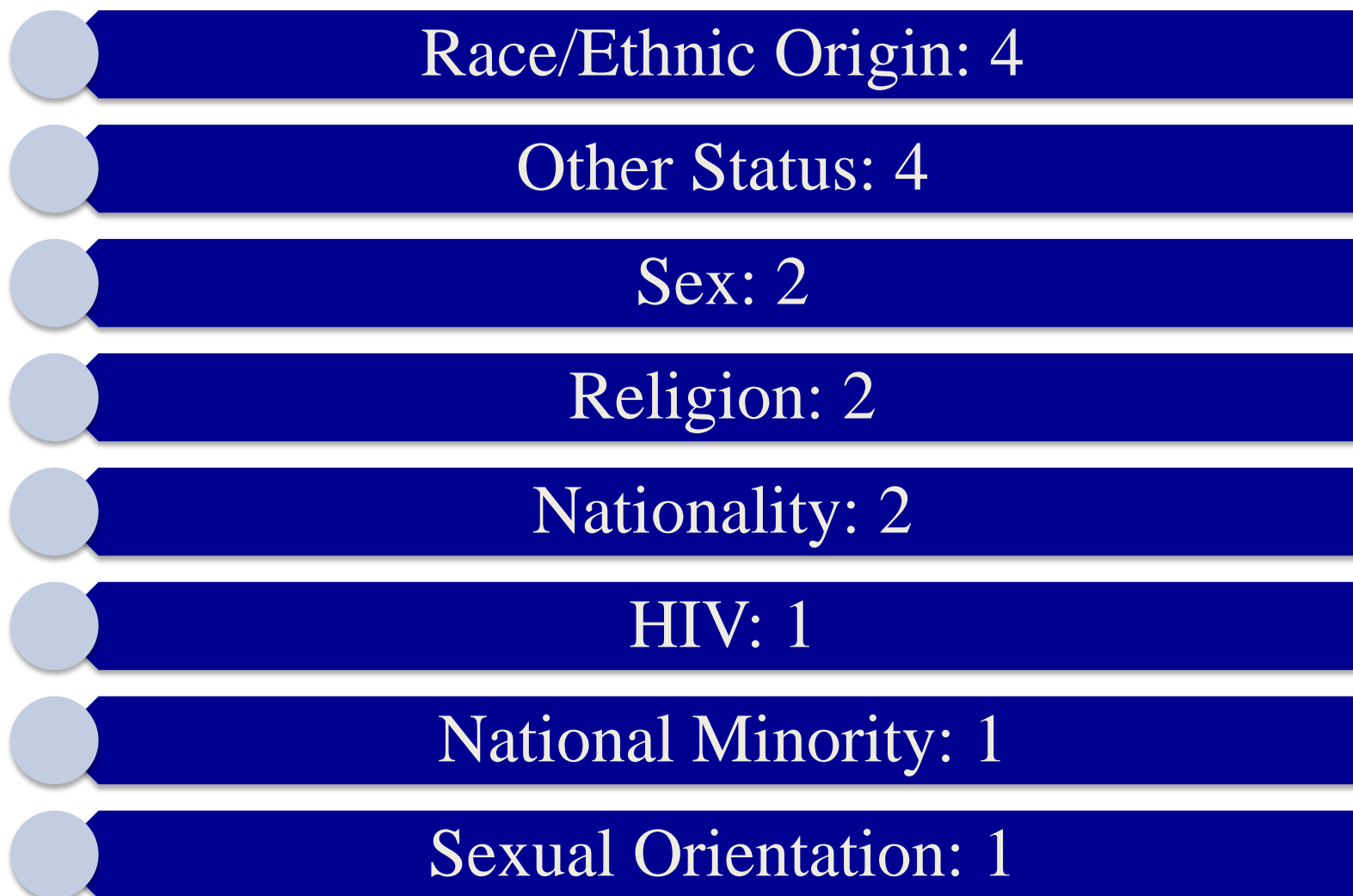


**ARTICLE 14 ECHR CASE LAW**  
**Legal Seminar, 24 November 2015**

Lourdes Peroni, Postdoctoral Researcher



# 17 JUDGMENTS: 1 Nov 2014 – 15 Nov 2015



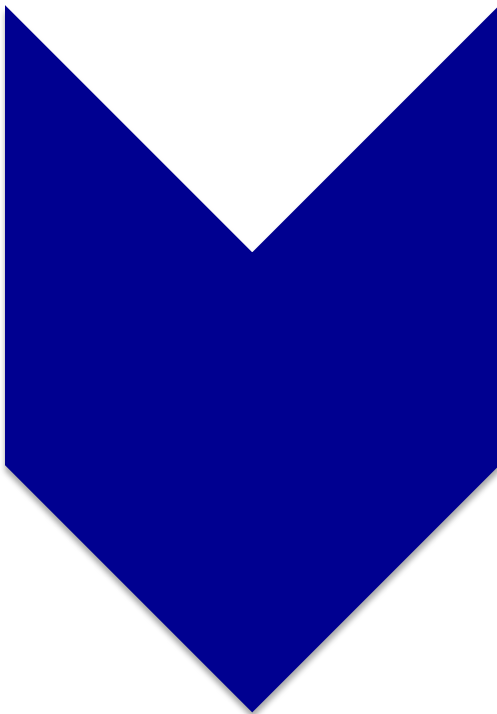


# 10 VIOLATIONS

- 
- *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

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**Romania: 5**

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**Turkey: 2**

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**Greece: 1**

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**Belgium: 1**

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**Cyprus: 1**

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**Croatia: 1**

