

## Recent case-law of the ECtHR on non-discrimination

### SUMMARIES OF CASES (1 November 2017 – 1 November 2018)

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## Gender

***Hallier and Others v. France*, 12 December 2017 (dec.), no. 46386/10**

**ECLI:CE:ECHR:2017:1212DEC004638610**

*Paid paternity leave – different treatment of fathers and mothers – same-sex partnership – no appearance of violation*

After Ms Hallier had given birth to a son, V., her partner, Ms Lucas, applied for 11 days paid paternity leave, but her application was refused on the grounds that the legislation made no provision for granting paternity leave to a woman. This decision was upheld in the national courts. Relying on Articles 8 and 14 ECHR, Ms Hallier and Ms Lucas complained about a discrimination on grounds of sex and sexual orientation. The Court considered that Ms Lucas, who had been helping to care for the child to whom her partner of many years had given birth, was in a comparable situation to a biological father within a heterosexual couple. She had nonetheless been subjected to a difference in treatment – as she was unable to claim paternity leave – which, in the Court’s view, had pursued a legitimate aim. The institution of paternity leave was designed to allow fathers to play a greater role in their children’s upbringing by being involved at an early stage, and to promote a more equal distribution of household tasks between men and women. Furthermore, the difference in treatment had not been based on sex or sexual orientation since, in a different-sex couple, the mother’s partner would not be eligible for paternity leave either if he was not the child’s father. The Court therefore considered that the institution of paternity leave was proportionate to the aim pursued; the fact that, at the relevant time, paternity leave had been conditional on the existence of a parental relationship was a matter falling within the State’s margin of appreciation. The Court therefore found no appearance of a violation of Article 14 taken in conjunction with Article 8. Lastly, the Court noted that, following legislative amendments introduced in 2012, the mother’s partner was now entitled to carer’s leave under the same conditions as paternity leave if he or she was not the child’s biological parent. The Court therefore rejected the application as being manifestly ill-founded.

***Leonov v. Russia*, 10 April 2018, no. 77180/11**

**ECLI:CE:ECHR:2018:0410JUD007718011**

*Residence order – best interests of the child – no general assumption in favour of residence orders for mothers – no applicability of equality between spouses*

Mr Leonov applied for a residence order in respect of his son, A., in March 2010 after his wife left him in November 2009. However, the district court handling the case first granted the wife an interim order preventing Mr Leonov from contacting his son or picking him up from his nursery and ultimately in April 2011 granted a residence order to the mother. The domestic court found that Mr Leonov’s arguments that he lived in a less polluted part of Moscow, that he had better living conditions and a better financial situation, or that the mother had a criminal record were not decisive in terms of granting a residence order. The child, who was only three years old, had lived for a long time with the mother. The court’s decision to grant the mother the residence order was upheld on appeal. Mr Leonov, complained under Article 14 (prevention of discrimination) in conjunction with Article 8 and under Article 5 of Protocol No. 7 to the Convention (equality between spouses). In this respect, Mr Leonov argued that the decisions in his case had been based on a general assumption prevailing in Russia that it was in the interest of children under a certain age to reside with the mother rather than the father. The Court noted, however, that the residence order was based on an assessment of the best interests of the child in the particular circumstances of the case, rather than on a general assumption in favour of

mothers. In particular, the domestic courts found that the child had lived with his mother at her place of residence for a long time. They considered that, given his young age and the length of his residence with the mother, a change to his established way of life would have a negative impact on his psychological state. The Court was therefore satisfied that no difference of treatment on account of sex existed either in the law or in the decisions applying it in Mr Leonov's case. There was accordingly no violation of Article 14 of the Convention, taken together with Article 8. Relying on Article 5 of Protocol No. 7, Mr Leonov further complained that the decision to grant a residence order in respect of his son in favour of the boy's mother had violated his right to equality between spouses. The Court noted that it had previously decided that Article 5 of Protocol No. 7 essentially imposes a positive obligation on States to provide a satisfactory legal framework under which spouses have equal rights and obligations concerning such matters as their relations with their children. It is not concerned with the way in which the national courts applied it. In the present case, the applicant did not question the legislative framework. His criticism only concerned the way in which the national courts applied it. The Court found no indication that the law in question violated the equality clause provided in Article 5 of Protocol No. 7, and it followed that this complaint was manifestly ill-founded.

