



## Recent case law from the ECtHR and the European Committee of Social Rights in gender equality matters

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### ECtHR – Domestic Violence

#### a) *Talpis v. Italy*, no. 41237/14, 2 March 2017 (only in French/Italian)

- Conjugal violence suffered by applicant, resulting in the murder of her son and her own attempted murder.
  - Court finds Art. 2 (right to life) and 3 (prohibition of inhuman or degrading treatment) violations for failure of authorities to protect the applicant against acts of domestic violence.
  - Court also found Art. 14 (prohibition of discrimination) violation although the issue had not been raised internally (para. 140).
  - Considered that the violence inflicted on the applicant should be deemed sex discrimination because the authorities' inaction (i.e. 7 months after complaint filed no investigation by police) essentially ended up endorsing the violence (para. 145).
- Used unchallenged statistics on domestic violence and femicides in Italy as well as persistent socio-cultural attitudes to link outcome to systemic sex discrimination (para.145).
- Dissent (Eicke) on Art. 14, mostly because only 3 years before in *Rumor v. Italy* (no. 72964/10), the Court found legislative framework on domestic violence OK, w/o considering structural aspects.



## ECtHR – Domestic violence

### b) *Bălșan v. Romania*, no. 49645/09, 23 May 2017

- Failure by authorities to protect applicant from repeated domestic violence and to hold her husband accountable, despite numerous complaints.
- Court finds an Art. 3 (*inter alia* considering feelings of fear and helplessness for severity analysis) and Art. 14 violation.
- On Art. 14, the Court mentions that particular vulnerability of victims of domestic violence, requires authorities to investigate more thoroughly (para. 82).
- Court considers that “the authorities did not fully appreciate the seriousness and extent of the problem of domestic violence in Romania and that their actions reflected a discriminatory attitude towards the applicant as a woman” (para. 85).



## ECtHR – Prisoner’s rights

### c) *Khamtokhu and Aksenchik v. Russia* (GC), nos. 60367/08 and 961/11, 24 January 2017

- Applicants, adult men serving life sentences for serious criminal offences, argue that they have been discriminated against as compared to other categories of convicts, namely (i) women or (ii) persons under 18 when their offence had been committed or over 65 when the verdict had been delivered, and who were legally exempted from life imprisonment.
- Grand Chamber confirms chamber judgment that there has been no violation of Art. 5 (right to liberty) together with Art. 14 on the grounds of sex or age.
- Court essentially agrees with legitimacy of aim to protect certain vulnerable groups with regard to life imprisonment.
- On proportionality, it takes into account the wide margin of appreciation granted in penal policy (paras. 85 and 87) and also looks at European consensus (79-84).
- 1 partial dissent by 5 judges who would have found sex discrimination mainly because of the very weighty reasons test.
- 1 dissent (Albuquerque) who argues essentially levelling up of male between 18-65 to the lower standard of women and juvenile/old and de facto arguing that life imprisonment should be abolished
  - 4 concurring opinions



## ECtHR – Prisoner's rights

d) *Enache v. Romania*, no. 16986/12, 3 October 2017 (only in French/Romanian)

- Male prisoner's (attorney in jail for fraud) sex discrimination complaint because under Romanian legislation only convicted mothers of children younger than one year can obtain a stay of execution of their prison sentences until their child's first birthday.
- Art. 3 violation for inhuman and degrading prison conditions
- No Art. 14 violation in conjunction with Art. 8 (right to family life), despite finding that men and women are in comparable situations and thus facts point to difference of treatment on the grounds of sex. Court nevertheless invokes the large margin of appreciation granted to states in determining penal policy and finds aim of protecting superior interest of new-born child is reasonable here.
  - Dissent (Albuquerque/Bošnjak)



## ECtHR – Stereotypes/intersectionality

e) *Carvalho Pinto de Sousa Morais v. Portugal*, no. 17484/15, 25 July 2017

- 50-year-old woman suffering from consequences of medical error (intense pain, incontinence, difficulties in sexual relations). Claimed that decision of Portuguese courts to reduce damages from 96.000€ to 56.000€ was violation of Art. 8 and 14.
- Court states that advancement of gender equality is major goal for CoE and only very weighty reasons can justify different treatment (para. 46).
- Court relies on gender stereotyping because Portuguese court in reducing damage award had considered that 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.
- Also referred to two cases of Portuguese men in similar situations and age but who received 224,459 € and 100,000 € (para.55).
- 2 concurring opinions of which one (Motoc) deepens stereotyping analysis.
  - One dissent (Ravarani/Bošnjak) essentially on method of comparison and that this was mostly an age discrimination and not a sex discrimination claim.
  - Age discrimination and intersectionality



## ECtHR- Pending cases (selection)

### Sex/gender equality

- *Jurčić v. Croatia*, no.54711/15 (discrimination claim by a pregnant woman after *in vitro* fertilization; refusal by authorities to grant her special sick leave allowance because she had just started a job some weeks before finding out to be pregnant and that was deemed to be fictitious employment)

### Homosexual/transexual/intersex issues

- *P. v. Ukraine*, no.40296/16 (discrimination claim by intersex person for absence of procedures to changing gender and name records)
  - *Beus v. Croatia*, no. 16943/17 (private homophobic violence)



## European Committee of Social Rights (ECSR)

### Pending case: Collective complaint(s) nos. 124-138, 4 July 2017 (admissibility decision)

- NGO University Women of Europe (UWE) claim violations of Artt. 1 (right to work), 4 (right to fair remuneration), 4(3) (equal pay for work of equal value) 20 (non-discrimination on grounds of sex at work) and E (general principle of non-discrimination) in all countries that have signed the Optional Protocol allowing collective complaints
- Essentially claims against persisting gender wage gap which equality monitoring bodies are failing to fight and absence of women in decision-making positions within private companies.
- ECSR rejects various governments' arguments that UWE is not qualified to lodge the complaint because topic of complaint does not fall under UWE's social objective and/or that the arguments are too vague and unprecise.

