March 2024
This Factsheet does not bind the Court and is not exhaustive

Work-related rights

See also the factsheets on "Austerity measures", "Slavery, servitude and forced labour", "Trade-union rights", "Surveillance at workplace" and "Whistleblowers and freedom to impart and to receive information".

Access to work

Kosiek v. Germany

28 August 1986

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

The European Court of Human Rights held that there had been **no violation of Article 10** (freedom of expression) of the European Convention on Human Rights. It found that, 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.

See also: ***Glasenapp v. Germany***, judgment of 28 August 1986.

Leander v. Sweden

23 March 1987

This 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.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. The safeguards contained in the Swedish personnel-control system met the requirements of Article 8. 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

25 June 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.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention as regards the interception of calls made on the applicant's office telephones. It further held that there had been **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

6 April 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).

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 9** (freedom of thought, conscience and religion) of the Convention. States had a legitimate interest to exclude some offenders from the profession of a chartered accountant. However, unlike other convictions for serious criminal offences, a conviction for refusing on religious or philosophical grounds to wear the military uniform could not imply any dishonesty or moral turpitude likely to undermine the offender's ability to exercise this profession. Excluding the applicant on the ground that he was an unfit person was not, therefore, justified. The applicant had served a prison sentence for his refusal to wear the military uniform. Imposing a further sanction on him was disproportionate. It followed that his exclusion from the profession of chartered accountants did not pursue a legitimate aim. There existed no objective and reasonable justification for not treating the applicant differently from other persons convicted of a felony. The State, in order to ensure respect for Article 14 taken in conjunction with Article 9, should have introduced appropriate exceptions to the rule barring persons convicted of a felony from the profession of chartered accountants.

Alexandridis v. Greece

21 February 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.

The Court held that there had been a **violation of Article 9** (freedom of thought, conscience and religion) of the Convention. It found that that obligation had interfered with the applicant's freedom not to have to manifest his religious beliefs.

Lombardi Vallauri v. Italy

20 October 2009

This case concerned the refusal of a teaching post in a denominational university because of alleged heterodox views. The applicant complained in particular that this decision, for which no reasons had been given and which had been taken without any genuine adversarial debate, had breached his right to freedom of expression. He further complained of the domestic courts' failure to rule on the lack of reasons for the Faculty Board's decision, thereby restricting his ability to appeal against that decision and to instigate an adversarial debate, and of the fact that the Faculty Board had confined itself to taking note of the Congregation's decision, which had also been taken without any adversarial debate.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It considered that the University's interest in dispensing teaching based on Catholic doctrine could not extend to impairing the very substance of the procedural guarantees afforded to the applicant by Article 10. Accordingly, in the particular circumstances of the case, the interference with the applicant's freedom of expression had not been "necessary in a democratic society". For the same reasons the Court held that the applicant had not had effective access to a court, and found a **violation of Article 6 § 1** (right to a fair trial) of the Convention.

Naidin v. Romania

21 October 2014

This case concerned the barring of a one-time informer of the Romanian political police from employment in the public service. The applicant complained of the refusal of his application to resume employment in the public service – and specifically in the reserve corps of deputy prefects – because of his collaboration with the political police under the communist regime. He argued that this constituted interference with his private life and claimed to have been the victim of unjustified discrimination with regard to employment in the public sector.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) **taken in conjunction with Article 14** (prohibition of discrimination) of the Convention. Taking note of the decision of the Romanian Constitutional Court according to which the barring of former collaborators of the political police from public-service employment was justified by the loyalty expected from all civil servants towards the democratic regime, the Court reiterated in particular that, as a matter of principle, States had a legitimate interest in regulating employment conditions in the public service. The Court also observed that democratic State had a legitimate interest in requiring civil servants to show loyalty to the constitutional principles on which the State was founded.

Grimmark v. Sweden and Steen v. Sweden

11 February 2020 (decisions on the admissibility)

Both cases concerned midwifes denied employment because of their religion-motivated refusal to assist in abortions.

The Court declared the applications **inadmissible**, as being manifestly ill-founded, under Article 9 (freedom of religion) and Article 14 (prohibition of discrimination) of the Convention.

Applicability of article 6 (right to a fair trial) of the Convention to cases involving civil servants

Do disputes relating to the recruitment, careers and termination of service of civil servants fall within the scope of Article 6 (right to a fair trial) of the Convention under its civil head?

In order for the respondent State to be able to rely before the European Court of Human Rights on the applicant's status as a civil servant in excluding the protection embodied in Article 6 of the Convention, 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 ***Vilho Eskelinen and Others v. Finland***, judgment (Grand Chamber) of 19 April 2007, §§ 43-62).

For an overview of the Court's case-law evolution prior to the *Vilho Eskelinen and Others v. Finland* judgment of 19 April 2007, see: *Neigel v. France*, judgment of 17 March 1997; *De Santa v. Italy*, judgment of 2 September 1997; *Huber v. France*, judgment of 19 February 1998; *Pellegrin v. France*, judgment (Grand Chamber) of 8 December 1999.