***Hülya Ebru Demirel v. Turkey*, 19 June 2018, no. 30733/08**

**ECLI:CE:ECHR:2018:0619JUD003073308**

*Civil service exam for security officer – exclusion of women – direct discrimination based on gender – no justification*

In October 1999 Ms Demirel passed a civil service exam and was informed that she would be appointed as a security officer at the Kilis branch of the Turkish Electricity Distribution company. However, the company refused to appoint her as she was not a man who had completed military service. The applicant initially won a discrimination court case against the company in 2001 but that decision was overturned on appeal by the Supreme Administrative Court in December 2002. Ms Demirel's further appeals (including a request for rectification) were all unsuccessful. Insofar as relevant for the discrimination aspect of the case, relying on Article 14 taken in conjunction with Article 8 (right to respect for private and family life) Ms Demirel complained that the decisions of the administrative authorities and the courts constituted sex discrimination. The Court reiterated that it had already set out detailed reasons for justifying a difference of treatment in [Emel Boyraz v. Turkey](#). It had held there that the decisions of the administrative and judicial authorities finding that the post of security officer was reserved solely for male candidates amounted to a clear difference of treatment, on grounds of sex, between persons in an analogous situation. After thoroughly examining whether there were reasonable and objective grounds that justified such a difference of treatment, the Court held in that case that the impugned difference of treatment had not pursued a legitimate aim. In the instant case, the Court observed that the administrative authorities and the courts had all considered that the post of security officer had been reserved for men and that therefore the applicant, as a woman, had been excluded. What is more, the competent court's decision did not adduce any reasons other than the applicant's sex for her not having been appointed to the post in question. The present case was, therefore, identical to *Emel Boyraz*. Accordingly, and for the detailed reasons elaborated on in *Emel Boyraz*, the Court concluded that the case disclosed a violation of Article 14 taken in conjunction with Article 8.

***Petrov and X v. Russia*, 23 October 2018, no. 23608/16  
[ECLI:CE:ECHR:2018:1023JUD002360816](#)**

*Residence order – best interests of the child – no assumption in favour of granting rights to the mother*

Mr Petrov's wife left him in April 2013, taking their son X with her to live in Nizhniy Novgorod, 1,000 km away. She then instituted divorce proceedings in court and applied for a residence order for their son. The courts granted the divorce and her application for the residence order in April 2014. They relied on a report by the Nizhniy Novgorod childcare authorities finding that it was better for X, given his young age, to live with his mother. The childcare authorities also assessed the mother's living conditions and financial situation, which they considered good, and took into account that she was on parental leave and still breastfeeding. The various procedures Mr Petrov instituted were to no avail for him, although he was granted contact rights and awarded compensation for the excessive length of the residence and contact proceedings. Relying on Article 14 taken in conjunction with Article 8 (right to respect for family life), Mr Petrov and X complained that the decision had amounted to discrimination on grounds of sex, alleging that residence orders for children under 10 had often gone in the favour of mothers. The Court observed that Russian law did not make any distinction between the sexes, both men and women being equally eligible to obtain a residence order in respect of their child, irrespective of the child's age. It noted that the domestic courts must evaluate all the relevant circumstances and the parties' parenting abilities in order to find the most appropriate solution in the child's best interests. The Court noted that the residence order was based on an assessment of the best interests of the child in the particular circumstances of the case, rather than on a general assumption in favour of mothers. In particular, the domestic courts had found that M. was on parental leave and was still breastfeeding the second applicant. They had considered that, given X's young age and the fact that after the parents' separation he had been brought up by the mother, it would be in his best interest to remain living with her. The Court was therefore satisfied that, as regards the examination of the application for a residence order, no difference of treatment on account of sex existed either in the law or in the decisions applying it in the applicant's case. Accordingly there had been no violation of Article 14 of the Convention, taken together with Article 8.

**LGTBI+**

***Hallier and Others v. France*, 12 December 2017 (dec.), no. 46386/10  
[ECLI:CE:ECHR:2017:1212DEC004638610](#)**

*Paid paternity leave – different treatment of fathers and mothers – same-sex partnership – no appearance of violation*  
See above.

***Charron and Merle-Montet v. France*, 16 January 2018 (dec.), no. 22612/15  
[ECLI:CE:ECHR:2018:0116DEC002261215](#)**

*Medically assisted reproduction – same-sex partners – non-exhaustion of domestic remedies*

Wishing to have a child together, Ms Charron and Ms Merle-Montet decided to seek medically assisted reproduction. In December 2014 they submitted to Toulouse Hospital's Centre for Medical Reproductive Assistance a request for information on the procedure for access to medically assisted reproduction in the form of artificial insemination or in vitro fertilisation. Dr F.L. replied that he could not accede

