for same-sex couples whereas it allowed it for unmarried different-sex couples. Her further appeals were unsuccessful.
- In cases in which the margin of appreciation afforded to States is narrow, as where there was a difference in treatment based on sex or sexual orientation, the principle of proportionality does not merely require the measure chosen to be suitable in principle for the achievement of the aim pursued, the State also had to show that it was necessary, in order to achieve that aim, to exclude certain categories of people – in this instance persons in a same-sex relationship – from the scope of application of the relevant provisions of domestic (immigration) law.
- Violation of Article 14 in conjunction with Article 8 of the Convention.

Gender reassignment***Hämäläinen v. Finland***

- **No. 37359/09**
- The Judgment of the Grand Chamber delivered 16 July 2014.
- Under Finnish law marriage is only permitted between persons of opposite sex. However, while same-sex couples are not permitted to marry, they can contract a civil partnership. The applicant was born a male and married a woman in 1996. The couple had a child in 2002. In 2009 the applicant underwent gender re-assignment surgery. However, although she changed her first names she could not have her identity number changed to a female one unless her wife consented to the transformation of their marriage into a civil partnership or the couple divorced. Both the applicant and her spouse wished to remain married.
- Relying on comparative law analysis, the Court noted that there was still no European consensus on allowing same-sex marriages and no consensus in those States which did not allow same-sex marriages as to how to deal with gender recognition in the case of a pre-existing marriage (the situation in the applicant's case). Accordingly, Finland had to be afforded a wide margin of appreciation, also taking into account the sensitive moral and ethical issues at stake. Plus, the change to a civil partnership would have no implications for the applicant's family life.
- No violation of Article 8 of the Convention.

Y.Y. v. Turkey

- **No. 14793/09**
- The Judgment of the Second Section delivered 10 March 2015.
- The applicant, Y.Y. (born as a female), was initially denied access to gender reassignment surgery by a domestic court on the sole ground that Y.Y. was not permanently unable to procreate. Y.Y. ultimately received a permission to undergo the operation.
- The Court accepted that gender reassignment surgery could be subject to regulation by the State for reasons related to the protection of health.
- However, the Court took the view that the principle of respect for the applicant's physical integrity precluded any obligation for him to undergo treatment aimed at permanent sterilisation prior to the medical process.

- The case raises a new issue in that, unlike earlier transsexual cases, the Court was called upon to address the compatibility with Article 8 of conditions imposed on an applicant seeking to change sex. In previous cases, the Court's concern had been to assess the justification for restrictions imposed on a post-operative transsexual's enjoyment of their Article 8 rights.
- Violation of Article 8 of the Convention.

A.P., Garçon and Nicot v. France

- **Nos. 79885/12, 52471/13, 52596/13**
- The Judgment of the Fifth Section delivered 6 April 2017.
- The applicants are transgender persons. Between 2007 and 2009 they applied to the domestic courts to have amended the entries on their birth certificates indicating their sex and first names. The courts generally dismissed their actions on the grounds that they had not shown that they had undergone the necessary medical and surgical treatment to bring about irreversible gender reassignment.
- In the Court's opinion, making recognition of the sexual identity of transgender persons conditional on undergoing an operation or treatment entailing sterilisation – or which would most probably produce that effect – against their wishes, amounted to making the full exercise of one's right to respect for private life, enshrined in Article 8, conditional on relinquishing full exercise of the right to respect for one's physical integrity, safeguarded not only by that provision but also by Article 3 of the Convention.
- No violation found in State asking for diagnosis of gender disorder, or obliging applicants to undergo a medical examination.

Criminal conviction and homosexuality

L. and V. v. Austria

- **Nos. 39392/98 and 39829/98**
- The Judgment of the First Section delivered 9 January 2003.
- Each of the applicants was convicted of engaging in homosexual acts with adolescents between 14 and 18 years old. Article 209 of the Criminal Code, which was repealed in 2002, provided that it was an offence for a male over 19 years old to engage in sexual acts with a person of the same sex between 14 and 18 years old. Consensual heterosexual or lesbian acts between an adult and a person over 14 years old were not punishable.
- The Court held that sexual orientation was covered by Article 14 and differences based on sexual orientation required particularly serious reasons by way of justification.
- The Government had not in the present case offered convincing and weighty reasons justifying the maintenance in force of Article 209 of the Criminal Code until 2002 and, consequently, the applicants' convictions.
- Violation of Article 14 in conjunction with Article 8 of the Convention.

