



INTERNATIONAL HUMAN RIGHTS
LouvainX online course - prof. Olivier De Schutter

READING MATERIAL
related to: section 6, sub-section 3, unit 3:
How to address profiling and stereotyping?

European Court of Human Rights (GC), *Konstantin Markin v. Russia* (Appl. No. 30078/06), judgment of 22 March 2012, paras. 127, 142-3:

[The applicant, a father of three children serving in the Russian military, divorced from their mother on 30 September 2005. By mutual agreement of the parents, the children were to live with him. On 11 October 2005, he requested to take a three years' parental leave. This was refused to him, because the three years' parental leave could be granted only to female military personnel. Though the applicant was allowed to take three months' leave, he was recalled to duty on 23 November 2005. In the legal proceedings that followed, the Russian Constitutional Court, in its judgment of 15 January 2009, justified the difference in treatment between servicewomen and servicemen as regards parental leave by the consideration that 'By granting, on an exceptional basis, the right to parental leave to servicewomen only, the legislature took into account, firstly, the limited participation of women in military service and, secondly, the special social role of women associated with motherhood'. This argument was not dissimilar to that invoked in the 1998 case of *Petrovic v. Austria* by the European Court of Human Rights itself (judgment of 27 March 1998, §§ 26-29), where the Court had found that a distinction on the basis of sex with respect to parental leave allowances was not in violation of Article 14 ECHR because at the material time there was no European consensus in this field, as the majority of Contracting States did not provide for parental leave or related allowances for fathers. Yet, in 2012 the same argument is strongly rejected by the Court, sitting in Grand Chamber, which concludes that Russia is in breach of Article 14 ECHR based, in part, on the following grounds:]

127. The Court further reiterates that the advancement of gender equality is today a major goal in the member States of the Council of Europe and very weighty reasons would have to be put forward before such a difference of treatment could be regarded as compatible with the Convention (see *Burghartz v. Switzerland*, 22 February 1994, § 27, Series A no. 280-B, and *Schuler-Zgraggen v. Switzerland*, 24 June 1993, § 67, Series A no. 263). In particular, references to traditions, general assumptions or prevailing social attitudes in a particular country are insufficient justification for a difference in treatment on grounds of sex. For example, States are prevented from imposing traditions that derive from the man's primordial role

and the woman's secondary role in the family (see *Ünal Tekeli*, cited above, § 63).

[...]

142. [...] [T]he difference in treatment cannot be justified by reference to traditions prevailing in a certain country. The Court has already found that States may not impose traditional gender roles and gender stereotypes [...]. Moreover, given that under Russian law civilian men and women are both entitled to parental leave and it is the family's choice to decide which parent should take parental leave to take care of the new-born child, the Court is not convinced by the assertion that Russian society is not ready to accept similar equality between men and women serving in the armed forces.

143. The Court concludes from the above that the reference to the traditional distribution of gender roles in society cannot justify the exclusion of men, including servicemen, from the entitlement to parental leave. The Court agrees with the Chamber that gender stereotypes, such as the perception of women as primary child-carers and men as primary breadwinners, cannot, by themselves, be considered to amount to sufficient justification for a difference in treatment, any more than similar stereotypes based on race, origin, colour or sexual orientation.