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Gomien, Donna, Short Guide to the European Convention on Human Rights, Council of Europe Publishing, Strasbourg, 1988, pp. 137, 150, 151.

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J.E.S. Fawcett, *The Application of the European Convention of Human Rights*, Oxford 1969, p. 223 .

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Religious : 1532

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⁸ -Vierdag, E.W.The Concept of Discrimination in International Law, Martinus Nijhoff the Hague,1973, pp. 83-86.

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Chandra, Satish, Civi and Political Rights of the Aliens, (Deep&Deep Publication, New Delhi, 1982, pp. 43.)

⁹ - McDougal, Myres S, Lasswell, Harold D, Chen, Lung-chu,

The Protection of Aliens from Discrimination and World Public Order.

Responsibility of States Conjoined with Human Rights, 70 A.J.I. L. (1976), P. 457.

¹⁰ - Bayefsky, Anne F, The Principle of Equality or Non – Discrimination in International Law, H. R.L. J, (1990), p.7.

¹¹ - UN .Doc. EL / CN. 4/52, p. 5 .

¹² - Elles, Diana, International Provisions Protecting the Human Rights of Non-Citizens, United Nations, New York, 1980, p.15.

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¹⁴ -Application No. 3325/67, X. v. U. K., Decision No. 15, December, 1967. p.120.

“ The Application further alleg a discrimination within the Article14 of the Convention, between them and certain citizens of the United Kingdom and Colonies, in respect of entry to and residence in the united Kingdom, whereas in this respect, it is to be observed that Article 14 only prohibits discrimination with regard to the enjoyment of the rights and freedoms set. Forth in the Convention and the Protocol Whereas the Commission has already found that a right to be admitted to a particular country or a certain part of it is not as such is guaranteed by any provisions of the Convention whereas it follows that, the exclusion or restriction upon entry or residence of some individuals and not others cannot constitute discrimination in respect of a right or freedom guaranteed by the Convention whereas it follows that, also under this respect, the application is incompatible with the provisions of the Convention within the meaning of Article 27, paragraph(2)...”

Isop Case Decision of 8 March 1962 .No.808/60. Yearbook 5. pp.108-124.

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¹⁵ Dudgeon

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Dudgeon

Application No. 3781/68, Xv. Sweden, 32CD.(1970),p.10: "It is to be observed that the guarantee of Article 14 has no independent existence in the sense that under the terms thereof it relates solely to rights and freedoms set forth in the Convention"

Application No.551/59.X v . Federal Republic of Germany, 3 C.D.(1960), p.5.

Application No.808/60,I.S.O.P.Y. Austria,8C.D.,(1962), p.89.

Application No.1425/62,Xv.Austria, 12C.D.,(1964), P.127.

Application No.3798/68,Church of Xv. U.K.,29C.D.,(1969),P.80.

Application No.4505/70Xv.Federal Republic of Germany, 39C.D.,(1972),P.57.

¹⁵ Dudgeon Case, Judgment of the European Court of Human Rights, 1981, para.67:"Where a substantive Article of the Convention has been invoked on its own and together with Article 14(art.14)and a separate breach has been found of the substantive Article, it is generally not necessary for the court also to examine the case under Article 14"

Case of x and y v . the Netherlands,

[http:// hudoc.echr.coe.int / Hudoc2doc / sitt / 188.txt](http://hudoc.echr.coe.int/Hudoc2doc/sitt/188.txt) para.33.

"Article 14 has no independent existence; it constitutes one particular element(non-discrimination) of each of the rights safeguard by the Convention. The Articles enshrining those may be violated alone or in conjunction with Article14. An examination of the case under Article 14 is not generally required when the Court finds a violation of one former Article taken alone".

Airey Judgment, 9Oct.1979, para.30.

Inze v. Austria, 25 September 1986

[http://hudoc.coe.int/ hudoc/ View Html](http://hudoc.coe.int/hudoc/ViewHtml) para.61.

Chassagnou and others v. France, 16 December 1998.

[http:// hudoc.ech.coe.int / hudoc / View Html](http://hudoc.ech.coe.int/hudoc/ViewHtml)

"Where a substantive Article of the Convention has been invoked both on its own and together with Article 14 and a separate breach has been found of the substantive Article, it is not generally necessary for the Court to consider the case under Article 14 also, though the position otherwise if a clear inequality of treatment in the enjoyment of the right in question is a fundamental aspect of the case".

Non-interpretation of Article 14, Gomien,op.cit, p.123.

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¹⁷- Application No. 2299/64, 12December, 1966,para. 38

Nedjati, Zaim M. Human Rights Under the European Convention, North-Holland Publishing Company, Oxford, 1978. p. 226.

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¹⁸ - "Article 2 : No person shall be denied the right to education . In the exercise of any functions which it assumes in relation to education and teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions".

¹⁹ - Belgian Linguistic Cases

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National Union of Belgian Police Case

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para. 9 “ While it is true that this guarantee has no independent existence in the sense that under the terms of Article14(art. 14)it relates solely to rights and freedoms set forth in the Convention, a measure which in it self in conformity with the requirements of the Article enshrining the right or freedom in question may however infringe this Article when read in conjunction with Article14(art. 14) for the reason that is of discriminatory nature”.

