GENERE, SOGGETTIVITÀ, DIRITTI · 6

EUROPEAN LAW AND GENDER

Cases and Materials (Syllabus)

Elettra Stradella and Giovanna Spanò

European Law and geNder

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Summary

1. Bibliography 7
2. Gender-Oriented Provisions in European Constitutions 19
3. European Law 21
4. Gender in Case Law 25

1.
Bibliography

1.1. General Suggestions

Bellassai S., *La mascolinità contemporanea*, Roma, 2004.

Bellassai A., *L'invenzione della virilità. Politica e immaginario maschile nell'Italia contemporanea*, Roma, 2011.

Benhabib S., *Feminism As Critique: Essays on the Politics of Gender in Late-capitalist Society*, Cambridge, 1987.

Benhabib S., *Situating the Self. Gender, Community and Postmodernism in Contemporary Ethics*, Cambridge, 1992.

Bourdieu P., *Il dominio maschile*, Milano, 1998.

Braidotti R., *Soggetto nomade. Femminismo e crisi della modernità*, Roma, 1995.

Braidotti R., *Nuovi soggetti nomadi*, Roma, 2002.

Bordo S., *Il peso del corpo*, Milano, 1997.

Bordo S., *The Male Body. A New Look at Men in Public and in Private*, New York, 2001.

Butler J., *Questione di genere. Il femminismo e la sovversione dell'identità*, Roma-Bari, 2013.

Butler J., *Corpi che contano. I limiti discorsivi del "sesso"*, Milano, 1996.

Butler J., *The Physic Life of Power*, Stanford, 1997.

Butler J., *La disfatta del genere*, Roma, 2006.

Capecchi S., *La comunicazione di genere. Prospettive teoriche e buone pratiche*, Roma, 2018.

Caputo I., *Le donne non invecchiano mai*, Milano, 2009.

Cavarero A., Restaino F., *Le filosofie femministe*, Milano, 2002.

Ciccone S., *Essere maschi. Tra potere e libertà*, Torino, 2009.

Connell R.W., *Questioni di genere*, Bologna, 2 ed., 2011.

Decataldo A., Ruspini E., *La ricerca di genere*, Roma, 2014.

Demaria C., *Teorie di genere. Femminismo, critica postcoloniale e semiotica*, Milano, 2003.

De Lauretis T., *Sui generis. Scritti di teoria femminista*, Milano, 1996.

De Lauretis T., *Soggetti eccentrici*, Milano, 1999.

Di Cori P., *Asincronie del femminismo. Scritti 1986-2011*, Pisa, 2012.

Di Cori P., Barazzetti D., *Gli studi delle donne in Italia*, Roma, 2001.

Firestone S., *The Dialectics of Sex. The case for Feminist Revolution*, New York, 1972.

Friedman M., *Autonomy, Gender, and Politics*, Oxford, 2003.

Ghigi R., Sassatelli R., *Corpo, genere e società*, Bologna, 2018.

Ginori A., *Pensare l'impossibile. Donne che non si arrendono*, Roma, 2010.

Gribaldo A., Zapperi G., *Lo schermo del potere. Femminismo e regime della visibilità*, Verona, 2012.

Haraway D., *Manifesto cyborg. Donne, tecnologie e biopolitiche del corpo*, Milano, 1995.

Held V., *Feminist Morality. Transforming Culture, Society and Politics*, Chicago, 1993.

Harding S., *Feminism and Methodology*, Bloomington-Indianapolis, 1987.

Hooks B., *Elogio del margine. Razza, sesso e mercato culturale*, Milano, 1998.

Irigaray L., *Io, tu, noi. Per una cultura della differenza*, Torino, 1992.

Lipperini L., *Ancora dalla parte delle bambine*, Milano, 2007.

Lipperini L., *Non è un paese per vecchie*, Milano, 2010.

Lipperini L., *Di mamma ce n'è più d'una*, Milano, 2013.

Lipperini L., Murgia M., *L'ho uccisa perché l'amavo. Falso!*, Roma-Bari, 2013.

MacKenzie C., Stolijar N., *Relational Autonomy. Feminist Perspectives on Autonomy, Agency, and the Social Self*, New York-Oxford, 2000.

MacKinnon C.A., *Sexual Harassment of Working Women: A Case of Sex Discrimination*, New Haven, 1979.

MacKinnon C.A., *Feminism Unmodified: Discourses on Life and Law*, Cambridge (MA), 1988.

MacKinnon C.A., *Only Words*, Cambridge (MA), 1996.

MacKinnon C.A., *Are Women Human?: And Other International Dialogues*, Cambridge (MA), 2007.

MacKinnon C.A., *Gender in Constitutional Law: Theoretical, Historical, and Empirical Analysis*, Cheltenham, 2018.

MacKinnon C.A., *Butterfly Politics: Changing the World for Women*, Cambridge (MA), 2019.

Marzano M., *Sii bella e stai zitta*, Milano, 2010.

Moller-Okin S., *Diritti delle donne e multiculturalismo*, Milano, 2007.

Murgia M., *Ave Mary. E la Chiesa inventò la donna*, Torino, 2011.

Nadotti M., *Sesso e genere*, Milano, 1996.

Piccone S., Saraceno C. (a cura di), *Genere. La costruzione sociale del femminile e del maschile*, Bologna, 1996.

Nussbaum M.C., *Woman and Human Development. The Capability Approach*, Cambridge, 2001.

Pitch T., *Un diritto per due. La costruzione giuridica di genere, sesso e sessualità*, Milano, 1998.

Rossi-Doria A., *Dare forma al silenzio. Scritti di storia politica delle donne*, Roma, 2007.

Ruspini E., *Le identità di genere*, Roma, 2 ed., 2009.

Ruspini E. (a cura di), *Donne e uomini che cambiano. Relazioni di genere, identità sessuali e mutamento sociale*, Milano, 2005.

Ruspini E. (a cura di), *Uomini e corpi. Una riflessione sui rivestimenti della mascolinità*, Milano, 2009.

Scott J.W., *Gender and the Politics of History*, New York, 1988.

Soffici C., *Ma le donne no. Come si vive nel paese più maschilista d'Europa*, Milano, 2010.

Spallacci A., *Maschi*, Bologna, 2012.

Spallacci A., *Maschi in bilico. Uomini italiani dalla ricostruzione all'era digitale*, Milano, 2019.

Zajczyk F., *La resistibile ascesa delle donne in Italia. Stereotipi di genere e costruzione di nuove identità*, Milano, 2007.

Zajczyk F., Borlini B., Crosta F., *La sfida delle giovani donne. I numeri di un percorso ad ostacoli*, Milano, 2011.

Zanardo L., *Il corpo delle donne*, Milano, 2010.

Zanatta A.L., *Nuove madri e nuovi padri*, Bologna, 2011.

1.2. Gender, Theory & Fundamental Rights

Adichie C.N., *Dovremmo essere tutti femministi*, Torino, 2015.

Arruzza C., Fraser N., Bhattacharya T., *Feminism for the 99%: A Manifesto*, London, 2019.

Breve difesa dei diritti delle donne scritta da Rosa Califronia contessa romana, Perugia, 2013.

Butler J., *L'alleanza dei corpi*, Milano, 2017.

Butler J., *Vite precarie. I poteri del lutto e della violenza*, Milano, 2013.

Butler J., *La rivendicazione di Antigone. La parentela tra la vita e la morte*, Torino, 2003.

Crenshaw K., *Demarginalising the Intersection of Race and Sex. A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, in *University of Chicago Legal Forum*, 1989, 1, 8, 139-167.

Davis A., *Donne, razza e classe*, Roma, 2019.

de Beauvoir S., *Quando tutte le donne del mondo*, Torino, 2019.

de Beauvoir S., *Il secondo sesso*, Milano, 2016.

de Gouges O., *Dichiarazione dei diritti della donna e della cittadina*, Genova, 2007.

Fineman M., Grear A., *Vulnerability. Reflection on a New Ethical Foundation for Law and Politics*, London, 2013.

Friedan B., *La mistica della femminilità*, Roma, 2012.

Gianformaggio L., *Eguaglianza, donne e diritto*, Bologna, 2005.

Gilligan C., *Con voce di donna. Etica e formazione della personalità*, Milano, 1993.

Goldman E., *Anarchia, femminismo e altri saggi*, Milano, 1976.

Goodin R.E., *Protecting the Vulnerable. A Reanalysis of Our Social Responsibilities*, Chicago-London, 1985.

Greer G., *L'eunuco femmina. La donna alla ricerca dell'identità perduta*, Milano, 1972.

Grimké S.M., *Poco meno degli angeli. Lettere sull'eguaglianza dei sessi*, Roma, 2016.

Irigaray L., *Speculum. L'altra donna*, Milano, 1998.

Kittay E.F., *La cura dell'amore. Donne, uguaglianza, dipendenza*, Milano, 2010.

Lonzi C., *Sputiamo su Hegel. La donna clitoridea e la donna vaginale e altri scritti*, Milano, 1978.

Mackenzie C., Stoljar N., (eds), *Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self*, Oxford, 2000.

Mill J.S., Taylor H., *Sull'eguaglianza e l'emancipazione femminile*, Torino, 2001.

Millet K., *La politica del sesso*, Milano, 1971.

Minow M., *Equalities*, in *The Journal of Philosophy*, 1991, 88, 633-644.

Mitchell J., *Women. The Longest Revolution*, New York, 1984.

Nussbaum M.C., *Diventare persone. Donne e universalità dei diritti*, Bologna.

Okin S.M., *Le donne e la giustizia. La famiglia come problema politico*, Bari, 1999.

Pateman C., *Il contratto sessuale. I fondamenti nascosti della società moderna*, Bergamo, 2015.

Rich A., *Nato di donna*, Milano, 1996.

Tronto J.C., *Caring Democracy. Markets, Equality and Justice*, New York, 2013.

Tronto J.C., *Confini morali. Un argomento politico per l'etica della cura*, Reggio Emilia, 2006.

Turri M.G., (a cura di), *Manifesto per un nuovo femminismo*, Milano, 2013.

Wittig M., *Il corpo lesbico*, Milano, 1976.

Wollstonecraft M., *I diritti delle donne*, Roma, 1977.

Woolf V., *Una stanza tutta per sé*, Milano, 2016.

1.3. Gender & Constitutional Law

Ales E., Barbera M., Guarriello F. (a cura di), *Lavoro, welfare e democrazia deliberativa*, Milano, 2010, 81-128.

Brems, E., P*rotecting the Human Rights of Women. International human rights in the 21st century: protecting the rights of groups*, Lanham, 2003.

Butler J., *Gender trouble: feminism and the subversion of identity*, London, 2006.

Byrnes A., *The Convention on the Elimination of All Forms of Discrimination against Women. The human rights of women: international instruments and African experiences*, London, 2002.

Caielli M., Pezzini B., Schillaci A. (a cura di), *Riproduzione e relazioni. La surrogazione di maternità al centro della questione di genere*, Torino, 2019.

Cavarero A., *Il modello democratico nell'orizzonte della differenza sessuale*, in *Democrazia e Diritto*, 1990, 2, 221-241.

Cornell D., *At the heart of freedom: feminism, sex, and equality*, Princeton, 1998.

Diduck A., *Shifting Familiarity*, in *Current Legal Problems*, 2005, 58, 235-254.