I.I.N. v. Netherlands [dec.]

- **No. 2035/04**
- The Decision of the Third Section on the admissibility delivered 9 December 2004.
- An Iranian national claimed he was homosexual and was facing criminal prosecution in Iran. Dutch authorities wanted to deport him, claiming there was no proof of his political activities or criminal proceedings against him in Iran.
- The Court recalled that Article 3 enshrines one of the most fundamental values of a democratic society and prohibits in absolute terms torture or inhuman or degrading treatment or punishment, a rigorous scrutiny must necessarily be conducted of an

individual's claim that his or her deportation to a third country will expose that individual to treatment prohibited by Article 3.

- An expulsion may give rise to an issue under Article 3. However, materials before the Court did not disclose a situation of active prosecution by the Iranian authorities of adults involved in consensual and private homosexual relationships. Although it was not disputed in the abstract therefore that very draconian punishment can be imposed for homosexual acts, the Court was not persuaded that the applicant has shown that he was at a real risk of falling foul of the authorities on that ground.
- Manifestly ill-founded.

Prisoners

Khamtokhu and Aksenchik v. Russia

- **No. 17484/15**
- The Judgment of the Grand Chamber delivered 25 July 2017.
- The applicants were adult men serving life sentences for, *inter alia*, attempted murder and murder. They complained under Article 14 in conjunction with Article 5 that they had been treated less favourably than female, juvenile and senior offenders found guilty of the same crimes because, by virtue of Article 57 of the Russian Criminal Code, the latter could not be given a life sentence.
- The applicants having been treated differently on the basis of "sex" and "age", Article 14 in conjunction with Article 5 was applicable.
- The Grand Chamber found that the different treatment of adult men did not amount to discrimination in breach of Article 14. The Grand Chamber established that the applicants were in an analogous situation to other offenders convicted of the same or comparable offences and, importantly, that the purpose of the impugned sentencing policy was to ensure, for reasons of justice and humanity, that account was taken of the age and physiological characteristics of certain categories of offenders.
- The margin of appreciation was central to the Court's findings.
- No violation of Article 14 in conjunction with Article 5.

X v. Turkey

- **No. 24626/09**
- The Judgment of the Second Section delivered 09 October 2012.
- The applicant was sentenced to prison for almost ten years for various offences. A homosexual, he was initially placed in a shared cell with heterosexual prisoners. He had been intimidated and bullied by his cell-mates. He was immediately placed in an individual cell, which was small and dirty. He was deprived of any contact with other inmates or of social activity. The applicant was ultimately transferred to a psychiatric hospital where he was diagnosed with depression and remained for about a month in hospital before returning to prison. During that period he filed a complaint against a warder for homophobic conduct, insults and blows.
- The applicant's total exclusion from prison life could not be regarded as justified. The Court was not convinced that the need to take safety measures to protect the applicant's physical well-being was the primary reason for his total exclusion from prison life. The main reason for the measure was his homosexuality. As a result it was established that he had sustained discrimination on grounds of sexual orientation.
- As a result of the inappropriateness of the applicant's total isolation from prison life, the Court found a violation of Article 14 in conjunction with Article 3.

Alexandru Enache v. Romania

- **No. 10662/06**
- The Judgment of the Fourth Section delivered 3 October 2017.
- The applicant, who had been sentenced to seven years' imprisonment, filed two applications for a stay of execution of sentence. He argued, in particular, that he wanted to look after his child, who was only a few months old. However, his applications were dismissed by the domestic courts on the grounds that the stay of execution laid down in the provision for convicted mothers up to their child's first birthday had to be interpreted strictly and that the applicant could not request its application by analogy.
- In the light of the broad margin of appreciation available to the respondent State in this sphere, there was a reasonable relation of proportionality between the means used and the legitimate aim pursued. The impugned exclusion therefore did not amount to a difference in treatment prohibited under Article 14 read in conjunction with Article 8 of the Convention.
- Motherhood has specific features which need to be taken into consideration, often by means of protective measures. International law provides that the adoption by States Parties of special measures to protect mothers and motherhood should not be considered as discriminatory. The same applies where the woman in question has been sentenced to imprisonment.
- No violation of Article 14 in conjunction with Article 8 of the Convention.

