February 2013

Work-related rights

Although Member States do not have an obligation under the Convention to ensure the effective exercise of the right to work, the Court has found violations of the Convention concerning unjustified dismissals, access to work, freedom of association etc…

Access to work

Kosiek v. Germany (application no. 9704/82)

28.08.1986

The applicant alleged that his political activities had been the main reason for his failure to secure an appointment as a lecturer.

No violation of Article 10: in refusing the applicant's access to the civil service, the responsible Ministry of the Land took account of his opinions and activities merely in order to determine whether he had proved himself during his probationary period and whether he possessed one of the necessary personal qualifications for the post in question.

Also see *Glasenapp v. Germany* (no. 9228/80, Judgment of 28.08.1986)

Leander v. Sweden (no. 9248/81)

23.03.1987

The case concerned the use of a secret police file in the recruitment of a carpenter. He had been working as a temporary replacement at the Naval Museum in Karlskrona, next to a restricted military security zone. After a personnel control had been carried out on him, the commander-in-chief of the navy decided not to recruit him. The applicant had formerly been a member of the Communist Party and of a trade union.

No violation of Article 8 (right to respect for private and family life): the safeguards contained in the Swedish personnel-control system met the requirements of Article 8. The Court concluded that the Swedish Government had been entitled to consider that the interests of national security prevailed over the applicant's individual interests in this case.

Halford v. the United Kingdom (no. 20605/92)

25.06.1997

The applicant, who was the highest-ranking female police officer in the United Kingdom, brought discrimination proceedings after being denied promotion to the rank of Deputy Chief Constable over a period of seven years. She alleged that her telephone calls had been intercepted with a view to obtaining information to use against her in the course of the proceedings.

Violation of Article 8 (right to respect for private and family life) as regards the interception of calls made on the applicant's office telephones.

No violation of Article 8 as regards the calls made from her home, since the Court did not find it established that there had been interference regarding those communications.

Thlimmenos v. Greece (no. 34369/97)

06.04.2000 (Grand Chamber)

The executive board of the Greek chartered accountants body refused to appoint the applicant as a chartered accountant - even though he had passed the relevant qualifying exam - on the ground that he had been convicted of insubordination for having refused

to wear the military uniform at a time of general mobilization (he was a Jehovah's Witness).
Violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 9 (freedom of thought, conscience and religion).

Alexandridis v. Greece (no. 19516/06)

21.02.2008
The applicant was admitted to practise as a lawyer at Athens Court of First Instance and took the oath of office, which was a precondition to practising as a lawyer. He complained that when taking the oath he had been obliged, in order to be allowed to make a solemn declaration, to reveal that he was not an Orthodox Christian, as there was only a standard form to swear a religious oath.
Violation of Article 9 (freedom of thought, conscience and religion): that obligation had interfered with the applicant's freedom not to have to manifest his religious beliefs.

Applicability of article 6 to cases involving civil servants

Are disputes relating to the recruitment, careers and termination of service of civil servants inside the scope of Article 6 § 1 (right to a fair trial within a reasonable time – for "civil rights")?

Vilho Eskelinen and Others v. Finland (no. 63235/00) § 43-62

19 April 2007 (Grand Chamber)
In order for the respondent State to be able to rely before the Court on the applicant's status as a civil servant in excluding the protection embodied in Article 6, two conditions have to be fulfilled. First, the State in its national law must have expressly excluded access to a court for the post or category of staff in question. Secondly, the exclusion must be justified on objective grounds in the State's interest.
See case law evolution from *Neigel v. France* (no. 18725/91, Judgment of 17.03.1997) / *Santa v. Italy* (no. 27/1996/646/831, Judgment of 2.09.1997) / *Huber v. France* (no. 160/1996/779/980, Judgment of 19.02.1998) / *Pellegrin v. France* (no. 28541/95, Grand Chamber Judgment of 8.12.1999) to *Vilho Eskelinen and Others v. Finland* (no. 63235/00, Grand Chamber Judgment of 19.04.2007).