Diduck A., Kaganas F., *Chapter 1. Law, gender and the state*, Oxford, 2012.

Duden B., *Il corpo della donna come luogo pubblico*, Torino, 1996.

Duden B., *L'epoca della schizo-percezione*, in Buttarelli A., Giardini F., *Il pensiero dell'esperienza*, Milano, 2008, 109-140.

Federici S., Fortunati L., *Il grande Calibano*, Milano, 1984.

Fraser N., Honneth A., *Redistribution or Recognition?*, New York, 2004.

Fredman S., *Discrimination law*, Oxford, 2011.

Gavey N., *Just Sex? The Cultural Scaffolding of Rape*, London, 2005.

Halley J.E., *Split decisions: how and why to take a break from feminism*, Princeton, 2008.

Lebiu R. (a cura di), *Genere, Non discriminazione*, *Diritto, quaderno degli studenti dei Corsi Jean Monnet 2006-2009*, 2012.

Littleton C.A., *Reconstructing Sexual Equality*, in *California Law Review*, 1987, 75, 4, 1279-1337.

MacKinnon C.A., *Toward a feminist theory of the state*, Cambridge, 1989.

MacKinnon C.A., *Women's lives, men's laws*, Cambridge, 2004.

McCrudden C., *Rethinking Positive Action*, in *Industrial Law Journal*, 1986, 15, 1, 219-243.

McGlynn C., *Reclaiming a Feminist Vision: The Reconciliation of Paid Work and Family Life in European Union Law and Policy*, in *Columbia Journal of European Law*, 2001, 7.

Mill J.S., *The subjection of women*, Harlow, Longmans, Green, Reader and Dyer, 1869.

Minow M., *The Supreme Court 1986 term. Foreword: justice engendered*, in *Harvard Law Review*, vol. 101, 1987, 10-95.

Munro V.E., *Law and politics at the perimeter: re-evaluating key debates in feminist theory*, Oxford, 2007.

Nash J.C., *Re-thinking intersectionality*, in *Feminist Review*, 2008, 89, 1-15.

Nedelsky J., *Reconceiving Rights as Relationship*, in *Review of Constitutional Studies*, 1993, 1.

Niccolai S., *Il limitato utilizzo del principio di pari dignità sociale nella giurisprudenza costituzionale*, in *Scritti in onore di Alessandro Pace*, ESI, 2012.

Niccolai S., *Studiare le politiche europee di genere per riscoprire la storicità e la socialità del diritto europeo*, in *Genesis*, 2010, 1.

Niccolai S., *La costituzione europea del genere*, in Corrias M.C. (a cura di), *Scritti in onore di Mariella Serra*, Napoli, 2007.

Niccolai S., *I rapporti di genere nella costruzione costituzionale europea. Spunti a partire dal Metodo aperto di coordinamento*, in *Politica del Diritto*, 2006, 4, dicembre, 573-628.

Novelli Dau C. (a cura di), *La partecipazione politica delle donne a sessant'anni dal voto*, Atti del convegno, Cagliari, 2007.

Nussbaum M.C., *Chapters 1 and 2. Sex & social justice*, Oxford, 1999.

Olivito E. (a cura di), *The Third Movement: Family Life for a Fee In Gender and Migration in Italy: A Multilayered Perspective*, London, 2017.

Pezzini B., Lorenzetti A., *Unioni e matrimoni same-sex dopo la sentenza 138/2010: quali prospettive?*, Napoli, 2011.

Pezzini B., *La costruzione del genere. Norme e regole*, *Corso di analisi di genere e diritto antidisciminatorio*, vol. I, Bergamo, Bergamo University Press, 2012.

Pezzini B., *Genere e diritto. Come il genere costruisce il diritto e il diritto costruisce il genere*, *Corso di analisi di genere e diritto antidiscriminatorio*, vol. II, *Lezioni, casi, materiali*, Bergamo, Bergamo University Press, 2012.

Pirrone M., Niccolai S., in Origa V. (a cura di), *Femminile Plurale, Il pensiero, il corpo, le relazioni, le lotte delle donne*, Cagliari, 2011.

Praetorius I., Davos P., *Idee femministe per una economia globale*, Milano, 2011.

Praetorius I., *L'economia è cura. La riscoperta dell'ovvio*, Iod edizioni, 2016.

Rao A., *The Politics of gender and culture in international human rights discourse. Women's rights, human rights: international feminist perspectives*, London, 1995.

Rich A., *Nato di donna*, Milano, 1996.

Rigotti C., *Prostituzione e diritti fondamentali: un'analisi comparata delle costituzioni e delle legislazioni nazionali*, Torino, 2019.

Ruggiu I. (a cura di), *Dignity in change. Exploring the Constitutional Potential of EU Gender and anti-Discrimination Law*, Fiesole, 2010.

Smart C., *Feminism and the power of law*, London, 1989.

Volpp L., *Feminism versus Multiculturalism*, in *Columbia Law Review*, 2001, 101, 5, June.

Walsh D.M., *Women's rights in democratizing states: just debate and gender justice in the public sphere*, Cambridge, 2011.

Williams P.J., *The alchemy of race and rights*, Cambridge, 1991.

1.4. Gender & Civil Law

Aa.Vv., *Il governo del corpo*, in *Trattato di biodiritto*, Milano, Giuffrè, 2011.

Angiolini C., *Transessualismo e identità di genere. La rettificazione del sesso fra diritti della persona e interesse pubblico*, in *Europa e diritto privato*, 2017, 1.

Azzarri F., *Identità sessuale e stato civile*, in *Rivista Critica del Diritto Privato*, 2018, 1.

Azzarri F., *Unioni Civili. Convivenze (Diritto Civile)*, in *Enciclopedia del diritto*, 2017, Annali X.

Barba V., *La tutela della famiglia tra persone formate dello stesso sesso*, in *GenIUS*, 2018.

Bracken L., *Same-Sex Parenting and the Best Interests Principle*, Cambridge, 2020.

Brunet L., King D., Davaki K., McCandless J., Carruthers J., Marzo C., *Comparative study on the regime of surrogacy in the EU member states*, European Parliament, Brussels, 2012.

Calderai V., *Breaking out of the Regulatory Delusion. The Ban to Surrogacy and the Foundations of European Constitutionalism*, in *Global Jurist*, 2020, 2.

Calderai, V., *Modi di costituzione del rapporto di filiazione e ordine pubblico internazionale*, in *La Nuova Giurisprudenza Civile Commentata*, 2017, 7-8.

Cardaci G., *Per un giusto processo di "mutamento" di sesso*, in *Diritto di famiglia e delle persone*, 2015, 4.

Cardaci G., *Il processo di accertamento del genere del minore intersessuale, in Rivista di diritto processuale*, 2016, 3, 683-712; 2017, fasc. 5, pt. 1.

Colombo S., *Femminismo giuridico*, in *Digesto delle discipline civilistiche*, 1992.

Favilli C., Ferreira N., *Different treatment of married and unmarried couples in the European Union*, in Brüggemeier G., Ciacchi Colombi A., Comandé G. (a cura di), *Fundamental rights and private law in the European Union. Volume 2. Comparative analyses of selected case patterns*, Cambridge, 2010.

Favilli, C., *Il cognome tra parità dei genitori ed identità dei figli*, in *La Nuova Giurisprudenza Civile Commentata*, 2017, 6.

Gallo D., Paladini L., Pustorino P. (a cura di), *Same-Sex Couples before National, Supranational and International Jurisdictions*, Berlino, Springer, 2014.

Grande E., Pes L. (a cura di), *Più cuori e una capanna. Il poliamore come istituzione*, Torino, 2018.

Lawson A., Schiek D., *European Union Non-Discrimination Law and Intersectionality*, London, 2013.

Marella M.R., *Fra pulsioni punitive e rigurgiti proprietari. I molti pasticci del d.d.l. Pillon*, in *Rivista Critica del Diritto Privato*, 2019, 1.

Marella M.R., Grillini F. (a cura di), *Stare insieme. I regimi giuridici della convivenza fra status e contratto*, Napoli, 2001.

Marini G., Marella M.R., *Di cosa parliamo quando parliamo di famiglia*, Roma-Bari, 2014.

Murray L., McDonnell L., Hinton-Smith T., Ferreira N., Walsh K. (a cura di), *Families in motion: ebbing and flowing through space and time*, Bingley, 2019.

Pikramenou N., *Intersex Rights. Living Between Sexes*, Berlino, 2019.

Patti S., *Intra-Family Torts: From Immunity to Special Rules in Criminal and Civil Law*, in Etcheverry Estrázulas N., Fernández Arroyo D. (a cura di), *Enforcement and Effectiveness of the Law - La mise en oeuvre et l'effectivité du droit*, Berlino, 2018.

Rodotà S., *Diritto d'amore*, Roma-Bari, 2015.

Scherpe, J.M., *The legal status of transsexual and transgender persons*, Cambridge, 2015.

1.5. Gender & Criminal Law

Bertolino M., *Violenza e famiglia: attualità di un fenomeno antico*, in *Riv. it. dir. proc. pen.*, 2015, 1710 ss.

Casella G., *Violenza di genere: la tutela della vittima nella dimensione procedimentale e processuale*, in *Cass. pen.*, 2019, 1388 ss.

Coco P., *Il c.d. femminicidio. Tra delitto passionale e ricerca di una identità perduta*, Napoli, 2016.

Corn E., *Non parlarmi, non ti sento. Il perdurante disallineamento tra i bisogni delle donne maltrattate e le tutele offerte dalle norme penali*, in *Riv. it. dir. e med. Legale*, 2018, 599 ss.

Felicioni P., Sanna A., *Contrasto a violenza e discriminazione di genere. Tutela della vittima e repressione dei reati*, Milano, 2019.

Venturoli M., *La vittima nel sistema penale. Dall'oblio al protagonismo?*, Napoli, 2015.

1.6. Gender, European & International Law

Charlesworth, H., Chinkin C., Wright, S., *Feminist Approaches to International Law*, in *American Journal of International Law*, 1991, 85, 4, 613-645.

Charlesworth H., *Not Waving but Drowning: Gender Mainstreaming and Human Rights in the United Nations*, in *Harvard Human Rights Journal*, 2005, 18.

Chinkin C., *Women's International Tribunal on Japanese Military Sexual Slavery*, in *American Journal of international Law*, 2001, 335-340.

De Vido S., *The ratification of the Council of Europe Istanbul Convention by the EU: A step forward in the protection of women from Violence in the European legal system*, in *European Journal of legal studies*, 2017, 69-102.

Ellis E., *The Impact of the Lisbon Treaty on Gender Equality*, in *European Gender Equality Law Review*, 2010-11, 7-14.

Engle K., *International Human Rights and feminism: When Discourses Meet*, in 13 *Michigan Journal of International Law*, 1991-92, 517.

Engle K., "*Calling in the Troops*". *The Uneasy Relationship among Women's Rights, Human Rights and Humanitarian Intervention*, in 20 *Harvard Human Rights Journal*, 2007, 189.

Foubert P., Burri S., Numhauser-Henning A., *The Gender Pay Gap in Europe from a Legal Perspective*, (including 33 country reports), European Commission, 2010.

Halley J., *Rape at Rome: Feminist Interventions in the Criminalization of Sex-Related Violence in Positive International Criminal Law*, in 30 *Michigan Journal of International Law*, 2008.