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Darby v. Sweden. 24 September 1990

<http://hudoc.echr.coe.int/hudoc/ViewHtml>.

“ The application of Article14 does not presuppose a breach of those provisions- and to this extent it is autonomous-,there can be no room for its application unless the facts at issue fall within the ambit of the latter.” para. 22 .

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Commonwealth Immigration Act 1986

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²⁰ - National Union of Belgian Police Case, judgment, 1 October, 1975, para.44.

“Although the Court has found no violation of Article 11 para.1 (art.11-1), it has to be ascertained whether the differences in treatment complained of by the applicant Article 11 and 14 (art.14+11) taken together. Although Article 14 (art.14) has, placed in comparable situations, from all discrimination in the enjoyment of the rights and freedoms set forth in those provisions. A measure which in itself is in conformity with the requirements of the Article enshrining the right and freedom in question may therefore infringe this Article when read in conjunction with Article 14 (art.14) for the reason that is of discriminatory nature. It is as though Article 14 (art.14) formed an integral part of each of the Articles laying down rights and freedoms whatever their nature.”

Swedish Engine Drivers' Union Case. Judgment 19 January 1976, para.44-46.

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Application No.44033/70, East African Asians v. U.K., 3 European Human Rights Report, 1981, pp.85-86

“whereas however the Commission is of the opinion that quite apart from any consideration of Article 14, discrimination based on race could in certain circumstances of itself amount to degrading treatment within the meaning of Article 3 of the Convention; whereas the Commission considers that is generally recognized that a special importance should be attached to discrimination based on race and that publicly to single out a group of persons for differential treatment on the basis of race might in certain circumstances, constitute a special form of affront to human dignity; whereas therefore differential treatment of a group of persons on the basis of race might be capable of constituting degrading treatment in circumstances where differential treatment on some other ground such as language would raise no such question.”

: **Sorensen**

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²²- Sorensen : "Discrimination is generally accepted as signifying as any act conduct which denies to individuals equality of treatment with other individuals because they belong to particular groups in society"

²³ - UN Commission :

"The prevention of discrimination is the prevention of any action which denies to individuals or groups of treatment which they may wish."

²⁴ -Kipp :

"Discrimination can be defined as : unequal treatment of equal objects or equal situation"

²⁵ Jeenicke :

"Nowadays the practice of international Law uses (the concept) to indicate an inadmissible unequal treatment ."

²⁶ -Vierdag:

" .. a detrimental distinction based on grounds which may not be attributed to the individuals and which have no justified consequences in social, political or legal relations (color, race, sex, etc.) or on grounds of membership in social categories (cultural, language, religious, political or other opinion, national circle, social origin, social class, property, birth or other status.)"

Vierdag, op.cit.pp.50-55. (22, 23, 24, 25,26)

²⁷ Curzon :

The according some differential treatment to persons or bodies in the same position.

Curzon,L B· Dictionary of Law· Fourth Edition· Pitman Publishing· London· 1993, P.120.

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Lithgow and others.

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³⁰ - Lithgow and others v. U.K., Case number 2/1984/74/112-118 para.177: "... furthermore, the contracting states enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law ; the scope of this margin will vary according to the circumstances, the subject-matter and its back ground."

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Marcks

Marcks ³³

³¹- X.v. Germany. Judgment of 27 October 1975 :”... Article 14 of the Convention which forbids any discrimination on the ground of sex dose not preclude a high Contracting Party from differentiation between sexes in the measures it takes with regard to homosexuality for the protection of health or morals in accordance with Article 8 (para. 2)of the Convention .”

Salgueiro Da Silva Mouta v. Portugal December 1999
<http://hudoc/hudoc/viewHtml> para.36.

³² D.R. 2.PP.110-117.*

³³- Marcks v. Belgium (1979)para .40.

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³⁴ - Article 1: "every natural or legal person is entitled to the peaceful enjoyment of his possession . No one shall be deprived of his possession except in the public interest and subject to the conditions provided for by law and by the general principles of international law ."

³⁵ - Inez v. Austria . Case Number 15/1986/113/161.

³⁶ - Vermeire v. Belgium, 24 October 1999.

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³⁷ - Case of Mazurek v. France

[http:// hudoc.echr.coe.int/hudoc/ViewHtml](http://hudoc.echr.coe.int/hudoc/ViewHtml) para.49.

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³⁹ -Hoffman v. Austria, Case Number 15/1992/360/434
 para.33: "...Such a difference in treatment is discriminatory in the absence of an objective and reasonable justification, that is, " if not justified by a " " legitimate aim" and if there is no "reasonable relationship of proportionality between the means employed and the aim sought to be

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realized ...” the aim pursued by the judgment of the Supreme Court was legitimate one the protection of health and rights of children· it must now be examined whether the second requirement was also satisfied. A distinction based essentially on a difference in religion alone is not acceptable . The Court therefore cannot find that a reasonable relationship of proportionality existed between the means employed and the aim pursued, there has accordingly a violation of Article 8 taken in conjunction with Article 14.