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**France: 1**

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**Georgia: 1**

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**Hungary: 1**

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**Lithuania: 1**

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**Portugal: 1**

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**Spain: 1**

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# 94 DECISIONS: 1 NOV 2014 – 15 NOV 2015

1

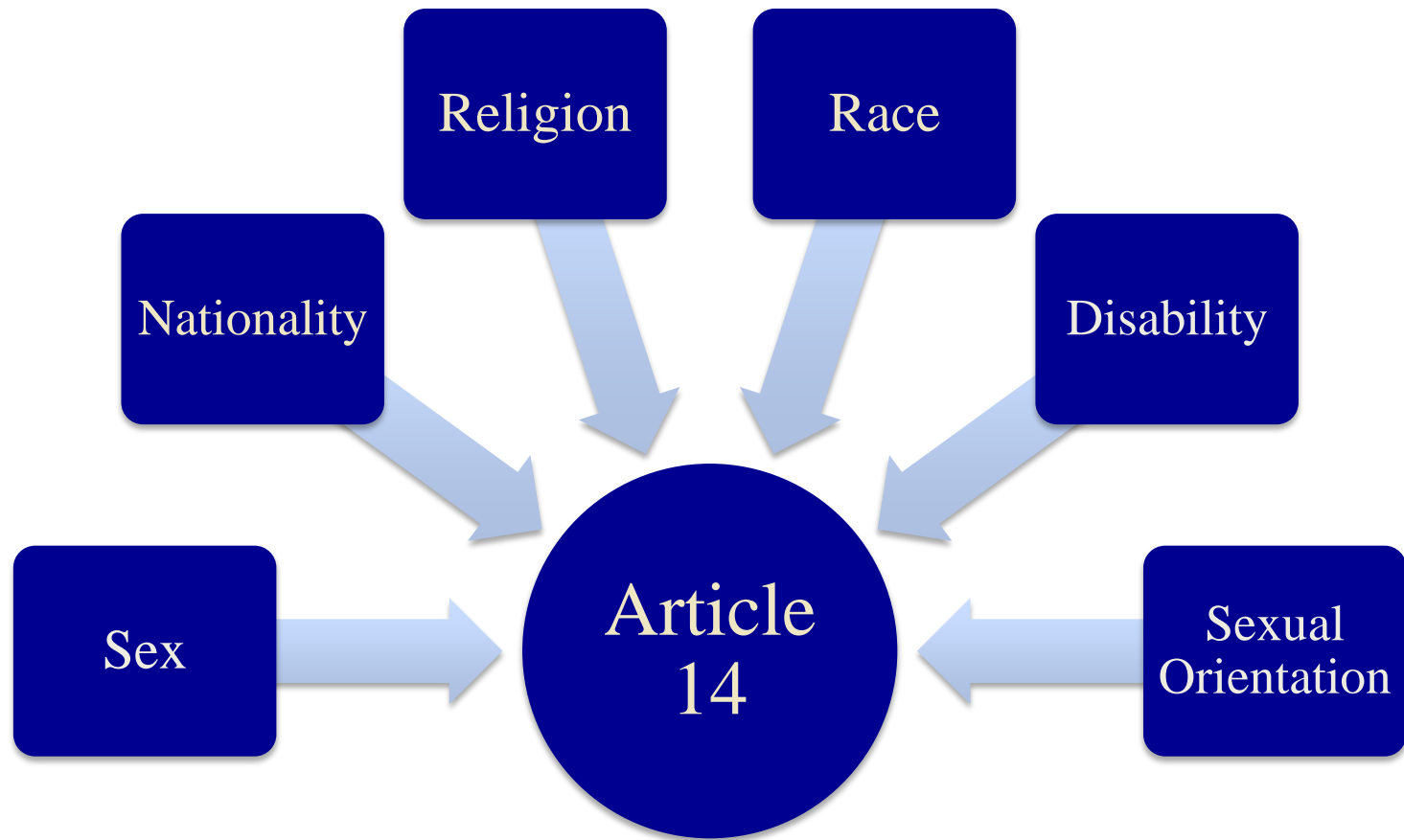
- *Gherghina v Romania*  
(disability) Non Exhaustion

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



# *Vrontou*: 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)