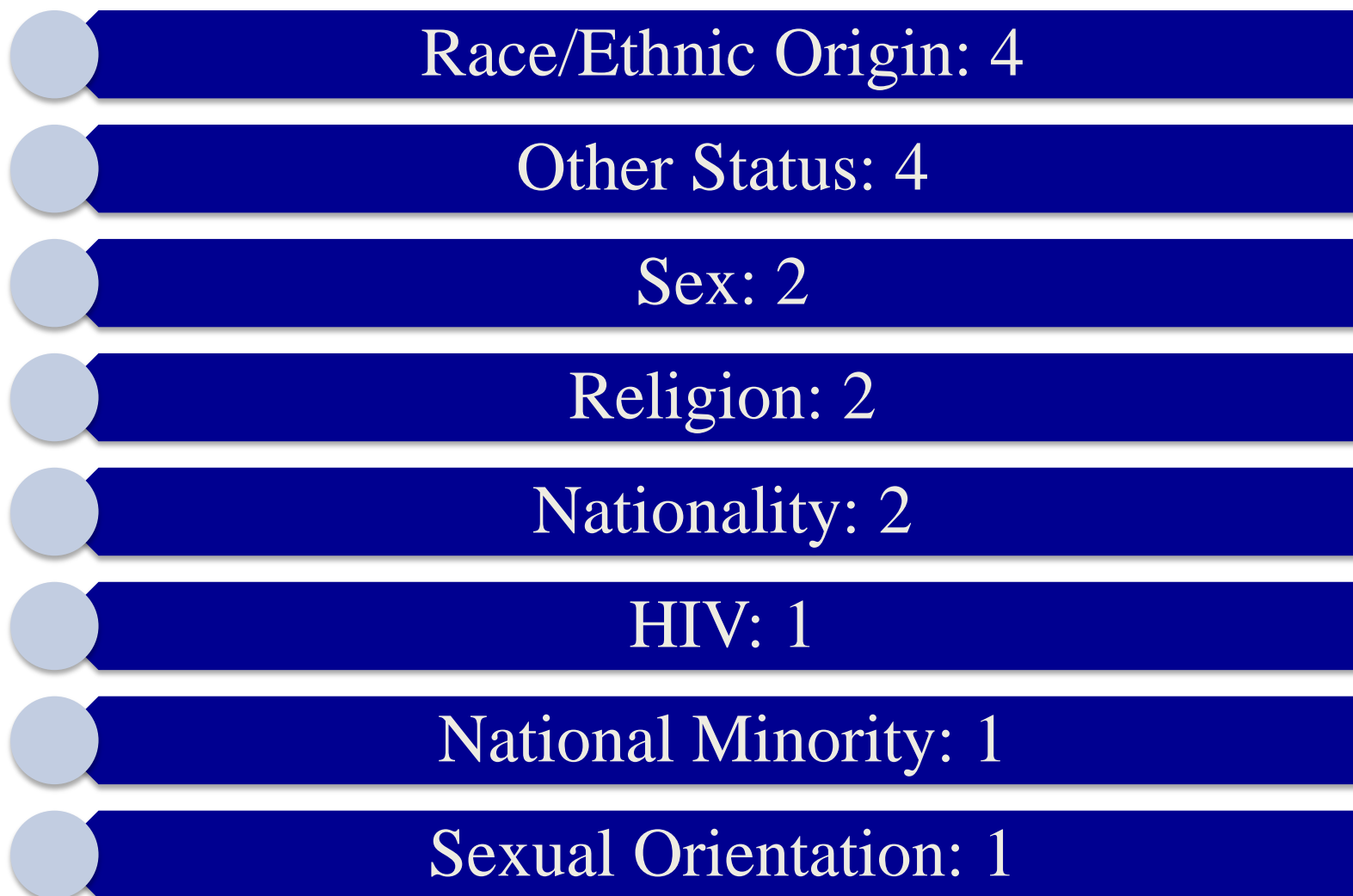


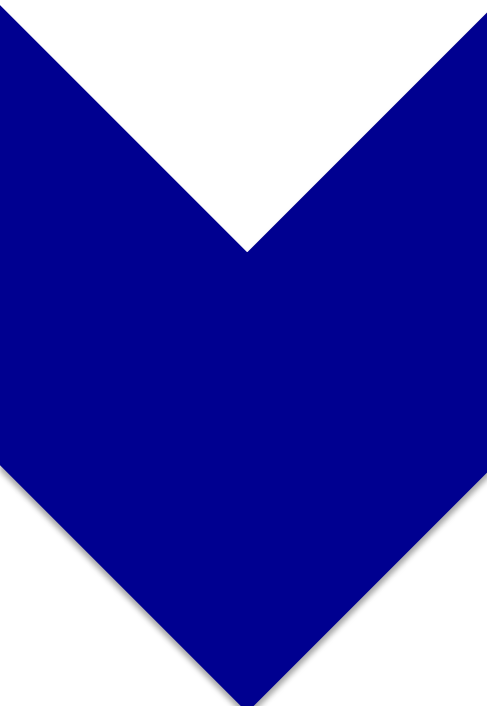
ARTICLE 14 ECHR CASE LAW
Legal Seminar, 24 November 2015

Lourdes Peroni, Postdoctoral Researcher

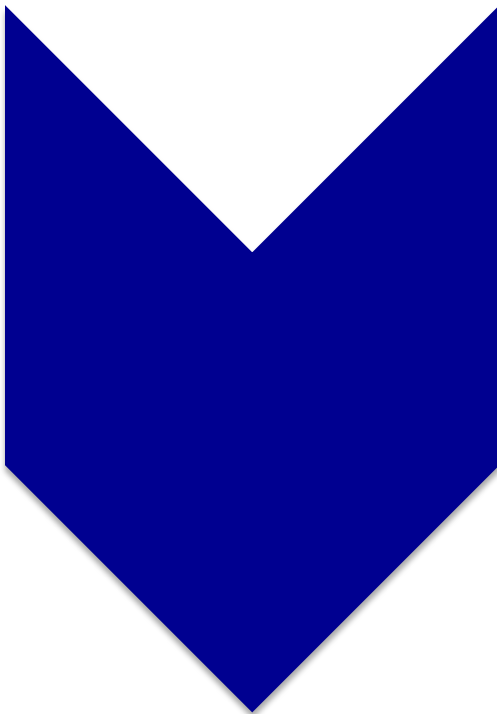
17 JUDGMENTS: 1 Nov 2014 – 15 Nov 2015



10 VIOLATIONS

- 
- *Balázs v. Hungary* (**race**)
 - *Ciorcan and Others v. Romania* (**race**)
 - *Emel Boyraz v. Turkey* (**sex**)
 - *Vrountou v. Cyprus* (**sex**)
 - *Identoba and Others v. Georgia* (**sexual orientation**)
 - *Danis and Association of Ethnic Turks v. Romania* (**national minority**)
 - *Cumhuriyetçi Eğitim Ve Kültür Merkezi Vakfı v. Turkey* (**religion**)
 - *Martzaklis v. Greece* (**HIV**)
 - *Costel Gaciu v. Romania* (**other status: remanded in custody**)
 - *Sidabras and Others v. Lithuania* (**other status: ex KGB employee**)

8 NO VIOLATIONS

- 
- *Qing v. Portugal* (**nationality**)
 - *Chbihi Loudoudi v. Belgium* (**nationality**)
 - *Lupeni Greek Catholic Parish and Others v. Romania* (**religion**)
 - *Mileusnić and Mileusnić-Espenheim v. Croatia* (**race**)
 - *Ion Bălăsoiu v. Romania* (**race**)
 - *Arnaud and Others v. France* (**other status: residence**)
 - *Junta Rectora del E.R.N.E. v. Spain* (**other status: police**)
 - *Sidabras and Others v. Lithuania* (**other status: ex KGB**)

OUTCOME



Violations

- Race: 2
- Sex: 2
- Other Status: 2
- Sexual Orientation: 1
- Religion: 1
- Minority: 1
- HIV: 1
- Nationality: 0



No Violations

- Race: 2
- Sex: 0
- Other Status: 3
- Sexual Orientation: 0
- Religion: 1
- Minority: 0
- HIV: 0
- Nationality: 2