Heathcote G., *International Law on the Use of Force: A Feminist Analysis*, London, 2011.

Howard E., *EU anti-discrimination law: Has the CJEU stopped moving forward?*, in *International Journal of Discrimination and the Law*, 2018, 60-81.

Howard E., *Equality: A Fundamental Right in the European Union*?, in *International Journal of Discrimination and the Law*, 2009, 19-38.

Hafner-Burton E., Pollack M.A., *Mainstreaming Gender in the European Union*, in *Journal of European Public Policy*, 2000, 432-456.

Hubert A., *From Equal Pay to Parity Democracy: The Rocky Ride of Women's Policy in the European Union*, in Klausen J., Maier C.S. (a cura di), *Has Liberalism-Failed Women? Assuring Equal Representation in Europe and the United States*, New York, 2001.

Keller L., *The Impact of States Parties' Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, in *Michigan State Law Review*, vol. 2014, 309.

Knop K., *Re/Statements: feminism and state sovereignty in international Law*, in 3 *Transnational law and Contemporary Problems*, 1993, 293.

Lahuerta S.B., Zbyszewska A., *EU equality law after a decade of austerity: On the Social Pillar and its transformative potential*, in *Interantional Journal of Dicrimination and the Law*, 2018, 163-192.

McNeilly K., *Sex/Gender Is Fluid, What Now for Feminism and International Human Rights Law? A Call to Queer the Foundations*, in Harris-Rimmer S., Kate O. (a cura di), *Research Handbook on the Future of Women's Engagement with International* Law, Cheltenham, 2018.

Otto D., *The Exile of Inclusion: Reflections on Gender Issues in International Law Over the Last Decadei*, in *Melbourne Journal of International Law*, 2009, 10, 1.

Otto D., *A Sign of "Weakness"? Disrupting Gender Certainties in the Implementation of Security Council Resolution 1325*, in 13 *Michigan Journal of Gender and Law*, 2006, 113.

Stark B., *Nurturing Rights: An Essay on Women, Peace and International Human Rights*, in 13 *Michigan Journal of International Law*, 1991-92, 144.

Reinalda B., *Dea ex Machina or the Interplay Between National and International Policy-making. A Critical Analysis of Women in the European Union*, in Gardiner F. (a cura di) *Sex Equality Policy in Western Europe*, London, 1997, 197-215.

Tanwir M., Idebottom S., *The Trade and Gender Nexus in Pakistan*, in *Journal of International Women's Studies*, 2019, 20, 2, 129-150.

Timmer A., Senden L., *How are EU rules transposed into national law in 2016?*, Utrecht University, December 2016.

2.
Gender-Oriented Provisions in European Constitutions

2.1. Key words: Gender; Sex; Equal(ity); Women

- *Austria* art. 7.
- *Belgium* artt. 10, 11-*bis*, 67.3.
- *Bulgaria* art. 6.2.
- *Cyprus* [final provisions, art. 186.2].
- *Croatia* artt. 3, 14, 17, 55, 66.
- *Denmark* artt. 2, 81.
- *Estonia* artt. 12, 27.
- *Finland* art. 6.
- *France* Preambolo, art. 1.
- *Germany* art. 3.2, 3.3.
- *Greece* artt. 4, 116.
- *Ireland* art. 16.1, 16.2.
- *Lithuania* artt. 38, 91.
- *Luxembourg* art. 11.2.
- *Malta* artt. 14, 32, 45.3, 45.7, 45.11.
- *Netherlands* art. 1.
- *Poland* artt. 33, 68, 233.
- *Portugal* artt. 9 h), 13.2, 58.2 b), 59.1, 59.2 c), 68.3, 109.
- *Czech Republic* artt. 3, 29.1, 32.2.
- *Romania* artt. 4, 16, 41.2, 41.4, 48.

- *Slovakia* artt. 12.2, 38.1.
- *Slovenia* artt. 14, 16, 43, 53.
- *Spain* sez. 14, 32.1, 35.1, 39.2, [*a contrario*, sez. 57.1].
- *Sweden* artt. 2, 12, 13.
- *Hungary* art. 15.3, 15.5, 19.4.

3.
European Law

3.1. European legal framework

- *Council Directive 75/117/EEC of 10 February 1975* on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women OJ L 45, 19.2.1975.
- *Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC* on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions OJ L 269, 5.10.2002.
- *Council Directive 79/7/EEC of 19 December 1978* on the progressive implementation of the principle of equal treatment for men and women in matters of social security OJ L 6, 10.1.1979.
- *Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EEC* on the implementation of the principle of equal treatment for men and women in occupational social security schemes OJ L 46, 17.2.1997.
- *Council Directive 86/613/EEC of 11 December 1986* on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-em-

ployed women during pregnancy and motherhood OJ L 359, 19.12.1986.

- *Council Directive 92/85/EEC of 19 October 1992* on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) OJ L 348, 28.11.1992.
- *Council Directive 96/34/EC of 3 June 1996* on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC OJ L 145, 19.6.1996.
- *Council Directive 2004/113/EC of 13 December 2004* implementing the principle of equal treatment between men and women in the access to and supply of goods and services OJ L 373, 21.12.2004.
- *Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006* on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) OJ L 204, 26.7.2006.
- *Regulation (EU) No 1381/2013.*
- *Regulation (EU) No 1382/2013.*
- *Women's Charter (2010).*
- *Gender Action Plan* 2016-2020 – Council conclusions (26 October 2015), *13183/15*.

3.2. European equality law review

The *European Gender Equality Law Review* is a biannual publication which details the national legislative, policy, case-law, and other developments in EU gender equality issues from the 33 countries participating in the EU Network of Legal Experts in the Field

of Gender Equality. Each edition of the Law Review includes at least two academic articles on EU gender equality issues, an editorial, the relevant developments in European policy and legislation, and the most recent case-law updates from the European Courts and the UN CEDAW Committee.

4.
Gender in Case Law

4.1. Civil, Political &Social Rights in ECHR

Keywords: *access to*→ (based on principles declared therein).

- *Degrading Treatment* [art. 3].
- *Proihibition of slavery and forced labour* [Trafficking in human beings, artt. 4; 4.1].
- *Right to marry* [Found a family, Marry, Men and Women, art. 12].
- *Prohibition of Discrimination* [Comparable situation, Discrimination, Objective and Reasonable Justification art. 14].

Methodology: an intersectional approach was applied. Thus, gender-based provisions were retrieved according to discriminations stemming from other grounds: i.e. religion, age, race, nationality, sexual orientation, political, social, economic conditions.

Timeline: 2000-2020.

Results: Violation and No Violation (in order to detect protection vacuum).

Art. 3: **Degrading treatment. Inhuman treatment.**
Topics:
a. *reproductive health*: sterilisation without consent (Roma woman);

b. *pisoner status*: total isolation (homosexual convict);
c. *domestic violence*: failure to protect the victim; failure to assess risk to life.

Synoptic/Summary Table

- *V.C. v. Slovakia – 18968/07, Judgment 8.11.2011 [Section IV]*. Article 3. Degrading treatment. Inhuman treatment. Sterilisation of Roma woman without her informed consent: *violation*. Article 8. Positive obligations. Absence of safeguards giving special consideration to the reproductive health of a Roma woman: *violation* (very important case).
- *X v. Turkey – 24626/09. Judgment 9.10.2012 [Section II]*. Article 3. Degrading treatment. Inhuman treatment. Holding of homosexual prisoner in total isolation for more than eight months to protect him from fellow prisoners: *violation*. Article 14. Discrimination. Holding of homosexual prisoner in total isolation for more than eight months to protect him from fellow prisoners: *violation*.
- *Volodina v. Russia – 41261/17. Judgment 9.7.2019 [Section III]*. Article 3. Degrading treatment. Inhuman treatment. Failure of authorities to take adequate measures to protect victim of *domestic violence*: *violation*. Article 14. Discrimination. Absence of *legislation* defining *domestic violence* and dealing with it at systemic level: *violation*.
- *Talpis v. Italy – 41237/14. Judgment 2.3.2017 [Section I]*. Article 2. Positive obligations. Article 2-1. Life. Failure to assess *risk to life* in time in *domestic-violence* case: *violation*. Article 3. Effective investigation. Positive obligations. *Delays in* mounting adequate *response* to acts of domestic violence: *violation*. Article 14. Discrimination. *Shortcomings in protection of woman* against domestic violence: *violation* (very important case).

Art. 4: **Trafficking in human beings. Servitude. Forced labour.**
Topics:
a. *operational measures and proper investigation*: victims' protection; minors.

- *Rantsev v. Cyprus and Russia – 25965/04. Judgment 7.1.2010 [Section I].* Article 4. Article 4-1. Trafficking in human beings. Trafficking in human beings: Article 4 applicable. Failure by Cyprus to establish suitable framework to combat trafficking in human beings or to take operational measures to protect victims: violation. Failure by Russia to conduct effective investigation into recruitment of a young woman on its territory by traffickers: *violation*.
- *Siliadin v. France – 73316/01. Judgment 26.7.2005 [Section II]*. Article 4, Article 4-1. Servitude. Article 4-2. Forced labour. Foreign minor without residence papers placed against her will into a situation of dependence which forced her to work without rest and payment: *violation*.
- *J. and Others v. Austria – 58216/12. Judgment 17.1.2017 [Section IV]*. Article 4. Positive obligations. Article 4-1. Trafficking in human beings. Decision of prosecutor not to pursue investigation into alleged human trafficking offences committed abroad by non-nationals: *no violation*.
- *M. and Others v. Italy and Bulgaria – 40020/03. Judgment 31.7.2012 [Section II]*. Article 4, Article 4-1. Trafficking in human beings. Trafficking of a young Bulgarian girl in Italy not supported by sufficient evidence: *inadmissible*.

Art. 5: **Right to liberty and security.**
Topics:
a. *confinement against will* (mentally disabled woman).

- *D.D. v. Lithuania – 13469/06. Judgment 14.2.2012 [Section II]*. Article 5, Article 5-1-e. Persons of unsound mind. Confinement of mentally disabled applicant against her will for over seven years: *no violation*. Article 5-4. Review of lawfulness of detention. Inability for mentally disabled applicant to contest involuntary confinement with separate legal representation: *violation*. Article 6. Civil proceedings. Article 6-1.Fair hearing. Unfairness of guardianship proceedings concerning mentally disabled applicant: *violation*.

Art. 6: **Access to court. Civil rights and obligations.**
Topics:
a. *employment*: sex discrimination in respect of refusal; sexual harassment by a male colleague.

- *Fogarty v. the United Kingdom [GC] – 37112/97, Judgment 21.11.2001 [GC]*. Article 6. Access to court, State immunity bar on claim of sex discrimination in respect of refusal of employment by foreign embassy: *no violation*.
- *Cudak v. Lithuania [GC] – 15869/02, Judgment 23.3.2010 [GC]*. Article 6. Civil rights and obligations, Proceedings for unfair dismissal by Embassy employee: Article 6 applicable, Access to court; Grant of State immunity from jurisdiction in respect of claim for unfair dismissal by Embassy employee: *violation*. Facts – The applicant, a Lithuanian national, worked as a secretary and switchboard operator with the Polish Embassy in Vilnius. In 1999 she complained to the Lithuanian Equal Opportunities Ombudsperson of sexual harassment by a male colleague. Although her complaint was upheld, the Embassy dismissed her on the grounds of unauthorised absence from work.