to their request on the grounds that “the Bioethics Law currently in force in France did not authorise such medical provision for same-sex couples”. Relying on Articles 8 and 14 ECHR, Ms Charron and Ms Merle-Montet complained that this refusal amounted to a violation of their right to respect for their private and family life and discrimination on the grounds of sexual orientation. The Court noted that the Hospital’s decision had been an individual administrative decision that could have been set aside on appeal for abuse of authority before the administrative courts. However, Ms Charron and Ms Merle-Montet had not used that remedy, considering that it would have been ineffective in view of an earlier decision of the Constitutional Council, Decision No. 2013-669. In that connection, the Court noted that this Decision had involved the Constitutional Council considering a request on the constitutionality of legislation “allowing same-sex couples to marry” rather than of the Public Health Code. Although the Constitutional Council’s decision had touched on the question of the conformity with the constitutional principle of equality of the differentiation between homosexual couples and heterosexual couples resulting from the Public Health Code, and thus had addressed the issue of whether or not it was discriminatory, it had nonetheless only dealt with that issue indirectly. Nor had the Constitutional Court dealt, even indirectly, with the issue of the conformity of the Public Health Code with the constitutional rights to a normal family life and to respect for private life, which constituted the core of the present applicants’ complaint. Moreover, scrutiny of an individual measure’s conformity with the Convention as conducted by the “ordinary courts” was different from scrutiny of a law’s conformity with the Constitution as conducted by the Constitutional Council. In other words, even though the chances of the success of an application to set aside Toulouse Hospital’s decision for abuse of authority based on Articles 8 and 14 of the Convention had possibly been reduced by the Constitutional Council’s decision, it would not have been “obviously doomed to failure”. Furthermore, the Court emphasized that it was vital, where the Court was addressing the complex and delicate issue of the requisite balance to be struck between the competing rights and interests in implementing that provision, that that balancing exercise had previously been conducted by the domestic courts, since the latter were in principle best placed to do so. The domestic courts had not yet had to adjudicate applications against decisions to deny same-sex couples access to a medically assisted reproduction procedure on the basis of the provisions of the Public Health Code. Therefore, the Court held that since Ms Charron and Ms Merle-Montet had not exhausted all domestic remedies within the meaning of Article 35 of the Convention and it therefore rejected their application as inadmissible.

***Bonnaud and Lecoq v. France*, ECtHR 6 February 2018 (dec.), no. 6190/11**  
**[ECLI:CE:ECHR:2018:0206DEC000619011](#)**

*Medically assisted reproduction for same-sex couple – non-recognition of mutual delegation parental responsibility – no difference in treatment*

In October 1998, after having recourse to medically assisted reproduction in Belgium, Ms Bonnaud gave birth to a daughter, El. In May 2002 Ms Bonnaud and Ms Lecoq entered into a civil partnership. In November 2003 Ms Lecoq, who had also made use of medically assisted reproduction in Belgium, gave birth to a son, Es. In June 2006 the applicants applied jointly to the courts seeking to share the exercise of parental responsibility for the children by means of the mutual delegation of responsibility. Although this was allowed by the first instance court, this was overturned by the court of appeal. The appeals court concluded that the applicants had not established why the specific circumstances or the children’s best interests should require each partner to delegate parental responsibility for her own child to the other partner, in order for them to exercise responsibility jointly. An appeal on points of law by the applicants was dismissed by the Court of Cassation in 2010. In 2012, the couple separated. Relying on Article 14 and 8 (right to respect for private and family life), Ms Bonnaud and Ms Lecoq alleged that the refusal to delegate parental responsibility to each other had been based on their sexual

orientation. The Court decided to conduct a separate examination of their situation before and after their separation in 2012. With regard to the period during which they cohabited, the Court considered that Ms Bonnaud and Ms Lecoq's situation had been comparable to that of a different-sex couple in a blended family in which the parent's partner lived with and raised a child who was not his or her biological child. The Civil Code did not distinguish between parents at this point, nor did it make any distinction on the basis of the sexual orientation of the parent making the request or the person to whom responsibility was to be delegated. Also in the instant case the Court considered that the judicial assessment made did not disclose a difference in treatment based on their sexual orientation. The Court also observed that the applicants were perceived by those around them as the parents of the two children and that they had not referred to any specific problems that would have called for the delegation of parental responsibility they had requested. The Court found no appearance of a violation of Article 8 taken in conjunction with Article 14. This aspect of the complaint was therefore ill-founded and had to be rejected. Following the couple's separation in 2012, proceedings for Ms Bonnaud's child to be adopted by Ms Lecoq were in progress. A fresh application seeking to have parental responsibility for Ms Lecoq's child delegated to Ms Bonnaud was being compiled, and the Court considered it possible that it might be granted in view of the change in the applicants' circumstances. This aspect of the complaint was thus premature and had to be rejected.

### **Ethnic/national origin**

***Alković v. Montenegro*, 5 December 2017, no. 66895/10**

**[ECLI:CE:ECHR:2017:1205JUD006689510](#)**

*Discriminatory violence against Roma and Muslim person – racist motive – procedural positive obligations violated*

Since 2006, Mr Alković, a Roma and a Muslim, lived in an apartment building for socially disadvantaged families. His application concerned four events where his neighbours have threatened him because of his origin and religion. On a first occasion, neighbours X and Y made insulting comments about Muslims and people of Turkish origin from their adjacent terrace, which Mr Alković could hear clearly because the doors were open. According to Mr Alković, X left Y's apartment at a certain point and went to his car, from which he took a gun. Y said "turn it to the left", which was the direction of the applicant's terrace. This was followed by nine to ten gunshots, and Y's calling out insulting references to Mr Alković's "Turkish mother". A few months later, neighbor V said, again within hearing distance of Mr Alković, that she was fighting "cockroaches, frogs, nits and lice, and all sorts of other things", which had been brought by "those dirty gypsies". V continued by saying that neighbours B and S "[could] use a hammer and a pruning knife (*kosijer*), and [she] would use an axe". S replied that "her [people] carried swords". V said that the axe could serve just as well. S answered "no, no, he is a Muslim, I have a sword". B said "all is fine, whatever is more readily available". V said loudly "An axe, an axe, a sledgehammer, like the one used on pigs". The third event was were comparable, but the last occasion was different. On the day of Ramadan Bayram, a religious holiday celebrated by Mr Alković's "Turkish mother". A few months later, neighbor V said, again within hearing distance of Mr Alković and his family, a large cross was drawn on his apartment door, and a large message was written on the wall next to it saying "move out or you'll bitterly regret it". Mr Alković's "Turkish mother". A few months later, neighbor V said, again within hearing distance of Mr Alković called the police, who came and took photographs of the cross and the message. The same day he lodged a criminal complaint with the police against the families of X, Y, S and B, and one more family living in the building. The neighbours denied all allegations, however, and in the end, the case was closed because of a lack of evidence.



