INDEX

Abbreviations used in the index
ACHR (American Convention on Human Rights (1969))
AComHPR (African Commission on Human and Peoples’ Rights)
ACtHPR (African Court on Human and Peoples’ Rights)
ADC/Antidiscrimination Conference (Inter-American Convention against All Forms of Discrimination and Intolerance (2013))
ADRDAM (American Declaration of the Rights and Duties of Man (1948))
ADRIP (American Declaration on the Rights of Indigenous Peoples (2016))
Antidiscrimination Conference/ADC (Inter-American Convention against All Forms of Discrimination and Intolerance (2013))
AOC (Administrative Offences Code)
APDF (L’Association pour le progrès et la défense des droits des femmes maliennes (Association for the Advancement and Defence of Women’s Rights))
CADE (Convention against Discrimination in Education (1960))
CAT (UN Committee against Torture)
CC (Civil Code)
CCL (Constitutional Court Law)
CEDAW (Convention on the Elimination of All Forms of Discrimination against Women (1979)/Committee on the Elimination of All Forms of Discrimination against Women)
CERAC (Social and Economic Rights Action Centre)
CESCR (UN Committee on Economic, Social and Cultural Rights)
CESCR GC (CESCR General Comment)
CFR (European Charter of Fundamental Rights (2000))
CJA (Criminal Justice Act)
CNDD (National Coordination of Departmental Delegates of the Cocoa Coffee Sector)
CoE (Council of Europe/Council of Europe Statute)
CPC (Criminal Procedure Code)
CRC (UN Convention on the Rights of the Child (1989)/Child Rights Committee)
CRMW (Convention on the Protection of the Rights of All Migrant Workers and Their Families (1990))
CRPD (Convention on the Rights of Persons with Disabilities (2006)/Committee on the Rights of Persons with Disabilities)
CWS-SL (Child Welfare Society of Sierra Leone)
ECJ (European Court of Justice/ECJ Statute)
ECOWAS CCJ (ECOWAS Community Court of Justice)
EHRC (Equality and Human Rights Commission)
ESC (European Social Charter (1996))
FAJ (Federation of African Journalists)
<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>FC</td>
<td>Mali Family Code</td>
</tr>
<tr>
<td>HRA</td>
<td>Human Rights Act (UK) 1998</td>
</tr>
<tr>
<td>HRC</td>
<td>UN Human Rights Committee</td>
</tr>
<tr>
<td>HRC GC</td>
<td>UN Human Rights Committee General Comment</td>
</tr>
<tr>
<td>I-A</td>
<td>Inter-American</td>
</tr>
<tr>
<td>IAComHR</td>
<td>Inter-American Commission on Human Rights</td>
</tr>
<tr>
<td>IACtHR</td>
<td>Inter-American Court of Human Rights</td>
</tr>
<tr>
<td>IAFDPC</td>
<td>Inter-American Convention on Forced Disappearance of Persons (1994)</td>
</tr>
<tr>
<td>IAJ</td>
<td>Inter-American Juridical Committee</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights (1966)</td>
</tr>
<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights (1966)</td>
</tr>
<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
</tr>
<tr>
<td>IHRDA</td>
<td>Institute for Human Rights and Development in Africa</td>
</tr>
<tr>
<td>IHRL</td>
<td>International human rights law</td>
</tr>
<tr>
<td>ILC(SR)</td>
<td>International Law Commission Articles on State Responsibility for Internationally Wrongful Acts</td>
</tr>
<tr>
<td>ILO</td>
<td>International Labour Organization</td>
</tr>
<tr>
<td>Istanbul Convention</td>
<td>Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (2011)</td>
</tr>
<tr>
<td>JSA 9</td>
<td>Justice and Security Act 2013</td>
</tr>
<tr>
<td>LGBT[I]</td>
<td>Lesbian, gay, bisexual and transgender [intersex]</td>
</tr>
<tr>
<td>MFWA</td>
<td>Media Foundation for West Africa</td>
</tr>
<tr>
<td>NI</td>
<td>Northern Ireland</td>
</tr>
<tr>
<td>NIHRC</td>
<td>Northern Ireland Human Rights Commission</td>
</tr>
<tr>
<td>OAPA</td>
<td>Offences against the Person Act</td>
</tr>
<tr>
<td>OAS</td>
<td>Organization of American States</td>
</tr>
<tr>
<td>OP</td>
<td>Optional Protocol</td>
</tr>
<tr>
<td>OUNHCHR</td>
<td>Office of the UN High Commissioner for Human Rights</td>
</tr>
<tr>
<td>PACE</td>
<td>Parliamentary Assembly of the Council of Europe</td>
</tr>
<tr>
<td>ROC</td>
<td>Rules of Court</td>
</tr>
<tr>
<td>ROP</td>
<td>Rules of Procedure</td>
</tr>
<tr>
<td>SOA</td>
<td>Sexual Offences Act</td>
</tr>
<tr>
<td>TEC</td>
<td>Treaty establishing the European Community</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights (1948)</td>
</tr>
<tr>
<td>UNCAT</td>
<td>UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)</td>
</tr>
<tr>
<td>UNHCHR</td>
<td>UN High Commissioner for Human Rights</td>
</tr>
<tr>
<td>UNHRC</td>
<td>UN Human Rights Council</td>
</tr>
<tr>
<td>Venice Commission</td>
<td>European Commission for Democracy through Law</td>
</tr>
<tr>
<td>WAVES</td>
<td>Women Against Violence and Exploitation in Society</td>
</tr>
</tbody>
</table>
abortion restrictions: see reproductive rights
access to justice, women’s right to
  CEDAW 15 (equality before the law) 483
  CEDAW General Recommendation 33 482, 483
  LR 483 n. 21
ACHPR (1981)
  justified differential treatment (ACHPR 27-9), force majeure and 18
  non-discrimination obligation (education): see education, non-discrimination obligation
ACHR (1969), interpretation
  applicable law, VCLT (1969) 322
  context (VCLT 31(2)), legal system to which the provisions to be interpreted belong
  324, 384-6
  conventionality control: see Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)) (separate opinions), Vio Grossi J
  intertemporal law/developments subsequent to conclusion of treaty as “relevant rule”
  (VCLT 31(3)(c)) (“living-tree” principle) 324, 330-8
  compatibility with ACHR 29 rules of interpretation 324, 330, 386
  most favourable interpretation 330
  [natural and] ordinary meaning in context (VCLT 31(1)) 381-3
  object and purpose (teleological approach) (VCLT 31(1))
  fullest protection of rights principle 323
  interpretation most favourable to the weaker party/pro persona principle 330
  restrictions regarding interpretation (ACHR 29)
  effect on rights under another treaty to which one or more of the Member States is party (ACHR 29(b)) 323-4
  limitation of effects of ADRDM, exclusion (ACHR 29(d)) 297-8, 323-4
  travaux préparatoires (VCLT 32) 381, 385-6
ACHR (1969), interpretation, jurisprudence (principles of interpretation)
  Artavia Marillo (IVF) 324, 386
  Atala Riffo 325, 330
  Consular Assistance (OC-16/99) 324, 386
  Effect of Reservations (ACHR 74 and 75) (OC-2/82) 323, 387
  Entitlement of Legal Entities to Hold Rights under the Inter-American System of Human Rights (OC-22/16) 321-2, 384, 387
  Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)) 321-5, 381
  Gonzáles (Cotton Field) 321, 323, 324, 384
  Hacienda Brazil Verde Workers 324
  Loayza Tamayo 387
  Mapiripán Massacre 330
  Promulgation and Enforcement of Laws (OC-14/94) 124-5
  Restrictions to the Death Penalty (ACHR 4(2) and 4(4)) (OC-3/83) 322
  Rights and Guarantees of Children in the Context of Migration (OC-21/14) 322, 323
  Street Children 324
  White Van 387
ACtHPR Rules of Court by rule
  26(1)(a) [jurisdiction: interpretation of Charter and other relevant human rights instruments] 10-11
  30 (costs) 26
  35(4)(a) (names and addresses of representatives) 8
  37 (time limit for reply to application) 8
  39(1) (preliminary examination of competence: Court’s right to request information/documentation) 32
ACtHPR Rules of Court by rule (cont.)
40 (conditions for admissibility) 14-15
40(6) (filing within a reasonable time) 14-15

Actio popularis/public interest litigation (PIL), possibility of
ACtHPR/ECOWAS CCJ 41, 78-9
features of 78-9
identification of victims, relevance 79
jurisprudence (international tribunals)
AComHPR, SERAC 41
ECOWAS CCJ
FAJ 41
Rev. Father Solomon Mfà 78
SERAP 41-2, 78-9
WAVES 77-9
ECtHR
Klass 574-5
Stübing 574-5
jurisprudence (municipal courts)
India, Fertilizer Corporation Kamager Union 41
Nigeria, Adesanya 41
UK, NIHRC 571, 574-6, 593, 627
NGOs’ role 41
object and purpose 78-9
“public interest” 78

Admissibility (ACHPR 56 requirements)
timeliness of application (ACHPR 56(6)/ROC 40(6))
date a quo, acquisition of knowledge of impugned law 14
jurisprudence
Abubakari 15
APDF and IHRDA 14-15
Dennis (ECtHR) 14
Thomas 15
Zongo 15
"reasonable period of time", relevant factors 15

Admissibility (ECOWAS): see ECOWAS Protocol (CCJ) (as amended in 2005 and 2006)
Admissibility (ECtHR)
abuse of process/right of application (ECHR 35(3) [27(2)]), timeliness 126-7
timeliness of objection 126-7

Advisory jurisdiction (ACHR 64), competence/scope/admissibility
ACHR 64(1) (interpretation of the Convention)
competence to interpret all aspects of the Convention including procedural provisions 297
as the "ultimate interpreter" 297
ACHR 64(1) (interpretation of “other treaties concerning the protection of human
rights in the American States”)
ADRDM as “other treaty” (ACHR 29(d)) 297-8
as broad and non-restrictive provision 297
“other treaties” 297-8
ACHR 64(2) (compatibility of domestic laws with ACHR 64(1)/human rights treaties),
jurisprudence
Naturalization Provisions of the Constitution of Costa Rica (OC-4/84) 325
Promulgation and Enforcement of Laws (OC-14/94) 124-5, 324-5
characteristics
contentious jurisdiction distinguished 321-2, 406-8
legal effect of opinion 407-8
for all OAS Member States 301-2
for OAS organs whose competence relates to the matter of the request 302
limitation to situation concerning most or all OAS Member States 408
discretion to decline request/factors of possible relevance
avoidance of over-formalism which would preclude juridical consideration of human rights issues 298
exclusion of hypothetical cases 299
existence of contentious cases relating to subject matter of request for advisory opinion, relevance 300
formal compliance with substantive requirements, relevance 298-9
request for advisory opinion in parallel with ICJ/IACtHR proceedings 300
establishment of jurisdiction, compétence de la compétence 295-6
jurisprudence: see also Gender Identity and Same-Sex Couples (IACtHR (OC-24/17))
Almonacid Arellano 297
Article 55 of the American Convention on Human Rights (OC-20/09) 297
Certain Attributes of the IACtHR (OC-13/93) 299
Chinchilla Sandoval 297
Constitutional Court v. Peru (OC-97) 297
Consular Assistance (OC-16/99) 298, 300
Effect of Reservations on the Entry into Force of the ACHR (OC-2/82) 301
Entitlement of Legal Entities to Hold Rights under the Inter-American System of Human Rights (OC-22/16) 297, 302, 321-2
Gender Identity and Same-Sex Couples (OC-24/17) 296-302, 406-8
Interpretation of the ADRDM within the Framework of ACHR 64 (OC-10/89) 298
Judicial Guarantees in States of Emergency (ACHR 27(2), 25 and 8) (OC-9/87) 299
Jurisdictional Status and Rights of Undocumented Migrants (OC-18/03) 299, 300, 302
“Other Treaties” Subject to the Advisory Jurisdiction of the Court (OC-1/82) 297, 299
Reports of the Inter-American Commission on Human Rights (ACHR 51) (OC-13/97) 297, 299, 321-2
Restrictions to the Death Penalty (ACHR 4(2) and 4(4)) (OC-3/83) 322
Rights and Guarantees of Children in the Context of Migration (OC-21/14) 297, 299, 300-2, 322
Vásquez Durand 297
object and purpose
assistance to OAS Members in the fulfilment of their international human rights obligations 299
protection of fundamental rights 301
request for opinion
inherent authority of Court to define, clarify and reformulate 298
requirements
considerations giving rise to request (ROP 70/ROP 71) 298
precise questions, specification of provisions to be interpreted and name/address of agent (ROP 70/ROP 71) 298
African Children’s Charter (1990) (ACRWC): see child rights (ACRWC)
age discrimination, prohibition
age as “other status” (ECHR 14) 250
“discrimination” (PHROP 2) 326
jurisprudence (ECtHR)
British Gurkha Welfare Society 250
age discrimination, prohibition (cont.)
Carvalho Pinto de Sousa Morais 250

PHROP 5 (equality and non-discrimination for reasons of age) 330-1

APDF and IHRDA (AChPR) (background, admissibility and jurisdiction)

admissibility (exhaustion of local remedies (AChPR 56(5))) 12-13
decision of Court’s conclusion (lack of an effective remedy) 13
decision of Court’s conclusion (filing of application within a reasonable time (AChPR 56(6))) 14-15

admissibility (filing of application within a reasonable time (AChPR 56(6))) 14-15

background
alleged violations 7-8
context and facts as related by the applicants (Family Code 2011) 7

parties’ positions
applicants 7-9
respondent State 9

admissibility (filing of application within a reasonable time (AChPR 56(6))) 14-15

Court’s conclusion (lack of an effective remedy) 13

“reasonable period of time” 14-15

Courts’ conclusion 15

“reasonable period of time” 14-15

background
alleged violations 7-8
context and facts as related by the applicants (Family Code 2011) 7

parties’ positions
applicants 7-9
respondent State 9

alleged violation relating to the minimum age of marriage (parties’ arguments)
absence of control of in religious marriages 20

APDF and IHRDA (AChPR) (merits): see also child rights (ACRWC)

alleged violation of the obligation to eliminate practices or traditions harmful to women
and children (ACRWC 1(3))

Court’s analysis
ACWRC 21(1) 25-6
CEDAW 5(a) 25-6
CEDAW 16(1)(a) and (b) 25
Maputo 2(2) 25-6

Courts’ conclusions 25-6

parties’ arguments
applicants 24
respondent 24-5

alleged violation relating to the minimum age of marriage (Court’s analysis and
conclusion) 18-19

Courts’ conclusion 19

force majeure, respondent’s admission of incompatibility with international law 18
legal provision for girls to be married at 15 years for “compelling reasons” (FC 281) 18-19

States’ obligation to take all appropriate measures to abolish negative practices and
customs including guarantee of minimum age for marriage at 18 years
(ACRWC 2/ACRWC 4(1)/ACRWC 21/Maputo 6(b)) 18