Art. 8: **Respect for family life. Respect for private life.**
Topics:

a. *parental rights: children removal* (forced return; children into care and restriction of mother's right of access, surrogacy arrangement and lack of biological link, adequacy of measures taken by the authorities to enforce court decisions, emergency basis, lack of legal representation, failure to hear child's views during protracted custody, detention and deportation of a child without her parents, missing newborn children, lack of intelllectual capacity, automatic and perpetual deprivation following criminal conviction for ill-treatment of children, lack of consideration of child's best interests, failure to provide adequate care by blind parents, drug addict on treatment disproportionately deprived, on account of mother's financial situation, because of mentally ill mother, due to mother's precarious condition); *artificial insemination* (state refusal to grant, requirement of father's consent for continued storage and implantation of fertilised eggs, ban preventing from screening embryos for in vitro fertilisation despite therapeutic abortion); *embryo donation* (prohibition for scientific research); *adoption* (refusal of application presented by an unmarried homosexual due to "choice of lifestyle, failure to hand over legally adopted children, exclusion from proceedings, revocation, following mother's expulsion, of a girl through a kafala); *home births* (lack of health professionals assistance); *family resettlement* (eviction of gypsy family, refusal of mother's right to stay due to lack of residence permit; *surrogacy* (refusal to grant parent-child relationships); *abortion* (lack of access to prenatal genetic tests, inability to have an abortion on grounds of foetal abnormality).

b. *Change of sex*: absence of legal recognition; refusal to give female identity; refusal to authorise a change of forename prior to gender reassignment surgery; gender reassignment conditional on proof that the person concerned was no longer able to procreate, refusal of experts' opinion.
c. *Physical integrity: forced medical treatment* (placement in clinic without a legal basis, gynaecological examination imposed on a detainee without her free and informed consent, medical examination of suspected child-abuse victim without parental consent); *due professional care* (not provided); *physical harm* (medical error).
d. *Abuse*: *sexual abuse* (failure to protect in criminal proceedings); *violence* (protection from husband, cyberviolence closely linked to the report of domestic violence); *racism* (Roma woman); *sexist remarks* (on Internet).
e. *Private life: same-sex partnerships* (lack of legal recognition, refusal to register same-sex marriages contracted abroad); *obstetric violence* (presence without mother's consent of medical students); *refusal to allow a change of patronymic*; *memorization by the police of the mention "prostitute" concerning the profession*; *dismissal of a judge motivated by her private life*.

Synoptic/Summary Table

- *Neulinger and Shuruk v. Switzerland [GC] – 41615/07 Judgment 6.7.2010 [GC]*. Article 8, Article 8, 1. Respect for family life, Order for return of child with mother to father's country of residence from which it had been wrongly removed: forced return would constitute a *violation*.
- *Scozzari and Giunta v. Italy [GC] – 39221/98 and 41963/98, Judgment 13.7.2000 [GC]*. Article 8.

Article 8-1, Respect for family life. Taking of children into care and suspension of parental rights: *no violation.* Restriction of mother's right of access to children in care: *violation*. Placement of children in community where certain personnel had convictions for paedophilia: *violation*.

- *X v. Latvia [GC] – 27853/09, Judgment 26.11.2013 [GC]*. Article 8, Article 8-1. Respect for family life. Failure to conduct detailed examination of all relevant points when deciding whether to return a child pursuant to Hague Convention: *violation*.
- *Dickson v. the United Kingdom [GC] – 44362/04, Judgment 4.12.2007 [GC]*. Article 8, Article 8-1.Respect for family life, Respect for private life. Refusal to grant artificial insemination facilities to enable a serving prisoner to father a child: *violation*.
- *Parrillo v. Italy [GC] – 46470/11, Judgment 27.8.2015 [GC]*. Article 8, Article 8-1, Respect for private life. Prohibition of embryo donation for scientific research stemming from an in vitro fertilization: *no violation*.
- *Christine Goodwin v. the United Kingdom [GC] – 28957/95, Judgment 11.7.2002 [GC]*. Article 8, Article 8-1. Respect for private life. Absence of legal recognition of change of sex: *violation*.
- *Hämäläinen v. Finland [GC] – 37359/09, Judgment 16.7.2014 [GC]*. Article 8, Positive obligations, Article 8-1, Respect for family life. Respect for private life. Refusal to give applicant female identity number following sex change unless marriage was transformed into a civil partnership: *no violation*.
- *Strand Lobben and Others v. Norway [GC] – 37283/13, Judgment 10.9.2019 [GC]*. Article 8, Article 8-1. Respect for family life. Shortcomings in decision-making process resulting in adoption of vulnerable child by foster parents: *violation*.

- *Dubská and Krejzová v. the Czech Republic [GC] – 28859/11 and 28473/12, Judgment 15.11.2016 [GC]*. Article 8, Article 8-1. Respect for private life. Legislation preventing health professionals assisting with home births: *no violation*.
- *Söderman v. Sweden [GC] – 5786/08, Judgment 12.11.2013 [GC]*. Article 8. Positive obligations. Article 8-1. Respect for private life. Lack of clear statutory provisions criminalising act of covertly filming a naked child: *violation*. (nb: fourteen years old *girl*).
- *Evans v. the United Kingdom [GC] – 6339/05, Judgment 10.4.2007 [GC]*. Article 8, Article 8-1. Respect for private life. Requirement of father's consent for the continued storage and implantation of fertilised eggs: *no violation*.
- *Paradiso and Campanelli v. Italy [GC] – 25358/12, Judgment 24.1.2017 [GC]*. Article 8, Article 8-1. Respect for private life. Removal of a child born abroad as a result of a surrogacy arrangement entered into by a couple later found to have no biological link with the child: *no violation*.
- *Odièvre v. France [GC] – 42326/98, Judgment 13.2.2003 [GC]*. Article 8, Article 8-1. Respect de la vie privée. Refus de divulger l'identité des parents biologiques: *no violation*.
- *Haase v. Germany – 11057/02, Judgment 8.4.2004 [Section III]*. Article 8, Article 8-1. Respect for family life. Withdrawal of parental rights and prohibition on access to children: *violation*.
- *Iglesias Gil and A.U.I. v. Spain – 56673/00, Judgment 29.4.2003 [Section IV]*. Article 8, Article 8-1. Respect for family life. Adequacy of measures taken by the authorities to enforce court decisions awarding applicant rights over her son, taken abroad by her ex-husband: *violation*.
- *Storck v. Germany – 61603/00. Judgment 16.6.2005 [Section III]*. Article 5, Article 5-1. Deprivation of liberty. Placement

in a private clinic without a legal basis: violation. Article 8, Article 8-1. Respect for private life. Interference with physical integrity by forced medical treatment: *violation*.

- *P., C. and S. v. the United Kingdom – 56547/00. Judgment 16.7.2002 [Section II]*. Article 8, Article 8-1. Respect for family life. Removal of child at birth on emergency basis: *violation*. Procedures concerning care and freeing for adoption orders: violation. Article 6, Civil proceedings. Article 6-1. Fair hearing. Lack of legal representation in proceedings concerning child care: *violation*.
- *Ignaccolo-Zenide v. Romania – 31679/96. Judgment 25.1.2000 [Section I]*. Article 8, Article 8-1. Respect for family life. Adequacy of measures taken by authorities to enforce court decisions ordering return of children to their mother: *violation*.
- *Venema v. the Netherlands – 35731/97, Judgment 17.12.2002 [Section II]*. Article 8. Article 8-1. Respect for family life. Making of provisional care order without providing parents with opportunity to contest: *violation*.
- *Rodrigues da Silva and Hoogkamer v. the Netherlands – 50435/99. Judgment 31.1.2006 [Section II]*. Article 8, Article 8-1. Respect for family life. Respect for private life. Refusal to allow foreign mother to remain in the Netherlands, where she has been staying without holding a residence permit, in order to share in the care of Dutch child born there: *violation*.
- *Fadeyeva v. Russia – 55723/00. Judgment 9.6.2005 [Section I]*. Article 8, Article 8-1. Respect for home. Respect for private life. Failure of the authorities to resettle a family living in a severely polluted area and to design or apply effective measures to reduce industrial pollution: *violation*.
- *M. and M. v. Croatia – 10161/13. Judgment 3.9.2015 [Section I]*. Article 8. Article 8-1. Respect for family life. Respect for private life. Failure to hear child's views during protract-

ed custody proceedings: violation. Article 3. Effective investigation. Failure to promptly investigate allegations of domestic violence against a minor: *violation*.

- *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium – 13178/03. Judgment 12.10.2006 [Section I]*. Article 3. Inhuman treatment. Detention of a five-year-old child without her family in a centre for adults, followed by her deportation: *violation*. Anxiety of a mother whose child was detained abroad and subsequently deported: violation. Extradition. Conditions in which a five-year-old child was deported without her parents: *violation*. Article 5. Article 5-1. Deprivation of liberty. Detention of a five-year-old foreign national without her family in a centre for adult illegal immigrants: *violation*. Article 8, Article 8-1. Respect for family life. Detention and deportation of five-year old child travelling alone to join her mother who had obtained refugee status in a different country: *violation* (for the mother and child).
- *Mennesson v. France – 65192/11. Judgment 26.6.2014 [Section V]*. Article 8. Article 8-1. Respect for family life. Respect for private life. Refusal to grant legal recognition in France to parent-child relationships that had been legally established in the United States between children born as a result of surrogacy arrangement and the couples who had had recourse to such arrangements: *violation*.
- *Zorica Jovanović v. Serbia – 21794/08. Judgment 26.3.2013 [Section II]*. Article 8. Positive obligations. Article 8-1. Respect for family life. Continuing failure to provide information concerning fate of newborn baby in hospital care: *violation*. Article 46, Article 46-2. Execution of judgment. Measures of a general character. Respondent State required to take appropriate measures to establish a mechanism of redress for all parents of missing newborn children.

- *Kutzner v. Germany – 46544/99. Judgment 26.2.2002 [Section IV]*. Article 8, Article 8-1. Respect for family life. Separation of children from their parents and restrictions on contacts, on account of the latter's alleged lack of intelllectual capacity to bring up their children properly: *violation*.
- *Fretté v. France – 36515/97. Judgment 26.2.2002 [Section III]*. Article 8, Article 8-1. Respect for private life. Refusal of application for prior approval as a prospective adopter presented by an unmarried homosexual man, on the ground of his "choice of lifestyle": *no violation*. Article 6. Civil proceedings. Article 6-1. Fair hearing. Failure to summon to appear at hearing before Conseil d'Etat an unrepresented plaintiff who had no opportunity of seeing the submissions of commissaire du Gouvernement: *violation*.
- *Hadzhieva v. Bulgaria – 45285/12. Judgment 1.2.2018 [Section V]*. Article 8. Positive obligations. Failure to ensure fourteen-year old girl was looked after while her parents were held in police custody: *violation, no violation*.
- *Pini and Others v. Romania – 78028/01 and 78030/01. Judgment 22.6.2004 [Section II]*. Article 6. Civil proceedings. Article 6-1. Access to court. Refusal of a private children's home to hand children over to adoptive parents, notwithstanding final and binding court decisions: *violation*. Article 8, Article 8-1. Respect for family life. Adoptive parents without any close link with the children whom they adopted abroad and who remained in a children's home after the adoption: Article 8 applicable, Article 8. Positive obligations. Failure to hand over legally adopted children to adoptive parents: *no violation*.
- *M.D. and Others v. Malta – 64791/10. Judgment 17.7.2012 [Section IV]*. Article 8, Article 8-1. Respect for family life. Automatic and perpetual deprivation of parental rights following criminal conviction for ill-treatment of children: *vi-*

olation. Article 46. Article 46-2. Execution of judgment. Individual measures. Respondent State required to introduce measures in respect of automatic and perpetual deprivation of parental rights following criminal conviction for ill-treatment of children and lack of access to court.