The Court considers that it is appropriate to examine Mr Alković's complaints under Article 8 taken in conjunction with Article 14. The Court was satisfied that the domestic legal framework as such provided sufficient protection, since it provided for the criminal offences of jeopardising someone's security, incitement to ethnic, racial and religious hatred, and discrimination, racial or otherwise and for an effective remedy for the victims. The Court further noted that most of the impugned remarks or actions were not made in Mr Alković's presence nor aimed at him directly. It was also clear that the applicant and his family were not physically harmed by any violent acts. Nevertheless, the Court noted that the prosecutor completely omitted the shooting of the first event from his conclusions and that hardly any efforts had been made to take measures to investigate the evidence regarding the last incident. The investigation thus did not constitute a sufficient response to the situation complained of. The Court concluded that the manner in which the criminal-law mechanisms were implemented in the present case by the judicial authorities was defective to the point of constituting a violation of the respondent State's obligations under Article 8 of the Convention in conjunction with Article 14 of the Convention.

***Balta v. France*, 16 January 2018 (dec.), no. 19462/12**

**ECLI:CE:ECHR:2018:0116DEC001946212**

*Travellers – illegally parked caravans – freedom of movement not applicable to illegal residents*

In April 2009 Mr Balta and others parked their caravans in a cul-de-sac near a public road in the municipality of La Courneuve. In November 2009 a Traveller park was opened locally. As a result, the mayor issued an order prohibiting the parking of caravans in any public places except for the areas specifically catering for them. On 29 December 2009 Mr Balta and other caravan occupiers were served with formal notice to leave their parking spaces in the cul-de-sac within 24 hours. Mr Balta challenged the notice in the courts, but in the end, the Constitutional Council found the disputed provisions to be in conformity with the Constitution. It said they were based on a difference in the situation of individuals, between those, regardless of origin, who lived in mobile homes and who chose an itinerant way of life, and those who lived sedentary lives. The distinction was based on objective and rational criteria to fulfil the legislature's aim of accommodating Travellers in conditions compatible with public order and the rights of third parties. Relying on Article 14 in conjunction with Article 2 of Protocol No. 4 (freedom of movement), Mr Balta complained about the rules governing the eviction of Travellers. The Court first observed that Article 2 of Protocol No. 4 was applicable only to a person lawfully within the territory of a State. The criteria and requirements for lawful residence were primarily matters of domestic law. That provision did not grant a right to a foreign national to reside or continue to reside in a country of which he was not a national and did not govern the conditions in which a person was entitled to reside in a State. The Court observed that Mr Balta had not provided any evidence to show that he was entitled to remain in France beyond the three-month period legally provided for this. It concluded that Mr Balta could not therefore rely on the freedom of movement guaranteed by Article 2 of Protocol No. 4, thus rendering Article 14 inapplicable as it could only be relied on in conjunction with another Article of the Convention. Consequently the Court declared the application inadmissible.



***Negrea and Others v. Romania*, 24 July 2018, no. 53183/07**

**ECLI:CE:ECHR:2018:0724JUD005318307**

*Childbirth payment – child allowance – alleged refusal because Roma parents were not married – no evidence of discrimination*

At the relevant time all applicants in this case were Roma women who cohabited with their partners. Each of them gave birth to a child out of wedlock, and all the children were recognised by their respective fathers. The legal provisions in force provided for the award of various social rights, such as a childbirth payment for mothers and for child allowance. The applicants submitted that their local town clerk refused to register their allowance applications on the grounds that they had not contracted civil marriages with their children's fathers. Allegedly, this policy was informed by their Roma origin and by their not having conducted a civil law marriage. They lodged a criminal complaint against the Frata town clerk, but the public prosecutor's office dealing with the case decided to discontinue it. The applicants then applied to the National Anti-discrimination Board (CNCD) within the same month. The latter conducted an investigation, concluding that the application lodged by five of the applicants had been rejected on the grounds that they did not meet the conditions laid down by law. Relying on Article 14 read in conjunction with Article 8 (right to private and family life) and/or Article 1 of Protocol No. 1 (protection of property), the applicants complained of discriminatory treatment in the exercise of their right to social welfare allowances, based on their Roma origin. The Court noted firstly that it had not been established that an obligation to marry had in reality been imposed on the applicants. The Court also noted that it had been established by the domestic courts that the town clerk's habitual practice of refusing to register incomplete files, while contrary to the law, had been applied to everyone irrespective of the ethnic origin of the individuals concerned. There was no tangible evidence in the case file to prove that individuals from the Roma ethnic group had been more affected than others. The complaint of discrimination against persons from the Roma ethnic group in the exercise of their right to social welfare allowances was therefore ill-founded and had to be rejected.