alleged violation relating to the minimum age of marriage (parties’ arguments)
absence of control of in religious marriages 20
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>applicants</td>
<td>19</td>
</tr>
<tr>
<td>absence of requirement to verify age in religious marriages</td>
<td>19</td>
</tr>
<tr>
<td>alleged breaches of ACRWC 1(3), ACRWC 2 and ACRWC 21</td>
<td>16</td>
</tr>
<tr>
<td>consent to &quot;under-age&quot; marriage, different treatment of girls and boys</td>
<td>16</td>
</tr>
<tr>
<td>incompatibility of FC 281 and Maputo 6(b)</td>
<td>16</td>
</tr>
<tr>
<td>Mali’s failure to take measures to eradicate &quot;under-age&quot; marriage</td>
<td>16</td>
</tr>
<tr>
<td>respondent State</td>
<td></td>
</tr>
<tr>
<td>biological and psychological acceptability of 15 as age of marriage for girls</td>
<td>17</td>
</tr>
<tr>
<td>compatibility of age of marriage in Code with realities in Mali</td>
<td>17</td>
</tr>
<tr>
<td>compatibility of revised Code with Charter and other human rights instruments</td>
<td>17</td>
</tr>
<tr>
<td>force majeure</td>
<td>16-17</td>
</tr>
<tr>
<td>need to revise text to garner consensus and avoid disruptions</td>
<td>17</td>
</tr>
<tr>
<td>alleged violation of the right of consent to marriage (Maputo 6(a)/CEDAW 16)</td>
<td></td>
</tr>
<tr>
<td>Court’s analysis and conclusion (absence of provision for verification of consent in religious marriages (FC 283/FC 287/FC 300))</td>
<td>20-1</td>
</tr>
<tr>
<td>parties’ arguments (applicants)</td>
<td>19, 20</td>
</tr>
<tr>
<td>continuing applicability of discriminatory customary law in absence of a will</td>
<td></td>
</tr>
<tr>
<td>(Maputo 21)</td>
<td>21-2</td>
</tr>
<tr>
<td>discrimination against children born out of wedlock (ACRWC 3/ACWRC 4(1))</td>
<td>22</td>
</tr>
<tr>
<td>equality of treatment for children without distinction (ACRWC 3/Maputo 21)</td>
<td>23</td>
</tr>
<tr>
<td>favour vs right</td>
<td>23</td>
</tr>
<tr>
<td>respondent (FC guarantees of compliance with consent obligations)</td>
<td>20</td>
</tr>
<tr>
<td>parties’ arguments (respondent)</td>
<td></td>
</tr>
<tr>
<td>citizens’ right to choose under the FC 22-3</td>
<td></td>
</tr>
<tr>
<td>obligation to revise 2009 Code in face of social unrest</td>
<td>21</td>
</tr>
<tr>
<td>reparations (ACHPR Protocol 27(1)/ROC 63)</td>
<td></td>
</tr>
<tr>
<td>applicants’ requests 8-9, 26</td>
<td></td>
</tr>
<tr>
<td>Court's decision/requirements</td>
<td></td>
</tr>
<tr>
<td>amendment of legislation to harmonize with international obligations</td>
<td></td>
</tr>
<tr>
<td>26 appropriate measures to bring an end to the violations 27</td>
<td></td>
</tr>
<tr>
<td>compliance with ACHPR commitment to promote Charter rights 26</td>
<td></td>
</tr>
<tr>
<td>costs (parties to bear own (ROC 30))</td>
<td>26</td>
</tr>
<tr>
<td>finding of violation of rights as a form of reparation 27</td>
<td></td>
</tr>
<tr>
<td>arbitrary arrest, detention or exile, freedom from (UDHR 9)</td>
<td>58, 60</td>
</tr>
<tr>
<td>Argentina, same-sex marriage/partnership</td>
<td>393, 396</td>
</tr>
<tr>
<td>armed forces</td>
<td></td>
</tr>
<tr>
<td>non-discrimination obligation/justified differential treatment (ECHR 14)</td>
<td>139-47</td>
</tr>
<tr>
<td>margin of appreciation 138, 140</td>
<td></td>
</tr>
<tr>
<td>parental leave 141-7</td>
<td></td>
</tr>
<tr>
<td>non-discrimination obligation/justified differential treatment (ECHR 14), jurisprudence</td>
<td></td>
</tr>
<tr>
<td>Demir 141</td>
<td></td>
</tr>
<tr>
<td>Engel 140, 141</td>
<td></td>
</tr>
<tr>
<td>Grigoriades 141</td>
<td></td>
</tr>
<tr>
<td>Hadjianastassiou 141</td>
<td></td>
</tr>
<tr>
<td>Kalaj 140</td>
<td></td>
</tr>
<tr>
<td>Larissis 140-1</td>
<td></td>
</tr>
<tr>
<td>Lustig-Prean 130, 139, 141</td>
<td></td>
</tr>
<tr>
<td>Markin 138-9, 140-7</td>
<td></td>
</tr>
<tr>
<td>Pasko 141</td>
<td></td>
</tr>
<tr>
<td>Smith and Grady 130, 139, 141</td>
<td></td>
</tr>
<tr>
<td>Vereinigung demokratischer Soldaten Österreich 141</td>
<td>141</td>
</tr>
</tbody>
</table>
Bayev (alleged violation of ECHR 14 in conjunction with ECHR 10 (LGBT issues))
(background/preliminary matters/just satisfaction (ECHR 41)) 177-95
just satisfaction (ECHR 41)
costs and expenses 212-13
disallowed travel expenses 213
limitation to reasonable expenses actually and necessarily incurred 213
default interest 213
non-pecuniary damage 212
pecuniary damage 211-12
procedural matters
admissibility (exhaustion of local remedies), absence of supporting evidence 195
applicants (administrative offences) 178-80
issue (alleged violation of ECHR 10) 194-5
Constitutional Court judgments 180-4
joinder of applications (ROC 42(1)) 194
summary 177-8
third-party intervenors 178
relevant law (CoE documents)
Committee of Ministers Decision 1273 (2016) (concerns relating to the
implementation of decision in Alekseyev) 193
Committee of Ministers Recommendation 2010(5) (measures to combat
discrimination on grounds of sexual orientation or gender identity) 192-3
PACE Resolution 1948 (2013) (tackling discrimination on the grounds of sexual
orientation and gender identity) 187-8
Venice Commission Opinion on the Issue of the Prohibition of so-called
“Propaganda of Homosexuality” (2013) (extracts) 188-92
relevant law (domestic)
Administrative Offences Law 2003 (Law No 172-22-OZ) (Archangelsk Oblast),
s 2.13 (promotion of homosexuality among minors), as additional section
(Oblast Law No 386-26-OZ of 21 November 2011) 184
Administrative Offences Law 2008 (Law No 182-OZ) (Ryazan Oblast), s 3.10
(promotion of homosexuality among minors) 185
Administrative Offences Law 2010 (Law No 273-70) (St Petersburg), s 7-1
(prohibition of LGBT among minors) 185
Protection of the Morality of Children in the Archangelsk Oblast Law 2011 (Law No
113-9-OZ), s 10 (prohibition of homosexuality among minors) 185
Protection of the Morality of Children in the Ryazan Oblast Law 2006 (Law No 41-
OZ), s 4 (prohibition of the promotion of homosexuality among minors) 184-5
relevant law (domestic), Constitution by article
19(2) (equality of rights irrespective of sex, social status or employment) 184
29 (freedom of speech and ideas) 184
55(3) (rights and freedoms: derogation) 184
relevant law (domestic) (Federal Laws)
Guarantees of the Rights of the Child in the Russian Federation Law 1998 (Law No
124-FZ), s 14 (protection of the child from harmful information, propaganda
and activism) 186-7
Protection of Children from Information that is Harmful to their Health and
Development Law 2010 (Law No 436-F3) by section
5(2) (prohibited forms of information) 186
16 (prohibition of the circulation of forbidden products in designated areas)
186
relevant law (HRC jurisprudence: Fedotova) 193-4
Bayev (alleged violation of ECHR 10 (freedom of expression/LGBT issues)) (merits) 195-209
Court’s assessment (interference with right) 201-2
  diversity of opinion, desirability 208-9
  enforcement of law as (respondent’s admission of) 202
  “law as such” 201-2
Court’s assessment (justified restrictions) 202-9
  “established by law”, clarity and precision of law, need for 207-8
  legitimate aim
    protection of the demography 205-6
    protection of health 205-6
    protection of minors 206-9
    protection of morals 203-5
    protection of the rights of others 206-9
  margin of appreciation 203, 209
requirements/relevant factors
  absence of alternative 202
  absence of evidence to support alleged adverse effect 203-4
  alleged intrusion in the field of education and parental choice 208
  avoidance of policies based on a predisposed bias of the majority 204-5
  balance between rights of LGBT individuals and interests of the community 205-6
  best interests of the child 217
  effective parliamentary and judicial review of the necessity 202
  evolution of attitudes towards social, civil-status and relational issues including
    family life 203-4
  homosexuality, rejection of alleged link with paedophilia 204
  proportionality to the legitimate aim 202-3
Court’s conclusion/decision 209, 214-15
dissenting opinion (Dedov J) 215-25
  family/private life, Court’s failure to address 216-19
  margin of appreciation 216-17
  obligation not to destroy any rights or freedoms 217
  review of the jurisprudence 216-19
freedom of expression
  inappropriateness of the promotion of non-traditional relations in proximity to
    children 224-5
  tolerance of homosexuality in Russia 224-5
  protection of the traditional family 222-3
  CRC stress on 223
  Venice Commission 222-3
sexual education
  CRC 28 223-5
  UNICEF International Technical Guidance on Sexuality Education 224
vulnerability of children 219-22
  alleged link between homosexuality and paedophilia 220-1
parties’ arguments
  applicants 198-200
  respondent 195-7
  third parties 200-1
Bayev (alleged violation of ECHR 14 (non-discrimination) in conjunction with
  ECHR 10 (freedom of expression/LGBT issues)) (merits) 210-11
  applicants’ position 210
Bayev (alleged violation of ECHR 14 (non-discrimination) in conjunction with ECHR 10 (freedom of expression/LGBT issues)) (merits) (cont.)

Court’s assessment (justified restrictions, requirements) 210
avoidance of policies based on a predisposed bias of the majority 210
“discriminatory” 210
margin of appreciation (differential treatment based on sexual orientation) 210-11
“proportionate to the legitimate aim” 210
Court’s conclusion 211

Brazil, same-sex marriage/partnership 393

Canada
same-sex marriage/partnership 395
jurisprudence 395
legislation (federal/provincial) 395

Carvalho Pinto de Sousa Morais (alleged breach of ECHR 14 in conjunction with ECHR 8 (gender equality/age discrimination)) (background/preliminary matters/just satisfaction (ECHR 41)) 234-45

admissibility
Court’s assessment 246-7
ancillary nature of ECHR 14 246-7
“private life” (ECHR 8) 247
Court’s decision 247
respondent’s submission (“personality”) 246
applicant’s medical history 234-5
declaration of partial inadmissibility 234
domestic proceedings against the hospital in date order
Lisbon Administrative Court (part finding in favour) (9 October 2014) 235-6
Supreme Court (reduction of damages) (9 October 2014) 236
Attorney General’s appeal against Supreme Court decision (29 October 2014) 237-9
dismissal of Attorney General’s appeal (29 January 2015) 238-9
just satisfaction (ECHR 41)
costs and expenses 254
default interest 254
non-pecuniary damage 254
relevant law (domestic jurisprudence) 241-2
relevant law (domestic legislation)
Constitution 1976 by article 13 (equality) 239
16 (fundamental rights: scope and interpretation) 239
18 (fundamental rights: legal force of constitutional provisions) 239
25 (personal integrity) 240
CPC 1939 (including amendments) by article 70 (protection of personality) 240
483 (intentional or reckless violation of rights: obligation to pay damages) 240
487 (burden/standard of proof) 240
relevant law (international)
CEDAW Committee’s observations on Portugal’s periodic reports (2015)
(“stereotypes”) 243
CEDAW (extracts) 242-3
Independence of Judges and Lawyers, Report of the UNHRC’s Special Representative (2015) 244
Index

Istanbul Convention (extracts) 244
relevant law (Report by the Permanent Observatory on Portuguese Justice (2016)) 244-5

Carvalho Pinto de Sousa Morais (alleged breach of ECHR 14 in conjunction with ECHR 8 (gender equality/age discrimination)) (merits)
Court’s assessment (principles)
age discrimination, prohibition 250
Court’s decision 254-5
differential treatment, justification/requirements (ECHR 14)
“differential treatment” 249
non-Convention right, applicability to 250
“proportionate to the legitimate aim” 249-50
“reasonable and objective” requirement 249-50
evaluation of evidence as matter for national courts 251-2
margin of appreciation 249-50
non-discrimination obligation (ECHR 14), burden/standard of proof 251
“or other status”
age 250
broad approach to 250
“status” 250
Court’s finding
difference of treatment by Portuguese Supreme Court of men in comparable situation 253
prejudices of Portuguese judiciary 251-3
sex and age as decisive factors in decision of the Supreme Administrative Court’s judgment 252-3
parties’ positions
applicant 247-8
respondent 248-9

Carvalho Pinto de Sousa Morais (alleged breach of ECHR 14 in conjunction with ECHR 8 (gender equality/age discrimination)) (separate opinions)
Motoc J (concurring) (judicial stereotyping) 260-5
Ravarani and Bošnjak JJ (dissenting) (failure to establish discrimination/address the issues) 265-76
comparative exercise 267-70
applicability to case under consideration 267-70
distinction operated by legislation 267-8
distinctive factual treatment 267-9
identification of two groups of persons 267
use of stereotypes as alternative 268, 274
differential treatment of persons in analogous or relevantly similar situations, need for 267
insufficiency of Portuguese jurisprudence to allow conclusions 272
disadvantageous treatment of the members of one group 270-3
discrimination (ECHR 14)
ancillary nature 266
“or other status” 266
requirements 266
Supreme Administrative Court’s approach to assessment of damage 274-6
three-stage process, Court’s failure to follow 267, 276
Yudkivska J (concurring) (judicial stereotyping) 255-60
causation/causal link as requirement for finding of breach of State responsibility/liability for reparation (ILC(SR) 31(2)), EB 247

CEDAW (1979)
compliance/implementation
inclusion in family education of an understanding of the common responsibility of men and women for children’s upbringing (CEDAW 5(b)) 111
maternity as a social function 111
“discrimination against women” (CEDAW 1) 482
inheritance rights (AT) 22
marriage
free and full consent requirement (CEDAW 16(1)(b)) 19-20, 25-6
same right as men to enter into marriage (CEDAW 16(1)(a)) 19-21, 25-6
same rights and responsibilities in all matters relating to children (CEDAW 16(1)(d)) 111
traditional social and cultural patterns (CEDAW 5(a)): see traditional social and cultural practices harmful to human/fundamental rights/stereotyping, obligation to eliminate

CEDAW General Recommendations
15 (avoidance of discrimination against women in national strategies for the prevention and control of AIDS) 482
19 (the family) 383, 485-6
21 (equality in marriage and family relations) 18, 381, 383, 482
24 (women and health) 482
25 (temporary special measures) 261
27 (older women and protection of their human rights) 335, 482
28 (core obligations under CEDAW 2) 304, 335, 472, 482
30 (women in conflict prevention) 482
31 (harmful practices) 482
33 (women’s access to justice) 482, 483
34 (rights of rural women) 482
35 (gender-based violence against women (updating Recommendation 19)) 482

CEDAW Rules of Procedure
64 (admissibility) 479
66 (joinder of admissibility and the merits) 479

child rights (ACHR 19)
as complementary/supplementary right for vulnerable persons 371
jurisprudence
Atala Riffo 371-2
Furlan 371
Gelman 371
Juvenile Re-education Institute 371
Mendoza 371
Pacheco Tineo Family 371
Rights and Guarantees of Children in the Context of Migration (OC-21/14) 371-2

child rights (ACRWC)
“best interests of the child” obligation (ACRWC 4) (umbrella provision) 18-19
“child” (ACRWC 2) 16-18
custom, tradition, cultural or religious practice inconsistent with ACWRC, obligation to discourage (ACRWC 1(3)) 16-18
elimination of harmful social and cultural practices affecting the child, obligation to take appropriate measures 16-18
INDEX 693

child rights (“best interests of the child”)
APDF and IHRDA 18-19
ECtHR
Bayev 217
Dubská 217
Sigma Radio 218, 219
IAGtHR, Gender Identity and Same-Sex Couples (OC-24/17) 371-4

Child Rights Convention (1989) (CRC)
“best interests of child . . . a primary consideration” (CRC 3(1)) 372-4
inherent right to life (CRC 6(1)) 372-3, 519
life, right to (CRC 6) 372-3, 519
non-discrimination obligation (CRC 2(1)), 82-8, 371-2: see also education, non-discrimination obligation; non-discrimination obligation (CRC 2)
right to be heard (CRC 12) 372-3
unlawful sexual activity, obligation to take measures to prevent 219

childcare in context of respect for family life (ECHR 8): see also parental leave in context of respect for family life (ECHR 8)

jurisprudence
Markin 101-72: see also Markin
Petrovic 127-8, 142-3
post-Petrovic evolution of attitudes towards responsibility for 127-8, 142-3

Children, Convention against Sexual Exploitation and Sexual Abuse (2007) (Lanzarote Convention), 6 (information on risks of sexual exploitation/abuse in context of new communication technologies) 520-1

Chile, same-sex marriage/partnership 393

Colombia
same-sex marriage/partnership 393, 395-6
sexual minorities, rights/protection of, same-sex marriage/partnership 393, 395-6
compensation for breach of ECHR (just satisfaction obligation (ECHR 41 [50])), right to/measure
Markin 150-1, 168-9
non-pecuniary loss, violation of law vs actual damage 168-9

background (legal), ECHR as integral part of the Russian legal system 516-17
background (procedural)
AOC 6.21 summarized 509
petitioners’ arguments 509, 510
Court’s analysis
direct force of rights 512
family/private life protected rights including protection of child against damaging propaganda (CRC 5/Lanzarote 6) 519-24
traditional values as basis of the law on family, sexual and private relationships 517-19
impossibility of suspending proceedings pending ECtHR decisions in analogous cases 512-13
Court’s competence to decide case without hearings (CCL 47) 512
pronym of Constitutional Court in case of conflict with ECtHR/resolution by appropriate mechanisms 512

- public discussion of sexual relations, including non-conventional relations contradicting moral norms (AOC 6.21.1)
- ad hoc application depending on potential audience and place of dissemination 524-5, 527
- compatibility with Constitution 524-5, 527, 528-30
- dependence of guilt on fair trial requirements 525-6
- factors to be considered when assessing Article 6.21.1 cases 529
- freedom of 515-17
- impact of information on recipient, relevance 526
- jurisprudence prior to enactment of provision 527-8
- as justified interference with family/private life 524, 528-9
- justified restrictions on (including ECHR 10/ICCPR 19/UDHR 29) 516-17
- Supreme Court’s jurisdiction in respect of/obligation to respect its decisions 528-9
- “unconventional sexual relations” as objective, non-pejorative term 523-4, 528-30
- right of petitioners to challenge constitutionality of implementation of AOC 6.21.1 530
- right of Russian citizens to appeal to international courts (Constitution 46(3)) 511-12
- sexual minorities
- prohibition of discrimination/differential treatment 512-14
- same-sex relationships on consensual basis, freedom of 512-14
- sexual orientation, gender identity and gender expression, right to self-determination of 512-14
- State’s constitutional obligation to recognize and protect all rights and freedoms on a basis of equality before the law 512-14
- human dignity as fundamental/non-derogable right 513
- Court’s decision (dismissal of complaint/constitutionality of AOC 6.21.1) 529-30

Constitutionality of Article 392(4)(3) and (4) of the Russian Civil Procedure Code taken in conjunction with Article 11 (Russian Constitutional Court)

- Court’s decision
- discontinuance of proceedings relating to CPC 392(4)(3) 501
- finding of constitutionality of CPC 392(4)(4) in conjunction with CPC 11(1) and (4) 501
- right of courts with general jurisdiction to request suspension of proceedings pending constitutional review of impugned legislation (CPC 392(4)(4)) 501
- decision of ECtHR as a new fact (CPC 4(4)) justifying 501
- Leningrad Circuit Military Court’s application for constitutional review
- background (factual) in date order
- rejection of Markin’s claim to maternity leave (14 March/27 April 2006) 490-1
- ECtHR judgment in Markin (22 March 2012) 491-2
- Leningrad Circuit Military Court’s abrogation of rulings of 14 March 2006 and 30 August 2012 (15 November 2012) 492-3
- refusal to reconsider on new facts basis rejection of Markin’s appeal against refusal to award maternity leave (15 November 2012) 490
- application for constitutional review (30 January 2013) 493
- background (legal)
- ECtHR as integral part of the Russian legal system 495-501
- law relating to constitutional review 489-90, 493-501
- law relating to Markin’s requests for child allowances/parental leave 491
recognition of ECtHR Markin decision as sole “new fact” 494-5
right of Russian citizens to appeal to international courts (Constitution 46(3)) 495
conventionality control: see Gender Identity and Same-Sex Couples (IACtHR (OC-24/17))
(separate opinions), Vio Grossi J
Costa Rica: see Gender Identity and Same-Sex Couples
Council of Europe (CoE)
Decisions (CM/Del/Dec(2016)1273/H46-23) (concerns relating to the implementation of decision in Alekseyev) 193
Recommendations (Committee of Ministers)
1996 (5) (reconciliation of work and family life) 114
2010 (4) (human rights of members of the armed forces) 115-16
2010 (5) (measures to combat discrimination on grounds of sexual orientation or gender identity) 192-3, 367
2017 (17) (gender equality standards) 114-15
Recommendations (PACE)
924 (1981) (discrimination against homosexuals) 336
1117 (1989) (condition of transsexuals) 336
1470 (2000) (situation of gays and lesbians and their partners in respect to asylum and immigration) 336
1474 (2000) (situation of lesbians and gays in the Member States) 336
1635 (2003) (lesbians and gays in sports) 336
1769 (2006) (reconciliation of work and family life) 113-14
1915 (2010) (discrimination on the basis of sexual orientation and gender identity) 336
Recommendations (PACE)
1274 (2002) (parental leave) 113
1948 (2013) (tackling discrimination on the grounds of sexual orientation and gender identity) 187-8
defamation
sanctions (proportionality/necessity requirement)
FAJ 49-57
Gleaves v. Deakin 51
Holbrock 51
Labouchare 51
Nevanji Madanhire 51
seditious libel, definition 51-3
differential treatment, justification/requirements (ACHR 30/CFR 1, CFR 20 and CFR 21/ECHR 14/ICCPR 26/ACHPR 2/UDHR 1 and UDHR 2)
burden/standard of proof 338-40
changing attitudes, obligation to take into account 138-9
definition (difference in treatment of persons in analogous or relevantly similar situations) 249, 267-8
health considerations 87
legitimate aim 328-9
“imperative” requirement 338-9
positive discrimination measures to reverse discriminatory situations 328
“manifestly without reasonable foundation” (Stec test) 137-8
margin of appreciation 138
non-Convention right, applicability to 250
“proportionate to the legitimate aim” 249-50, 328-9
differential treatment, justification/requirements (ACHR 30/CFR 1, CFR 20 and CFR 21/ECHR 14/ICCPR 26/ACHPR 2/UDHR 1 and UDHR 2) (cont.)