D.M.T. and D.K.I. v. Bulgaria (no. 29476/06)

24.07.2012
The case concerned the suspension of a civil servant for more than six years while criminal proceedings against him were ongoing, and the ban on his engaging in any other gainful employment in the public and private sectors, except in teaching and research.
Violation of Article 6 § 1 in conjunction with Article 6 § 3 (a) and (b) (right to a fair trial – right to be informed promptly of the accusation; right to adequate time and facilities for preparation of defence)
Violation of Article 6 § 1 (right to a fair trial within a reasonable time).
Violation of Article 8 (right to respect for private and family life).
Violation of Article 13 (right to an effective remedy) in conjunction with Article 6 § 1 and Article 8.
The Court found, in particular, that the ban had not been necessary or proportionate to the legitimate aim pursued by the opening of criminal proceedings, and could not be regarded as the normal and inevitable consequence of such proceedings.

Dismissal

Sidabras and Dziautas v. Lithuania (no. 55480/00)

27.07.2004

The applicants were dismissed of their position of tax inspectors because of their previous occupation as KGB agents.

Violation of Article 8 in conjunction with Article 14: the ban was a disproportionate measure imposed on the applicants 9 and 13 years after their departure from the KGB.

On the same issue, see *Rainys and Gasparavicius v. Lithuania* (7.04.2005).

Right to access to court for embassy employees

Sabeh El Leil v. France (no. 34869/05)

29.06.2011 (Grand Chamber)

The case concerned an ex embassy employee who was prevented from challenging his dismissal. French courts held that the applicant's claims against Kuwait were inadmissible because foreign States enjoyed jurisdictional immunity; in view of his level of responsibility and the nature of his duties as a whole, the applicant participated in the exercise of the governmental-authority activity of the State of Kuwait, through its diplomatic representation in France.

Violation of Article 6 § 1 (right of access to court): French courts had failed to preserve a reasonable relationship of proportionality and had thus impaired the very essence of the applicant's right of access to a court.

Wallishauser v. Austria (no. 156/04)

17.07.2012

The applicant was a photographer for the United States of America embassy in Vienna. She complained about proceedings she had brought before the Vienna Labour and Social Court against the United States claiming salary payments from September 1996 following her unlawful dismissal. In particular, she complained that she had been denied access to court because the United States' authorities, relying on their immunity, had refused to be served with the summons to a hearing on the case and the Austrian authorities accepted this refusal, finding that they were obliged to do so under the rule of customary international law to respect a State's sovereignty.

Violation of Article 6 § 1 (right of access to court): by accepting the United States' refusal to serve the summonses in the applicant's case as a sovereign act and by refusing, consequently, to proceed with the applicant's case, the Austrian courts had failed to preserve a reasonable relationship of proportionality. They had thus impaired the very essence of the applicant's right of access to court.

Religion-related dismissal

Larissis and Others v. Greece (nos. 23372/94; 26377/94; 26378/94)

24.02.1998

Air force officers and followers of the Pentecostal Church, the three applicants were convicted by Greek courts of proselytism after trying to convert a number of people to their faith, including three airmen who were their subordinates.

No violation of Article 9 (freedom of thought, conscience and religion) with regard to the measures taken against the applicants for the proselytising of air force service personnel: it had been necessary for the State to protect junior airmen from being put under undue pressure by senior personnel.

Violation of Article 9 with regard to the measures taken against two of the applicants for the proselytising of civilians as they had not been subject to pressure and constraints as the airmen.

Dahlab v. Switzerland (no. 42393/98)

15.02.2001 (inadmissibility decision)

The applicant, a primary-school teacher who had converted to Islam, complained of the school authorities' decision to prohibit her from wearing a headscarf while teaching, eventually upheld by the Federal Court in 1997. She had previously worn a headscarf in school for a few years without causing any obvious disturbance.

Application manifestly ill-founded: the measure had not been unreasonable, having regard in particular to the fact that the children for whom Ms Dahlab was responsible as a representative of the State were aged between four and eight, an age at which children were more easily influenced than older pupils.

Obst and Schüth v. Germany (nos. 1620/03 and 425/03)

23.09.2010

The case concerned the dismissal of church employees for adultery.

No violation of Article 8 (right to respect for private and family life) in Mr Obst's case

Violation of Article 8 in Mr Schüth's case (German labour courts had failed to weigh Mr Schüth's rights against those of the Church employer in a manner compatible with the Convention).