***Lingurar and Others v. Romania*, 16 October 2018, no. 5886/15**

**ECLI:CE:ECHR:2018:1016JUD000588615**

*Roma camp – police violence – no racist motive – violation of procedural positive obligations*

After the police had received a number of complaints of theft, the police organised an initial operation in the Roma community where the applicants were living, the Pata Rât community. A number of stolen goods were recovered and two arrests were made. As a result of the discovery of stolen goods and evidence indicating that other suspects were living among the Roma community, the Police Inspectorate (IPJ) approved the organisation of a large police operation in Pata Rât on 8 November 2005. The operation began at 6 a.m. and ended at 10 a.m. The applicants refused to leave their houses and were forcibly removed from them. At the close of the operation the police officers set light to the camp. The applicants lodged a criminal complaint against all of the police officers, but three years later, the court of appeal decided to discontinue the proceedings. Relying on Article 14 taken together with Articles 3 (prohibition of inhuman and degrading treatment) and 8 (right to respect for the home), they alleged that they had been discriminated against on account of their ethnic origin. Although the manner in which the police operation had been organised was open to criticism, given its scale in comparison to the declared aims – locating individuals who were suspected of theft –, the Court did not consider that the treatment inflicted on the applicants had a racist motive. However, the Court considered that the investigation conducted by the authorities into the applicants' allegations of police racism had not been thorough enough. The domestic authorities had confined themselves to providing very general

responses, holding that the mere fact of having been able to lodge a criminal complaint and that an investigation had been conducted amounted to evidence of a lack of discrimination. Such a response was insufficient for the purposes of Article 14. The Court considered that the Romanian authorities had failed in their obligation, imposed by Article 14, to take all the necessary measures to investigate whether there had been a racist motive in the organisation of the police operation.

## **Disability/illness**

***Enver Şahin v. Turkey*, 30 January 2018, no. 23065/12**

**ECLI:CE:ECHR:2018:0130JUD002306512**

*Disability – access to university building for paraplegic person – reasonable accommodation – respect for dignity and self-worth of persons with a disability*

In 2005, while he was a first-year mechanics student in the technical faculty of Firat University, Mr Şahin was seriously injured in an accident which left his lower limbs paralysed. He had to suspend his studies until he had recovered sufficiently to return to university. In 2007 Mr Şahin requested that the faculty adapt the university premises so that he could resume his studies. Citing budgetary reasons and time constraints, the rector's office replied that the adjustments he sought were not possible in the short term, but offered to appoint someone to assist the applicant on the premises. Mr Şahin refused, arguing, among other things, that it would interfere with his privacy. He appealed without success to the administrative courts. At the ECtHR, Mr Şahin complained under Articles 2 of Protocol No 1 (right to education), 8 (right to respect for private and family life) and 14 ECHR that the decisions of the university made him give up his studies and made him dependent on other persons for assistance, which deprived him of his privacy. The Court noted, firstly, that in explaining to Mr Şahin that the adjustments he sought could not be carried out in the short term, the university authorities had cited first and foremost a lack of financial resources that could be made available at short notice for that purpose. In that connection the Court was unable to accept that the issue of Mr Şahin's access to the faculty buildings could be left unresolved pending the availability of the full amount needed in order to complete all the major adjustment works required by law. Secondly, the faculty had not refused the applicant's request outright, but had offered him the assistance of an accompanying person, the purpose and exact nature of which were not explained by the Government. The Court concluded from this that the assistance had been designed solely to help Mr Şahin, who was paraplegic, to move around within the three-storey faculty building. In that regard the Court reiterated that the possibility for persons with a disability to live independently and fully develop their sense of dignity and self-worth was of paramount importance, and that the very essence of the Convention was respect for human dignity and human freedom, including the freedom to make one's own choices. Furthermore, there was nothing in the case file capable of persuading the Court that the rector's office had proposed this measure following an assessment of Mr Şahin's actual needs and an honest appraisal of the potential impact on his safety, dignity and independence. Accordingly, the assistance of an accompanying person could not be regarded as reasonable for the purposes of Article 8, since it disregarded the applicant's need to live as independent and autonomous a life as possible.