- absence of alternative 339
- “reasonable and objective” requirement 249-50, 328-9
- stereotyping as basis 268
- substantial grounds/weighty reasons 130, 138

**differential treatment, justification/requirements (ACHR 30/CFR 1, CFR 20 and CFR 21/ECHR 14/ICCPR 26/ACHPR 2/UDHR 1 and UDHR 2), jurisprudence**

- Alajos Kiss 250
- Atala Riffo 325, 329, 339, 396
- Biao 249-50
- British Gurkha Welfare Society 250
- Carson 250
- Carvalho Pinto de Sousa Moraes 249-76
- Clift 250, 257
- Duque 340, 396
- Engel 140, 141
- Espinoza González 327-8
- Flor Freire 339, 340
- Gaygusuz 138
- I.V. 328-9, 339
- Kalas 140
- Khamtokhu 250, 251
- Norin Carramán 328-9
- Promulgation and Enforcement of Laws (OC-14/94) 327, 410
- Rasmussen 138
- Salgueiro da Silva Mouta 204, 211, 252
- Schüler-Zgraggen 250, 252
- Schwizgebel 250
- Sousa Goucha 249-50, 252
- Stafford 138
- Ünal Tekeli 250, 251
- WAVES 82-8
- Weller 138

**discrimination, definitions**

- “as any exclusion, restriction or preference based on specific reasons … which has the purpose or effect of nullifying or impairing … human rights and fundamental freedoms …” (Atala Riffo) 326-7, 409-10
- intersecting discrimination: see non-discrimination obligation (CEDAW 2)
- intersecting forms of discrimination
- examples 482-3, 484-5
- General Recommendations referring to 482 n. 18
- treaty provisions
  - Anti-racism Convention 1(1) 326
  - CEDAW 1 482
  - CERD 1(1) 326
  - CRPD 1(1) 326
  - HRC GC 18:2 326-7
  - PHROP 2 326
INDEX

ECHR (1950), interpretation, “European consensus”/“emerging consensus” 138
ECOWAS (CCJ), Rules of Procedure (2002)
  87(1) (preliminary procedure: preliminary plea not going to the substance) 35
  87(2) (preliminary procedure: application requirements) 35
  89 (intervention/amicus curiae) 36
ECOWAS Protocol (CCJ) (as amended in 2005 and 2006)
  exhaustion of local remedies 45-7: see also exhaustion of local remedies
  jurisdiction (ECOWAS Protocol (CCJ) 9)
Court’s rights
  determination of propriety of domestic administrative decisions, exclusion 89
  examination of legislation to confirm compatibility with international obligations
  to raise jurisdiction/admissibility ex proprio motu 76
criteria (text of Statute in conjunction with substance of application) 76
  Bakary Sarre 76
  Esiyen 76
  Mr Claude Mba 76
  WAVES 76
human rights violations (ECOWAS Protocol 9(4)/ECOWAS Protocol 10(d)) 47, 76-9
  hypothetical cases/examination of law as such, exclusion 47-9
human rights violations (ECOWAS Protocol 9(4)/ECOWAS Protocol 10(d)), jurisprudence
  Bakary Sarre 77
  FAJ 47-9
  Habré 48
  Koronou 48
  WAVES 76-9
limitation period (within three years of cause of action arising) (ECOWAS Protocol 9
  (3)) 42-5
“cause of action” 44-5
  Letang 45
  SERAP 45
continuity of wrongful act 43-4
  Ouko 44
  Randolph (HRC) 44
  SERAP 44
English and French texts compared 42-3
drafting language (French), as preferred text 43
standing (ECOWAS Protocol (CCJ) 10)
  actio popularis/public interest action, possibility of 41, 78-9: see also actio popularis/
  public interest litigation (PIL), possibility of
  legal personality
  definition 40
  evidence of 40
  need for 40, 74
“shall not be anonymous” (ECOWAS Protocol (CCJ) 10(d)(i)) 77-9
standing/legal personality, jurisprudence
  Abraham Adesanya (Supreme Court of Nigeria) 41
  CNDD 40
  FAJ 39-42
  Fertilizer Corporation Kamager Union (Supreme Court of India) 41
ECOWAS Protocol (CCJ) (as amended in 2005 and 2006) (cont.)
  MFWA 77
  SERAC 41
  SERAP 40, 41, 77
  WAVES 74, 77-8

ECtHR
  evidence as matter for national court 251-2
  exclusion of hypothetical cases/review of domestic law in the abstract 203
  Animal Defenders International 202-3
  Bayev 202-3
  James 203
  Perinçek 203
  judgments, binding force and execution (ECHR 46 [ECHR 53/ECHR 54])
    Alekseyev 193
    Court’s supervisory powers, enhanced supervision procedure 193
    municipal courts, primacy in case of conflicting interpretation 512
  request to strike out case (ECHR 37(1))
    importance of human rights issue as justification for continued examination as
    counter-indication 125
  jurisprudence
    Kaftailova 124
    Markin 123-6
    Pisano 123
    Shevanosov 124

ECtHR, individual applications (“victim” (ECHR 34 [ECHR 25(1)])
  effective exercise of right, obligation not to obstruct 147-50
  burden of proof/relevant facts 167-8
  inappropriateness of authorities’ direct contacts with applicant 149
    contacts not amounting to improper pressure 148-9
    examples of inappropriateness 149
    failure to achieve desired withdrawal of case, relevance 169
    relevant factors 149-50
  jurisprudence
    Akdeniz 149
    Akdivar 148-9, 171
    Aksoy 148
    Asenov 149
    Ergi 149
    Fedotova 147, 149
    Knyazev 147
    Kurt 148-9
    Manousos 149
    Markin 147-50, 167-8
    Matyar 149
    Popov 147
    Ryabov 147, 149
    Siojova 148-9
    Tanrikulu 149
    Yegeyiy Alekseyenko 149

factors of possible relevance
  acknowledgement of breach/remedy by State authorities and, jurisprudence
  Amuur 122-3
INDEX 699

Dalban 122-3
Markin 121-3
Sakhnovskiy 122-3

decision or measure favourable to victim short of acknowledgement/satisfaction 121-3
“law as such” vs individual measure of implementation 201-2, 555-6, 581-2, 587-8, 590-5

ECtHR Rules of Court (1998-2013)
24 (composition of Chamber) 102
44(1)(b) (right to submit written comments/take part in a hearing, procedure) 102
52(1) (allocation of cases) 101
59(1) (individual applications: parties’ observations) 102
73 (request for transferral to Grand Chamber) 102
74(2) (separate opinions) 152

ECtHR Rules of Court (2016)
42(1) (joinder of cases) 173 n. 173, 194
44(3)(a) (third-party intervention: participation in written/oral hearing) 178
54(3) (declaration of inadmissibility) 234
74(2) (separate opinions) 255

education, non-discrimination obligation
derential treatment, justification for 86-8
examples of discrimination
barring of pregnant girls from mainstream schooling 82-8
segregation of immigrant children 86-7
jurisprudence
Ortuis 86-7
WAVES 82-8
treaties relating to
ACHPR 17(1), ACHPR 2 and ACHPR 25 82-8
CADE (1960) 82-8
CRC 2(2) 82-8
UDHR 26 82-8

education, right to (ECHR Protocol 1:2)/freedom of religion (ECHR 9), relationship
Kjeldsen, Busk Madsen and Pedersen 200, 208, 209
Lautsi 217

effective remedy before national authority, need for (ECHR 13/ICCPR 2(3)/ACHPR 56(6))/CEDAW OP 4(1) 481
tuples of ineffectiveness
cassation review not applicable to circumstances of claim 480
statutory limitation 481
jurisprudence
APDF and IHRDA 14-15
Dennis 14
Kashlan 477
ON and DP 479-81

equality before the law (ACHR 24)
definition 325
jurisprudence
Apitz Barbera (First Court of Administrative Disputes) 328
Atala Riff 325
Duque 325, 328
Espinoza Gonzales 325, 327, 328
Flor Freire 325, 327, 328
equality before the law (ACHR 24) (cont.)
Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)) 325, 327-8
Gonzáles Lluy 328
I.V. 325
Naturalization Provisions of the Constitution of Costa Rica (OC-4/84) 327
Yatama 327-8
as jus cogens 325
non-discrimination (ACHR 1(1)) and 325, 327-8
evidence (ECtHR), evaluation, as matter for national courts (subsidiarity principle)
251-2
exhaustion of local remedies
CEDAW OP 4(1) 478-81
customary international law (CIL) 46-7
ECOWAS CCJ
absence of requirement for 45-7
ACHPR/ACtHPR practice distinguished 46, 47
customary international law and 46-7
exhaustion of local remedies, jurisprudence
ACtHPR, APDF and IHRDA 12-13
CEDAW Committee
Dorofeev 480
ES and SC 479
ON and DP 479-81
ECOWAS CCJ
FAJ 45-7
Musa Saidykhan 46-7
Ocean King Nigeria 46
Sikiru Alade 46
extradition, deportation or expulsion to country where risk of breach of human rights
including life/torture/inhuman treatment
Chahal 639-40
Saadi 640
Sufi and Elmi 640

fair hearing (right to be heard) (ACHPR 7)
FAJ 57-8
Huri Laws 60
Tandja 60

FAJ (ECOWAS CCJ) (background, procedural history, facts, preliminary objection)
facts and procedural history
1st plaintiff 33, 37
2nd plaintiff 33, 37
2nd, 3rd, 4th [and 5th] plaintiffs 33, 37
3rd plaintiff 33-4, 37
4th plaintiff 34, 37
amicus curiae briefs, Court’s agreement to a consolidated version 36
applicants’ updated application 36, 38
requested reliefs 34-5
measure of damages 5
preliminary objection (Court’s analysis)
exhaustion of local remedies
INDEX 701

absence of ECOWAS CCJ requirement for 46-7
ACHPR/ACHPR practice distinguished 46, 47
Court’s conclusion 47
jurisdiction (human rights violations (ECOWAS Protocol 9(4)/ECOWAS Protocol 10(d))
Court’s conclusion 49
hypothetical cases/examination of law as such, exclusion 47-9
right to examine legislation to confirm compatibility with international obligations 47-9
legal personality/standing of 1st plaintiff (FAJ)
ACHPR/ACHPR practice distinguished 46, 47
actio popularis/public interest litigation (PIL), possibility of 41
Court’s conclusion 41-2
jurisprudence 40-2
“legal personality” 40
standing (human rights cases) 41-2
limitation period (within three years of cause of action arising) (ECOWAS Protocol 9 (3)) (3rd plaintiff) 42-5
“cause of action” 44-5
continuity of wrongful act 43-4
Court’s conclusion 45
English and French texts compared 42-3
preliminary objection (parties’ positions)
applicants 38-9
defendant 35-6, 38
FAJ (ECOWAS CCJ) (merits)
alleged breach of right to freedom of expression (ACPHR 9/ICCPR 19/UDHR 19/justified restrictions), Court’s analysis and conclusion 49-57
Court’s conclusion 57
freedom of expression/the press as bedrock of a democratic society (HRC GC 34) 53-7
seditious libel/libel defamation 49-57
Gambian law on 52-3
history and reasons for the offence 50-2
“within the law” requirement (ACHPR 9(2)) 50-7
clarity and precision of law, need for 49-57
alleged breach of right to freedom of expression (ACPHR 9/ICCPR 19/UDHR 19/justified restrictions), parties’ arguments
defendant 49-50
plaintiffs 49, 52
alleged breach of right to liberty of person (ACHPR 6)/prompt hearing (ACHPR 7(1)(d)) 57-61
Court’s decision 61
parties’ claims
applicants 57, 60
defendant 59, 60
alleged breach of right to liberty of person (ACHPR 6)/prompt hearing (ACHPR 7(1)(d)), Court’s analysis
“arrest”/“detention” 59-60
“lawfulness requirement”
ACHPR 6 58-9
FAJ (ECOWAS CCJ) (merits) (cont.)
dependence on conformity of national law with international obligations 57-8
Gambian Constitution 19, 59
ICCPR 9(1) 58
jurisprudence 57-8
relevant legal instruments, ECHR 5(1) 58-9
UDHR 3/UDHR 9 58-9
prompt hearing
Gambian Constitution 19(3)(b) 60
jurisprudence 60
alleged torture and degrading treatment (ACHPR 5/Gambian Constitution 21/ICCPR 7)
Court’s analysis 61-3
definition/classification as torture 61-2
evidence of/burden of proof 62-3
treaty provisions (ACHPR 5/ICCPR/7/UNCAT 1) 61
Court’s conclusion 63
parties’ claims
applicants 4 and 5 61-2
defendant 62
Court’s decision
costs 64
damages 64
finding of breaches of
ACHPR 5 and ICCPR 7 (torture) 64
ACHPR 6, ACHPR 9 and ACHPR 12(2), ICCPR 9, ICCPR 12(4) and ICCPR 19(2), and ECOWAS 66(2)(c) (freedom of expression) 64
reparations, repeal/amendment of impugned laws to conform with international law obligations 64
“family”/“family life”
forms of family life not based on marriage 382-3
General Comments
CRC 7 (implementing child rights in early childhood) 381, 383
HRC 17 (right to privacy) 381, 383
HRC 19 (ICCPR 23 (the family)) 381, 383
General Recommendations (CEDAW) 21 (equality in marriage and family relations) 381
interpretation principles
broad and flexible interpretation, desirability 387-8
evolution of concept/“living-tree” principle (VCLT 31(3)(c)) 381-2, 386-8
ordinary meaning, difficulty of establishing 381-3
relevant factors 383
restrictive interpretation excluding same-sex ties as defeat of object and purpose 387
limitation of protection to relationships based on marriage (ACHR 17(2), ACHR 17(3), ACHR 17(4) and ACHR 17(5)) 384
treaty provisions
absence of definition 385-6
ACHR 1(1) (non-discrimination), applicability to all ACHR provisions and to other I-A human rights treaties 388
ACHR 11(2) (interference with private life/family) 380-90
ACHR 17(1) (family as natural and fundamental group unit of society) 380-90
ACHR 24 (equal protection before the law) 388
family/private life, respect for/freedom from interference (ACHR 11/ACHR 17/ ECHR 8(1)/ICCPR 17/ADRDM VI/UDHR 12)
Member States’ positive obligation to establish effective and accessible procedures to protect rights, jurisprudence, Süderman 216
sexual minorities and 203-5
absence of evidence to support alleged adverse effect of same-sex partnerships on private/family life 203-4
entitlement to rights and obligations established by domestic law 389
family/private life, respect for, justified restrictions/interference by public authority, grounds/requirements (ACHR 11(2)/ACHR 17/ECHR 8(2)/ICCPR 17)
“in accordance with the law”/“prescribed by law” 595, 649
balance of interests
 of foetus and mother 588-90, 601-2
 of individual and community as a whole/public interest 654-66
 between pregnant mother and the community 550-5
 burden/standard of proof 648
legitimate purpose 650-68
 protection of health or morals 203-6, 550, 595-9
 public opinion, relevance/assessing 551, 595-9, 664-6
 protection of the unborn child 650-2
 rational connection requirement 652
 margin of appreciation 600
 “institutional competence”/discretionary area of judgment considerations 557-8, 600-1, 655-9
family/private life, respect for, justified restrictions/interference by public authority, grounds/requirements (ACHR 11(2)/ACHR 17/ECHR 8(2)/ICCPR 17) (cont.)

“necessary in a democratic society” 599-602
“proportionate to the legitimate aim” 550-5, 652
absence of alternative 202-3
“least intrusive means” 652-4
refusal of abortion in case of fatal foetal abnormality 553-4, 602-4, 609-11, 650-68, 679, 680
incest 552-3, 605-7
rape 552-3, 604-7
serious foetal abnormality 553-4, 607-8, 667-8, 679-80
relevant factors, evolution in society and changes in the perception of social, civil-status and relational issues 203-4

family/private life, respect for, justified restrictions/interference by public authority
(ACHR 11(2)/ACHR 17, ECHR 8(2), ICCPR 17), jurisprudence

Axel Springer 218
Bank Mellat 599, 648
Bayev 202-9
Kozak 203, 204
KU 218
Mouvement Raelien Suisse 655
Nada 655
NIHRC (Supreme Court) 595-608, 648-68
Oliari 203
PB and JS 203
Quila 648, 651-2
Schalk and Kopf 203
X v. Austria 204
X v. Poland 203-4
X and Y v. Netherlands 218

force majeure, human rights derogations, as justification for 18

forced marriage: see marriage, protective measures

freedom of expression/freedom of the press (ACHPR 9/ACHR 13/ECHR 10/ICCPR 19(2)/ECOWAS 66): see also freedom of expression/freedom of the press, justified restrictions/interference by public authority/requirements (ACHPR 9 (2)/ACHPR 27(2)/ACHR 13(2)/ECHR 10(2)/ICCPR 19(3))
diversity of opinion, desirability of exposure to 208-9
language of choice, right to use 346
personal identity and 346, 357-9
photographic images, applicability to 357-8
rights and reputations of others and 206-9
obligation not to destroy any ECHR rights or freedoms 217
UDHR 19 50, 57

freedom of expression/freedom of the press (ACHPR 9/ACHR 13/ECHR 10/ICCPR 19(2)/ECOWAS 66/UDHR 19), jurisprudence

ACHPR, Konate 55-6
ECOWAS CCJ, FAJ 49-57
ECtHR
Altug Tanker Akcam 56
Axel Springer 217
INDEX

Bayev 195-209, 215-25: see also Bayev
Castells 54
DI 217
Dudski 217
Handyside 216
Kao 217-18
KU 217
Kuhnen 217
Lautsi 217
Lingens 54
MGN 357
Otegi Mondragon 56
Parillo 217
Schussel 357
Von Hannover 357
IACtHR
Fontecvecchia 357
Kimel 55
López Álvarez 346
municipal courts
India, K.U. 217

freedom of expression/freedom of the press, justified restrictions/interference by public authority/requirements (ACHPR 9(2)/ACHPR 27(2)/ACHR 13(2)/ECHR 10(2)/ICCPR 19(3))
balance of interests of persons with opposing views 517
legality of measure/"established by law"
clarity and precision of law, need for 49-57
"within the law" (ACHPR 9(2)) 50-7
legitimate aim, protection of family/private life 177-210
minors 206-9
public morals 203-5
necessity/proportionality 49-57

freedom of movement (ACHPR 12), right to leave/return to one’s own country 44, 64

Gambia
Constitution by section
12 (freedom from torture or inhuman or degrading treatment) 61
19 (liberty and security of person) 57-61
19(3)(b) (prompt hearing) 60
Criminal Code 2009, compatibility with international human rights obligations: see FAJ
Criminal Code 2009 by article, 52 (sedition), text 52
Information and Communications (Amendment) Act 2013 by section, 173A 47
sedition (CC 51/CC 52) 49-57

gender identity: see Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)); sexual minorities; sexual orientation

Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)): see Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)) (background: jurisdiction/admissibility/court’s approach to the case); Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)) (Costa Rica’s questions/Court’s conclusions
Gender Identity and Same-ex Couples (IACtHR (OC-17)) (cont.)
(overview); Gender Identity and Same-Sex Couples (IACtHR (OC-24/17))
(Court’s opinion); Gender Identity and Same-Sex Couples (IACtHR (OC-24/17))
(international protection of same-sex relationships); Gender Identity and
Same-Sex Couples (IACtHR (OC-24/17)) (right to equality and non-
discrimination of LGBTI persons); Gender Identity and Same-Sex Couples
(IACtHR (OC-24/17)) (right to identity/gender identity); Gender Identity and
Same-Sex Couples (IACtHR (OC-24/17)) (right to recognition of juridical
personality, to a name and to gender identity); Gender Identity and Same-Sex
Couples (IACtHR (OC-24/17)) (right to rectification of identity data to
conform with the self-perceived gender identity); Gender Identity and Same-Sex
Couples (IACtHR (OC-24/17)) (separate opinions)

Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)) (background:
jurisdiction/admissibility/court’s approach to the case) 284-325

competence/scope/admissibility 296-302
AChR as the “ultimate interpreter” 297
“all matters relating to the interpretation or application of [the] Convention” (AChr
62(1)/AChR 62(3)) 321
compétence de la compétence 295-6
competence to interpret all aspects of the Convention including procedural provisions
297
contentious jurisdiction distinguished 321-2
avoidance of over-formalism which would preclude juridical consideration of
human rights issues 298
formal compliance with substantive requirements, relevance 298-9
request for advisory opinion in parallel with ICJ/IAComHR proceedings 300
discretion to decline request/factors of possible relevance, exclusion of hypothetical
cases 299
IACtHR as human rights court 324-5
interpretation of other treaties (AChR 64(2))
ADRM (AChR 29(d)) 297-8
as broad and non-restrictive provision 297
“other treaties” 297-8
legal effect of opinion
for all OAS Member States 301-2
for OAS organs whose competence relates to the matter of the request 302
requirements
considerations giving rise to request (ROP 70/ROP 71) 298
precise questions, specification of provisions to be interpreted and name/address of
agent (ROP 70/ROP 71) 298
State responsibility for treaty compliance/acts/omissions of State organ (ILC(SR) 4) 301
Costa Rica’s request, reasons for
diversity of processes in different Member States 286
uncertainty as to extent of prohibition on discrimination based on gender identity/
sexual orientation 286
Costa Rica’s request for rulings on
a. protection provided by ACHR 11(2), ACHR 18 and ACHR 24 in relation to
ACHR 1 to the recognition of gender identity-based change 285
b. compatibility of CC 54 on gender identity-based name change with ACHR 11(2),
ACHR 18 and ACHR 24 in relation to ACHR 1 285
c. protection provided by ACHR 11(2) and ACHR 24/ACHR 1 to the recognition of
patrimonial rights derived from same-sex relationship 285-6
materials considered by the Court 296
proceedings before the Court
arrangements for the submission of written observations 288
IACtHR 289
members of civil society 291-2
OAS Member States 289
State agencies 289
UNHCHR 289
observations submitted by national and international associations, academic establishments and non-governmental organizations 289-91
public hearing (16-17 May 2017) 292-6
supplementary briefs 296
terminology (sexual minorities) 302-11: see also sexual minorities, terminology
treaty interpretation criteria 321-5
applicable law
IHRL 324-5
VCLT 31 and 32 322, 381
context (VCLT 32), legal system to which the provisions to be interpreted belong 324, 384-6
fullest protection of rights principle 323-4
living-tree principle (VCLT 31(3)(c)) 324, 330-8, 381-2, 386-8
compatibility with ACHR 29 rules of interpretation 324, 330, 386
ordinary meaning (VCLT 31(1)) 381-4
restrictions regarding interpretation (ACHR 29)
effect on rights under another treaty to which one or more of the Member States is party (ACHR 29(b)) 323-4
limitation of effects of ADRDM, exclusion (ACHR 29(d)) 323
travaux préparatoires (VCLT 32) 381, 385-6
treaty as a whole/holistic approach (VCLT 31(2))
international declarations and rulings 324
international legal standards relevant to the subject matter 324
jurisprudence 324
other treaties applicable to the parties 324
with reference to object and purpose 324

Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)) (Costa Rica’s questions/Court’s conclusions (overview))

Question 1: recognition and facilitation of name change
Court’s analysis 351-3
Court’s conclusion 355
separate opinion (Vio Grossi J) 412-15
text 287

Question 2: rectification of identity data/need for a judicial procedure
Court’s analysis 374-6
Court’s conclusion 376
separate opinions
Sierra Porto J (concurring) 451-62
Vio Grossi J 415-16
text 287

Question 3: compatibility of Costa Rican Civil Code, Article 54 with requirements as established by the Court
basic characteristics 356-7
Court’s analysis 340-9
Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)) (Costa Rica’s questions/Court’s conclusions (overview)) (cont.)

Court’s conclusion 379-80

Question 4: patrimonial rights derived from a same-sex relationship

Court’s analysis 380-9

Courts conclusion 389-90

separate opinion (Vio Grossi J) 419-22

text 387

Question 5: mechanisms to regulate relationships/recognition of relationship

Courts analysis 390-6

Courts conclusion 399

separate opinion (Vio Grossi J (dissenting)) 422-30

text 287

Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)) (Court’s opinion)

1. competence to issue Advisory Opinion 399

2. change of name/rectification of identity documents as ACHR right/obligation of State to recognize, regulate and establish the appropriate procedure 399-400

3. State’s obligation to establish procedure meeting requirements established by the Court 400

4. dependence of compatibility of CC 54 on compliance with procedural requirements established by the Court 300-1

5. implementing measures open to Costa Rica 401

6. entitlement of same-sex couples to the same protection under ACHR 11(2)/ACHR 17 as heterosexual couples 401

7. State’s obligation to recognize and ensure ACHR 11(2)/ACHR 17(1) rights deriving from same-sex family relationship 401

8. State’s obligation to ensure same-sex couples’ full access to all mechanisms under domestic laws to ensure protection of rights 401

Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)) (international protection of same-sex relationships) 380-99

“family”/“family life”

forms of family life not based on marriage 382-3

interpretation principles

broad and flexible interpretation, desirability 387-8

evolution of concept/“living-tree” principle (VCLT 31(3)(c)) 381-2, 386-8

ordinary meaning, difficulty of establishing 381-3

restrictive interpretation excluding same-sex ties as defeat of object and purpose 387 jurisprudence 382-3

limitation of protection to relationships based on marriage (ACHR 17(2), ACHR 17(3), ACHR 17(4) and ACHR 17(5)) 384

relevant factors 383

treaty provisions relating to 380-90

family/private life, respect for/freedom from interference (ACHR 11/ACHR 17/ECHR 8(1)/ICCPR 17/ADRDM VI/UDHR 12) 389

non-discrimination obligation (ACHR 1(1)), as general obligation extending to all provisions of the Convention and other I-A human rights treaties 327, 388

same-sex marriage/partnership

ACHR 11(2) (private life)/ACHR 17(1) (protection of the family) as basis of protection 380-90

differential treatment, unacceptable grounds 397-9

creation of institution with same effects as marriage but not the name 398
equality test, any failure to meet 338-9, 397

equality test, any failure to meet 338-9, 397

evolution of marriage concept, failure to take account of 397

measures conflicting with liberty of person/freedom to make life choices (ACHR 7)

philosophical/religious convictions-based distinctions 397-8

procreation as the purpose of marriage 397

semantic imposition of the etymology of “marriage” 397

entitlement to rights and obligations established by domestic law 389

“family”, whether 381-90

institutional difficulties impeding legislative reform, State’s obligations
good faith promotion of required legislative, administrative and judicial reforms 398-9

non-discrimination/guarantee of same rights as offered by marriage as an interim measure 399

mechanisms to protect diverse families 390-9

jurisprudence (ECtHR/IACtHR/HRC) 390-2

State practice 393-6

observations (CESCR/CEDAW) 391

sexual minorities, rights/protection of (ACHR 1(1)/ECHR 14/ICCPR 26/ACHPR 18(3)/TEC 119)
civil, political, economic and social rights 389

patrimonial rights 389-90

social security provisions 389

Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)) (right to equality and non-discrimination of LGBTI persons)
differential treatment, justification/requirements (ACHR 10) 325-9

legitimate aim 328-9

positive discrimination measures to reverse discriminatory situations as 328

“proportionate to the legitimate aim” 328-9

“reasonable and objective” 328-9

equality (ACHR 24)
definition 325

jurisprudence 325, 328

as jus cogens 325

non-discrimination and 325, 327-8

LGBTI communities, historic victimization (Atala Riffo) as frame of reference 311-20
diversity of approaches to 317-18

exacerbation of other identity factors 316-17

health, impact on 319-20

international instruments other than treaties relevant to 311-20

official discrimination, examples 315-16

positive response of OAS Member States to UN recommendations 318

prejudice-based violence 312-13

private discrimination 316

non-discrimination (ACHR 1(1)) 327-9
categories of discrimination, non-exhaustive nature 329, 330
differential treatment distinguished 328-9

“discrimination” 326

jurisprudence 325, 326-8

State responsibility for breach 327

sexual orientation, gender identity and gender expression as protected categories (“any other status”) 329-38
Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)) (right to equality and non-discrimination of LGBTI persons) (cont.)

discrimination on the basis of perception 337-8
ECtHR jurisprudence 335-6
justified restrictions/differential treatment 338-40
OAS Member States’ provision for in domestic legal systems 338
recognition in treaties and similar international instruments 330-5
terminology (sexual minorities): see also sexual minorities, terminology

glossary 302-11
LBGTI as OAS preference 310-11

Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)) (right to identity/gender identity) 340-9

Court’s conclusions
affirmation of gender/sexual identity as an integral and a determining component of personal identity (ACHR 7/ACHR 11(2)) 348
free development of the personality and the right to privacy as basis of the right to identity 348
gender identity as internal and individual experience independent of assignment of sex at birth 348
instrumental value of identity for exercise of democratic rights 349
link between gender/sexual identity and liberty, privacy, self-determination and right to make life choices 348
recognition of identity as a protected ACHR right 348
relationship of identity with human dignity, right to life and personal autonomy (ACHR 7/ACHR 11) 348
sex, gender and the socially constructed identities, attributes and roles as characteristics dependent on subjective appreciation of person concerned 349
State recognition of gender identity as critical to ensuring that transgender persons can fully enjoy all human rights 349
State’s obligation to ensure that individuals of all sexual minorities have dignity and respect 349
gender expression/manifestation of identity 305, 345
failure to recognize gender/sexual identity as indirect censure of 346
freedom of expression (ACHR 13) and 346
gender/sexual identity 4-9, 344-9
definition/characteristics
an integral and a determining component of personal identity 347
independence of genitalia 345
internal and individual experience of gender 4-9, 344-9
as subjective matter independent of sex assigned at birth 345-6, 349
elements of/related rights
liberty of person/freedom to make life choices (ACHR 7) 342-3, 344-5, 348, 375
personal autonomy based on international and domestic law 344, 345
failure to recognize gender/sexual identity as indirect censure of 346
honour and dignity (ACHR 11(1)), right to
applicability to all Convention provisions 341
autonomy of the person/self-determination as basis 341
as fundamental right enforceable erga omnes 340-1
identity, right to and 343, 348
jurisprudence 341
identity, right to 340-9
definition (“a series of characteristics individualizing a person in society”) 344
elements of/related rights
civil, cultural, economic, political and social rights essential in a democratic society 347-8
dignity (ACHR 11(1)) 343, 348
legal personhood, a name, a nationality, civil registration, and family relationships 347
personal autonomy based on international and domestic law 343, 344
recognition as someone distinct and distinguishable from others
right to externalize persona according to one’s convictions 344
IAJC Opinion on the scope of the right to identity (2007) 341, 347-8
liberty and security of person, right to (ACHR 7), broad interpretation 342
private life/privacy, definitions/scope (ACHR 11/ECHR 8/ICCPR 17) 341-5, 348
personal autonomy/self-determination 341-5, 348
personal development 247, 341-9

Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)) (right to recognition of juridical personality, to a name and to gender identity) 349-55
Court’s conclusion (obligation of States to recognize, regulate and establish the appropriate procedure to ensure compliance with ACHR 1(1), ACHR 2, ACHR 3, ACHR 7(1), ACHR 11(2) and ACHR 24) 355
dependence of all rights recognized by international human rights law including ACHR rights on 354-5
right to juridical personality (ACHR 3)
failure to recognize, consequences
denial of rights to person concerned 350
impact on human dignity (ACHR 7) 350
impossibility for LGBTI persons to guarantee that their self-determined identity corresponds with the official records and identity documents 350
as inherent right/non-derogability 349
relationship with legal attributes distinguishing, identifying and individualizing people 350
Yogyakarta Principle 6 (right to privacy) 350
right to a name
characteristics
as basic and essential element of identity 351
dependence of juridical personality on 351
as expression of personality 351
as inherent right 351
object and purpose
affirmation of chosen identity before society and in State procedures 351, 353
unique distinguishing sign 351, 353
to protect against unlawful or arbitrary interference 351, 352
right to update 351-2
State obligation to facilitate registration with name of choice 351-2
treaty provisions 351-5
right to recognition of gender identity 353-6
failure to recognize as interference in private life 353
State’s obligations
issue of legal identity documents reflecting the preferred gender of the person concerned 353-4, 355
steps to ensure recognition of gender/sexual identity 354
Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)) (right to rectification of identity data to conform with the self-perceived gender identity) 356-77: see also sexual orientation, gender identity and gender expression as protected categories ("any other status"), rectification of identity data procedure for requesting the rectification of identity data to conform with the self-perceived gender identity 356-77 children's best interests requirement 371-4 complete rectification of self-perceived gender identity 357-60, 376 compliance of Costa Rican Civil Code, Article 54, with requirements as established by the Court 377-80 confidentiality requirement 363-6, 376 judicial vs administrative procedure, relevant factors 374-7 importance of maintaining declaratory nature of procedure 375 inappropriateness of invasive intrusion of private matters for purely declaratory procedures 375 legal regulation, relevance 376-7 liberty of person/freedom to make life choices (ACHR 7) 375 obligation to promote prompt and cost-free registration process 367-8, 375, 376 protection of confidentiality 376 rule of law/legality principle and 451-62 State’s right to determine own procedures 375 requirement to provide evidence of surgical and/or hormonal therapy, exclusion 368-71, 376 sufficiency of free and informed consent 360-3, 376 right to identity 340-9 right to recognition of juridical personality, to a name, and to gender identity 349-55 Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)) (separate opinions) Sierra Porto J (concurring), "requirement of law"/"reserva de ley" (ACHR 2) 451-62 Vio Grossi J (part dissenting) 402-50 advisory jurisdiction (ACHR 64) contentious jurisdiction distinguished 406-8 legal effect of opinion 407-8 limitation to situation concerning most or all OAS Member States 408 conventionality control 430-56 definition 432 jurisprudence 430-1 conventionality control, IACtHR exercise of 436-49 contentious jurisdiction 442-9 limitations on 449-50 preliminary considerations 436-7 relevant international norms 437-42 conventionality control, State exercise of 432-6 comments 435-6 jurisprudence 434-5 rationale 432-4 differential treatment, justification/requirements 410 IACtHR jurisdiction (ACHR 62(3)) 403-6 non-discrimination obligation (ACHR 1(1)) 408-12 response to Questions 1: name change 412-15 2: judicial vs administrative procedure 415-16
INDEX

3: compatibility of Civil Code 54 with requirements as established by the Court 416-18
4: patrimonial rights 419-22
5: mechanisms to regulate relationships/recognition of relationship (dissenting) 422-30
procedure for changing name 415-16
sexual orientation, gender identity and gender expression as protected categories (“any other status”) 410-12
General Comments (CESCR), 16 (equal rights of men and women) 161
General Comments (CRC)
5 (general measures of implementation of the CRC) 372
6 (treatment of unaccompanied and separated children outside their country of origin) 372
7 (implementing child rights in early childhood) 381
14 (CRC 3(1): best interests of the child as a primary consideration) by paragraph 372
18 (harmful practices) 482
20 (implementation of rights of the child during adolescence) 370, 374
General Comments (HRC)
16 (ICCPR 17 (right to privacy)) 381, 383
18 (ICCPR 26 (non-discrimination))
   differential treatment (HRC GC 18:13) 328
   “discrimination” (HRC GC 18:6) 326-7
   measures to guarantee equality of rights (HRC GC 18:5) 328
19 (ICCPR 23 (the family)) 381, 383
34 (ICCPR 19 (freedoms of opinion and expression)), freedom of expression/freedom of the press as essential elements of democracy 53

General Recommendations (CEDAW): see CEDAW General Recommendations

honour and dignity (ACHR 11(1)), right to
applicability to all Convention provisions 341
autonomy of the person/self-determination as basis 341
as fundamental right enforceable erga omnes 340-1
identity, right to and 343
jurisprudence
Artavia Murillo 341
Fernández Ortega 341
Gelman 341
Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)) 340-9
IAJC Opinion on the scope of the right to identity (2007) 341
Ituango Massacres 341
I.V. 341
Santa Bárbara Campesino Community 341
non-derogability 341

human dignity, right to (municipal law/general)
constitutional right, Russia 513
in Russia 513, 517

Human Rights Act 1998 (HRA)
declaration of incompatibility (HRA 4(2)), jurisprudence
Attorney General’s Reference (No 5 of 2002) 629
MM (Lebanon) 582
The Christian Institute 582
Human Rights Act 1998 (HRA) (cont.)
separation of powers/respective roles of Parliament and the courts 669-71, 678
victim, need for
compatibility cases (ss 3 and 4) and challenge to acts of a public authority (ss 6 and 7)
distinguished 571-2, 624-5
jurisprudence
Ghaidan 547, 549, 625-6
Lancashire County Council v. Taylor 572
Rusbridger 571-2, 624-5
Steinfeld 549
Wilson v. First County Trust (No 2) 549, 623, 625-6

Human Rights Act 1998 (HRA) by section
3(1) (interpretation of legislation: “in a way compatible with the Convention rights”)
jurisprudence
Ghaidan v. Godin-Mendoza 547, 549, 625
NIHRC (Supreme Court) 623-6
Rusbridger 623-6
6 (acts of public authorities), text 566-7
7 (proceedings against public authority), text 567-8
7(1) (proceedings against public authority: victim, limitation to) 549
8 (judicial remedies), text 568

IACtHR, jurisdiction and functions (ACHR 61-65)
“all matters relating to the interpretation or application of [the] Convention” (ACHR 62
(1)/ACHR 62(3)) 321, 403-6
as human rights court 324-5

IACtHR Rules of Procedure (2009)
70 (advisory opinion: interpretation of the Convention) 284-8, 298
70(1) (request for an advisory opinion requirements: specific questions) 408
71 (advisory opinion: interpretation of other treaties) 284-8, 298
72 (advisory opinion: request, requirements) 284-8
73(1) (transmission of copies of request) 288
73(3) (invitation to interested parties to submit a written opinion on the issues) 288
73(4) (oral proceedings) 292

identity, right to
child’s right (CRC 8) 373-4
definition/scope, “a series of characteristics individualizing a person in society” 343
elements of/related rights
civil, cultural, economic, political and social rights essential in a democratic society 347-8
dignity (ACHR 11(1)) 343, 348
legal personhood, a name, a nationality, civil registration, and family relationships 347
name, right to 352-3
personal autonomy based on international and domestic law 343, 344, 351
recognition as someone distinct and distinguishable from others 344
right to externalize persona according to their convictions 344
gender/sexual identity as an integral and a determining component of 347, 348
IACtHR Opinion on the scope of the right to identity (2007) 341, 347-8

identity, right to, jurisprudence
HRC, Coeriel 343
INDEX 715

IACtHR
Contreras 343, 344
Expelled Dominicans and Haitians 347
Fornerón 343
Gelman 343, 373
Rochac Hernández 343
IAJC Opinion on the scope of the right to identity (2007) 341, 343, 347-8
municipal courts (Constitutional Court of Colombia, Judgment T-063/2015) 343

IHRL (international human rights law), corpus juris 324-5

illegitimate children
APDF and IHRDA 21-4
property/inheritance rights (including ECHR Protocol 1/ACRWC 3 and ACRWC 4(1)) 21-3

ILO Conventions
111 (Discrimination in Respect of Employment and Occupation) (1958) 111-12, 145-6, 161
156 (Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities) (1981) 112

incest
jurisprudence
Herrn S/Stübing 606-7
NIHRC (Supreme Court) 560, 605-7

reports on
“Do we need the Crime of Incest?” (Temkin) 605-6
“incest—Should Incest between Consenting Adults be a Crime?” (2015) (Bowsher) 606-7
“Protecting the Public—Strengthening Protection against Sex Offenders and Reforming the Law on Sexual Offences’ (2002), Cm 5668 605
The Law of Incest in Scotland (1980) (Scottish Law Commission) 607
UK law on 560

India, actio popularis/public interest litigation (PIL), possibility of 41

inheritance rights
children/children born out of wedlock (ACRWC 3/ACRWC 4(1)) 23-4
women
AT (CEDAW) 22
Maputo 21 (right to an equitable share) 21-4

inhuman or degrading treatment (ECHR 3/ICCPR 7)
benchmark/threshold
absolute vs relativist approach 641-8
intention or motivation, relevance 590, 632-7, 645
jurisprudence relating in particular to qualification as/threshold
Aksoy 632-3
Egnez 632-3
Gaffgen 590-1, 632, 645
Ireland v. UK 641
Iwaniczuk 647
Krastanov 632-3
Meller 593-5
P and S 592, 641-2, 646-7
RR v. Poland 591-2, 633, 639, 640, 641, 644-5, 647
Whelan 593-5
inhuman or degrading treatment (ECHR 3/ICCPR 7) (cont.)