⁴⁰- Ireland v. the United Kingdom (1978)

Abdulaziz, Cabales, and Balkandali.⁴¹

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⁴¹- Abdulaziz, Cabales, and balkkndali v. U. K..
<http://hudoc.echr.coe.int/Hudoc\HEGD\sift\1.txt>
para,78-79

“ As to the present matter, it can be said that the advancement of the equality of the sexes is today a major goal in the member States of the Council of Europe . This means that very weight reasons would have to be advanced before a difference of treatment on the ground of sex could be regarded as compatible with the Convention In any event the Court is not convinced that the difference that may nevertheless exist between the respective impact of men and women on the domestic labour market is sufficiently important to justify the difference of treatment complained of by the applicants, as to the possibility for a person settled in the United Kingdom to be joined by, as the case may be, his wife or her husband”.

Van der Mussele

Van der Mussele

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Van der Mussele v. Belgium(1983) - 42
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⁴³ - Van Raatle v. Netherlands 28 January 1997,
<http://hudoc.echr.coe.int/hudoc/Viewwhtml>, para.42.

⁴⁴ - The Case of Burghartz v. Switzerland, 24 January 1994
<http://hudoc.echr.coe.int/hudoc/Viewwhtml> . para. 27-28-29

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Moustaquim ⁴⁷

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⁴⁵ - Application Number 5663/72,, C.D.,45, pp. 76,85.

⁴⁶ - Application Number 6163/73, D. R., 1 pp. 60, 61.
Application Number 5913/72, C.D.,45,97
Nedjati, op.cit. pp.230-2
Chandra,op.cit. pp.44-45.

⁴⁷- Moustaquim v. Belgium, 18 February 1990 .

<http://hudoc.echr.coe.int/hudoc2doc/HEJUD/sift/237.txt/> . para. 48

“ Like the Commission the Court would reiterate that Article 14 (art. 14) safe guards individuals placed in similar situations from any discriminatory differences of treatment in the enjoyment of rights and freedoms recognised in the Convention and its Protocols. In the instant case the applicant cannot be compared to the Belgian juvenile delinquents. The latter have a right of abode in their own country and cannot be expelled from it, this is confirmed by Article 3 of Protocol No. 4(P4-3). As for the preferential treatment given to national of other member States of the Communities, there is objective and reasonable justification for it Belgium belongs, together with those States, to a special legal order”.

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Cevat ⁴⁹

Gaygusuz.

⁴⁸ - Article 3, Protocol No. 4:

- 1- NO one shall be expelled, by means either of individual or of a collective measures, from the territory of the State of which he is a national.
- 2- No one shall be deprived of the right to enter the territory of the State of which he is a national .

⁴⁹ Cevat Gaygusuz v. Austria, 31 August 1996
<http://hudoc.echr.coe.int/hudoc/ViewHtml> para.42-50-52.

Ozgur Gunden,

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Belgian Linguistic Cases

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⁵¹ - Ozgur Gunden v. Turkey 16 March 2000

<http://hudoc.echr.coe.int/hudoc/ViewHtml...para.72>

"...It was satisfied that they pursued the legitimate aims of protecting national security and territorial integrity or that of the prevention of crime or disorder. There is no reason to believe that the restrictions on freedom of expression which resulted can be attributed to a difference of treatment based on applicants' national origin or to association with national minority, Accordingly, the Courts concludes that there has been no breach of Article 14 of the Convention."

para.63. "... Articles found by the Commission to contain passages which advocate intensifying the armed struggle, glorified war and espoused the intention to fight to the last drop of blood The Court agree that ... be regarded encouraging the use of violence ... given relatively light penalties imposed the Court finds that measures complained of were reasonably proportionate to the legitimate aims of preventing crime and disorder in democratic society."

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⁵² - Belgian Linguistic Cases

<http://hudoc.echr.coe.int/Hudoc2doc\HEJUD\ para.9>

“..... the Court holds that equality of treatment is violated if the distinction has no objective and unreasonable justification. The existence of such a justification must be assessed in relation to the aims and effects of the measure under consideration, regard being to the principles, which normally prevail in democratic societies. A difference of treatment in the exercise of a right laid down in the Convention must not only pursue a legitimate aim : Article 14 is likewise violated when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised. In attempting to find out in a given case whether or not there has been arbitrary distinction, the Court cannot disregard these legal and factual features which characterise the life of the society in the State which, as a Contracting Party, has to answer for the measure in dispute. National authorities remain free to choose the measure which they consider appropriate in those matters which are governed by the Convention “

- Bayefsky Anne F, *The Principle of Equality or Non-Discrimination in International Law*, 11 H.R.L.J. (1990).
- Buregenthal, Thomas, & Shelton, Dinah, *Protecting Human Rights in the Americas, Fourth Edition, International of Human Rights*, Arlington, 1995 .
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- *Reports of Judgments and Decisions, European Court of Human Rights*, Carl Heymanns Verlag, Colonge.

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