- *Kosmopoulou v. Greece – 60457/00. Judgment 5.2.2004 [Section I]*. Article 8, Article 8-1. Respect for family life. Adequacy of measures taken to ensure enforcement of mother's access to her child: *violation*.
- *A. v. Croatia – 55164/08. Judgment 14.10.2010 [Section I]*. Article 8. Positive obligations. Article 8-1. Respect for private life. Failure of authorities to implement court orders intended to afford applicant protection from violent husband: *violation*.
- *R.K. and A.K. v. the United Kingdom – 38000/05. Judgment 30.9.2008 [Section IV]*. Article 8, Article 8-1. Respect for family life. Temporary placement of a child under public care due to fears of ill-treatment by the parents: *no violation*.
- *X. v. Croatia – 11223/04. Judgment 17.7.2008 [Section I]*. Article 8, Article 8-1. Respect for family life. Respect for private life. Exclusion of the applicant, who had been divested of her capacity to act, from proceedings resulting in the adoption of her daughter: *violation*.
- *Nunez v. Norway – 55597/09. Judgment 28.6.2011 [Section IV]*. Article 8. Expulsion. Positive obligations. Article 8-1. Respect for family life. Deportation and exclusion orders that would effectively result in a mother guilty of immigration-law breaches being separated from her young children for two years: *deportation would constitute a violation*.
- *Connors v. the United Kingdom – 66746/01. Judgment 27.5.2004 [Section I]*. Article 8, Article 8-1. Respect for home. Eviction of a family from a local authority gypsy caravan site: *violation*.

- *Šneersone and Kampanella v. Italy – 14737/09. Judgment 12.7.2011 [Section II]*. Article 8, Article 8-1. Respect for family life. Order for return of minor child, who had been living with mother in Latvia, to father in Italy without due consideration of child's best interests: *violation*.
- *R.B. v. Hungary – 64602/12. Judgment 12.4.2016 [Section IV]*. Article 8. Positive obligations. Article 8-1. Respect for private life. Inadequate investigation into racist abuse directed at woman of Roma origin: *violation*.
- *Aune v. Norway – 52502/07. Judgment 28.10.2010 [Section I]*. Article 8, Article 8-1. Respect for family life. Decision to deprive applicant of parental responsibilities and to authorise the adoption of her son by his foster parents: *no violation*.
- *Wagner and J.M.W.L v. Luxembourg – 76240/01. Judgment 28.6.2007 [Section I]*. Article 8, Article 8-1. Respect for family life. Mother living with her adopted daughter since the date of the foreign adoption order: article 8 applicable. Refusal to enforce a full adoption order by a foreign court in favour of a single woman: *violation*.
- *Connors v. the United Kingdom – 66746/01. Judgment 27.5.2004 [Section I]*. Article 8, Article 8-1. Respect for home. Expulsion of a family from a municipal site for gypsy caravans: *violation*.
- *K. and T. v. Finland – 25702/94. Judgment 27.4.2000 [Section IV]*. Article 8, Article 8-1. Respect for family life. Taking of child into care and refusal to terminate care: violation. Restrictions on access to child in care: *no violation*.
- *Costa and Pavan v. Italy – 54270/10. Judgment 28.8.2012 [Section II]*. Article 8, Article 8-1. Respect for private life. Ban preventing healthy carriers of cystic fibrosis from screening embryos for in vitro fertilisation, despite existence of right to therapeutic abortion in domestic law: *violation*.

- *C. v. Finland – 18249/02. Judgment 9.5.2006 [Section IV]*. Article 8. Article 8-1. Respect for family life. Granting by the Supreme Court of custody over two children to person with whom they were living, instead of the father, given the preference expressed by the children to stay with this person: *violation* (*a contrario*).
- *Ageyevy v. Russia – 7075/10. Judgment 18.4.2013 [Section I]*. Article 8. Positive obligations. Article 8-1. Respect for family life. Respect for private life. Revocation of adoption while criminal proceedings for suspected child abuse were still pending: *violation*. Failure adequately to investigate unauthorised disclosure of confidential information or to protect reputation and right to be presumed innocent of parent suspected of child abuse: *violation*.
- *V.D. and Others v. Russia – 72931/10. Judgment 9.4.2019 [Section III]*. Article 8, Article 8-1. Respect for family life. Transfer of child back to biological parents after nine years in care of foster mother: no violation. Foster mother and children denied access to child following his transfer to biological parents after nine years in foster care: *violation*.
- *Strand Lobben and Others v. Norway – 37283/13. Judgment 30.11.2017 [Section V]*. Article 8, Article 8-1. Respect for family life. Decision by domestic authorities to allow adoption of psychologically vulnerable child by foster parents: *no violation*.
- *Zelikha Magomadova v. Russia – 58724/14. Judgment 8.10.2019 [Section III]*. Article 8. Positive obligations. Article 8-1. Respect for family life. Widow denied access to her children by relatives-in-law in defiance of court orders and later arbitrarily deprived of parental authority: *violation*.
- *Oliari and Others v. Italy – 18766/11 and 36030/11. Judgment 21.7.2015 [Section IV]*. Article 8. Positive obligations.

Article 8-1. Respect for family life. Respect for private life. Lack of legal recognition of same-sex partnerships: *violation*.

- *Reklos and Davourlis v. Greece – 1234/05. Judgment 15.1.2009 [Section I]*. Article 8, Article 8-1. Respect for private life. Photographing of a newborn baby without prior agreement of parents and retention of the negatives: *violation*.
- *Konovalova v. Russia – 37873/04. Judgment 9.10.2014 [Section I]*. Article 8, Article 8-1. Respect for private life. Presence without mother's consent of medical students during child birth: *violation*.
- *M.A.K. and R.K. v. the United Kingdom – 45901/05 and 40146/06. Judgment 23.3.2010 [Section IV]*. Article 8, Article 8-1. Respect for family life. Delays in referring suspected child-abuse victim to specialist to determine cause of her injuries: *violation*. Respect for private life. Medical examination of suspected child-abuse victim without parental consent or court order: *violation*.
- *Penchevi v. Bulgaria – 77818/12. Judgment 10.2.2015 [Section IV]*. Article 8, Article 8-1. Respect for family life. Refusal to allow child to travel abroad to join his mother without the consent of the father: *violation*.
- *Saviny v. Ukraine – 39948/06. Judgment 18.12.2008 [Section V]*. Article 8, Article 8-1. Respect for family life. Placement of children in public care on ground that their blind parents had failed to provide adequate care and housing: *violation*.
- *Y.C. v. the United Kingdom – 4547/10. Judgment 13.3.2012 [Section IV]*. Article 8, Article 8-1. Respect for family life. Placement of child from abusive background with prospective adoptive parent: *no violation*.
- *Garnaga v. Ukraine – 20390/07. Judgment 16.5.2013 [Section V]*. Article 8. Positive obligations. Article 8-1. Respect

for family life. Respect for private life. Refusal to allow a change of patronymic: *violation*.

- *Høiness v. Norway – 43624/14. Judgment 19.3.2019 [Section II]*. Article 8, Article 8-1. Respect for private life. Internet news portal found not liable for sexist remarks posted on its site by anonymous third parties: *no violation*.
- *Erdinç Kurt and Others v. Turkey – 50772/11. Judgment 6.6.2017 [Section II]*. Article 8. Positive obligations. Article 8-1. Respect for private life. Expert medical report relieving doctors of liability without examining whether they had provided due professional care: *violation*.
- *H. v. Finland (referral) – 37359/09. Judgment 13.11.2012 [Section IV]*. Article 8, Article 8-1. Respect for family life. Respect for private life. Refusal to give applicant female identity number following sex change unless marriage was transformed into civil partnership: *case referred to the Grand Chamber*.
- *Lazoriva v. Ukraine – 6878/14. Judgment 17.4.2018 [Section IV]*. Article 8, Article 8-1. Respect for private life. Adoption of child without due consideration of his aunt's interest in becoming his legal tutor: *violation*.
- *Orlandi and Others v. Italy – 26431/12, 26742/12, 44057/12 et al. Judgment 14.12.2017 [Section I]*. Article 8, Article 8-1. Respect for family life. Respect for private life. Refusal to register same-sex marriages contracted abroad: *violation*.
- *Pojatina v. Croatia – 18568/12. Judgment 4.10.2018 [Section I]*. Article 8, Article 8-1. Respect for private life. Legislation preventing health professionals assisting with home births: *no violation*.
- *Kearns v. France – 35991/04. Judgment 10.1.2008 [Section III]*. Article 8, Article 8-1. Respect for private life. Two-month time-limit for requesting return of child placed in the care of the State by the mother: *no violation*.

- *X v. Latvia – 27853/09. Judgment 13.12.2011 [Section III]*. Article 8, Article 8-1. Respect for family life. Lack of in-depth examination of all relevant factors when deciding to return applicant's child under the Hague Convention on the Civil Aspects of International Child Abduction: *violation*. [This case was referred to the Grand Chamber on 4 June 2012].
- *Y.I. v. Russia – 68868/14. Judgment 25.2.2020 [Section III]*. Article 8, Article 8-1. Respect for family life. Drug addict on treatment disproportionately deprived of parental authority over her children who were not neglected or in danger, of which the two youngest placed in public care: *violation*.
- *S.V. v. Italy – 55216/08. Judgment 11.10.2018 [Section I]*. Article 8. Positive obligations. Article 8-1. Respect for private life. Refusal by the authorities to authorise a change of forename prior to the completion of gender reassignment surgery: *violation*.
- *Jansen v. Norway – 2822/16. Judgment 6.9.2018 [Section V]*. Article 8, Article 8-1. Respect for family life. Mother denied contact rights in respect of her child in foster care because of abduction risk: *violation*.
- *Harroudj v. France – 43631/09. Judgment 4.10.2012 [Section V]*. Article 8. Positive obligations. Article 8-1. Respect for family life. Refusal of permission to adopt owing to prohibition of adoption in child's country of birth: *no violation*.
- *Juhnke v. Turkey – 52515/99. Judgment 13.5.2008 [Section IV]*. Article 8, Article 8-1. Respect for private life. Gynaecological examination imposed on a detainee without her free and informed consent: *violation*.
- *R.M.S. v. Spain – 28775/12. Judgment 18.6.2013 [Section III]*. Article 8. Positive obligations. Article 8-1. Respect for family life. Respect for private life. Placement of child on account of mother's financial situation and without taking into account subsequent change in circumstances: *violation*.