Wikiorko 647
State’s positive obligation to protect against/proactive obligation
A v. UK 639
Mubilanzila Mayeka 645-6
NIHRC (Supreme Court) 555-6, 637-40
Pretty 637-8
treatment of a minor/vulnerable person
Mubilanzila Mayeka 645-6
P and S 646-7
legislation as such vs ad hoc approach 590-5
as a positive obligation to protect against/proactive obligation 556
“treatment”, forcing victim to take action as 638

juridical personality, right to (ACHR 3): see also Gender Identity and Same-Sex Couples
(IACtHR (OC-24/17)); legal personality, eligibility for
failure to recognize, consequences
denial of rights to person concerned 350
impact on human dignity 350
impossibility for LGBTI persons to guarantee that their self-determined identity
 corresponds with the official records and identity documents 350
as inherent right/non-derogability 349
name as essential to 351
relationship with legal attributes distinguishing, identifying and individualizing people 350
State’s obligation to ensure free and full exercise of 349-50
Yogyakarta Principle 6 (right to privacy) 350

juridical personality, right to (ACHR 3), jurisprudence
IACtHR
Bámaca Velásquez 349, 350
Chitay Nech 349-50
Expelled Dominicans and Haitians 349
Juridical Status and Human Rights of the Child (OC-17/02) 350
Massacres of the Río Negro 349
Sawhoyamaxa Indigenous Community 349-50
Yean and Bosico Girls 350

just satisfaction obligation (ECHR 41 [50]), costs and expenses, travel and
subsistence, limitation to costs of attending ECtHR proceedings 213

legal certainty/legality principle
causes of uncertainty 356
finality of judgments and 356-7
jurisprudence
Beian 356
Brumăreșcu 356
Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)) 356-7
Nejdet Şahin 356
Supreme Court of Justice of Mexico, Direct amparo 6/2008 357
rectification of identity data to conform with the self-perceived gender identity 356-7
sanctity of rights and obligations prior to recognition of change of gender identity
356-7
legal personality, eligibility for: see also juridical personality, right to (ACHR 3)
Federation of African Journalists (FAJ) 40-2

LGBT rights: see sexual minorities, rights/protection of

liberty and security of person, right to (ACHPR 6)
“except for reasons and conditions previously laid down by law” 59
jurisprudence
FAJ 57-61
_Huri Laws_ 60
_Tandja_ 60

liberty and security of person, right to (ACHR 7)
broader interpretation 342, 373
_Gelman_ 373
“liberty” as the capacity to do or not to do whatever is legally permitted 342-3, 344-5, 348

liberty and security of person, right to, exceptions (ECHR 5(1)), “in accordance with
procedure prescribed by law” (ECHR 5(1)) requirement/“lawful
detention”, _A v. UK_ 57-8

life, liberty and security of person (UDHR 3) 58
life, right to (CRC 6) 372-3, 519

Mali
Constitution (1992) by article
85 (Constitutional Court as judge of constitutionality of the laws/guarantor of
fundamental rights) 39
88 (constitutional review of laws prior to promulgation) 13
116 (primacy of treaties) 10
Constitutional Court Law (Law 97-010 of 11 February 1997) by article, 45
(constitutional review of laws prior to promulgation) 13
Family Code 2011 (FC) by article: see also APDF and IHRDA
281 (age of consent to marriage) 16-19
300 (religious marriage) 19-20
751 (inheritance) 21-4
inheritance law (FC 751) 21-4
marriage in
consent to marriage (FC 281) 16-19
religious marriage (FC 300) 19-20
women in, _APDF and IHRDA_ 5-28

elimination/modification of harmful cultural and traditional practices (Maputo 2(2))
15-16, 25-6
inheritance rights of women (Maputo 21) 21-3
marriage
full and free consent (Maputo 6(a)) 7-8, 15-16, 19-21, 27
minimum age (Maputo 6(b)) 7-8, 15-19, 27
non-discrimination against women, elimination (Maputo 2) 20-1

margin of appreciation (including ACHR, EC, ECHR, ICCPR and municipal law
practice)
consensus/common standard and, changing nature of international law/uncertainties,
effect 655
“institutional competence”/discretionary area of judgment considerations 557-8, 600-1,
655-9
margin of appreciation (including ACHR, EC, ECHR, ICCPR and municipal law practice) (cont.)

Kebeline 656
Lord Carlile of Berriew 656-7
Nicklinson 557-8, 600-2, 657-8
NIHRC (Supreme Court) 557-8, 600-1, 655-9
Re G 557, 600-1, 657-8

judicial vs legislative responsibility for determining the issues 669-71, 678
military discretion, limitation in relation to family and private life rights 128, 138, 140
municipal and domestic law, applicability distinguished 655-9

margin of appreciation, jurisprudence

A, B and C 551-2, 556-7, 575, 589-91, 593, 594-5, 596, 599, 601-2, 603-4, 618, 641,
642-4, 650-1, 654, 660-6, 672-5, 676-7, 679-80
Bayev 216-17
Biao 249-50
Carvalho Pinto de Sousa Morais 249-50
Handsside 216
S.L. 199
Sideman 216
Sousa Goucha 249-50

Markin: see Constitutionality of Article 392(4)(3) and (4) of the Russian Civil Procedure Code taken in conjunction with Article 11 (Russian Constitutional Court); Markin (alleged violation of ECHR 14 in conjunction with ECHR 8) (right to parental leave) (background/preliminary matters/just satisfaction (ECHR 41)); Markin (alleged violation of ECHR 14 in conjunction with ECHR 8) (right to parental leave) (merits); Markin (alleged violation of ECHR 14 in conjunction with ECHR 8) (right to parental leave) (preliminary objections); Markin (alleged violation of ECHR 34(1)) (obligation not to hinder exercise of right); Markin (separate opinions)

Markin (alleged violation of ECHR 14 in conjunction with ECHR 8) (right to parental leave) (background/preliminary matters/just satisfaction (ECHR 41)) 102-27
applicant’s status 102
just satisfaction (ECHR 41)
costs and expenses, parties’ positions 151, 152
Court’s assessment and conclusions
default interest 151, 152
non-pecuniary damage (sexual discrimination) 150-2
pecuniary damage, rejection of claim for want of evidence 150
parties’ positions 150

parental leave proceedings in date order
birth of third child/grant of divorce (30 September 2005) 103
agreement that applicant would look after children, ex-wife paying maintenance (6 October 2005) 103
applicant’s request for three years’ parental leave (11 October 2005) 103
refusal of request for leave/grant of three months’ leave (12 October 2005) 103
premature recall from three months’ leave (23 November 2005) 103
proceedings before the Pushkin Military Court claiming three years’ parental leave (Military Service Act) (30 November 2005-14 March 2006) 103-5
evidence of applicant’s sole responsibility for childcare 103-5
Pushkin Garrison Military Court’s annulment of decision to curtail leave (9 March 2006) 103
dismissal of claim to parental leave on grounds that parental leave was limited to
female personnel/failure to prove sole carer status (14 March 2006) 105, 492-3
Leningradskiy Command Military Court reversal of annulment decision (17 April
2006) 103

dismissal of appeal against decision of 14 March (27 April 2006) 105-6
head of military unit’s grant of parental leave and financial aid (24 October 2006)
106
Pushkin Garrison Military Court’s decision on unlawfulness of 24 October order
(8 December 2006) 106
Constitutional Court’s dismissal of application (15 January 2009) 106-8
procedural history in date order
institution of proceedings (21 May 2006) 101
First Section Chamber proceedings (7 October 2010) 101
Grand Chamber panel’s acceptance of respondent Government’s request for referral
of case to Grand Chamber (21 February 2011) 102
military prosecutor’s visit to applicant at request of Russia’s ECtHR Representative
(31 March 2011) 108-9
constitution of tribunal, parties’ written observations and third-party observations
(Human Rights Centre of the University of Ghent) 102
hearing (8 June 2011) 102
relevant law (CoE documents)
Committee of Ministers’ recommendations
1996 (5) (reconciliation of work and family life) 114
2010 (4) (human rights of members of the armed forces) 115-16
2017 (17) (gender equality standards) 114-15
European Social Charter (1961), Art. 27(2)
Russia’s acceptance of obligations under (2009) 113
text 112-13
PACE
Recommendation 1769(2006) (reconciliation of work and family life) 113-14
Resolution 1274(2002) on Parental Leave 113
relevant law (comparative study of Member State law) 118-20
relevant law (domestic)
Constitution 2003, 19(2)-(3) (State guarantee of equality/equal rights, obligations
and opportunities for men and women) 109
Constitution 2003, 38(2)-(3) (State protection of the family/care for children as right
and responsibility of parents) 109
Labour Code 2001 by article
255 (entitlement of women to maternity and childcare leave) 109
256 (entitlement of persons other than the mother to parental leave) 109
Military Service Act (Law 76-FZ of 27 May 1998) by section
10(9) (entitlement to social benefits of female military personnel and military
personnel bringing up children) 110
11(3) (parental leave) 110
Military Service Regulations 1999 (Presidential Decree 1237 of 16 September 1999)
110
Social Insurance Law (Law 255-FZ of 29 December 2006) 109-10
relevant law (ECJ jurisprudence)
Griesmar 117
Roca Álvarez 117-18
relevant law (EU documents)
Council Directive 96/34/EC (Framework Agreement on parental leave) 116
Markin (alleged violation of ECHR 14 in conjunction with ECHR 8) (right to parental leave) (background/preliminary matters/just satisfaction (ECHR 41)) (cont.)


relevant law (international)
CEDAW by article
  5(a) (modification of social and cultural patterns) 110
  5(b) (inclusion in family education of an understanding of maternity as a social function and common responsibility of men and women for children’s upbringing) 111
  16(1)(d) (same rights and responsibilities in all matters relating to children) 111
CEDAW Committee’s observations on Russia’s periodic report (2020) 111
ILO Convention No 111 (Discrimination in Respect of Employment and Occupation (1958)), Art. 1 ("discrimination") 111-12
ILO Convention No 156 (Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities (1981)) Art. 3(1) (right of persons with family responsibilities to engage in employment without conflict or discrimination) 12
Recommendation 165 supplementing the Convention, Art. 22 112

Markin (alleged violation of ECHR 14 in conjunction with ECHR 8) (right to parental leave) (merits) 127-47

Chamber judgment 139-47
applicability of ECHR 14 in conjunction with ECHR 8 to the facts of the case 139
differential treatment, justification (armed forces) 141-7
  acceptability of differential treatment based on the nature of the job/irreplaceability (ILO Convention No 111, Art. 1) 145-6
ECtHR jurisprudence 140-1
margin of appreciation 140
military discretion, limitation in relation to family and private life rights 128
post-Petrovic evolution of attitudes towards childcare responsibilities 142-3
in Member State practice 127-8
Court’s assessment (application of the principles)
  weaknesses in respondent’s position
    applicant’s alleged contractual waiver of his right, exclusion as a fundamental right 146
    failure to establish settled State practice supportive of respondent’s view 145
    failure to undertake expert/statistical evaluation of the alleged problem 143-4
    rigidity of Russian legal provisions on parental leave in the army 144-5
Court’s assessment (general principles) 137-9
applicability of ECHR 14 to facts falling within the “ambit” or “scope” of the Convention 137, 139
“discriminatory” 137-8
interrelationship of ECHR 14 with other ECHR articles/ancillary nature of obligation 137
differential treatment, justification/requirements
  armed forces and 138-9
  “manifestly without reasonable foundation” (Stec test) 137-8
  obligation to take changing attitudes into account/"emerging consensus” 138-9
  substantial grounds/weighty reasons 138
margin of appreciation 138
Court’s decision 146-7, 151-2
INDEX 721

parties’ positions
applicant 129-32
government 132-5
third party 135-7

Markin (alleged violation of ECHR 14 in conjunction with ECHR 8) (right to parental leave) (preliminary objections) 121-7
alleged abuse of the right of individual petition (ECHR 35) 126-7
Court’s assessment/rejection of request for untimeliness 126-7
parties’ positions
applicant 126
respondent 126
request to strike out following claimed resolution of the matter (ECHR 37(1)(b))
Chamber’s decision 123
insufficiency of “resolution” 124-5
Court’s assessment, importance of human rights issue as justification for continued examination on the merits 125
“victim” status (ECHR 34)/acknowledgement of breach/remedy by State authorities 121-3
Chamber’s decision 121-2
Court’s assessment (endorsement of Chamber’s conclusion) 122-3
parties’ arguments
applicant 122
government 122

Markin (alleged violation of ECHR 34(1)) (obligation not to hinder exercise of right) 147-50
Court’s assessment
Court’s conclusion 150
inappropriateness of authorities’ direct contacts with applicant 148-50
contacts not amounting to improper pressure 149-50
elements of inappropriateness 148-9
parties’ positions
applicant 147
respondent 148

Markin (separate opinions)
Kalaidjieva J (dissenting alleged violation of ECHR 34) burden of proof considerations 167
failure to achieve desired withdrawal of case, relevance 168
Nußberger J joined with Fedorova, Judge ad hoc (dissenting on just satisfaction (ECHR 41))
sufficiency of declaration of violation 169
violation of obligation vs actual damage 168-9
Pinto de Albuquerque J (partly dissenting) 152-66
alleged breach of ECHR 14 in conjunction with ECHR 8 (concurring), nature of right to parental leave
acceptability of differential treatment based on the nature of the job/irreplaceability (ILO Convention No 111, Art. 1) 166
discrimination on military service grounds 164-5
discrimination on sexual grounds 165-6
as fundamental Convention right/social right 153-4
non-discriminatory basis 162-3
obligation of result 164
positive obligation of State to provide for 162-3
Markin (separate opinions) (cont.)
post-Petrovic evolution of attitudes towards gender-based concepts of childcare responsibilities 160-2
social rights, protection under ECHR 14 154-60
alleged breach of ECHR 34 (dissenting)
   inappropriateness of authorities’ direct contacts with applicant 153
   right to peaceful enjoyment of one’s home 153
   failure to achieve desired withdrawal of case, relevance 168
Popović J (dissenting)
alleged inappropriateness of authorities’ direct contacts with applicant (ECHR 34) 171-2
alleged violation of ECHR 14 in conjunction with ECHR 8
   conflict of facts with right to parental leave 170
   non-victim status of applicants (ECHR 37(1)(b)) 171
marriage, protective measures: see also APDF and IHRDA (ACtHPR) (merits); family/
private life, respect for
   age of/underage marriage (Maputo 6(b)) 18-19
   full and free consent
   CEDAW 16(1)(b) 19-21
   Maputo 2(1)(a)/Maputo 6(a) 19-21
marriage, right of (municipal law/general), APDF and IHRDA 5-28
Mexico City, same-sex marriage/partnership 392-3
name, right to
   characteristics
   as basic and essential element of identity 351
   as expression of personality 351
   as inherent right 351
   object and purpose
   affirmation of chosen identity before society and in State procedures 351, 353
   unique distinguishing sign 351
   State obligations
   to facilitate registration with name of choice 351-2
   to protect against unlawful or arbitrary interference 351, 352
treaty provisions
   ACHR 18 351-5
   ACRWC 7(1) 351
   CRC 7(1) 351
   CRMW 29 351
   ECHR 8 (by implication) 351
   ICCPR 24(2) 351
   Yogyakarta Principle 3 (right to recognition before the law) 353
name, right to, jurisprudence
   ECtHR
   Burghartz 351
   Dudgeon 353
   Goodwin 353
   Guillot 352
   Stjerna 351, 352
   HRC, Coeriel 352
   IACtHR
INDEX

Expelled Dominicans and Haitians 351
Gelman 351
Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)) 351-3, 412-15
Yean and Bosico Girls 351, 352
IAJC Opinion on the scope of the right to identity 352
municipal courts
Constitutional Court of Colombia, Judgment T-063/15 351, 353
Constitutional Court of Peru, Judgment of 21 October 2016 353
Supreme Court of Justice of Mexico, Direct amparo 6/2008 351
national legislation 353

necessary/dress as defence, requirements, absence of alternative 202-3, 339
NIHRC (Supreme Court): see NIHRC (Supreme Court), facts, procedural matters and overview of the judgments of the Court; NIHRC (Supreme Court) (Lady Black); NIHRC (Supreme Court) (Lady Hale PSC); NIHRC (Supreme Court) (Lord Kerr); NIHRC (Supreme Court) (Lord Mance); NIHRC (Supreme Court) (Lord Reed (Lord Lloyd-Jones agreeing))

NIHRC (Supreme Court), facts, procedural matters and overview of the judgments of the Court
abortion in Northern Ireland as criminal offence punishable by a maximum sentence of life imprisonment 534
absence of exceptions on grounds of malformation of the foetus or pregnancies due to rape or incest 534
acceptability of assistance to go elsewhere in the UK for an abortion illegal in Northern Ireland (DPP clarification of 17 October 2013) 534
threat to woman’s life or permanent serious risk to her well-being as sole exception 534
NIHRC’s application for judicial review
request for general relief
i. declaration pursuant to HRA 6(4) of incompatibility of OAPA 1861 58 and 59 (administering drugs or using instruments to procure abortion) with ECHR 3, ECHR 8 and ECHR 14 in conjunction with ECHR 8 559, 616
ii. declaration that women, despite HRA/OAPA provisions in NI, may access termination services in NI in case of malformed foetus/rape or incest 559, 616
iii. declaration of breach of rights of women in NI with a malformed foetus/pregnancy as a result of such rape or incest 559, 617
iv. other relief as the Court might think appropriate 559
respondents’ objection to the challenge on grounds of standing 535
overview (divisions of the Court)
impossibility of presenting a single lead judgment representing the majority view on all issues 545
on standing 544-5, 558
on substance 544, 558-9
procedural history in date order
High Court (NI) proceedings (15-17 June 2015) 617
High Court (NI) holding that the abortion law breached ECHR 3 but not ECHR 8 (30 November 2015) 534
High Court (NI)’s finding that the abortion law was incompatible with ECHR 8 in case of a fatal foetal abnormality or pregnancy resulting from rape or incest (16 December 2015) 534
NIHRC (Supreme Court), facts, procedural matters and overview of the judgments of the Court (cont.)