Siebenhaar v. Germany (no. 18136/02)

03.02.2011

The applicant, a Catholic, was employed by a Protestant parish as a childcare assistant and later in the management of a kindergarten. She complained of her dismissal as from 1999, confirmed by the German labour courts, after having been active as a member of another religious community (the Universal Church/Brotherhood of Humanity) and having offered primary lessons in that community's teachings.

No violation of Article 9 (freedom of thought, conscience and religion): the labour courts had undertaken a thorough balancing exercise regarding the interests involved. Their findings that the dismissal had been necessary to preserve the Church's credibility and that the applicant should have been aware from the moment of signing her employment contract that her activities for the Universal Church were incompatible with her work for the Protestant Church, was reasonable.

Eweida and Others v. the United Kingdom (nos. 48420/10, 59842/10, 51671/10 and 36516/10)

15.01.2013

All four applicants are practising Christians. Ms Eweida, a British Airways employee, and Ms Chaplin, a geriatrics nurse, complained that their employers placed restrictions on their visibly wearing Christian crosses around their necks while at work. Ms Ladele, a Registrar of Births, Deaths and Marriages, and Mr McFarlane, a Relate counsellor complained about their dismissal for refusing to carry out certain of their duties which they considered would condone homosexuality.

The Court did not consider that the lack of explicit protection in UK law to regulate the wearing of religious clothing and symbols in the workplace in itself meant that the right to manifest religion was breached, since the issues could be and were considered by the domestic courts in the context of discrimination claims brought by the applicants.

In Ms Eweida's case, the Court held that on one side of the scales was Ms Eweida's desire to manifest her religious belief. On the other side of the scales was the employer's wish to project a certain corporate image. While this aim was undoubtedly legitimate, the domestic courts accorded it too much weight.

As regards Ms Chaplin, the importance for her to be allowed to bear witness to her Christian faith by wearing her cross visibly at work weighed heavily in the balance. However, the reason for asking her to remove the cross, namely the protection of health and safety on a hospital ward, was inherently more important than that which applied in respect of Ms Eweida and the hospital managers were well placed to make decisions about clinical safety.

In the cases of Ms Ladele and Mr McFarlane, it could not be said that national courts had failed to strike a fair balance when they upheld the employers' decisions to bring disciplinary proceedings. In each case the employer was pursuing a policy of non-discrimination against service-users, and the right not to be discriminated against on grounds of sexual orientation was also protected under the Convention.
Violation of Article 9 (freedom of religion) as concerned Ms Eweida;
No violation of Article 9, taken alone or in conjunction with Article 14 (prohibition of discrimination), as concerned Ms Chaplin and Mr McFarlane; and
No violation of Article 14 taken in conjunction with Article 9 as concerned Ms Ladele.

Pending case

Fernandez Martinez v. Spain (no. 56030/07)

15.05.2012 – referred to the Grand Chamber

Grand Chamber hearing on 30.01.2013

The case concerns the refusal to renew a teacher of Catholic religion and morals' contract after he publicly revealed his position as a « married priest ».
In its Chamber judgment of 15.05.2012, the Court held that there had been no violation of Article 8 (right to respect for private and family life): the refusal was covered by freedom of religion and a fair balance had been struck between several private interests.
On 24 September 2012 the case was referred to the Grand Chamber at the applicant's request.

Dismissal on account of membership of a political party

Redfearn v. the United Kingdom

06.12.2012

The case concerned a complaint by a member of the British National Party ("the BNP") – a far-right political party which, at the time, restricted membership to white nationals – that he had been dismissed from his job as a driver transporting disabled persons, who were mostly Asian.
Violation of Article 11 (freedom of association)

The military

Cases concerning members of the United Kingdom armed forces, discharged on the sole ground of their sexual orientation, in accordance with Ministry of Defence policy: *Lustig-Prean and Beckett v. the United Kingdom* (application nos. 31417/96 and 32377/96, Judgment of 27.09.1999), *Smith and Grady v. the United Kingdom* (nos. 33985/96 and 33986/96, Judgment of 27.09.1999)
Violations of Article 8 (right to respect for private life).
Also see *Perkins and R. v. the United Kingdom* (nos. 43208/98 and 44875/98, 22.10.2002) and *Beck, Copp and Bazely v. the United Kingdom* (nos. 48535/99, 48536/99 and 48537/99, Judgment of 22.10.2002)

Pensions & benefits

C. v. France (no. 10443/83)

Decision of 15.07.1998

The applicant, a taxes inspector, complained of the suspension of his retirement pension, following his conviction to three years imprisonment for having accepted bribes.
The Court found that the suspension of his pension had not interfered with any property right under Article 1 of Protocol No.1 as he had been convicted of an offence which, under the statutory provisions in force throughout the period of the applicant's service,

could have given rise to the withdrawal of his pension entitlement (on forfeiture of retirement benefits, also see *Azinas v. Cyprus*, no. 56679/00).