In addition to this, the Court noted that it had been primarily for the Administrative Court – before which Mr Şahin had raised the same complaints as those alleged in substance before the Court – to give effect to the rights at stake. However, while acknowledging vaguely that the administrative authorities were required to implement the technical guidelines aimed at assisting disabled persons, the court had simply exempted the university from that obligation, on the sole grounds that the building had been

constructed in 1988, before the entry into force of those guidelines. For the rest, the Administrative Court had deemed it sufficient to reiterate that a person would be appointed to assist Mr Şahin, without demonstrating in what way such a solution might prove satisfactory. The court had also omitted to look for possible solutions that would have enabled the applicant to resume his studies under conditions as close as possible to those provided to students with no disability, without imposing an undue or disproportionate burden on the administration. Consequently, the Court found that the Government had not demonstrated that the national authorities, and in particular the university and judicial authorities, had reacted with the requisite diligence in order to ensure that Mr Şahin could continue to enjoy his right to education on an equal footing with other students. The fair balance to be struck between the competing interests at stake had thus not been achieved, and the Court found a violation of Article 14 of the Convention read in conjunction with Article 2 of Protocol No. 1 to the Convention.

**S.S. v. Slovenia, 30 October 2018, no. 40938/16**

**ECLI:CE:ECHR:2018:1030JUD004093816**

*Mental illness – child removed from mother – withdrawal of parental rights – no violation of right to family life – no substantiation of discrimination complaint*

Ms S.S. suffered from paranoid schizophrenia. All but one of her four children were either in foster care or adopted. The third child was living with his father in France. She gave birth to her fourth child, E., in 2010 in Slovenia, where she was provided with various social services. One month after the birth she left E. with the grandmother and went to France. Neither the grandmother nor the father was willing to look after the baby, and the authorities considered her to be abandoned. E. was placed in foster care and eventually adopted by her foster parents in 2016. The adoption was authorised following court proceedings, initiated by the welfare authorities, finding that it was in E.'s best interests to withdraw Ms S.S.'s parental rights. Relying in particular on Article 8 (right to respect for private and family life), as well as on Article 14, Ms S.S. complained that the withdrawal of her parental rights had been an extreme measure because it had resulted in her ties with her daughter being completely severed. The Court decided to consider the case mainly under Article 8. It was satisfied that there were such exceptional circumstances in the present case as to justify the withdrawal of the applicant's parental rights, and that those measures were motivated by an overriding requirement pertaining to E.'s best interests. Having regard to the positive steps taken to assist the applicant and to the relevant and sufficient reasons adduced in support of the decision to deprive the applicant of her parental rights, the Court concluded that there had been no violation of Article 8 of the Convention. Relying on Article 14 of the Convention, the applicant complained that she had been discriminated against in the enjoyment of her rights under Article 8 on the grounds of her mental illness. As regards the applicant's complaint concerning her opportunity to influence the decisions interfering with her family life, the Court considered that this issue had been appropriately dealt with under Article 8 alone. As to the remaining complaints raised under Article 14 in conjunction with Article 8, having regard to the lack of any indication in the present case that the applicant was divested of her parental rights on the sole basis of her mental health diagnosis, the Court considered that this part of the application was unsubstantiated. It was therefore rejected as manifestly ill-founded.

## **Nationality, residence and citizenship**

***Tsezar and Others v. Ukraine*, 13 February 2018, nos. 73590/14 and others**

**ECLI:CE:ECHR:2018:0213JUD007359014**

*Pension claims – no comparability between regions that are or are not under effective government control*

After the outbreak of the conflict in eastern Ukraine in April 2014, payments of social benefits to people living in areas which were outside Government control were suspended. The areas included settlements of the Donetsk and Luhansk regions. In September 2014 the jurisdiction of the Donetsk courts was relocated to neighbouring Government-controlled territory. Some of the applicants continued to receive their social benefits until June 2014 and some to August of that year. In June 2015, the Tsezars registered with the Labour and Social Security Department of a neighbouring Government-controlled area. They had their social benefits reinstated and backdated. To the extent relevant to non-discrimination issues, the Tsezars complained before the Court that they had suffered discrimination in the enjoyment of their right of access to court and of their property rights on the grounds of their place of residence, contrary to Article 14 read in conjunction with Article 6 of the Convention (right to a fair trial) and/or with Article 1 of Protocol No. 1 to the Convention (right to property). The Court noted that the applicants compared their own position to those of residents of other territories of Ukraine that are under the control of the Government. It considered that the main difference between the situation of the applicants as compared to the situation of persons residing in the territory of other regions controlled by the Government, was that in the city where these applicants resided the Government did not exercise their powers. This significantly restricted if not deprived the Government of the possibility to effectively maintain operation of the courts and social benefit payments on this territory. The objective factor of the hostilities going on in the region where the first three applicants resided forced the Government to adopt remedial measures which were not needed in those other parts of the country which remained under their control. The Court therefore found that the applicants did not find themselves in an “analogous situation” compared to those who reside on the territory controlled by the Government. The complaint was, consequently, manifestly ill-founded.