Employment

Emel Boyraz v. Turkey

- **No. 61960/08**
- The Judgment of the Second Section delivered 2 December 2014.
- The applicant, a female Turkish national, successfully sat a public servant examination and was appointed to the post of security officer in a branch of a State-run electricity company. Later, she was informed that she would not be appointed as she did not fulfil the requirements of "being a man" and "having completed military service".
- The Court considered that applicant's dismissal on the sole ground of her sex had constituted an interference with her right to respect for her private life, also taking into account her dismissal's consequences on her family and her ability to practise a profession which corresponded to her qualifications. The Court therefore considered that Article 14 was applicable, taken in conjunction with Article 8.
- The Court recalled that member States' room for manoeuvre (margin of appreciation) in assessing whether a difference in treatment was justified was narrower where the difference in treatment was based on sex. The advancement of gender equality was today a major goal in the member States and very weighty reasons would have to be put forward before such a difference of treatment could be regarded as compatible with the Convention.
- Violation of Article 14 in conjunction with Article 8 of the Convention.

Pensions and other social rights

Mata Estevez v Spain [dec.]

- **No. 56501/00**
- The Decision of the First Section delivered 24 June 2010
- The applicant was denied a survivor's pension for his deceased longtime same-sex partner. The High Court has stated that it was for the legislator to take a decision

regarding the extension of survivor's pensions to stable *de facto* relationships, be it heterosexual or homosexual.

- The Court considered that the difference in treatment found can be considered to fall within the State's margin of appreciation and that the impugned decisions did not constitute a discriminatory interference with the applicant's private life contrary to Article 8, taken in conjunction with Article 14 of the Convention.
- Manifestly ill-founded.

***Stec and Others v. The United Kingdom* [GC]**

- **Nos. 65731/01 and 65900/01**
- The Grand Chamber Judgment delivered 12 April 2006.
- The applicants (2 men and 2 women) complained about a regulation of the United Kingdom linking the cut-off age for Reduced Earnings Allowance to the end of working life.
- The pensionable age in the United Kingdom for persons born before 6 April 1950 was different for men and women, e.g. 65 years for men and 60 years for women.
- The differential pensionable ages were intended to correct "factual inequalities" between men and women.
- Given the slowly evolving nature of the change in women's working lives, and in the absence of a common standard amongst the Contracting States, the United Kingdom could not be criticised for not having changed to single pensionable age at the time (margin of appreciation), but it must carry out a continuing consultation and review concerning the matter.
- No violation of Article 14 taken in conjunction with Article 1 Protocol 1.

Andrle v. the Czech Republic

- **No. 6268/08**
- The Judgment of the Fifth Section delivered 17 February 2011.
- The applicant complained that, unlike the position for women, there was no lowering of the pensionable age for men who raised children. The Government argued that this system only applied to people old enough to have raised children in the Communist period, when women were expected to work full time as well as to take care of the children and household. This system was meant to compensate for the double burden on women, and the pension system was being reformed for the younger, post-Communism generations.
- The Court applied the margin of appreciation to hold that these measures, rooted in specific historical circumstances and designed to address the need for special treatment for women, were not manifestly unreasonable. Therefore, the State did not violate the non-discrimination principle.
- States generally enjoy a wide margin of appreciation with respect to pension schemes.
- No violation of Article 14 taken in conjunction with Article 1 of Protocol 1.

Karner v. Austria

- **No. 40016/98**
- The Judgment of the First Section delivered 24 July 2003.
- *Karner v. Austria* concerned the refusal of the Austrian courts to recognise the right of the homosexual partner of a deceased tenant to take over the lease.
- The Court reiterated that differences based on sexual orientation required particularly serious reasons by way of justification.

- Where the Contracting States' margin of appreciation was narrow, as in the present case, the principle of proportionality between the means employed and the aim sought to be realised did not merely require the measure chosen to be suitable for realising the aim of „the protection of a traditional family union“; it also had to be shown that it was necessary to exclude homosexual couples from the scope of the legislation in order to achieve that aim.
- Violation of Article 14 taken in conjunction with Article 8 of the Convention.