Schuitemaker v. the Netherlands (no. 15906/08)

Inadmissibility decision 4.05.2010

The applicant, a philosopher by profession, had been unemployed and in receipt of benefits since 1983. After a change in the legislation in 2004, she was informed that her eligibility for general welfare benefits was dependent on her obtaining and being willing to take up "generally accepted" employment and that non-compliance would lead to a reduction in her benefit payments. She complained that under the new legislation she was required to obtain and accept any kind of work, irrespective of whether or not it was suitable, in breach of Article 4.

Application manifestly ill-founded. Where a State introduced a system of social security, it was fully entitled to lay down conditions for persons wishing to receive benefits. In particular, a condition to the effect that a person must make demonstrable efforts in order to obtain and take up generally accepted employment could not be considered unreasonable, nor could it be equated with compelling a person to perform forced or compulsory labour within the meaning of Article 4.

Stummer v. Austria (no. 37452/02)

07.07.2011 (Grand Chamber)

The applicant complained of his non-affiliation to the old-age pension system for work performed in prison and his consequent inability to receive pension benefits under that scheme.

No violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 1 of Protocol No. 1 (protection of property).

No violation of Article 4 (prohibition of forced labour).

In the Court's view, Austria could not be reproached for giving priority to the insurance scheme (the applicant was receiving emergency-relief payments supplemented by a housing allowance) it considered most relevant for the reintegration of prisoners upon their release.

See Social welfare Factsheet

Safety in the employment context

Mangouras v. Spain (no. 12050/04)

28.09.2010 (Grand Chamber)

The application concerned the level of recognizance required to secure release on bail of a ship's master in maritime pollution case. The applicant was formerly the captain of a ship, which released into the Atlantic Ocean the 70,000 tons of fuel oil it was carrying. A criminal investigation was opened and the applicant was remanded in custody with bail fixed at 3,000,000 euros.

No violation of Article 5 § 3 (right to liberty and security): the bail set for the captain's release was not excessive. Given the exceptional nature of the applicant's case and the huge environmental damage caused by the marine pollution, which had seldom been seen on such a scale, it was hardly surprising that the judicial authorities should have adjusted the amount required by way of bail in line with the level of liability incurred, so as to ensure that those responsible had no incentive to evade justice and forfeit the security. In addition, the very fact that payment had been made by the shipowner's insurer appeared to confirm that the Spanish courts, when they had referred to the applicant's "professional environment", had been correct in finding – implicitly – that a relationship existed between Mr Mangouras and the persons who were to provide the security. The Spanish courts had therefore taken sufficient account of the applicant's personal situation, and in particular his status as an employee of the ship's owner, his professional relationship with the persons who were to provide the security, his

nationality and place of permanent residence and also his lack of ties in Spain and his age.

Pending cases:

Vilnes and Others v. Norway (nos. 52806/09, 22703/10)

Public hearing on 18 September 2012

The cases concern complaints from divers for the Norwegian oil industry in the North Sea and at the testing facilities organised by the partially State–owned company "Norwegian Underwater Intervention Ltd" (NUI/NUTEC). The applicants complain that through diving they had sustained disabilities and lost their capacity to work. They also claim that the Norwegian authorities had failed to ensure a legal framework of safety regulations to protect them, had granted exemptions from safety regulations, had failed to adequately supervise and – in the case of some divers – had failed to prevent the test diving at NUI/NUTEC and had neither informed them about the experiment and its consequences, nor carried it out in accordance with their prior consent.

Respect for private life in the employment context

Copland v. the United Kingdom (no. 62617/00)

03.04.2007

The applicant was employed by Carmarthenshire College, a statutory body administered by the State. She became the personal assistant to the College Principal and was required to work closely with the newly-appointed Deputy Principal. She complained that, during her employment at the College, her telephone, e-mail and internet usage had been monitored at the Deputy Principal's instigation.