- *S.S. v. Slovenia – 40938/16. Judgment 30.10.2018 [Section IV]*. Article 8, Article 8-1. Respect for family life. Withdrawal of parental rights of mentally ill mother based on her inability to take care of her child: *no violation*.
- *Dakir v. Belgium – 4619/12. Judgment 11.7.2017 [Section II]*. Article 8, Article 8-1. Respect for private life. Ban on wearing face covering in public: no violation. Article 9, Article 9-1. Manifest religion or belief. Ban on wearing face covering in public: no violation. Article 14. Discrimination. Alleged indirect discrimination underlying ban on wearing face covering in public: *no violation*.
- *Godelli v. Italy – 33783/09. Judgment 25.9.2012 [Section II]*. Article 8, Article 8-1. Respect de la vie privée. Impossibilité pour une personne abandonnée à la naissance d'avoir accès à des informations non identifiantes ou de demander la réversibilité du secret sous réserve de l'accord de la mère: *violation*.
- *R.R. v. Poland – 27617/04. Judgment 28.11.11*. Lack of access to prenatal genetic tests resulting in inability to have an abortion on grounds of foetal abnormality. Article 3: *violation*. Article 8: *violation*.
- *Y.Y. v. Turkey – 14793/08. Judgment 10.06.2015*. Gender reassignment surgery made conditional on proof that the person concerned was no longer able to procreate. Article 8: *violation*.
- *Soares de Melo v. Portugal – 72850/14. Judgment 16.2.2016 [Section IV]*. Article 8, Article 8-1. Respect for family life. Placement of children in institutions for adoption on the grounds of the mother's precariousness and her refusal to be sterilized: *violation*.
- *Codarcea v. Romania – 31675/04. Judgment 2.6.2009 [Section III]*. Article 8, Article 8-1. Respect for privacy. Lack of guarantees of compensation for personal injury caused by a medical error in a public hospital: *violation*.

- *Khelili v. Switzerland – 16188/07. Judgment 18.10.2011 [Section II]*. Article 8, Article 8-1. Respect for privacy. Record by the police of the mention "prostitute" concerning a woman's profession, in the absence of any conviction at this regard: *violation*.
- *Buturugă v. Romania – 56867/15. Judgment 11.2.2020 [Section IV]*. Article 3. *Effective investigation. Positive obligations. Failure of authorities to approach criminal investigation from domestic violence perspective: violation. Article 8. Positive obligations. Article 8-1. Respect for correspondence. Absence of substantive examination of cyberviolence complaint closely linked to domestic violence complaint*: *violation* (very important case).
- *K.A.B. v. Spain – 59819/08. Judgment 10.4.2012 [Section III]*. Article 8, Article 8-1. Respect for privacy. Adoption of a child following the expulsion of his mother and despite the opposition of his father: *violation*.
- *Chbihi Loudoudi and Others v. Belgium – 52265/10. Judgment 16.12.2014 [Section II]*. Article 8. Positive obligations. Article 8-1. Respect for family life. Respect for privacy. Rejection of requests for a young girl's adoption entrusted by her biological parents to a couple through a kafala: *no violation*.
- *Y. v. Slovenia – 41107/10. Judgment 28.08.2015*. Article 3: *violation*. Failure to protect complainant's personal integrity in criminal proceedings concerning sexual abuse: violation. Article 8: *violation*.
- *Gross v. Switzerland – 67810/10. Judgment 14.5.2013 [Section II]*. Article 8. Positive obligations. Article 8-1. Respect for privacy. Lack of clear legal criteria regulating the prescription of medication to a person not suffering from a fatal disease, who then committed suicide: *violation*.
- *Schlumpf v. Switzerland – 29002/06. Judgment 8.1.2009 [Section I]*. Article 6. Civil Procedure. Article 6-1. Fair tri-

al. Public trial. Refusal to hear experts in a case concerning medical expenses linked to sexual reassignment operation: *violation*. Lack of publicity of proceedings in a case concerning medical expenses linked to a sexual reassignment operation: *violation*. Article 8, Article 8-1. Respect for family life. Respect for privacy. Balance between insurance company's interests and the applicant's interests in a case concerning medical expenses connected with a sexual reassignment operation: *violation*.

- *Özpınar v. Turkey – 20999/04. Judgment 19.10.2010 [Section II]*. Article 8, Article 8-1. Respect for privacy. Dismissal of a magistrate, motivated in part by her conduct in the context of private life: *violation*.
- *Neulinger and Shuruk v. Switzerland – 41615/07. Judgment 8.1.2009 [Section I]*. Article 8, Article 8-1. Respect for family life. Respect for privacy. Order to return to Israel the child kidnapped by his mother who has moved to Switzerland: *case referred to the Grand Chamber*.

Art. 9: **Manifest religion or belief.**

- *Eweida and Others v. the United Kingdom – 48420/10, 36516/10, 51671/10 et al. Judgment 15.1.2013 [Section IV]*. Article 9, Article 9-1. Manifest religion or belief. Disciplinary measures against employees for wearing religious symbols (cross) at work or refusing to perform duties they considered incompatible with their religious beliefs: violation; *no violation*. Article 14. Discrimination. Disciplinary measures against employees for wearing religious symbols (cross) at work or refusing to perform duties they considered incompatible with their religious beliefs: violation; *no violation*.

Art. 11: **Freedom of association. Freedom of peaceful assembly.**
Topics:
a. *LGBT rights*: refusals to authorise gay-pride; unlawful refusal to grant permission for a march and meetings to protest against homophobia; refusal to register LGBT associations.

- *Alekseyev v. Russia – 4916/07. Judgment 21.10.2010 [Section I]*. Article 11, Article 11-1. Freedom of association. Freedom of peaceful assembly. Repeated refusals to authorise gay-pride parades: *violation*.
- *Bączkowski and Others v. Poland – 1543/06. Judgment 3.5.2007 [Section IV]*. Article 11, Article 11-1. Freedom of peaceful assembly. Unlawful refusal to grant permission for a march and meetings to protest against homophobia: *violation*.
- *Zhdanov and Others v. Russia – 12200/08, 35949/11 and 58282/12. Judgment 16.7.2019 [Section III]*. Article 11, Article 11-1. Freedom of association. Refusal to register LGBT associations: violation. Article 14. Discrimination. Refusal to register LGBT associations: *violation*.

Art. 12: **Right to marry.**
Topics:
a. Refusal to allow in prison.

- *Frasik v. Poland – 22933/02. Judgment 5.1.2010 [Section IV]*. Article 12. Marry. Refusal to allow a prisoner to marry in prison: *violation*.
- *Jaremowicz v. Poland – 24023/03. Judgment 5.1.2010 [Section IV]*. Article 12. Marry. Refusal to allow a prisoner to marry in prison: *violation*.

Art. 14: **Discrimination.**

Topics:

a. *fundamental rights*: impossibility of adoption in same-sex couple; exclusion of same-sex couples from "civil unions"; more favourable conditions for family reunion depending on citizenship; difference in treatment between male and female of rights to parental leave; inability of same-sex couple to marry; placement of children with father due to mother's faith; reinforcing stigma and prejudice and encouraging homophobia among minors; failure of judicial system to serious domestic violence; refusal to grant a residence permit for family reason to a same-sex foreign partner; refusal, as a result of ethnic origin, to suspend sentence; prohibition on the use of ova and sperm for in vitro fertilisation; different-sex couple denied access to registered partnership; failure to take into account possible discriminatory motives in homophobic attack; failure to enforce a judgment acknowledging gender discrimination against a working mother; woman dismissed from post of security officer on grounds of her sex; denial of refugee card on the basis that the applicant was the child of a displaced woman rather than a man; refusal to prosecute authors of serious homophobic comments on Facebook including undisguised calls for violence; inaccessibility of protective measures against domestic violence to unmarried or divorced women; insufficient consideration of the risk of lethality in a situation of domestic violence;
b. *patrimonial rights*: differences for men and women to social security benefits; application of Islamic law concerning succession to estate; refusal to recognise Roma marriage for survivor's pension; reduction in damages award on grounds of sex and age; excessively formalistic interpretation of domestic law as regards paid maternity leave for adoptive mother;

difference in rights to retrospective survivor's pension between same-sex couples.

Synoptic/Summary Table

- *X and Others v. Austria [GC] – 19010/07, Judgment 19.2.2013 [GC]. Article 14*. Discrimination. Impossibility of second-parent adoption in same-sex couple: *violation*.
- *Stec and Others v. the United Kingdom [GC] – 65731/01, Judgment 12.4.2006 [GC]*. Article 14. Discrimination. Differences in the entitlement for men and women to certain industrial injuries social security benefits: *no violation*.
- *Molla Sali v. Greece [GC] – 2052/14, Judgment 19.12.2018 [GC]*. Article 14. Discrimination. Application of Islamic law (sharia) in litigation concerning succession to estate of Greek Muslim: *violation*.
- *Khamtokhu and Aksenchik v. Russia [GC] – 60367/08 and 961/11, Judgment 24.1.2017 [GC]*. Article 14. Discrimination. Alleged discrimination in provisions governing liability to life imprisonment: *no violation*. (*a contrario*: Article 57 of the Russian Criminal Code provides that a sentence of life imprisonment may be imposed for certain particularly serious offences. However, such a sentence cannot be imposed on women, or on persons under 18 when the offence was committed or over 65 at the date of conviction. Conclusions: no violation on grounds of age (sixteen votes to one); no violation on grounds of sex (ten votes to seven). Nb: *No broader interpretation of gender based discrimination*.
- *Vallianatos and Others v. Greece [GC] – 29381/09 and 32684/09, Judgment 7.11.2013 [GC]*. Article 14. Discrimination. Exclusion of same-sex couples from "civil unions": *violation*.

- *Biao v. Denmark [GC] – 38590/10, Judgment 24.5.2016 [GC]*. Article 14. Discrimination. More favourable conditions for family reunion applying to persons who had held Danish citizenship for at least 28 years: *no violation*.
- *Andrejeva v. Latvia [GC] – 55707/00, Judgment 18.2.2009 [GC]*. Article 14. Discrimination. Refusal to take applicant's years of employment in former Soviet Union into account when calculating her entitlement to a retirement pension because she did not have Latvian citizenship: *violation*.
- *S.A.S. v. France [GC] – 43835/11, Judgment 1.7.2014 [GC]*. Article 8, Article 8-1. Respect for private life. Ban on wearing religious face covering in public: no violation. Article 9, Article 9-1. Manifest religion or belief. Ban on wearing religious face covering in public: no violation. Article 14. Discrimination. Ban on wearing religious face covering in public: *no violation*.
- *Konstantin Markin v. Russia [GC] – 30078/06, Judgment 22.3.2012 [GC]*. Article 14. Discrimination. Difference in treatment between male and female military personnel regarding rights to parental leave: *violation*.
- *Şerife Yiğit v. Turkey [GC] – 3976/05, Judgment 2.11.2010 [GC]*. Article 14. Discrimination. Refusal to recognise applicant as heir of man she had married in purely religious ceremony: *no violation*.
- *Schalk and Kopf v. Austria – 30141/04, Judgment 24.6.2010 [Section I]*. Article 14. Discrimination. Inability of same-sex couple to marry: *no violation*. Article 8, Article 8-1. Respect for family life. Cohabiting same-sex couple living in a stable relationship constitute "family life": article 8 applicable.
- *Gas and Dubois v. France – 25951/07. Judgment 15.3.2012 [Section V]*. Article 14. Discrimination. Refusal of simple adoption order in favour of homosexual partner of biological mother: *no violation*.

