

Judicial (intersectional) negative stereotyping

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ECtHR case law (selection)

- [*J. L. c. Italie*](#) (2021)
 - gang sex abuse
 - Court expressly: secondary victimization by domestic judges
 - misogyny – discrediting, victim-blaming
 - biphobia (unacknowledged), references to sexuality
 - sexist reasoning = violation of Art. 8 positive duties
 - inappropriate, unjustified references to sexuality = unnecessary interference
 - prejudices/ stereotyping of women bars effective protection of GBV victims
 - victim protection duties include safeguarding dignity, image & privacy

J. L. c. Italie

- Judges' freedom of expression – limited in decisions:
 - no reproducing sexist stereotypes
 - no downplaying GBV
 - no blaming women

Judicial victim-blaming discourages victims' faith in justice.

J. L. c. Italie

Flaws Court's judgment:

- No consideration as negative duty breach
- Neglect of intersectionality (biphobic comments)
- Other revictimisation aspects unacknowledged
- No Art. 14 ruling - 'unnecessary'
- **No addressing anti-victim/pro-accused case outcome**

Case law inconsistency

- [*Carvalho Pinto de Sousa Morais v. Portugal*](#) (2017)
 - Court's [key case](#)
 - Violation Art. 14 + 8
 - Reduction in damages based on sex & age of claimant
 - gynaecological disease, medical negligence
 - “already fifty years old at the time of the surgery and had two children [...] an age when sexuality is not as important as in younger years, its significance diminishing with age”; she “probably only needed to take care of her husband”

[*Carvalho Pinto v. Portugal*](#)

- Contrast with comparable male claimants' cases
- Into consideration:
 - could no longer have normal sexual relations
 - had affected their self-esteem, resulting in “tremendous shock”/ “strong mental shock”
- No consideration
 - age
 - parenthood
 - any other factor

Carvalho Pinto v. Portugal

Court:

- judgmental assumption sexuality not as important for 50-year old mother of two as for someone younger
- reflecting traditional idea of female sexuality as being for child-bearing purposes
- ignoring its physical & psychological relevance for self-fulfilment of women as people

Carvalho Pinto v. Portugal

Court:

- sexist reasoning not 'unfortunate turn of phrase'
- age & sex appeared decisive
- difference in treatment
- references to traditions/ prevailing social attitudes, general assumptions = no justification
- stereotyping prevents individual examination of case
- no consideration of *her* capacity/ needs
- no attempt to verify validity of generalizations in *her* case

Paraskeva Todorova v. Bulgaria (2010)

- Violation of Art. 14 + 6 (1)
- Roma woman refused suspended sentence
- Judge referenced ethnicity, alleging minorities had a sense of impunity, seeing suspended sentence as no conviction
- Court: reasoning apparently sought to set an example
- Judge disregarded woman's health/ mitigating circumstances
- Less favourable treatment based on ethnicity

Negative stereotyping = discriminatory treatment of case?

- *J.L. v. Italy*: expression, revictimisation
- *Carvalho Pinto & Paraskeva Todorova*: discriminatory case outcome

Further reading

[J.L. V. ITALY: A SURVIVOR OF TRIVICTIMISATION – NAMING A COURT’S FAILURE TO FULLY \(RECOGNIZE AND\) ACKNOWLEDGE JUDICIAL GENDER-BASED REVICTIMISATION](#)

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Further cases

- [Beizaras and Levickas v. Lithuania](#) (2020), ECtHR [key case 2020](#)
 - public image of gay kiss
 - violent homophobic hate speech backlash on social media
 - both personal and general
 - authorities refused to investigate; no possibility of redress
 - violations of Art. 14 + Art. 8, Art. 13
 - **sexual orientation played a role in authorities’ response: clearly expressed disapproval of applicants publicly demonstrating homosexuality**

Further cases

- [Moldovan & Ors v. Romania \(No. 2\)](#) (2005)
 - withholding of protection following pogrom involving police
 - violation of Art. 14 + Art. 6 and 8 – length and result of case brought by Roma victims
 - ethnicity appeared decisive; repeated discriminatory remarks by authorities throughout case & blank refusal for 10 years to award damages for destruction of homes
 - ‘serious violation of Art. 8 of a continuing nature’
 - anti-Roma comments within judgment denying liability of perpetrators; victim-blaming
 - violation of Art. 3
 - ‘general attitude of authorities’: anti-Roma remarks by officials dealing with case

Further cases: U.S.

[Gay/ bisexual men assumed responsible for preponderance of sexual assaults in prisons](#)

- [Cole v. Flick](#): court upheld right of prisons to limit length of inmates' hair, as longer hair could increase attacks by "predatory homosexuals"
- [Roland v. Johnson](#): "gangs of homosexual predators"
- [Ashann-Ra v. Virginia](#): "inmates known to be predatory homosexuals [stalking] other inmates in the showers"

Thank you for your attention!

Shall we discuss?

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