Violation of Article 8 (right to respect for private life and correspondence). The Court considered that the collection and storage of personal information relating to Ms Copland through her use of the telephone, e-mail and internet had interfered with her right to respect for her private life and correspondence, and that that interference was not "in accordance with the law", there having been no domestic law at the relevant time to regulate monitoring. While the Court accepted that it might sometimes have been legitimate for an employer to monitor and control an employee's use of telephone and internet, in the present case it was not required to determine whether that interference was "necessary in a democratic society".

Benediktsdóttir v. Iceland (no. 38079/06)

16.06.2009 (inadmissibility decision)

The applicant complained that, by affording her insufficient protection against unlawful publication of her private e-mails in the media, Iceland had failed to secure her rights guaranteed by Article 8 (right to respect for private life and correspondence). She submitted that an unknown third party had obtained the e-mails in question, without her knowledge and consent from a server formerly owned and operated by her former employer who had gone bankrupt. The e-mail communications consisted in particular of direct quotations or paraphrasing of e-mail exchanges between the applicant and the former colleague of a multinational company's Chief Executive Officer and his wishes to find a suitable lawyer to assist him in handing over to the police allegedly incriminating material he had in his possession and to represent him in a future court case against the leaders of the multinational company in question. At the time there was an ongoing public debate in Iceland relating to allegations that undue influence had been exerted by prominent figures on the most extensive criminal investigations ever carried out in the country.

Application manifestly ill-founded: there was nothing to indicate that the Icelandic authorities had transgressed their margin of appreciation and had failed to strike a fair balance between the newspaper's freedom of expression and the applicant's right to respect for her private life and correspondence under Article 8.

Köpke v. Germany (no. 420/07)

05.10.2010 (inadmissibility decision)

The case concerned video surveillance of supermarket cashier suspected of theft.

Application manifestly ill-founded: the measure had been limited in time (two weeks) and had only covered the area surrounding the cash desk and accessible to the public. The visual data obtained had been processed by a limited number of persons working for the detective agency and by staff members of the employer. They had been used only in connection with the termination of her employment and the proceedings before the labour courts. The interference with the applicant's private life had thus been restricted to what had been necessary to achieve the aims pursued by the video surveillance.

Özpinar v. Turkey (no. 20999/04)

19.10.2010

Dismissal of a judge by the Judicial Service Commission for reasons relating to her private life (allegations, for example, of a personal relationship with a lawyer and of her wearing unsuitable attire and makeup).

Violation of Articles 8 (right to private and family life) and 13 (right to an effective remedy) in conjunction with Article 8.

Eternit v. France (no. 20041/10)

27.03.2012 (inadmissibility decision)

The case concerned the fairness of the proceedings in a dispute between a company and a Health Insurance Office over the occupational nature of a disease contracted by a former employee. In particular it focused on the failure of the Health Insurance Office to give the employer access to the former employee's medical records.

Application manifestly ill-founded. The Court considered in particular that the Health Insurance Office had not been given a substantial advantage over the applicant company in the proceedings, as the administrative services of the Health Insurance Office had not had access to the medical records requested by the applicant company either. The Court accordingly concluded that the principle of equality of arms had been respected in this case.

Gillberg v. Sweden (no. 41723/06)

03.04.2012 (Grand Chamber)

The case essentially concerned a professor's criminal conviction for misuse of office in his capacity as a public official, for refusing to comply with two administrative court judgments granting access, under specified conditions, to the University of Gothenburg's research on hyperactivity and attention deficit disorders in children to two named researchers.

The Court concluded that Article 8 (right to respect for private and family life) and Article 10 (freedom of expression) did not apply in this case. The Court found in particular that the professor could not rely on Article 8 to complain about his criminal conviction and that he could not rely on a "negative" right to freedom of expression, the right not to give information, under Article 10.

Michaud v. France (no. 12323/11)

06.12.2012

The case concerned the obligation on French lawyers to report their "suspicions" regarding possible money laundering activities by their clients. Among other things, the applicant submitted that this obligation, which resulted from the transposition of European directives, was in conflict with Article 8 of the Convention (right to respect for private life), which protects the confidentiality of lawyer-client relations.