RESPONDENT STATES

Romania: 5

Turkey: 2

Greece: 1

Belgium: 1

Cyprus: 1

Croatia: 1

France: 1

Georgia: 1

Hungary: 1

Lithuania: 1

Portugal: 1

Spain: 1

94 DECISIONS: 1 NOV 2014 – 15 NOV 2015

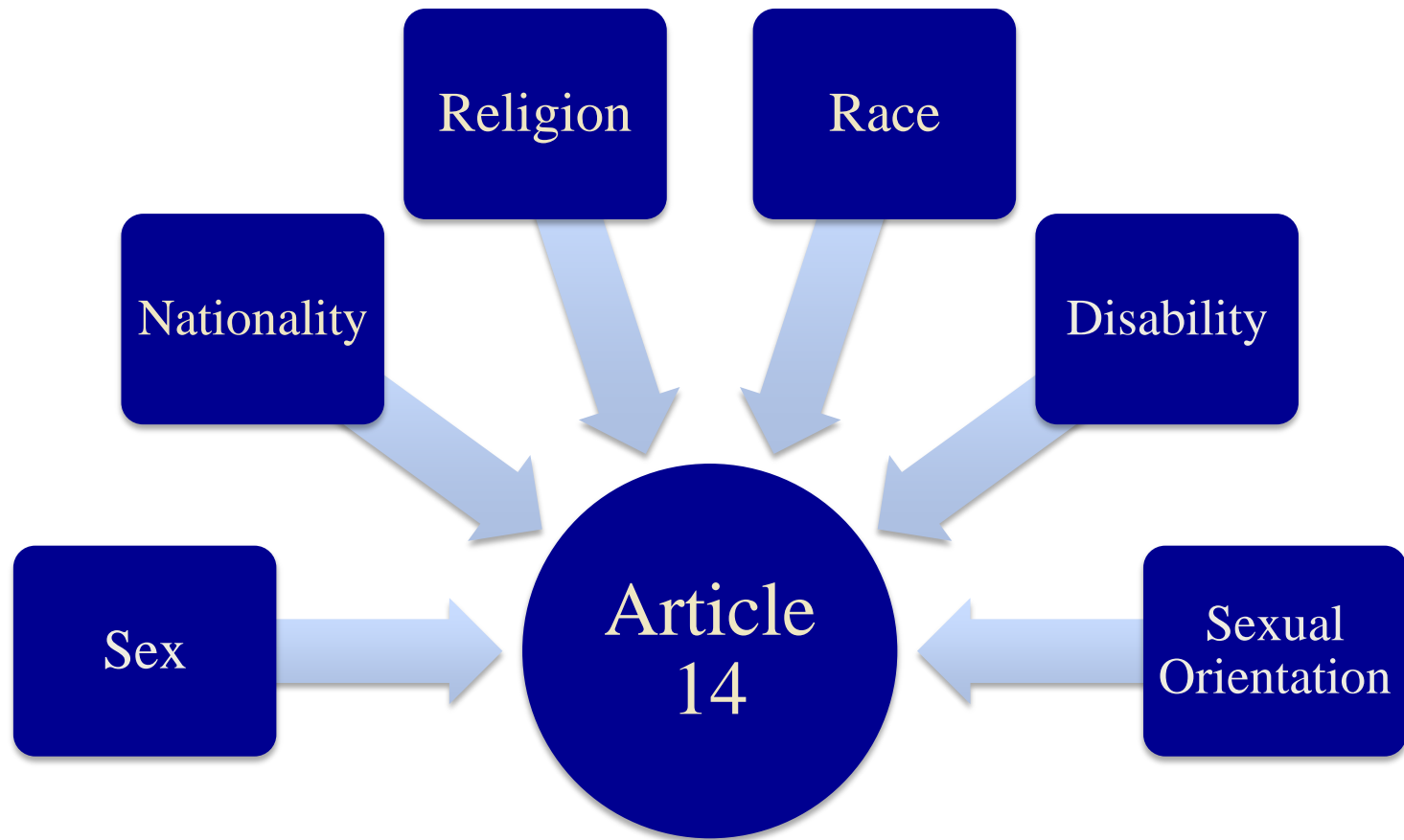
1

- *Gherghina v Romania*
(disability) Non Exhaustion

2

- *Žarković v Croatia*
(ethnic origin) Struck Out (Declaration)
- *S.S., F.A. and Others v the United Kingdom*
(prisoners) Ill Founded

DISCUSSED GROUNDS



SEX

Violations

Emel Boyraz v Turkey

Vrontou v Cyprus

Emel Boyraz: Dismissal, women not suitable for security officer post

Violation Arts 14 & 8

- **Applicability:** Dismissal on sole ground of sex has adverse effects on person's identity and private life
- Difference in treatment pursued **no legitimate aim:** No explanation of women's supposed inability to undertake risks/responsibilities inherent in the post

Vrountou: Children of displaced mothers not entitled to “refugee cards”

Violation
Art 14 & Art 1 of
Protocol 1

- Government’s justification: Men **breadwinners** in 1974
- **Insufficient Justification**: Social attitudes deriving from man’s primary role and **women’s secondary role in the family** (*Konstantin Markin*)
- Timing: Long-standing difference in treatment (**40 years**) **exceeded any MoA**, very weighty reasons
- **Budgetary considerations** alone cannot justify difference in treatment based exclusively on gender

NATIONAL ORIGIN

No Violation

Qing v Portugal

Qing: Nationality, a factor justifying pre-trial detention

No Violation
Arts 14 & 5.1 (c)

- Risk for investigation very high given “special characteristics of Chinese community in Portugal”:
No discriminatory intent but domestic authorities should refrain from **prejudicial comments** on issues concerning **foreign citizens**.