***Aleksandr Aleksandrov v. Russia*, 27 March 2018, no. 14431/06**

**ECLI:CE:ECHR:2018:0327JUD001443106**

*No non-custodial sentence because of lack of permanent residence – plurality of grounds of discrimination – no objective and reasonable justification*

In 2005 Mr Aleksandrov was found guilty of a drunken assault on a police officer and sentenced to one year’s imprisonment. The trial court refused to impose a non-custodial sentence because, among other things, he had no permanent residence within the Moscow Region where the offence had been committed and the sentence pronounced. Mr Aleksandrov appealed, unsuccessfully. Relying on Article 14, Mr Aleksandrov alleged that the only reason he had been given a custodial sentence had been because he had not had a permanent place of residence in the region in which he had been tried and that this had been discriminatory. The Court noted that there was no evidence of an established sentencing policy differentiating on specific grounds. Accordingly, it held that the present case must be taken to concern an individual decision which disclosed a difference in treatment based on his place of residence. The Court recalled that it had previously recognised that the place of residence constituted an aspect of personal status for the purposes of Article 14 and can trigger the protection of that Article. In addition to this ground, the decision referred to the particular circumstances of the case, which

could be taken as an analysis of the *de facto* situation; that ground was not discriminatory on the face of it. The Court reiterated that in discrimination cases where more than one ground forms part of an overall assessment of the applicant's situation, grounds should not be considered alternatively, but concurrently. Consequently, the illegitimacy of one of the grounds would have the effect of contaminating the entire decision. The Court therefore had to examine whether the decision introducing a distinction based on the applicant's place of residence was objectively and reasonably justified. In the present case the trial court simply indicated that the applicant had no permanent residence within the Moscow Region, which was not the region of the applicant's habitual residence. It did not explain in any form the relevance of this fact to the decision to impose a custodial sentence, nor did it justify why the benefit of a non-custodial sentence should have been conditional on the applicant's ability to have a permanent residence outside his home region and near the place where he had been tried and sentenced. The appellate court, for its part, did not address the discrimination argument made by the applicant's lawyer and offered no justification for the difference in treatment. Accordingly, it had not been shown that the difference in treatment pursued a legitimate aim or had an objective and reasonable justification. There had therefore been a violation of Article 14 of the Convention, taken in conjunction with Article 5.

### **Unlawful birth / birth out of wedlock**

***Negrea and Others v. Romania*, 24 July 2018, no. 53183/07**

**[ECLI:CE:ECHR:2018:0724JUD005318307](#)**

*Childbirth payment – child allowance – alleged refusal because Roma parents were not married – no evidence of discrimination*

See [above](#).

### **Religion**

***Alković v. Montenegro*, 5 December 2017, no. 66895/10**

**[ECLI:CE:ECHR:2017:1205JUD006689510](#)**

*Discriminatory violence against Roma and Muslim person – racist motive – procedural positive obligations*

See [above](#).

### **Right to free elections**

***Cernea v. Romania*, 27 February 2018, no. 43609/10**

**[ECLI:CE:ECHR:2018:0227JUD004360910](#)**

*By-elections – right to be elected – party not yet represented in Parliament*

The ecologist party Partidul Verde, of which Mr Cernea was the Executive President at the material time, presented his candidature for the 17 January 2010 by-elections, which had been organised in order to fill a vacant seat in a Bucharest constituency. The Electoral Board rejected the candidature less than a year before the by-elections, on the grounds that Partidul Verde was not represented in Parliament. The party, represented by Mr Cernea, contested the decision, alleging in particular that

that decision infringed the right to free elections and that it amounted to unjustified discrimination vis-à-vis parties represented in Parliament. The Constitutional Court dismissed the unconstitutionality plea. Before the ECtHR, Mr Cernea complained about a violation of Article 14 in conjunction with Article 3 of Protocol No. 1 (right to free elections). The Court noted that there had been differential treatment because Mr Cernea had not been able to stand for the by-elections as his party was not represented in Parliament, whereas he could have done so if his party had already been represented there. The Romanian Constitutional Court had held that the impugned limitation pursued the aim of protecting the structure of Parliament and preventing the fragmentation of the political views represented there in the wake of the general elections. The Court did not question that aim. In order to justify the limitation imposed during the by-elections, the Constitutional Court had taken into account the electoral threshold which political parties had to pass in order to enter Parliament. In that regard the Court reiterated that it had ruled that the setting of electoral thresholds was a discretionary matter for the national authorities since such thresholds were geared to promoting sufficiently representative political views and helped prevent the excessive fragmentation of Parliament. The Court further noted that the by-elections in question had been organised in respect of one single parliamentary seat which had fallen vacant in a Bucharest constituency. It therefore considered that the limitation of Mr Cernea's right had to be kept in perspective, especially since he had stood in the 2008 general elections, when his party had failed to pass the electoral threshold to enter Parliament. In that context, the Court took note of the Constitutional Court's argument that the aim of by-elections was not to open a backdoor to a parliamentary seat for a party which had failed to obtain seats at the general elections. It therefore held that the domestic authorities had been objectively and reasonably justified in limiting the right in question and that that limitation had been reasonable and proportionate. The Court concluded that the rejection of Mr Cernea's candidature had been objectively and reasonably justified, that it had not infringed the very essence of the people's right to freedom of expression, and that consequently it had not been disproportionate to the legitimate aim pursued. There had therefore been no violation of Article 14 of the Convention read in conjunction with Article 3 of Protocol No. 1 to the Convention.