No violation of Article 8 (right to respect for private life).

The Court held that it was required to rule on this question, since the "presumption of equivalent protection" was not applicable in this case (the Court had held in the *Bosphorus Airways v. Ireland* judgment that the protection of fundamental rights by the European Union was in principle equivalent to that of the Convention system.)

The Court stressed the importance of the confidentiality of lawyer-client relations and of legal professional privilege. It considered, however, that the obligation to report suspicions pursued the legitimate aim of prevention of disorder or crime, since it was intended to combat money laundering and related criminal offences, and that it was necessary in pursuit of that aim. On the latter point, it held that the obligation to report suspicions, as implemented in France, did not interfere disproportionately with legal professional privilege, since lawyers were not subject to the above requirement when defending litigants and the legislation had put in place a filter to protect professional privilege, thus ensuring that lawyers did not submit their reports directly to the authorities, but to the president of their Bar association.

Reconciling professional and family life

García Mateos v. Spain (no. 38285/09)

19.02.2013

The case concerned a supermarket employee, who asked for a reduction in her working time because she had to look after her son, who was then under six years old.

Violation of Article 6 § 1 (right to a fair hearing within a reasonable time) combined with Article 14 (prohibition of discrimination)

The Court found that the violation of the principle of non-discrimination on grounds of sex, as established by the Constitutional Court's ruling in favour of Mrs García Mateos, had never been remedied on account of the non-enforcement of the relevant decision and the failure to provide her with compensation.

Freedom of expression in the employment context

The protection of Article 10 extends to the workplace in general and to public servants in particular (Vogt v. Germany, 26.09.1995; Wille v. Liechtenstein, 28.10.1999; Ahmed and Others v. the United Kingdom, 02.09.1998; Fuentes Bobo v. Spain, 29.02.2000). At the same time civil servants owe to their employer a duty of loyalty, reserve and discretion (De Diego Nafría v. Spain, 14.03.2002).

In Guja v. Moldova (Grand Chamber judgment of 12.02.2008), the Court found a violation of Article 10: "Being mindful of the importance of the right to freedom of expression on matters of general interest, of the right of civil servants and other employees to report illegal conduct and wrongdoing at their place of work, the duties and responsibilities of employees towards their employers and the right of employers to manage their staff, and having weighed up the other different interests involved in the present case, the Court came to the conclusion that the interference with the applicant's right to freedom of expression, in particular his right to impart information, was not "necessary in a democratic society".

The Court reached the same conclusion in its judgment in the Bucur and Toma v. Romania judgment (10.01.2013). The case concerned in particular Mr Bucur who worked for the Romanian intelligence service, in the telephone communication monitoring department. He complained about his criminal conviction for divulging information classified "top secret". He had released audio cassettes at a press conference containing recordings of the telephone calls of several journalists and politicians, together with incriminating elements he had noted down in the register of conversations.

Freedom of association, trade union rights

The judgment *National Union of Belgian Police v. Belgium* (no. 4464/70, Judgment of 27.10.1975) set forth the main principles concerning trade union freedom.

See Factsheet on Trade-union rights.

Recent cases include:

Freedom of association : *Demir et Baykara c. Turquie* (no. 34503/97, 12.11.2008), *Aizpurua Ortiz et autres c. Espagne* (no. 42430/05, 2.02.2010) -

"*Right to strike":* *Urcan and Others v. Turkey* (no. 23018/04, 17.07.2008), *Enerji Yapı-Yol Sen v. Turkey* (no. 68959/01, 21.04.2009)

Trade union Rights: *Danilenkov and Others v. Russia* (no. 67336/01, 30.07.2009), *Csánics v. Hungary* (no. 12188/06, 20.01.2009), *Barraco v. France* (no. 31684/05, 5.03.2009), *Vörður Ólafsson v. Iceland*, no. 20161/06, 27.04.2010), *Şişman and Others v. Turkey*, no. 1305/05, 27.09.2011), *Vellutini and Michel v. France* (no. 32820/09, 6.10.2011), *Palomo Sánchez and Others v. Spain* (no. 28955/06, 12.09.2011).

Forced labour (Article 4)

See Forced Labor Factsheet

Press Contact: Celine Menu-Lange
+33 (0)3 90 21 42 08
echrpress@echr.coe.int