- *Palau-Martinez v. France – 64927/01. Judgment 16.12.2003 [Section II]*. Article 14. Discrimination. Placement of children with father, as the mother was a Jehovah's Witness: *violation*.
- *Bayev and Others v. Russia – 67667/09, 44092/12 and 56717/12. Judgment 20.6.2017 [Section III]*. Article 10, Article 10-1. Freedom of expression. Legislative prohibition on the promotion of homosexuality among minors reinforcing stigma and prejudice and encouraging homophobia: *violation*. Article 14. Discrimination.Unjustified difference in treatment between heterosexual majority and homosexual minority: *violation*.
- *Muñoz Díaz v. Spain – 49151/07. Judgment 8.12.2009 [Section III]*. Article 14. Discrimination. Refusal to recognise validity of Roma marriage for purposes of establishing entitlement to survivor's pension: *violation*.
- *Bah v. the the United Kingdom – 56328/07, Judgment 27.9.2011 [Section IV]*. Article 14. Discrimination. Refusal to take minor subject to immigration control into account when determining priority in entitlement to social housing: *no violation*.
- *Opuz v. Turkey – 33401/02. Judgment 9.6.2009 [Section III]*. Article 2. Positive obligations. Article 2-1. Life. Fatal injuries sustained by applicant's mother in domestic violence case in which authorities had been aware of the perpetrator's history of violence: *violation*. Article 3. Degrading treatment. Inhuman treatment. Positive obligations. Failure of authorities to take adequate measures to protect applicant and her family from domestic violence: *violation*. Article 14. Discrimination. Failure of judicial system to provide adequate response to serious domestic violence: *violation* (very important case).
- *Carvalho Pinto de Sousa Morais v. Portugal – 17484/15. Judgment 25.7.2017 [Section IV]*. Article 14. Discrimina-

tion. Reduction in damages award on grounds of sex and age of claimant: *violation* (very important case).

- *Taddeucci and McCall v. Italy – 51362/09. Judgment 30.6.2016 [Section I]*. Article 14. Discrimination. Refusal to grant a residence permit for family reason to a same-sex foreign partner: *violation*.
- *Savez crkava "Riječ života" and Others v. Croatia – 7798/08. Judgment 9.12.2010 [Section I]*. Article 14. Discrimination. Inability of Reformist churches to provide religious education in schools and to conclude officially recognised religious marriages: *violation*.
- *Topčić-Rosenberg v. Croatia – 19391/11. Judgment 14.11.2013 [Section I]*. Article 14. Discrimination. Excessively formalistic interpretation of domestic law as regards paid maternity leave for adoptive mother: *violation*.
- *Paraskeva Todorova v. Bulgaria – 37193/07. Judgment 25.3.2010 [Section V]*. Article 14. Discrimination. Refusal, as a result of applicant's ethnic origin, to suspend sentence: *violation*.
- *S.H. and Others v. Austria – 57813/00. Judgment 1.4.2010 [Section I]*. Article 14. Discrimination. Prohibition under domestic law on the use of ova and sperm from donors for in vitro fertilisation: *violation*.
- *Taddeucci and McCall v. Italy – 51362/09. Judgment 30.6.2016 [Section I]*. Article 14. Discrimination.
- Refusal to grant a residence permit for family reasons to a foreign same sex partner: *violation*.
- *Ratzenböck and Seydl v. Austria – 28475/12. Judgment 26.10.2017 [Section V]*. Article 14. Discrimination. Different-sex couple denied access to registered partnership reserved exclusively for same-sex couples: *no violation*.
- *Çam v. Turkey – 51500/08. Judgment 23.2.2016 [Section II]*. Article 14. Discrimination. Refusal by academy of music

to enrol blind person despite her having passed competitive entrance examination: *violation*.

- *M.C. and A.C. v. Romania – 12060/12. Judgment 12.4.2016 [Section IV]*. Article 14. Discrimination. Failure to take into account possible discriminatory motives in investigation of homophobic attack: *violation*.
- *García Mateos v. Spain – 38285/09. Judgment 19.2.2013 [Section III]*. Article 14. Discrimination. Failure to enforce a judgment acknowledging *gender discrimination* against a working mother: *violation*.
- *Aldeguer Tomás v. Spain – 35214/09. Judgment 14.6.2016 [Section III]*. Article 14. Discrimination. Difference in rights to retrospective survivor's pension between same-sex couples and unmarried different-sex couples: *no violation*.
- *Bălşan v. Romania – 49645/09. udgment 23.5.2017 [Section IV]*. Article 14. Discrimination. Failure of authorities to take appropriate action to address domestic *violence against women: violation*. Article 3. Positive obligations. Failure of authorities to take adequate measures to protect applicant from *domestic violence*: *violation*.
- *Emel Boyraz v. Turkey – 61960/08. Judgment 2.12.2014 [Section II]*. Article 14. Discrimination. Woman *dismissed from post* of security officer *on grounds of her sex*: *violation*.
- *Alexandru Enache v. Romania – 16986/12. Judgment 3.10.2017 [Section IV]*. Article 14. Legislation permitting deferral of prison sentence for mothers, but not fathers, of young children: *no violation* (*a contrario*).
- *Vrountou v. Cyprus – 33631/06. Judgment 13.10.2015 [Section IV]*. Article 14. Discrimination. Denial of refugee card on the basis that the applicant was the child of a displaced woman rather than a displaced man: *violation*.

- *Beizaras and Levickas v. Lithuania – 41288/15. Judgment 14.1.2020 [Section II]*. Article 35, Article 35-1. Exhaustion of domestic remedies. *NGO pursuing criminal complaints* in the interest of applicants targeted by homophobic comments on Facebook: *admissible*. Article 13. Effective remedy. Discriminatory attitudes impacting on the effectiveness of remedies in the application of domestic law: violation. Article 14. Discrimination. Refusal to prosecute authors of serious homophobic comments on Facebook including undisguised calls for violence, without effective investigation beforehand: *violation*.
- *M.G. v. Turkey – 646/10. Judgment 22.3.2016 [Section II]*. Article 3. Positive obligations. Inaccessibility of protective measures against domestic violence to unmarried or divorced women: *violation*. Article 14. Discrimination. Inaccessibility of protective measures against domestic violence to unmarried or divorced women: *violation*.
- *Halime Kılıç v. Turkey – 63034/11. Judgment 28.6.2016 [Section II]*. Article 2. Positive obligations. Article 2-1. Life. Insufficient consideration of the risk of lethality in a situation of domestic violence: *violation*. Article 14. Discrimination. Persistent climate of impunity for domestic violence, mainly affecting women: *violation* (very important case).
- *McMichael v. the United Kingdom – 16424/90. Judgment 24.2.1995*. Article 6. Procédure civile. Article 6-1. Fair trial. Contradictory procedure. Proceedings in Scotland concerning children subject to forcible placement measures: *violation*. Article 14. Discrimination. Parental rights towards children born out of wedlock: *violation*.
- *Gülay Çetin v. Turkey – 44084/10. Judgment 5.3.2013 [Section II]*. Article 3. Degrading treatment. Inhuman treatment. Insufficient procedure to protect a person's health suffering

from a serious illness: *violation*. Article 14. Discrimination. Unjustified different treatment between persons and convicted on health grounds: *violation*.

- *Belli and Arquier-Martinez v. Switzerland – 65550/13. Judgment 11.12.2018 [Section III]*. Article 14. Discrimination. Expatriation resulting in the loss of non-contributory disability social security benefits: *no violation*.

4.2. Gender in ECHR

Keywords: Gender.

Timeline: 2000-2020.

Results: Violation and No Violation (in order to detect protection vacuum).

Synoptic/Summary Table

- *A, B and C v. Ireland [GC] – 25579/05. Judgment 16.12.2010 [GC]*. Article 8, Article 8-1. *Respect for private life. Restrictions on obtaining an abortion in Ireland*: *violation*; *no violation*.
- *A.P., Garçon and Nicot v. France – 79885/12, 52471/13 and 52596/13. Judgment 6.4.2017 [Section V]*. Article 8. Positive obligations, Article 8-1. *Respect for private life. Legal requirements for rectification of civil status for transgender persons*: *violation, no violation*.
- *L. v. Lithuania – 27527/03. Judgment 11.9.2007 [Section II]*. Article 8, Article 8-1. Respect for family life. *Respect for private life. Failure to introduce implementing legislation to enable a transsexual to undergo gender-reassignment surgery*

and change his gender identification in official documents: *violation*. Article 41. Just satisfaction. Just satisfaction in respect of State's failure to enact implementing legislation: State to introduce relevant legislation within set time frame or, in default, pay a specified amount in respect of pecuniary damage.

- *Van Kück v. Germany – 35968/97. Judgment 12.6.2003 [Section III]*. Article 8, Article 8-1. *Respect for private life. Refusal to order private insurance company to reimburse costs of gender re-assignment surgery*: *violation*, Article 6. Civil proceedings. Article 6-1. Fair hearing. Fairness of proceedings concerning reimbursement of the costs of gender re-assignment surgery: *violation*.
- *Grant v. the United Kingdom – 32570/03. Judgment 23.5.2006 [Section IV]*. Article 8, Article 8-1. *Respect for private life. Transsexual denied legal recognition of her gender change and refused retirement pension from the age applicable to other women*: *violation*.
- *Jabari v. Turkey – 40035/98. Judgment 11.7.2000 [Section IV]*. Article 3. Expulsion. *Expulsion to Iran – risk of stoning for adultery*: *violation*.
- *M.C. v. Bulgaria – 39272/98. Judgment 4.12.2003 [Section I]*. Article 3. Positive obligations, *Adequacy of protection provided by Bulgarian law for victim of alleged rape*: *violation*. Article 8. Positive obligations. *Bulgarian law provided insufficient protection to victim of an alleged act of rape*: *violation*.
- *S.L. v. Austria – 45330/99. Judgment 9.1.2003 [Section I]*. Article 14. *Discrimination. Different age of consent for homosexual and heterosexual/ lesbian acts*: *violation*.
- *L. and V. v. Austria – 39392/98 and 39829/98. Judgment 9.1.2003 [Section I]*. Article 14. *Discrimination. Different age of consent for homosexual and heterosexual/ lesbian acts*: *violation*.

- *Ünal Tekeli v. Turkey – 29865/96. Judgment 16.11.2004 [Section IV]*. Article 14. *Discrimination. Impossibility for married woman to use only her maiden name in official documents*: *violation*.
- *Škorjanec v. Croatia – 25536/14. Judgment 28.3.2017 [Section II]*. Article 3. Effective investigation. Positive obligations. *Failure to investigate racially motivated act of violence against victim by association*: *violation*.
- *Wainwright v. the United Kingdom – 12350/04. Judgment 26.9.2006 [Section IV]*. Article 8, Article 8-1. *Respect for private life. Disregard for procedures for strip-searching visitors to a prison*: *violation*. Article 3. Degrading treatment. Inhuman treatment. Strip-search of family members paying a prison visit: *no violation*. Article 13. Effective remedy. Prison officers' negligence did not give grounds for any civil liability for strip-searches, in particular as there was no general tort of invasion of privacy: *violation*.
- *Schwizgebel v. Switzerland – 25762/07. Judgment 10.6.2010 [Section I]*. Article 14. *Discrimination. Unmarried woman of a certain age debarred from adopting a second child*: *no violation*.
- *Beghal v. the United Kingdom – 4755/16. Judgment 28.2.2019 [Section I]*. Article 8. Article 8-1. *Respect for private life. Power of border control officials to stop and question without suspicion or access to lawyer*: *violation*.
- *Pretty v. the United Kingdom – 2346/02. Judgment 29.4.2002 [Section IV]*. Article 2. *Positive obligations. Refusal to give undertaking not to prosecute husband for assisting wife to commit suicide*: *no violation*. Article 3. Degrading treatment. Inhuman treatment. *Refusal to give undertaking not to prosecute husband for assisting wife to commit suicide*: *no violation*. Article 8. Article 8-1. Respect for private life. Refusal to give undertaking not to prosecute husband for assisting wife to commit suicide: *no violation*.