### **Social security, social benefits and property rights**

***Hallier and Others v. France*, 12 December 2017 (dec.), no. 46386/10**

**[ECLI:CE:ECHR:2017:1212DEC004638610](#)**

*Paid paternity leave – different treatment of fathers and mothers – same-sex partnership*

See [above](#).

***Tsezar and Others v. Ukraine*, 13 February 2018, nos. 73590/14 and others**

**[ECLI:CE:ECHR:2018:0213JUD007359014](#)**

*Pension claims – no comparability between regions that are or are not under effective government control*

See [above](#).

***Negrea and Others v. Romania*, 24 July 2018, no. 53183/07**

**[ECLI:CE:ECHR:2018:0724JUD005318307](#)**

*Childbirth payment – child allowance – alleged refusal because Roma parents were not married – no evidence of discrimination*

See [above](#).



***Bradshaw and Others v. Malta*, 23 October 2018, no. 37121/15  
ECLI:CE:ECHR:2018:1023JUD003712115**

*Rent received significantly lower than market value – difference in treatment between lease for commercial and non-commercial use – objective and reasonable justification*

The applicants inherited a multi-storey property, which was rented out as a band club since 1946. Under rent-control legislation in Malta, they were obliged to renew each year the lease their ancestors entered into and they were not allowed to demand an increase in rent. In 2011 they brought constitutional redress proceedings to complain that they were being denied the use of their property without adequate compensation. The first-instance court found in their favour, but this judgment was overturned on appeal. The Constitutional Court found in particular that there had been no violation of the applicants' rights because their ancestors had entered into the rental agreement voluntarily and in full knowledge of the consequences. Relying on Article 14 (prohibition of discrimination) in conjunction with Article 1 of Protocol No. 1, the applicants alleged that they were being discriminated against because they had to renew their rent agreement on a yearly basis, while, under amendments to the law made in 2009, others who leased out property for commercial use would be freed from this obligation in 2028. The Court considered that the applicants, as landlords of controlled property leased out as band clubs, were in a comparable situation to landlords of controlled property leased out for commercial use, as they were both persons subject to controlled properties which were not used for the social welfare of tenants or to prevent homelessness. The applicants were, however, treated differently in so far as - unlike landlords whose controlled property was leased out for commercial use - the applicants did not benefit from the change of law allowing their property to be free (from the imposed conditions) as of 2028 as provided by the 2009 amendments. The Court was ready to accept that the State had to start from somewhere to improve the situation of owners suffering from the effects of controlled rents. While the Government failed to substantiate their claim that persons leasing out property for commercial purposes were suffering more than people in the applicants' position, the fact that commercial premises deserved lesser protection was for the purpose of this part of the assessment an acceptable argument. The Court was thus ready to accept that the Government's choice at the time of enacting the 2009 amendments fell within their margin of appreciation and was reasonably justified. The question remained whether the situation persisting after that date was also reasonable and justified. In the present case the measure complained of by the applicants was that, according to the law at present, their property would not be "released" in 2028, while that of their comparators would. Thus, such an action would come to be in respect of their comparator only in ten years' time. From the parties' submissions the Court could not conclude that further amelioration to the applicants' situation would not ensue until such date. The Court therefore found that the current existing difference in treatment may at this stage be considered reasonably justified. It followed that there was no violation of Article 14 of the Convention, in conjunction with Article 1 of Protocol No. 1 to the Convention.

**Ethnic/racist/religiously motivated violence**

***Alković v. Montenegro*, 5 December 2017, no. 66895/10  
ECLI:CE:ECHR:2017:1205JUD006689510**

*Discriminatory violence against Roma and Muslim person – racist motive – procedural positive obligations*

See [above](#).



***Lingurar and Others v. Romania*, 16 October 2018, no. 5886/15  
[ECLI:CE:ECHR:2018:1016JUD000588615](#)**

*Roma camp – police violence – no racist motive – violation of procedural positive obligations*  
See [above](#).

#### **Accessory character Article 14**

***Balta v. France*, 16 January 2018 (dec.), no. 19462/12  
[ECLI:CE:ECHR:2018:0116DEC001946212](#)**

*Travellers – illegally parked caravans – freedom of movement*  
See [above](#).

#### **Reasonable accommodation**

***Enver Şahin v. Turkey*, 30 January 2018, no. 23065/12  
[ECLI:CE:ECHR:2018:0130JUD002306512](#)**

*Disability – access to university building for paraplegic person – reasonable accommodation – respect for dignity and self-worth of persons with a disability*  
See [above](#).

#### **Comparability**

***Tsezar and Others v. Ukraine*, ECtHR 13 February 2018, nos. 73590/14 and others  
[ECLI:CE:ECHR:2018:0213JUD007359014](#)**

*Pension claims – no comparability between regions that are or are not under effective government control*  
See [above](#).