RACE

Procedural Violation
Arts 14 & 3

Balázs v Hungary

Balázs I: Investigation of possible racist motives

Rigorous
Investigation
Required

- Offenses committed against members of particularly **vulnerable groups**

Balázs II: Investigation of possible racist motives

Context/Reports

- Alleged **language** (“gypsy”) against background of **documented prejudice/hostility against Roma** called for **verification**

Balázs III: Investigation of possible racist motives

Mixed Motives

- Hate crimes: Not only acts based **solely on a victim's characteristic**
- Perpetrators may have **mixed motives**, being influenced by situational factors equally or stronger than by their biased attitude towards the group the victim belongs to

Balázs IV: Investigation of possible racist motives

Conclusion:
Ineffective
Investigation into
Motive

- “Manifestly Unreasonable Assessment”: Insistence on **exclusive racist motive**; failure to identify racist motive in the face of **powerful hate crime indicators** (posts on social network)

SEXUAL ORIENTATION

Violations

Identoba and Others v Georgia

Oliari and Others v Italy

Identoba: Protection of LGBT marchers and investigation into homophobic violence

Violation Arts 3 & 14

- **Role of broader context** of negative social attitudes in assessing state duties to protect and investigate homophobic motives
- **Heightened**/compelling character of **duty to protect**: Reports & request for protection

Violation Arts 11 & 14

- Given such attitudes: **Obligation to use any means possible** to ensure demonstration can take place peacefully

Oliari: Legal recognition of same-sex unions

Violation Art 8

- **Positive obligation** to put in place specific **legal framework** recognizing and protecting same-sex unions

Arts 12 & 14
Ill Founded

- *Schalk and Kopf*: No obligation to grant same-sex couples access to marriage

RELIGION

One Violation
One No Violation

*Cumhuriyetçi Eğitim Ve Kültür
Merkezi Vakfı v Turkey*

*Lupeni Greek Catholic Parish and
Others v Romania*

Cumhuriyetçi: Non-recognition of Alevi *cemevis* as places of worship and denial of ensuing material benefits

Violation Arts 14 & 9

- Difference in treatment: Implicit exclusion of **cemevis** from exemption to pay electricity (mosques, synagogues and churches)
- No objective and reasonable justification: State's appreciation that **Alevi confession is not a religion cannot justify** exclusion from benefits given to places of worship

Lupeni Greek Catholic Parish I: Non-restitution of Catholic church transferred to Orthodox Church

Arts 14 & 6 § 1: No
Violation

Arts 9 and 14: Ill
Founded

Arts 1, Prot 1 & 14: Ill
Founded

- Restitution criterion:
“**Wishes of adherents** of
communities owning
properties” (in practice
Orthodox Church)

Lupeni Greek Catholic Parish II: Non-restitution of Catholic church transferred to Orthodox Church

No Violation
Arts 14 & 6 § 1

- Criterion: legitimate objective & reasonable justification
- **Application of criterion not limited and automatic:** courts balanced several interests within historical context; respect for **communities' religious autonomy** to decide over property of their places of worship

HIV/DISABILITY

One Violation
One Inadmissible

Martzaklis and Others v Greece

Gherghina v Romania

Martzaklis: Segregation/detention conditions of HIV-positive prisoners

Violation
Arts 3 & 14

- **Inadequate conditions of detention and irregular medical treatment**
- **Segregation lacked objective and reasonable justification**

Gherghina I: Lack of facilities accommodating student's disability in university buildings

GC, majority:
Inadmissible (non
exhaustion of domestic
remedies)

- **NATURE OF DOMESTIC REMEDIES REQUIRED:**
Compensatory not enough. They should be capable of leading to **swift adoption** of decisions **requiring university concerned to install suitable facilities** or to make reasonable accommodation to enable student to continue studies

Gherghina II: Lack of facilities accommodating student's disability in university buildings

GC, majority:
Inadmissible (non
exhaustion of domestic
remedies)

- Applicant failed to apply to civil courts for order requiring universities concerned to install facilities accommodating his needs (e.g. access ramps)

Thank you