- *Di Trizio v. Switzerland – 7186/09. Judgment 2.2.2016 [Section II]*. Article 14. *Discrimination. Method of calculation of invalidity benefits which in practice was discriminatory against women*: *violation*. Article 8, Article 8-1. Respect for family life. Respect for private life. De facto discrimination against women arising out of method of calculation of invalidity benefits: Article 8 *applicable*.
- *Andrle v. the Czech Republic – 6268/08. Judgment 17.2.2011 [Section V]*. Article 14. *Discrimination. Lower pensionable age for women who had raised children, but not for men*: *no violation*.
- *Vejdeland and Others v. Sweden – 1813/07. Judgment 9.2.2012 [Section V]*. Article 10, Article 10-1. *Freedom of expression. Convictions for circulating homophobic leaflets at school*: *no violation*.
- *Dogru v. France – 27058/05. Judgment 4.12.2008 [Section V]*. Article 9. Article 9-1. *Manifest religion or belief. Expulsion of female pupils from State school for refusing to remove headscarves during physical education and sports lessons*: *no violation*.
- *Dadouch v. Malta – 38816/07. Judgment 20.7.2010 [Section IV]*. Article 8, Article 8-1. *Respect for family life. Respect for private life. Prolonged failure to register marriage concluded abroad*: *violation*.
- *J.M. v. the United Kingdom – 37060/06. Judgment 28.9.2010 [Section IV]*. Article 14. *Discrimination. Difference in treatment on grounds of sexual orientation in relation to child-support regulations*: *violation*.
- *J.D. and A v. the United Kingdom – 32949/17 and 34614/17. Judgment 24.10.2019 [Section I]*. Article 14. *Discrimination. No distinction made in favour of certain categories of vulnerable social housing tenants in the application of amended housing benefit scheme*: *no violation*, *violation*.

- *Sousa Goucha v. Portugal – 70434/12. Judgment 22.3.2016 [Section IV]*. Article 8. Positive obligations. Article 8-1. *Respect for private life. Refusal to prosecute for joke made during television comedy show about homosexual celebrity referred to as a "female"*: *no violation*. Article 14. *Discrimination. Refusal to prosecute for joke made during television comedy show about homosexual celebrity referred to as a "female": no violation*. Facts – During a live television comedy show, a joke was made about the applicant, a well-known homosexual TV host, who was referred to as a "female". His criminal complaint for defamation against the television and production companies, the presenter and the directors of programming and content was dismissed by the domestic courts.
- *Identoba and Others v. Georgia – 73235/12. Judgment 12.5.2015 [Section IV]*. Article 3. Positive obligations. *State's failure to protect demonstrators from homophobic violence and to launch effective investigation*: *violation*. Article 14. *Discrimination. State's failure to protect demonstrators from homophobic violence and to launch effective investigation*: *violation*.
- *N. v. Sweden – 23505/09. Judgment 20.7.2010 [Section III]*. Article 3. *Expulsion. Risk of ill-treatment in case of deportation to Afghanistan of a woman separated from her husband*: deportation *would constitute a violation*.
- *Pajić v. Croatia – 68453/13. Judgment 23.2.2016 [Section II]*. Article 14. *Discrimination. Discrimination between unmarried same-sex couples and unmarried different-sex couples in obtaining family reunification*: *violation*.
- *M.E. v. Sweden – 71398/12. Judgment 26.6.2014 [Section V]*. Article 3. Expulsion. *Homosexual required to return to Libya in order to apply for family reunion*: *no violation*.
- *Korelc v. Slovenia – 28456/03. Judgment 12.5.2009 [Section III]*. Article 14. *Discrimination. Inability of a cohabitant pro-*

viding daily care to inherit tenancy: inadmissible. Article 8, Article 8-1. Respect for home. Inability of a cohabitant providing daily care to inherit tenancy: *inadmissible*.

- *Eremia v. the Republic of Moldova – 3564/11. Judgment 28.5.2013 [Section III]*. Article 3. *Inhuman treatment. Positive obligations. Failure of authorities to take adequate measures to protect applicant and her daughters from domestic violence*: *violation*. Article 8. Positive obligations. Article 8-1. *Respect for private life. Failure of authorities to take adequate measures to protect daughters traumatised as a result of witnessing their father's violent assaults on their mother*: *violation*. Article 14. *Discrimination. Failure of judicial system to provide adequate response to serious domestic violence against women*: *violation*.
- *Valiulienė v. Lithuania – 33234/07. Judgment 26.3.2013 [Section II]*. Article 3. Degrading treatment. Inhuman treatment. Effective investigation. *Investigative and procedural flaws resulting in prosecution of domestic-violence case becoming time-barred*: *violation*.
- *W.H. v. Sweden (referral) – 49341/10. Judgment 27.3.2014 [Section V]*. Article 3. *Expulsion. Order for deportation of a Mandaean woman to Iraq*: *case referred to the Grand Chamber*.
- *B.S. v. Spain – 47159/08. Judgment 24.7.2012 [Section III]*. Article 14. D*iscrimination. Ineffective investigation into possible racist motivation for ill-treatment allegedly suffered by Nigerian prostitute*: *violation*.
- *Khadija Ismayilova v. Azerbaijan – 65286/13 and 57270/14. Judgment 10.1.2019 [Section V]*. Article 8. Positive obligations. Article 8-1. *Respect for private life. Failure to effectively investigate serious interferences into well-known journalist's private life*: *violation*. Article 10. Positive obligations. Failure to protect journalist's freedom of expression: *violation*.

- *Wiktorko v. Poland – 14612/02. Judgment 31.3.2009 [Section IV]*. Article 3. Degrading treatment. *Female applicant stripped naked in a sobering-up centre by male staff members and immobilised with belts for ten hours; lack of effective investigation*: *violation*.
- *S.F. and Others v. Sweden – 52077/10. Judgment 15.5.2012 [Section V]*. Article 3. *Expulsion. Refusal of asylum to Iranian dissidents who had actively and openly campaigned against the regime since their arrival in respondent State*: deportation would constitute a *violation*.
- *Mariya Alekhina and Others v. Russia – 38004/12. Judgment 17.7.2018 [Section III]*. Article 10. Article 10-1. *Freedom of expression. Conviction and prison term for performing political song in cathedral and ban on performance video-recordings online*: *violation*.
- *P. and S. v. Poland – 57375/08. Judgment 30.10.2012 [Section IV]*. Article 8, Article 8-1. *Respect for private life. Disclosure of information by public hospital about a pregnant minor who was seeking an abortion after being raped*: *violation*. Article 3. *Degrading treatment. Inhuman treatment. Harassment of minor by anti-abortion activists as a result of authorities' actions after she had sought an abortion following rape*: *violation*. Article 5, Article 5-1. *Lawful arrest or detention. Placement of pregnant minor in juvenile shelter to prevent her from seeking abortion following rape*: *violation*.
- *J.K. and Others v. Sweden (referral) – 59166/12. Judgment 4.6.2015 [Section V]*. Article 3. *Expulsion. Proposed deportation to Iraq of family threatened by al-Qaeda: case referred to the Grand Chamber*.
- *Bljakaj and Others v. Croatia – 74448/12. Judgment 18.9.2014 [Section I]*. Article 2. Positive obligations. Article 2-1. *Life. Police failure to take reasonable measures to protect life of lawyer killed by mentally disturbed man*: *violation*.

- *M.S. v. Croatia (no. 2) – 75450/12, Judgment 19.2.2015 [Section I]*. Article 5, Article 5-1-e. *Persons of unsound mind. Lack of effective legal representation in proceedings concerning applicant's confinement in a psychiatric hospital*: *violation*. Article 3. *Degrading treatment. Inhuman treatment. Effective investigation. Unnecessary physical restraint for 15 hours in psychiatric hospital and lack of investigation into alleged ill-treatment*: *violation*.
- *Lashmankin and Others v. Russia – 57818/09, 51169/10, 4618/11 et al. Judgment 7.2.2017 [Section III]*. Article 11. Article 11-1. *Freedom of peaceful assembly. Arbitrary and discriminatory power of authorities to propose changes in location, time or manner of conduct of a public event*: *violation*. Article 13. *Effective remedy. Lack of effective remedy allowing an enforceable judicial decision against authorities' refusal to approve the location, time or manner of conduct of a public event before its planned date*: *violation*.

4.3. Gender in ECJ

Keywords: Gender.

Timeline: 2000-2020.

- *Joined Cases T-770/16 and T-352/17* Janusz Korwin-Mikke v European Parliament.
- *Case C-451/16* MB,.l v Secretary of State for Work and Pensions.
- *Case C-443/15* Dr David L. Parris v Trinity College Dublin and Others.
- *Joined Cases C-148/13, C-149/13 and C-150/13* A, B and C.
- *Case C-236/09* Association Belge des Consommateurs Test-Achats ASBL and Others v Conseil des ministres.

- *Case C-396/07*. Mirja Juuri v Fazer Amica Oy.
- *Case C-423/0* Sarah Margaret Richards v Secretary of State for Work and Pensions.
- *Case C-14/04* Abdelkader Dellas Confédération générale du travail Fédération nationale des syndicats des services de santé et des services sociaux CFDT Fédération nationale de l'action sociale Force ouvrière v Secrétariat général du gouvernement.
- *Case C-151/02* Landeshauptstadt Kiel v Norbert Jaeger.
- *Case C-117/01* K.B. v The National Health Service Pensions Agency e The Secretary of State for Health.

Results: The attention paid by ECHR is focused mainly on the protection of right to life and its private dimension, though "no-violation" decisions seem remarkable. In addition, this may appear as a trend whenever particular respect is addressed towards Member States' discretion in shaping civil and social rights policies. All of above can be detected *vis-à-vis* the recognition of pluralist perspectives on "family/ies", whereas a strong guarantee is promoted towards LGBT rights, in order to overcome homophobic o trans-phobic phenomena.

Same considerations can be underlined as far as "gender" as a key word research is concerned.

Moreover, one can retrieve few judgments in connection with the right to marry in its broaden interpretation, while a strict scrutiny is ensured in case of specific circumstances of vulnerability. Once again, the protection against all forms of discrimination is likely to be linked to issues regarding personal and family life, thus confirming the role played by these provisions in shaping an "European" gender-based approach.

Nonetheless, discrimination is taken into account as a primary source for different ranges of inequalities and through all its facets.

Undoubtedly, the relevance and the weight of basic principles are safeguarded, aiming at testifying the multiple interactions between rights and their enjoyment. Still, the body as an outer element of personality bearing an inner dignity as well lacks a space for protection on its own (for instance: trafficking in human beings, forced labor, right to liberty and security). Despite a thorough entitlement in rights, a substantive endowment is missing in this case, since sporadic decisions guide the access to courts, notably on civil right and obligations.