

## Article 14

*A very short introduction*

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14

**RIGHT NOT TO BE  
DISCRIMINATED  
AGAINST**



## ARTICLE 14

### **Prohibition of discrimination**

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

## Introduction

- Article 14 of the Convention enshrines the protection against discrimination in the enjoyment of the rights set forth in the Convention.
- ECtHR has held that the principle of non- discrimination is of a “*fundamental*” nature and underlies the Convention together with the rule of law, and the values of tolerance and social peace (*S.A.S. v. France* [GC], 2014, § 149; *Străin and Others v. Romania*, 2005, § 59).

## Ancillary right

- No independent existence
- No prohibition on discrimination as such. Must be discrimination in the enjoyment of *“the rights and freedoms set forth in this convention”*.
- Not necessary to show violation of substantive provision to fall within scope of article 14: ***Carson and Others v. the United Kingdom*** [GC], 2010, § 63
- *“Rights and freedoms”*, not just substantive provisions of ECHR, but additional rights, falling within the wider **ambit** of any Article of the Convention, for which the State has voluntarily decided to provide – e.g. appellate courts

## Forms of discrimination (1)

- Direct discrimination: “*difference in treatment of persons in analogous, or relevantly similar situations*” and “*based on an identifiable characteristic, or ‘status’*”: ***Biao v. Denmark*** [GC], 2016, § 89
  - E.g. Sentenced female offenders who had a small child were able to obtain deferral of the starting date for the service of their prison sentence until the child’s first birthday. The applicant complained that, as a man, he was excluded from such a possibility and thus directly discriminated against on the basis of his sex.
- Indirect discrimination: disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, has a particular discriminatory effect on a particular group: ***Bioa***
  - E.g. Czech legislation imposing national testing to determine school placements, which based on mainstream population and did not take into account special characteristics of Roma children, who therefore more likely to perform poorly and be placed in worse schools: ***D.H. and Others v. the Czech Republic*** [GC], 2007

## Forms of discrimination (2)

- Discrimination by association: situations where the protected ground in question relates to another person somehow connected to the applicant
  - E.g. failure to take into the needs of a disabled child when determining his father's eligibility for tax relief re. the purchase of a specially adapted property: ***Guberina v. Croatia***, 2016
- Positive action: Article 14 does not prohibit a member State from treating groups differently in order to correct "*factual inequalities*" between them; indeed in certain circumstances a failure to attempt to correct such inequality through different treatment may in itself give rise to a breach of Article 14
  - E.g. tax advantages accruing when woman the main family breadwinner were found to be within margin of appreciation as state had objective and reasonable justification in providing positive discrimination in favour of married women who work: ***Lindsay v. the United Kingdom***, 1986

## Basis for discrimination

- Article 14 does not prohibit all differences in treatment but only those based on an identifiable, objective or personal characteristic, or **“status”**, by which persons or groups of persons are distinguishable from one another: ***Molla Sali v. Greece*** [GC], 2018, § 134
- Discrimination must be based on “*sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*”
- The words “*other status*” have generally been given a wide meaning (***Carson and Others v. the United Kingdom*** [GC], 2010, § 70) and their interpretation has not been limited to characteristics which are personal in the sense that they are innate or inherent (*Kiyutin v. Russia*, 2011, § 56; *Clift v. the United Kingdom*, 2010, § 56).
  - E.g. Sexual orientation, age, gender identity, disability, immigration status

## Discrimination test

- Not all differences in treatment – or failure to treat differently persons in relevantly different situations – constitute discrimination, but only those devoid of “*an objective and reasonable justification*”: ***Molla Sali v. Greece*** [GC], 2018, § 135

When deciding cases of discrimination, the Court will apply the following test:

1. Has there been a difference in treatment of persons in analogous or relevantly similar situations – or a failure to treat differently persons in relevantly different situations? The other person is called the “**comparator**”
2. If so, is such difference – or absence of difference – objectively justified? In particular,
  - Does it pursue a legitimate aim?
  - Are the means employed reasonably proportionate to the aim pursued? NB wide margin of appreciation given when state justifies measures on social/economic grounds: the test is whether the policy choice is “**manifestly without reasonable foundation**”

## Thank you for listening

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