Court of Appeal (NI)’s holding on appeal against exclusion of serious foetal abnormality that the abortion law was compatible with ECHR 8 (29 June 2017) 534-5, 618

relevant law (summaries). Note: references to the relevant legislation appear both in the Court’s judgments and under the legislation in question.
incest 560
NIHRC standing 547-50, 568-72
legal texts 562-8

NIHRC (Supreme Court) (Lady Black)

standing (finding against) 678

substance

ECHR 3 (inhuman or degrading treatment), rejection of claim of incompatibility 678

ECHR 8 (family/private life), justified restrictions on abortion

A, B and C, persuasiveness 679

abstract case/lack of opportunity for Court to consider individual cases 678-9
cases other than fatal foetal abnormality 679-80
fatal foetal abnormality 679, 680

NIHRC (Supreme Court) (Lady Hale PSC) 544-58

standing

powers of NIHRC (NIA 69(a) and (b)) 547-8
denial of right to initiate proceedings as anomaly/inconsistency with NIA 69(1) role 549-50
NIA 71 restrictions 548-50
NIA drafting history 548-9
victim status, relevance 547-50

EHRC status compared 549-50

substance/compatibility

definitions (Sexual Offences (Northern Ireland) Order 2008)
“incest” 552-3
“rape” 552

ECHR 3 (inhuman or degrading treatment) and 555-6
“law as such” vs ad hoc approach 555-6
mitigation/justification, exclusion 555
State’s positive obligation to protect against/proactive obligation 555-6

ECHR 8 (family/private life), justified restrictions on abortion
difficulty of articulating the legitimate aim 550
fatal foetal abnormality cases 553-4
“proportionate to the legitimate aim” requirement, CEDAW Committee Report on the UK (2018) 547, 555
rape/incest cases 552-3
serious foetal abnormality cases 554-5

margin of appreciation considerations 551
“institutional competence”/discretionary area of judgment considerations 557-8

public opinion, relevance 551
personal autonomy and bodily integrity as underlying principles 532-3, 545-7

NIHRC (Supreme Court) (Lord Kerr) 609-68

introduction

cases involving fatal foetal abnormality 609-11, 667-8
INDEX

cases involving rape/incest, case histories 611-13
NIHRC’s requests 616-17
procedural history 614-18
relevant legislation
NI abortion law 616
OAPA 58/59, analysis/jurisprudence 613-16
standing
action popularis/public interest litigation (PIL), exclusion 593, 627
compatibility cases (ss 3 and 4) and challenge to acts of a public authority (HRA
6 and HRA 7), distinguishability 626
conclusion 628
HRA 3(1) (interpretation of legislation: “in a way compatible with the Convention
rights”) 623-6
legislative interpretation (intention of legislature/effectiveness principle) 628-31
NIHRC role (NIA 69) 619-20
denial of right to initiate proceedings as anomaly/inconsistency with NIA 69(1)
role 619-20
practical effects of a finding against standing 627-8
victim, analysis of requirement for 620-3
conclusion 623-8
substance/compatibility
ECHR 3 (inhuman or degrading treatment) 632-48
conclusion 648
motivation, relevance 632-7, 645
State’s positive obligation to protect against/proactive obligation 637-40
threshold, absolute vs relativist approach 641-8
“treatment”, forcing victim to take action as 638
ECHR 8(2) (family/private life), justified restrictions 648-66
“in accordance with the law” 649
balance of interests of individual and community as a whole/public interest 654-66
burden of proof 648
“least intrusive means” 652-4
legitimate aim 650-2
“proportionate to the legitimate aim” 550-5
protection of the unborn child 650-2
rational connection requirement 652
refusal of abortion in case of fatal foetal abnormality 650-68
international standards, treaties and jurisprudence 666-7
margin of appreciation considerations 650-1, 654, 660-6
motivation, difficulty of establishing (NI Assembly February 2016 proceedings)
635-7, 664-5
public opinion, relevance 664-6
NIHRC (Supreme Court) (Lord Mance) 558-609
introduction
1945 Act as subsidiary legislation 561, 576-7
incest, law relating to 560
issues before the Court (standing/incompatibility) 561-2
NIHRC requests 559
standing of NIHRC 562-77
action popularis/public interest litigation (PIL), exclusion 571, 574-6
compatibility cases (ss 3 and 4) and challenge to acts of a public authority (HRA
6 and HRA 7) distinguished 571-2
NIHRC (Supreme Court) (Lord Mance) (cont.)
NIHRC’s powers (NIA 68-71, NIA 6(2)(c), NIA 24(1)(a) and HRA 6-8), texts 562-8
NIHRC’s status as a “core” statutory public authority 574-5
victim, analysis of requirement for 568-77
EHRC status compared 572-3
NIA drafting history 574-6
substance/compatibility
abortion law in England and NI compared 579-80
categories of cases advanced by NIHRC 577-8
ECHR 3 (inhuman or degrading treatment) and 590-5
conclusion 595
ECHR jurisprudence 590-3
HRC jurisprudence 593-5
ECHR 8(2) (family/private life), justified restrictions on abortion (“proportionate to
the legitimate aim” requirement) 595-608
fatal foetal abnormality 602-4
incest 604-5
“institutional competence”/discretionary area of judgment considerations 600-1
public opinion, relevance 595-9
rape 605-7
serious foetal abnormality 607-8
evidence
expert evidence on the possibility of pre-natal diagnosis of foetal or serious foetal
abnormalities 582-4
factual cases presented to the Court 584-7
“law as such” vs individual measure of implementation 581-2, 587-8, 590-5
OAPA 58/OAPA 59, “unlawfully” (Bourne) 579-80
NIHRC (Supreme Court) (Lord Reed (Lord Lloyd-Jones agreeing))
standing (finding against) 668
substance
ECHR 3 and ECHR 8 modalities distinguished 669-71
ECHR 3 (inhuman or degrading treatment), rejection of claim of non-compatibility 675
ECHR 8(2) (family/private life), justified restrictions
A, B and C, persuasiveness 676-7
abstract case/lack of opportunity for Court to consider individual cases 675-7
judicial vs legislative responsibility for determining the issues 669-71, 678
margin of appreciation considerations 670-1
ECHHR jurisprudence 672-5
non-discrimination obligation: see age discrimination, prohibition; child rights
(ACRWRC); Child Rights Convention (1989) (CRC), non-discrimination
obligation (CRC 2(1)); differential treatment, justification/requirements; non-
discrimination obligation (ACHR 1(1)); non-discrimination obligation (CRC
2); non-discrimination obligation (ECHR 14); traditional social and cultural
practices harmful to human/fundamental rights/stereotyping, obligation to
eliminate

non-discrimination obligation (ACHR 1(1))
categories of discrimination
“any other social condition” 330
discrimination on the basis of perception 337-8
non-exhaustive nature 329, 330
differential treatment distinguished 328-9
“discrimination”: see also discrimination, definitions
absence of definition in ACHR 326
“as any exclusion, restriction or preference based on specific reasons ... which has the purpose or effect of nullifying or impairing ... human rights and fundamental freedoms ...” 326-7, 409-10
equal protection of the law (ACHR 24) and 325, 327-8
as general obligation extending to all provisions of the Convention and other I-A human rights treaties 327, 388, 408-9
jurisprudence (IACtHR)
Apitz Barbera (First Court of Administrative Disputes) 328
Artavia Murillo (IVF) 325
Atala Riffo 325, 326-7, 328
Duque 325, 326-7, 328, 388
Espinoza Gonzales 327, 328
Flor Freire 325, 327-8
Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)) 325-40
Gonzales Lluy 328
Hacienda Brazil Verde Workers 328
I.V. 327
Juridical Status and Rights of Undocumented Migrants (OC-18/03) 327
Naturalization Provisions of the Constitution of Costa Rica (OC-4/84) 325, 327
Norin Cattrimán 328
Radio Caracas Television 327
Xákmok Kásek 327, 328
Yatama 327-8, 388
sexual orientation, gender identity and gender expression as protected categories 329-38
State responsibility for breach 327
non-discrimination obligation (CEDAW 2)
“discrimination against women” (CEDAW 1) 482
intersecting forms of discrimination: see also discrimination, definitions
examples 482-3
jurisprudence
AS 482 n. 18
Jallow 482 n. 18
Kell 482 n. 18
MW 482 n. 18
ON and DP 482-3
RPB 482 n. 18
SVP 482 n. 18
State responsibility for acts of any person, organization or enterprise (CEDAW 2(e)) 482
Goekce 482
Yildirim 482
non-discrimination obligation (CRC 2) 82-8, 371-2
non-discrimination obligation (ECHR 14)
burden/standard of proof 251
“discriminatory” 137-8, 210
factual discrimination 268-9
intention to discriminate, relevance 258
non-discrimination obligation (ECHR 14) (cont.)
interrelationship with other ECHR articles/non-autonomous/ancillary nature of obligation 266
applicability to facts falling within the “ambit” or “scope” of the Convention 137
“or other status” 250
broad approach to 250
innate or inherent personal characteristics, limitation to 198-9, 250
“status” 250
patrimonial rights 389
non-discrimination obligation (ECHR 14), jurisprudence (ancillary nature of obligation)
Abdulaziz, Cabales and Balkandali 266
Carvalho Pinto de Sousa Morais 246-7
EB v. France 137, 139
Fabris 246-7
Khamtokhu 246-7
Markin 137, 139, 246, 266
Thlimmenos 139
non-discrimination obligation (ECHR 14), jurisprudence (“or other status”): see also
sexual minorities, rights/protection of
Carson 250
Clift 250, 265, 336
Northern Ireland: see also NIHRC (Supreme Court)
abortion: see NIHRC (Supreme Court)
abortion, unborn foetus as “not a person” 588-90, 601-3
Criminal Justice Act (NI) 1945 (CJA (NI)): see also NIHRC (Supreme Court)
s 25(1) (punishment for child destruction), text 613
as subsidiary legislation 561, 576-7
Criminal Law Act (NI) 1967 by section, 5 (penalties for concealing offences) 545-7
incest, summary of the law (Sexual Offences (NI) Order 2003, Arts. 32-6 and 68-9) 560
Sexual Offences (Northern Ireland) Order 2008, “rape” (ss 5, 12 and 16) 552
Northern Ireland Act 1998 (NIA) (including amendments) by section: see also NIHRC
(Supreme Court)
3 (interpretation of legislation in a way which is compatible with the Convention rights) 549-50
4 (declaration of incompatibility) 549-50
6 (legislative competence), text 565-6
6(2)(c) (compatibility with ECHR) 548
24(1) (legislative competence: restrictions on) 548
text 565
69 (NIHRC: function), text 562-3
69(5)(a) (NIHRC role: assistance to individuals in accordance with NIA 70) 547-8, 571, 574, 575-6, 619-20
69(5)(b) (NIHRC: initiation of proceedings involving law or practice relating to the protection of human rights) 547-50, 568-70, 574-7, 619-24
70 (NIHRC: assistance by) 547
text 563-4
70(1) (NIHRC assistance in Northern Ireland proceedings involving law or practice relating to the protection of human rights) 547
INDEX 729

71 (restrictions on application of rights/standing to bring incompatibility proceedings) (as amended in 2007) 547-50
  text 564-5
71(1) (victim status requirement) 548-50
  drafting history 548-9, 574-6, 621-2
71(2) (non-applicability of s 72(1) to AG, AG (NI), AG (Scotland) and the Lord Advocate) 548
71(2A) (non-applicability of s 71(1) to the NIHRC) 548
71(2B) (victim status of NIHRC, absence of requirement in case of institution or intervention in human rights proceedings) 548-9, 568-70, 622
  71(2B)(a) (exclusion of need for NIHRC to have victim status) 548-9, 568-9
  71(2B)(b) (non-applicability of HRA 7(3) and (4)) 568
  71(2B)(c) (requirement for one or more victims of the unlawful act) 548-9, 568-9, 622, 627
  71(2B)(d) (no award of damages to NIHRC) 569
71(2C)(a) (“human rights proceedings”) 549, 622
71(3) (limitation of s 6(2)(c) prohibition) 548
71(4) (limitation of s 24(1)(a) prohibition) 548
Northern Ireland Human Rights Commission (NIHRC)
  functions (NIA 69) 547-8
  right to institute ECHR-based human rights proceedings in its own right (NIA 71(2A), (2B) and (2C))
    amendment to NIA 71 (JSA 14(2)) 548-9, 574-6
    denial of right as anomaly/inconsistency with NIA 69(1) role 549-50, 619-20
    status as “core” statutory public authority, relevance 574-5
    victim status, relevance 547-50, 568-77, 620-7, 630
  right to institute ECHR-based human rights proceedings in its own right (NIA 71(2A), (2B) and (2C)), jurisprudence
    NIHRC (Supreme Court) 544-680
Re Northern Ireland Human Rights Commission 548, 562, 569, 576, 621

OAS (Organization of American States)
OAS General Assembly resolutions
  AG/RES. 2362 (XXXVIII-O/08) (universal civil registry and the “right to identity”) (3 June 2008) 347
  AG/RES. 2602 (XL-O/10) (human rights, sexual orientation and gender identity) (9 June 2010) 347

ON and DP (CEDAW) (background)
facts in date order
  attack on authors (19/20 October 2014) 468
  incident reported to the police (21 October 2014) 468
  medical examination of first author/emergence of injuries to second author (21/22 October 2014) 468
  request, with evidence, for a criminal case to be opened 468
  refusal to open criminal case under CC 116(1) on grounds of impossibility of establishing witnesses and perpetrators (30 October 2014) 468
  refusal to open criminal charge overturned (30 October 2014) 468-9
  medical examination of the first author (26 November 2014) 469
  request for closed-circuit television recording/notification that recording had been destroyed (7 December 2014) 469
second refusal to open a criminal case (9 December 2014) 469
third refusal to open a criminal case (14 February 2015) 469
authors’ challenge to investigator’s failure to act (CPC 125) (3 March 2015) 469-70
third refusal to open a criminal case overruled (sufficiency of CC 116(1) grounds) (13 March 2015) 470
authors’ reiteration of their arguments (2 April 2015) 470
Court’s acceptance of complaint in regard to investigating officer’s actions/rejection of other complaints (14 April 2015) 470
appeal to Saint Petersburg City Court against 14 April 2015 decision (23 April 2015) 470
opening of case under CC 116(1) (2 May 2015) 470
authors’ request for reclassification of the crime to CC 116(2) (hate motivations) (18 June 2015) 470-1
refusal to reclassify (impossibility of identifying the perpetrators/confirming homophobic motive) 471
rejection of appeal (7 July 2015) 470
suspension of CC 116(1) proceedings for failure to identify perpetrators (21 July 2015) 470
appeal against refusal to reclassify (6 August 2015) 471
rejection of appeal against refusal to reclassify (16 October 2015) 471
appeal to Saint Petersburg City Court/rejection of appeal (22 October 2015/2 December 2015) 471
resumption of criminal proceedings/further suspension (19 February 2016) 471
authors’ further challenges to investigator’s failure to act/suspension of proceedings/CC 116(1) classification (29 February 2016) 471
reversal of decision to suspend (13 April 2016) 471
termination of proceedings on 29 February complaint (18 April 2016) 471
rejection of further request for reclassification of the crime (20 May 2016) 472
procedural matters
admissibility
Court’s analysis (exhaustion of local remedies/effective remedy) 479-81
Court’s conclusion (admissibility/join to the merits) 481
authors’ comments on the State party’s observations 476-9
authors’ complaints (absence of effective remedy)
i: CEDAW 1/CEDAW 2(b), 2(c), 2(e) and 2(f) (non-compliance with CEDAW General Recommendation 28 (core obligations under CEDAW 2)/CEDAW observations on Russia’s reports) 472-3
ii: CEDAW 2(b)-(f)/CEDAW 5(a) 473
iii: CEDAW 1/2(b), (c), (e) and (f)/5(a) 473
authors’ requests
finding of violation of CEDAW 1/CEDAW 2(b), 2(c), 2(e) and 2(f)/CEDAW 5(a) 473
recommendation to State party to provide appropriate remedies 473-4
State party’s observations on admissibility and the merits
effective remedy 475-6
exhaustion of local remedies 474-5
refusal to reclassify crime/impossibility in absence of identified perpetrators 476
ON and DP (CEDAW) (merits) 481-6
Committee’s analysis
access to justice, women’s right to (CEDAW 15) 482-3
Committee’s concluding observations on Russia’s sixth and seventh periodic reports 484-5
examples of State party’s non-compliance with 483-5
intersecting forms of discrimination 482-3
State responsibility for acts of any person, organization or enterprise (CEDAW 5(e)) 481
State responsibility for conduct of State organ/agency (ILC(SR) 4) for non-compliance with treaty obligations 481
traditional social and cultural practices harmful to human/fundamental rights/stereotyping, obligation to eliminate (CEDAW 2(a), CEDAW 2(c)-(e) and CEDAW 5(a)) 481-5
Committee’s conclusions and recommendations 485-6
State party’s obligation to give due consideration to the recommendation and submit a written response including action taken (CEDAW OP 7(4)) 486

**Parental care:** see childcare in context of respect for family life (ECHR 8)

**Parental leave in context of respect for family life (ECHR 8)**
CoE Member State practice 117-18, 145, 160-2
definition of “parental leave” 139-40
maternity leave distinguished 139-40
differential treatment/justified restrictions (military considerations) 138-47, 164-5
acceptability of differential treatment based on the nature of the job/irreplaceability (ILO Convention No 111, Art. 1) 145-6, 166
jurisprudence
ECJ
Gomez Limon 161
Griesmar 117
Roca Álvarez 117-18
ECtHR
Markin 127-72
Petrovic 127-8, 129, 139, 140, 142-3, 161
non-discrimination obligation (ECHR 14) 127-72
discrimination on sexual grounds 165-6
post-Petrovic evolution of attitudes towards 127-8, 142-3, 160-2
Russian legislation relating to 109-10
treaties and other international instruments relating to CEDAW 110-11
CESCR General Comment 16 (2005) (equal rights of men and women) 161
CoE documents 112-16, 160
EU documents 116, 161
ILO Conventions 111-12, 161

**Portugal**
Civil Procedure Code 1939 (including amendments) by article
70 (protection of personality), text 240
483 (intentional or reckless violation of rights: obligation to pay damages), text 240
487 (burden/standard of proof), text 240
Constitution 1976 by article
13 (equality), text 239
16 (fundamental rights: scope and interpretation), text 239
18 (fundamental rights: legal force of constitutional provisions), text 239
25 (personal integrity), text 240
Portugal (cont.)
discrimination evidence by the judicial system: see Carvalho Pinto de Sousa Morais
Legislative Decree no 48051 of 21 November 1967 (State’s non-contractual civil liability) by article
2(1) (liability for negligent acts), text 240-1
4 (assessment of negligence) 241
6 ("unlawful" acts) 241

preliminary objections, jurisprudence (general)
APDF and IHRDA 9-11
WAVES 73-4

private life/privacy, definitions/scope (ACHR 11/ECHR 8/ICCPR 17)
as a broad term/difficulty of definition 247
elements of
gender identification, sexual orientation and sex life 247, 373
failure to recognize gender of transgender person as interference in personal autonomy/self-determination 341-5, 348, 351, 532-3, 545-7 personal development 247, 341-9, 351 personal photographs and images 357-8

private life/privacy, definitions/scope (ACHR 11/ECHR 8/ICCPR 17), jurisprudence
Carvalho Pinto de Sousa Morais 247
Constitutional Court of Colombia, Judgment T-063/2015 342-3
ECtHR
EB v. France 204
Goodwin 353
Paradiso 247
X v. Austria 204
HRC, Coeriel 343
IACtHR 357
Artavia Murillo (IVF) 341-2
Atala Riffo 342, 344-5
Chaparro Álvarez 342
Contreras 343, 344
Fernández Ortega 341
Flor Freire 342
Fontevecchia 357
Gelman 341, 343, 347
Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)) 340-9,
356-7
Ituango Massacres 341
I.V. 341-2, 343
Rochac Hernández 343
Rosendo Cantú 341-2
Santa Bárbara Campeino Community 341
Tristán Donoso 357

prompt hearing, jurisprudence
AG CHPR
FAJ 60
Huri Laws 60
Tandja 60
IACtHR, Castillo Paez 60
reparation for breach of treaty (ACHPR Protocol 27(1))

- costs and expenses 65
- parties to bear own 26-7

jurisprudence

APDF and IHRDA 26-7
WAVES 88-9

non-pecuniary reparation/satisfaction

- amendment of legislation 26, 27, 65
- finding of violation 27
- measures to ensure non-repetition/compliance obligation (ACHPR Protocol 30) 27
- pecuniary reparation for pecuniary damage/material prejudice 64

reparation for breach of treaty/internationally wrongful act other than compensation, jurisprudence

- declaration of illegality
  SERAP 88
  WAVES 88
- publication and dissemination of judgment, WAVES 88

reproductive rights

- fatal foetal abnormality/serious fatal abnormality, distinction 534 n. 7, 554-5
- international instruments relating to
  CEDAW 447
  CRPD (2006), 25 (health) 667-8
  ECHR 2(1) (right to life) 580-2, 589-90, 673
  ECHR 3 (torture) 555-6, 580-2, 590-5, 632-48, 670, 672, 675-6, 678
  ECHR 8 (private and family life) 550-9, 580-2, 595-608, 648-66, 670-1, 672-5, 676-7, 679-80
  ECHR 14 (non-discrimination) 580-2, 608
  ESC 667
  ICCPR 667
  UNCAT 667
- personal autonomy and bodily integrity as underlying principles 545-6

reproductive rights, jurisprudence (including abortion and related issues)

Attorney General v. X 602
Attorney General’s Reference (No 3 of 1994) 589, 660
Bourne 561, 579-80, 581, 614-16, 618, 649
FPANI 553-4, 580, 581, 582-3, 595-6, 614, 615, 638-9, 649
McFarlane 604
MB (Medical Treatment) 550, 589-90
Nicklinson 557-8, 600-2, 657-9
Open Door Counselling 596, 664
P and S 592, 641-2, 646-7
Parkinson 604, 607-8
Pretty 545, 657-8
Re G (Adoption: Unmarried Couple) 557, 600-1, 602, 658
Re MB (An Adult: Medical Treatment) 550, 589
RR 591-2, 633, 639, 640, 641, 644-5, 647
Stüber 606-7
Tysiac 642
Vo 550, 589-90, 597, 659-60, 662, 673-4

review of treaty provisions, Elimination of Discrimination in Education 1 and 3 84
rule of law
ACHR obligations and (ACHR 2) 453-62
judicial vs administrative procedure 374-7
jurisprudence (general)
Artavia Murillo 453-4
Gender Identity and Same-Sex Couples (OC-24/17) 451-62
Habeas Corpus in Emergency Situations (ACHR 27.2, 25.1 and 7.6) (OC-8/87) 453
The Word “Laws” (OC-6/86) 454
"requirement of law"/"reserva de ley" (ACHR 2) 451-62

Russian Federation (1991-)
Administrative Offences Code (AOC) by article
1.5 (presumption of innocence) 525
1.5.1 (establishment of guilt) 525
6.21.1 (promotion of non-traditional sexual relations among minors) (addition
(Federal Law No 35-F3) (2013)) 171-225, 509-30: see also Bayev
ad hoc application depending on potential audience and place of dissemination 524-5, 527
compatibility with Constitution 528-30
dependence of guilt on fair trial requirements 525-6
factors to be considered when assessing Article 6.21.1 cases 529
impact of information on recipient, relevance 526
jurisprudence prior to enactment of provision 527-8
as justified interference with family/private life 524, 528-9
object and purpose (protection of the child/traditional family) 22-3, 521-4
Supreme Court’s jurisdiction in respect of obligation to respect its decisions 528-9
text 187
“unconventional sexual relations” as objective, non-pejorative term 523-4, 528-30
Allowances (Prescription and Payment Act) 491
children, legislation relating to
Child Allowances Act 491
Protection of Children from Information Causing Damage to their Health and Development (Law of 29 December 2010) by article
1(1) (protection of children from information damaging to their health) 520
1(2) (non-applicability of restriction to information products having significant historical, artistic or other cultural value) 520
5(2) (prohibited information (unconventional sexual relations)) 520
5(3) (limitation to certain ages) 520
children, treaties relating to
CRC 5 (respect for responsibilities of extended family as provided for by local custom) 520
Lanzarote 6 (information on risks of sexual exploitation/abuse in context of new communication technologies) 520
Civil Procedure Code (2002) by article 490-501
11 (applicable law), text 488
11(1) (applicable law in civil cases; normative legal acts of federal and local bodies of State power) 232-6, 490, 494-5
11(4) (applicable law in civil cases: primacy of treaty) 490, 494-5
392(4)(4) (review of judicial decisions on grounds of new facts: ECtHR finding of breach of ECHR) 489-501
text 487
INDEX 735

393(4)(2) (review of judicial decisions on grounds of new facts: Constitutional Court’s review of constitutional incompatibility of impugned law) 501 text 487
Constitution 1993 (including 1999 amendments) by article
1(1) (Russia as democratic federal law-bound State) 496, 521
2 (fundamental rights and freedoms: supreme importance/obligation to protect) 496, 512-13
3 (sovereignty of the people) 499
4 (sovereignty of the Federation) 499
4(1) (sovereignty of Russian Federation) 498
4(2) (supremacy of Constitution throughout Russian territory) 512
13(1) (recognition of ideological diversity) 515
15 (supremacy of the Constitution) 499
15(1) (Constitution: primacy) 498, 512, 521
15(2) (obligation of public authorities and officials to respect Constitution and laws of the Federation) 496, 512, 521
15(4) (generally recognized principles and norms of international law including treaties as part of the law of/primacy) 93-9, 493, 495-6, 510-11, 516-17 text 488, 505
17(1) (protection of fundamental rights under international law and the Constitution) 510-11, 525
17(2) (fundamental rights: inalienability) 496
17(3) (fundamental rights: non-interference with rights and freedoms of others) 513, 525
18 (rights and freedoms: direct effect) 496, 498, 512-13
19(1) (equality before the law) 498, 510-11, 513, 514
19(2) (equality of rights irrespective of sex, social status or employment) 109, 184, 510-11, 512-13, 514
19(3) (equal rights, freedoms and opportunity for men and women) 109, 513
21(1) (human dignity) 510-11, 513
23(1) (inviolability of private/family life) 513
24(5)(1) (circumstances preventing proceedings in an administrative offences case: repeal of the relevant law) 525
28 (freedom of conscience/religion) 513
29 (freedom of speech and ideas) 184, 513
29(1) (freedom of ideas and speech) 510-11, 513, 516
29(2) (prohibition of promotion of social, racial, national, religious or linguistic supremacy) 510-11, 516, 517
29(4) (freedom to receive and transmit information by any lawful means) 510-11
38(1) (State protection of maternity, childhood and the family) 109, 516-18, 521
38(2) (care and upbringing of children as right and obligation of parents) 109
45(1) (State protection of rights and freedoms) 496, 521
46(1) (judicial protection) 496, 512
46(2) (judicial protection: judicial appeal against act of State body, local self-government and officials) 496, 512
46(3) (judicial protection: appeal to international courts) 495, 511-12
49(1) (presumption of innocence) 525
51(1) (self-incrimination) 525
52 (victims’ right to access to justice/compensation for damage) 496, 525
54 (criminal liability) 525
54(2) (criminal liability: nullum crimen, nulla poena sine lege) 524-5
55(3) (rights and freedoms: derogation) 184, 491, 510-11, 525
Russian Federation (1991-) (cont.)
64 (legal status of individual) 525
71(a) (federal jurisdiction: adoption and control of the Constitution and federal laws) 521
71(c) (federal jurisdiction: protection of rights and freedoms) 521
71(f) (federal jurisdiction: federal policy in the sphere of State, economic, ecological, social, cultural and national development of the Federation) 521
71(o) (federal jurisdiction: federal conflict of laws) 521
72: Note: “joint jurisdiction” refers to the joint jurisdiction of the Russian Federation and the constituent subjects of the Russian Federation
72(1)(g) (joint jurisdiction: health care, family protection, maternity, paternity and childhood, social security) 517-18
76 (hierarchy of laws) 499
118 (judicial power/administration of justice) 496, 498
118(2) (exercise of judicial power: constitutional, civil, administrative and criminal proceedings) 512
118(3) (exclusion of extraordinary court) 112
120(1) (judicial independence) 498
125 (Constitutional Court) 498
125(4) (Constitutional Court: competence: constitutional review) 499, 510, 512
126 (Supreme Court) 512
Constitutional Court decisions exclusion of appeal from 500
possibility of application for review of constitutionality of laws underlying a decision 500-1
Constitutional Court Law 1994 (CCL) by article
3 (powers of the Constitutional Court) 510
3(1)(3) (constitutional review) 499-500
6 (binding effect of decisions) 501, 530
36 (reasons and grounds for consideration of a case by the Constitutional Court) 510
43(1) (dismissal of petition: Constitutional Court’s lack of competence) 494, 499-500
47 (resolution of cases without hearings) 512
68 (discontinuance of proceedings) 494
71 (questions requiring/not requiring a decision) 501
72 (reaching the decision) 501
74 (requirements for decisions) 493, 501, 510
75 (clarification of integral provisions of Resolution of Constitutional Court) 501
78 (promulgation of decision) 501
96 (right to petition the Constitutional Court) 499-500, 510
97 (admissibility of complaint) 510
100 (final decision on complaint of violation of constitutional rights and freedoms: possibilities) 499-500, 501
101 (petition to the Court) 493
102 (admissibility of request for review) 493
104 (limits of verification of constitutionality of dispute law by Constitutional Court) 501
Criminal Code (CC) (1996 as amended 2012) by article
116(1) (battery) 468-83
116(2) (aggravated battery motivated by hatred in relation to a social group) 468
Criminal Procedure Code 2001 (CPC) by article
INDEX 737

125 (challenge to refusal to open/termination of criminal case) 469-70
401(2)(1) (cassation review: points of law/court decisions in force) 480
ECHR Ratification Law
1 (ECHR jurisdiction) 495-6
ECHR as integral part of the Russian legal system 495-501, 516-17
ECHR judgments, binding force/compliance obligation (ECHR 46) 489-502
primacy of Constitutional Court in case of conflict with ECHR/resolution by appropriate mechanisms 512
effective remedy before national authority (CEDAW OP 4(1)/ECHR 13) 479-81
equality before the law (Constitution 19(1)), legislation implementing principle 514-15
family/private life
compatibility of Russian law with, CRC 5 (respect for responsibilities of extended family as provided for by local custom) 520-1
freedom and personal inviolability/autonomy including the right to make life choices 513
Lanzarote Convention 6 (information on risks of sexual exploitation/abuse in context of new communication technologies) 520-1
protected rights including protection of child against damaging propaganda 519-24
traditional values as basis of the law on family, sexual and private relationships 222-3, 517-19
freedom of expression, justified restrictions: see Bayer; Constitutionality of Article 6.21.1 of the Russian Code of Administrative Offences (AOC 6.21.1)
human dignity as fundamental/non-derogable right 513, 517
ICCP (1966) as integral part of Russian legal system 16-17
Labour Code 2001 by article
3 (non-discrimination) 514
255 (entitlement of women to maternity and childcare leave) 109
256 (entitlement of persons other than the mother to parental leave) 109
Military Service Act (Law 76-FZ of 27 May 1998) by section
10(9) (entitlement to social benefits of female military personnel and military personnel bringing up children) 110, 491
11(13) (parental leave) 110, 491
military service, legislation relating to other than the Military Service Act and Military Service Regulations 491
Military Service Regulations 1999 (Presidential Decree 1237 of 16 September 1999), paternal entitlements of service men and women distinguished 110
non-discrimination obligations: see Markin
sexual minorities in: see also Bayer; Constitutionality of Article 6.21.1 of the Russian Code of Administrative Offences (AOC 6.21.1); Constitutionality of Article 392(4)(3) and (4) of the Russian Civil Procedure Code taken in conjunction with Article 11 (Russian Constitutional Court); ON and DP (CEDAW)
prohibition of discrimination/differential treatment 512-14
public discussion of sexual relations, including non-conventional relations contradicting moral norms, freedom of 515-17
justified restrictions (including ECHR 10/ICCPR 19/UDHR 29) 516-17
same-sex relationships on consensual basis, freedom of 512-14
sexual orientation, gender identity and gender expression, right to self-determination of 512-14
Social Insurance Law (Law 255-FZ of 29 December 2006) 109-10
same-sex marriage/partnership: see also “family”/“family life”
ACHR 11(2) (private life)/ACHR 17(1) (protection of the family) as basis of protection 380-90

differential treatment, unacceptable grounds 397-9
creation of institution with same effects as marriage but not the name 398
equality test, any failure to meet 338-9, 397
evolution of marriage concept, failure to take account of 397
measures conflicting with liberty of person/freedom to make life choices (ACHR 7) 398
philosophical/religious convictions-based distinctions 397-8
procreation as the purpose of marriage 397
semantic imposition of the etymology of “marriage” 397
“family”, whether 381-90
institutional difficulties impeding legislative reform, State’s obligations
good faith promotion of required legislative, administrative and judicial reforms 398-9
non-discrimination/guarantee of same rights as offered by marriage as an interim measure 399
jurisprudence, Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)) 380-99: see also Gender Identity and Same-Sex Couples (IACtHR (OC-24/17))
mechanisms to protect diverse families 390-9
observations
CEDAW 391
CESCR 391
mechanisms to protect diverse families, jurisprudence
ECtHR
Karner 391-2
Kozac 392
Oliari 392
PB and JS 392
Vallianatos 392
HRC
X v. Colombia 391
Young 391
IACtHR
Duque 390
Getman 390-1
I.V. 391
Street Children 390
Valencia Hinojosa 390
patrimonial rights 389-90
rights and obligations under domestic law accorded to heterosexual partnerships 390
State practice
Argentina 393, 396
Brazil 393
Canada 395
Chile 393
Colombia 393, 395-6
Costa Rica 395
Ecuador 393
Mexico 392-3
Uruguay 393
satisfaction for injury caused by internationally wrongful act (ILC(SR) 37)
cessation obligation (ILC(SR) 30(a)) 90
punishment of responsible person 81-2
sedition, freedom of expression and 49-57
sedition libel: see defamation
sexual abuse, measures to protect children against (CRC 19) 221
sexual minorities, rights/protection of: see Bayer; CEDAW; Constitutionality of Article 6.21.1 of the Russian Code of Administrative Offences (AOC 6.21.1); Constitutionality of Article 392(4)(3) and (4) of the Russian Civil Procedure Code taken in conjunction with Article 11 (Russian Constitutional Court); Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)); General Comments (HRC); General Comments (HRC), 18 (ICCPR 26 (non-discrimination)); General Comments (HRC), 19 (ICCPR 23 (the family)); ON and DP (CEDAW); same-sex marriage/partnership; sexual minorities, rights/protection of (ACHR 1(1)/ECHR 14/ICCPR 26/ACHPR 18(3)/TEC 119); sexual minorities, rights/protection of (ACHR 1(1)/ECHR 14/ICCPR 26/ACHPR 18(3)/TEC 119), jurisprudence; sexual minorities, rights/protection of (ACHR 1(1)/ECHR 14/ICCPR 26/ACHPR 18(3)/TEC 119), justiﬁed restrictions/differential treatment by public authorities/differential treatment; sexual minorities, rights/protection of, international instruments other than treaties relevant to; sexual minorities, terminology; sexual orientation and gender expression as protected categories (“any other status”); traditional social and cultural practices harmful to human/fundamental rights/stereotyping, obligation to eliminate; women
sexual minorities, rights/protection of (ACHR 1(1)/ECHR 14/ICCPR 26/ACHPR 18(3)/TEC 119)
civil, political, economic and social rights 389
consensual homosexual activity in private, requirements 338-40
differential treatment, standard/burden of proof 338-40
family/private life (ECHR 8/ICCPR 17) and: see family/private life, respect for/freedom from interference
freedom of expression and (ECHR 10/ICCPR 19(2)/UDHR 29) 177-225, 509-30
homosexuality, paedophilia, alleged link with 204, 220-1
patrimonial rights 389-90
public interest litigation (PIL) 78-9
social security provisions 389
Duque 389
Yokoyakarta Principle 13 (right to social security) 389
sexual minorities, rights/protection of (ACHR 1(1)/ECHR 14/ICCPR 26/ACHPR 18(3)/TEC 119), jurisprudence
justiﬁed restrictions/differential treatment ECtHR
ADT 315
Bayev 177-225
Burden 210
Dudgeon 315
EB 211
Hämäläinen 204
HQ 315
L and V 204
Markin 204
Modinos 315
sexual minorities, rights/protection of (ACHR 1(1)/ECHR 14/ICCPR 26/ACHPR 18(3)/TEC 119), jurisprudence (cont.)
Norris 315
Salgueiro da Silva Mouta 204, 211, 252
Schuler-Zgraggen 250, 252
Smith and Grady 204
Sousa Goucha 252
Unal Tekeli 138, 250
Vallianatos 204, 210
X v. Austria 204, 210-11
HRC, Toonen 315
IACtHR
Atala Riffo 311
Duque 317
as protected categories
ECtHR
Alekseyev 336
Clift 336
EB 336
Fretté 336
Gelman 347, 351
Goodwin 336
Identoba 336
JM 336
Kozak 336
L and V 336
Salgueiro da Silva Mouta 336
SL 336
IAComHR, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas 345
IACtHR
Atala Riffo 329, 344
Bámaca Velásquez 349, 350
Chitay Nech 349-50
Contreras 344
Duque 329
Expelled Dominicans and Haitians 347, 349
Flor Freire 329, 344-5
Juridical Status and Human Rights of the Child (OC-17/02) 350
López Álvarez 346
Massacres of the Río Negro 349
Sawhoyamaxa Indigenous Community 349-50
Yeán and Busico Girls 350
municipal courts (Constitutional Court of Colombia)
Judgment C-109 (1995) 350
Judgment T-063/2015 345, 351
Judgment T-090 (1995) 350
municipal courts (Constitutional Court of Peru), Judgment (21 October 2016) 345
municipal courts (Supreme Court of Justice of Mexico), Direct amparo 6/2008 346, 351
sexual minorities, rights/protection of (ACHR 1(1)/ECHR 14/ICCPR 26/ACHPR 18(3)/TEC 119), justified restrictions/interference by public authorities/differential treatment

avoidance of policies based on a predisposed bias of the majority 204-5, 210, 339-40, 396

balance between rights of LGBT individuals and interests of the community 205-6

evolution of attitudes towards social, civil-status and relational issues including family life 203-4

impact in individual cases 202-3

“law as such” as interference 201-2

legality of measure/“establishment by law”, clarity and precision of the law, need for 296-7

legitimate aim

“imperative requirement” 338-9

protection against, risk to the demography 205-6

protection of health 205

minors 206-9

morals 203-5

rights and interests of others 206-7

margin of appreciation 202-3, 210-12

necessity/proportionality 202-3

absence of alternative 202-3, 339

effective parliamentary and judicial review of the necessity 202

“proportionate to the legitimate aim” 210

positive discrimination measures to reverse discriminatory situations 328

sexual minorities, rights/protection of, international instruments other than treaties relevant to

CAT observations with regard to Argentina, Colombia, Costa Rica, Ecuador, USA, Paraguay and Peru 313

CESCR observations on Sudan and Tunisia 315

CoE Committee of Ministers Resolution 2010 (5) (measures to combat discrimination on grounds of sexual orientation or gender identity) 192-3

CoE Council of Ministers Decision (CM/Del/Dec(2016)1273/H46-23) (concerns relating to the implementation of decision in Alekseyev) 193


IACOMHR, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas (12 November 2015) 312, 313-14, 316, 319

OAS General Assembly Resolutions (2008-17) 311-12, 317-18, 331

OUNHCHR


Disrimination and violence against individuals based on their sexual orientation and gender identity 319

Living Free and Equal. What States are doing to tackle violence and discrimination against LGBTI people (2012) 315


UN Report of the Special Rapporteur on the human right to safe drinking water and sanitation (2012) 316
sexual minorities, rights/protection of, international instruments other than treaties relevant to (cont.)
UN Report of the Special Rapporteur on violence against women, its causes and consequences (20 January 2006) 316
UN Reports of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (3 July 2001/1 February 2013) 313
UNHCHR Reports in date order
  Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity (17 November 2011) 311, 312, 313-15
  Discrimination and violence against individuals based on their sexual orientation and gender identity (4 May 2015) 311, 312-13, 315-17, 319
UNHRC Resolutions in date order
  17/19 (ending violence and discrimination based on sexual orientation/gender identity) (17 June 2011) (and successive similar resolutions) 322, 332
  27/32 (human rights, sexual orientation and gender identity) (2 October 2014) 311
  32/2 (protection against violence and discrimination based on sexual orientation/gender identity) (30 June 2016) 332
sexual minorities, terminology
avoidance of stereotyping, importance 302
constant evolution 302, 303-11
  bisexual 309
  cisgender person 307
  cisnormativity 309
  gay 307, 308
  gender 304-5
  gender expression 305
  gender identity 304
  heteronormativity 309-10
  heterosexual 308
  homophobia/transphobia 309
  homosexuality 307
  intersexuality 303-4
  lesbianism 307, 308
  LGBTI 310-11
  sex 303
  sex assigned at birth 303
  transgender/trans 305-6
  transsexual person 306
  transvestite 306
  glossary (based on Gender Identity and Same-Sex Couples (IACtHR (OC-24/17))),
    gender/sex binary systems 303
  lack of agreement on 302-11
  OAS practice 310-11
sexual orientation, gender identity and gender expression as protected categories
  (“any other status”) 329-38, 410-12
  CESCR observations (ICESCR 2(2)) 333-4
  CoE resolutions and recommendations 336
INDEX 743

CRC/CAT/CEDAW Committee references to 334-5
discrimination on the basis of perception 337-8
domestic legal systems recognizing 338
ECtHR jurisprudence 335-6
free and informed consent as sole requirement, procedure, “personal data”/“sensitive
personal data” (IAJC Report on Privacy and Data Protection (2015)), exclusion
358
gender expression/manifestation of identity
definition/examples of 305, 345
freedom of expression (ACHR 13) and 346
self-perceived gender identity distinguished 305
gender/sexual identity 344-9
definition/characteristics
- an integral and determining component of personal identity 347
- independence of genitalia 345
- internal and individual experience of gender 304-5, 345, 348-9
  as subjective matter independent of sex assigned at birth 345-6, 349
elements of/related rights
- all rights recognized by international human rights law including ACHR rights
  354-5
- liberty of person/freedom to make life choices (ACHR 7) 342-3, 344-5, 348, 375,
  398
- name of own choosing/corresponding to the self-perceived gender identity, right to
  351-5
- personal autonomy based on international and domestic law 344, 351,
  513-14
- privacy (ACHR 11) 344-5
State’s obligations
failure to recognize gender/sexual identity as indirect censure of 346
issue of legal identity documents reflecting the preferred gender of the person
concerned 353-4, 355
steps to ensure recognition of gender/sexual identity 354, 356-74
HRC observations (ICCPR 2(1)) 333
name of own choosing/corresponding to the self-perceived gender identity, right to: see
name, right to
OAS resolutions on 331
rectification of identity data to conform with the self-perceived gender identity, right to
children, procedures relating to 371-4
  ACHR 19 (rights of the child) as supplementary right 371
  best interests of the child principle 371-4
  child’s right to identity 373-4
domestic law (Argentina) as example of best practice 374
domestic legislation (Argentina/Bolivia) 365-6
non-discrimination principle 371-2, 373
respect for child’s views 372-3, 374
respect for right to life, survival and development 371-2
special nature of children’s rights/governing principles 371-2
Yogyakarta Preamble 374
confidentiality of changes, corrections or amendments to the records 363-6
Atala Riffo/Fontevecchia 364
Constitutional Court of Colombia, Judgment T-063/2015 364
domestic legislation (Argentina/Bolivia) 365-6
sexual orientation, gender identity and gender expression as protected categories
(“any other status”) (cont.)

- Inter-American Program for Universal Civil Registry and the “Right to Identity” best practices and standards 365
- as reflection of relationship between the right to identity and to privacy (ACHR 11(2)) 364
- risks of undesired publicity concerning a change in gender identity 363-4
- Supreme Court of Justice of Mexico, Direct amparo 6/2008 366
- Yogyakarta Principle 6 (right to privacy) 365
- cost-free/least onerous possible procedure
  - Andrade Salmón/Cantos 368
- CoE Council of Ministers’ Recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity 367
- domestic legislation (Argentina) 367-8
- as guarantee of access to Convention rights/avoidance of discrimination 368
- Inter-American Program for Universal Civil Registry and the “Right to Identity” 367
- evidence of surgery, hormonal therapy, sterilization or bodily changes requirement, exclusion 369-70
- CESCRC GC 22 (sexual and reproductive health) 370
- Constitutional Court of Colombia, Judgment T-063/15 370
- CRC GC 20 (implementation of the rights of the child during adolescence) 370
- Superior Court of Justice of Brazil, Judgment of 9 May 2017 370
- Supreme Court of Justice of Mexico, Direct amparo 6/2008 370
- Yogyakarta Principle 3 (right to recognition before the law) 370
- evidence of surgery, hormonal therapy, sterilization or bodily changes requirement, exclusion, jurisprudence
  - Garçon 370
  - Goodwin 370
  - I.V. 369
- free and informed consent as sole requirement 360-3
- domestic jurisprudence (Colombia/Mexico) 362
- exclusion of medical and/or psychological or other certifications that could be unreasonable or pathologizing 360-3
- inappropriateness of invasive intrusion of private matters for a purely declaratory procedure 363, 375
- transgender persons, inequality of treatment of 362
- UN Special Rapporteur on Torture 369-70
- UNHCHR/UN human rights bodies positions on 360-1
- Yogyakarta Principle 3 (right to recognition before the law) 361
- judicial vs administrative procedure, relevant factors 374-7
- importance of maintaining declaratory nature of procedure 375
- inappropriateness of invasive intrusion of private matters for a purely declaratory procedure 375
- legal regulation, relevance 376-7
- liberty of person/freedom to make life choices (ACHR 7) 375
- obligation to promote prompt and cost-free registration process 367-8, 375, 376
- protection of confidentiality 376
- right to recognition of self-perceived gender identity without State intervention 375
- rule of law/legality principle 451-62
- State’s right to determine own procedures 375
INDEX

procedure, general considerations 356-60
ACHR 11/ACHR 13 protection 357-8
domestic legislation/jurisprudence providing for 357-8
Inter-American Program for Universal Civil Registry and the “Right to Identity”
best practices and standards 359-60
legal certainty requirement/sanctity of rights and obligations prior to recognition of
change of gender identity 356-7
State’s obligation to ensure simultaneous updating of a single recognition will in all
government records 358
supporting evidence including photographic images 357
prompt procedure 367
Andrade Salmón/Valle Jaramillo 367
domestic legislation (Bolivia) 367
“reasonable time”, determining factors 367
right of individuals of all sexual orientations and gender identities to live with dignity
and respect 349
treaties including specific reference to
Anti-discrimination Convention 1(1) 331
PHROP 5 330-1
UNGA Statement on human rights, sexual orientation and gender identity (22
December 2008) 331
UNHCHR/Special Rapporteur reports 332, 335
UNHRC resolutions 331-2
standing (general): see also ECOWAS Protocol (CCJ); legal personality, eligibility for
human rights cases (flexibility of approach) 41-2
legal personality and 39-42
State responsibility
for breach of treaty/consequences of implementation of treaty
ACHR (1969) 301, 327
acts/omissions of State organ (ILC(SR) 4), jurisprudence
Almonacid Arellano 301
Fonteviccia 301
Las Dos Erres Masacre 301
Liakat Ali Alibux 301
Mendoza 301
Rights and Guarantees of Children in the Context of Migration (OC-21/14) 301
Velásquez Rodríguez 301
for conduct of private persons or groups for human rights violations (CEDAW 2(3)) 462
for conduct of State organ/agency (ILC(SR) 4)
attributability of
official acts, limitation to 81
ultra vires acts (ILC(SR) 7) 81
unlawful/wrongful acts 81-2
failure to comply with treaty obligations 301, 481
required elements
attribution as essential feature 80-1
due diligence 81-2

torture
burden/standard of proof 62-3
definition/classification as
torture (cont.)
definitions, “severe pain or suffering . . . intentionally inflicted . . . for such purposes as obtaining . . . information or a confession” (UNCAT 1) 61
inhuman or degrading treatment, distinguishability 632-3
evidence of 62-3
jurisprudence
ECOWAS CCJ
FAJ 61-2
ECtHR
Aksoy 632-3
Elçi 63
IACtHR
Loayza Tamayo 61-2
mitigation/justification, exclusion 555, 632, 670
traditional social and cultural practices harmful to human/fundamental rights/
stereotyping, obligation to eliminate
CEDAW 2(a), CEDAW 2(c)-(e) and CEDAW 5(a) 15-16, 25-6, 82-8, 136, 481-6
CEDAW Concluding Observations on Russian periodic reports (30 July 2010) 111, 136
CEDAW General Recommendation No 25 (temporary special measures) 261
jurisprudence (ACHPR)
APDF and IHRDA 21, 24-6, 27
jurisprudence (CEDAW)
Belousova 481
ON and DP 471-86
RKB 482
jurisprudence (ECJ)
Griesmar 117
Marschall 264
jurisprudence (ECtHR)
Abdulaziz, Cabales and Balkandali 268
Aksu 262
Alajos Kis 250, 262, 268
Bayev 181-94
DH 268, 269
di Trizio 269
EB 268
Eremia 268-9
Inze 136
Kiyutin 262
L and V 136
Lustig-Prean 136
Marckx 262
Markin 110-12, 117-18, 135-6, 143, 259, 263
Roca Álvarez 117-18
Runke and White 129-30
Salgueiro da Silva Mouta 269
Schuler-Zgraggen 269
Stec 129-30
Ünal Tekeli 250, 262
Zarb Adami 136, 269
INDEX 747

jurisprudence (IACtHR)
Carvalho Pinto de Sousa Morais 251-3, 255-65
Gender Identity and Same-Sex Couples (IACtHR (OC-24/17)) 316

jurisprudence (municipal courts)
South Africa, National Coalition for Gay and Lesbian Equality 264-5
US
Bradwell v. Illinois 259
Nevada Department of Human Resources v. Hibbs 263
Price Waterhouse v. Hopkins 258-9
US v. Virginia Military Institute 258-9

OUNHCHR Report on Discrimination and violence against individuals based on their sexual orientation and gender identity (4 May 2015) 316

travaux préparatoires as supplementary means of interpretation (VCLT 32), ACHR 17 (“family”) 385-6

treaty interpretation
multilingual treaties/treaties authenticated in two or more languages (VCLT 33)
drafting language, as preferred text 43
English and French texts compared, ECOWAS Protocol 9(3) 42-3
natural and ordinary meaning (VCLT 31(1)), “family”/“family life” 381-4
object and purpose (VCLT 31(1)), most favourable/liberal interpretation 330
parties’ intention at time of conclusion (contemporaneity) vs intertemporal law (evolutionary/“living-tree” principle)
Artavia Murillo (IVF) 386
Consular Assistance (OC-16/99) 386
Gender Identity and Same-Sex Couples (OC-24/17) 230-8, 386-8
Hacienda Brazil Verde Workers 386
Navigational Rights 386
Tyrer 386

treaty as a whole/holistic approach (VCLT 31(2)), relevant materials international declarations and rulings 324
international legal standards relevant to the subject matter 324
jurisprudence 324
other treaties applicable to the parties 324
with reference to object and purpose 324

United Kingdom
abortion: see also Offences against the Person Act 1861 (OAPA) by section, 58/59
(administering/procuring drugs etc. to procure abortion) below
unborn foetus as “not a person” 588-90, 601-3
Attorney General’s Reference (No 3 of 1994) 589
MB (Medical Treatment) 588-9
Abortion Act 1967 by section, 1 (medical termination of pregnancy: grounds) 579-80
Equality Act 2006 (by section)
9(1) (duties: human rights), text 572
30 (judicial review and other legal proceedings), text 572-3
NIA provisions distinguished 573
incest (SOA 2003, ss 25-9 and 64-5) 560
legislation, interpretation 628-31
intention of legislature/effectiveness principle, jurisprudence
Attorney General’s Reference (No 5 of 2002) 629
Cabell [US case] 630
Kebeline 631
Littlewoods 629-30
NIHRC (Supreme Court) 628-31
Quintavalle 629
Robinson 631
Z (Attorney General for Northern Ireland’s Reference) 629

margin of appreciation, “institutional competence”/discretionary area of judgment considerations 557-8, 600-1, 655-9

Offences against the Person Act 1861 (OAPA) by section:
see also NIHRC (Supreme Court)

58/59 (administering/procuring drugs etc. to procure abortion) 613-16
compatibility with ECHR: see NIHRC (Supreme Court)

texts 613

“unlawfully” (Bourne) 579

sexual offences, incest: see incest above

Uruguay, same-sex marriage/partnership 393

Venice Commission, Opinion 707/2012 of 18 June 2013 (prohibition of so-called “Propaganda of Homosexuality”) (extracts) 188-92, 206-7

WAVES (ECOWAS) (background/procedural issues)

allegation (violation of pregnant girls’ rights) 70
amicus curiae (Amnesty International), agreement to 74
facts (as presented by the applicants in date order)
pre-2002: exclusion of pregnant girls from school 70
2002-14: respondent State’s strategy to reduce teenage pregnancies and promote school attendance 70
2014-15: ebola in Sierra Leone forces schools to close 71
2015: CRC report on Sierra Leone’s combined third to fifth periodic reports (1 November 2016) 72
2015: Minister of Education’s ban on visibly pregnant girls attending school 71, 79

parties

applicant 1 (WAVES) 69
applicant 2 (CWS-SL) 69-70
respondent State (Sierra Leone) 70

parties’ arguments (applicants)

ban on pregnant girls attending school
as discrimination 71
as policy 71, 79
CRC’s criticism of the ban as breach of CRC 2/CRC 3/CRC 4/CRC 28 72
evidence (witness statements, Amnesty International report and media reports) 72

inadequacy of respondent State’s attempts to provide alternative schooling 71

parties’ arguments (respondent State)
denial of alleged facts 74
provision of alternative schooling 75, 80
reversal of Minister of Education’s alleged ban on pregnant girls attending school 75, 79-80
stigma and economic hardship as disincentives to school attendance 71

preliminary objection (standing (ECOWAS Protocol (CCJ) 10)) 73-4, 76-9
INDEX

actio popularis/public interest litigation (PIL), possibility of
  object and purpose 78-9
  “shall not be anonymous” (ECOWAS Protocol (CCJ) 10(d)(i)) and 78-9
  Court’s right to raise ex proprio motu 76
criteria (text of Statute in conjunction with substance of application) 76
striking of 2nd applicant, agreement to (legal personality/standing) 74
reparation sought 72-3
WAVES (ECOWAS) (Court’s decision including reparations)
i: procedural matters
  affirmation of Court’s jurisdiction 90
  applicant’s standing 90
ii: merits
  existence of discrimination
    inadequacy of alternative schooling arrangements 90
    Minister’s statement of ban on schooling for pregnant girls 90
    finding of breach of respondent State’s obligations under the ACHPR, CRC and
    CADE 90
iii: reparation orders
  revocation of ban 90
  strategies and programmes
    to develop income-generation driven programmes for pregnant girls 91
    to enable teenage mothers to attend school 91
WAVES (merits) (Court’s analysis and conclusions), issue 1: existence of ban on
  pregnant girls attending school in Sierra Leone/State responsibility for 79-82
  Court’s findings
    insufficiency of respondent State’s efforts to mitigate effects of breach 82
    punishment of person responsible as satisfaction for internationally wrongful act (ILC
    (SR) 37) 81-2
    responsibility of respondent State for Minister’s actions 82
  State responsibility
    for conduct of State organ (ILC(SR) 4)
      limitation to official acts 81
      unlawful/ultra vires acts 81-2
    required elements (ILC(SR) 2(a))
      attribution 80-1
      due diligence 81-2
      rules relating to 80-2
    summary of facts as presented by parties 79-80
    as clear evidence of Ministerial statement announcing ban 82
WAVES (merits) (Court’s analysis and conclusions), issue 2: existence of
discrimination against pregnant schoolgirls in Sierra Leone 82-8
  Court’s finding of discrimination 86-8
  review of the relevant treaty provisions
    ACHPR 84-6
    CADE (1960) 84
    CRC 85-6
  summary of parties’ arguments
    applicant 82-3
    respondent State 83
women: see also CEDAW (1979); Maputo Protocol (2003); non-discrimination obligation
  (CEDAW 2)
inheritance rights (APDF and IHRDA) 23-4
  description of 304 n. 45
  Principle 3 (right to recognition before the law) 353
  Principle 6 (right to privacy) 350, 365
  Principle 13 (right to social security) 389