Austerity measures and reduction in remuneration, benefits, bonuses and retirement pensions

Koufaki and ADEDY v. Greece

7 May 2013 (decision on the admissibility)

In 2010 the Greek Government adopted a series of austerity measures, including reductions in the remuneration, benefits, bonuses and retirement pensions of public servants, with a view to reducing public spending and reacting to the economic and

financial crisis the country was facing. In July 2010 the applicants took the matter before the Supreme Administrative Court: the first applicant applied to the court to annul her pay-slip; the second applicant – the Public Service Trade Union Confederation – sought judicial review because of the detrimental effect of the measures on the financial situation of its members. On 20 February 2012 the Supreme Administrative Court rejected the applications.
The Court declared the applications **inadmissible** as being manifestly ill-founded. It considered that the reduction of the first applicant's salary from EUR 2,435.83 to EUR 1,885.79 was not such that it risked exposing her to subsistence difficulties incompatible with Article 1 (protection of property) of Protocol No. 1 to the Convention. Regard being had also to the particular climate of economic hardship in which it occurred, the interference in issue could not be considered to have placed an excessive burden on the applicant. As regards the second applicant, the removal of the thirteenth and fourteenth months' pensions had been offset by a one-off bonus. Substitute solutions alone did not make the disputed legislation unjustified. So long as the legislature did not overstep the limits of its margin of appreciation, it was not for the Court to say whether they had chosen the best means of addressing the problem or whether they could have used their power differently.

Da Conceição Mateus v. Portugal and Santos Januário v. Portugal

8 October 2013 (decision on the admissibility)
These cases concerned the payment of the applicants' public sector pensions, which were reduced in 2012 as a result of cuts to Portuguese government spending. The applicants complained about the impact that the reduction of their pensions had had on their financial situation and living conditions.
The Court examined the compatibility of the reductions of the applicants' pension payments with Article 1 (protection of property) of Protocol No.1 to the Convention. It declared the applications **inadmissible** as being manifestly ill-founded. It held in particular that the pension reductions had been a proportionate restriction on the applicants' right to protection of property. In light of the exceptional financial problems that Portugal faced at the time, and given the limited and temporary nature of the pension cuts, the Portuguese government had struck a fair balance between the interests of the general public and the protection of the applicants' individual right to their pension payments.

da Silva Carvalho Rico v. Portugal

1 September 2015 (decision on the admissibility)
This case concerned the reduction of retirement pensions following austerity measures taken in Portugal, in particular the extraordinary solidarity contribution ("CES"). The applicant, a pensioner belonging to the public-sector pension scheme, maintained that these measures had breached her right to protection of property, alleging in particular that the CES was no longer a temporary measure as it had already been applied to her pension in 2013.
The Court declared the application **inadmissible** as being manifestly ill-founded. It noted in particular the overall public interests at stake in Portugal at a time of financial crisis and the limited and temporary nature of the measures applied to the applicant's pension. The Court therefore found that the pension reduction had been a proportionate restriction on the applicant's right to protection of property in order to achieve medium-term economic recovery in the country.

Mockienė v. Lithuania

4 July 2017 (decision on the admissibility)
This case concerned the reduction of welfare benefits during the economic crisis in Lithuania. The applicant, a former officer for the Prisons Department, complained that her service pension had been reduced by 15% when new legislation was in force in Lithuania from January 2010 to December 2013. She further complained that she had

been discriminated against because those who received retirement pensions had been entitled to compensation for their reduced benefits whereas she had not.
The Court declared the applicant's complaints **inadmissible** as being manifestly ill-founded. It saw in this case no grounds to find that the Lithuanian authorities had failed to strike a fair balance between the applicant's fundamental rights and the general interest of the community. The Court took into account in particular the serious economic difficulties faced by Lithuania during a time of global financial crisis as well as the limited extent and temporary nature of the reduction in the applicant's pension, which was part of a wider programme of austerity measures. The Court also found that the new legislation introduced in 2010 was not discriminatory. In this respect, it noted in particular that service pensions were discretionary and depended on the State's financial resources whereas retirement pensions were a constitutional obligation on the State and were linked to individuals' social insurance contributions. Those two groups of beneficiaries were not therefore comparable, meaning that any difference in treatment between the two could not amount to discrimination.

Aielli and Others and Arboit and Others v. Italy

10 July 2018 (decision on the admissibility)
This case concerned a reform of the uprating of State pension payments for 2012 and 2013 in the context of the budget deficit crisis and its consequences. The applicants, who were all pensioners receiving more than three times the basic minimum pension, complained about the readjustment of their old-age pensions.
The Court declared the application **inadmissible** as being manifestly ill-founded. It observed in particular that the Italian legislature had been obliged to intervene in a difficult economic context. The Legislative Decree in question had sought to provide for redistribution in favour of lower pensions, while preserving the sustainability of the social security system for future generations. The Italian government's room for manoeuvre had also been restricted on account of the limited resources and the risk that the European Commission might take action for an excessive budget deficit. In conclusion, the Court took the view that the effects of the reform were not so severe that they risked causing the applicants difficulties in meeting living costs to an extent that would be incompatible with Article 1 (protection of property) of Protocol No. 1 to the Convention.

Žegarac and Others v. Serbia

17 January 2023 (decision on the admissibility)
This case primarily concerned the 11 applicants' complaints that the payment of their old-age pensions had been reduced from November 2014 to September 2018. The reduction followed legislative amendments introduced by the Serbian Government as part of a wider set of austerity measures. The legislation was repealed once it was considered that public debt had been sufficiently reduced.
The Court declared **inadmissible**, as being manifestly ill-founded, the complaints under Article 1 (protection of property) of Protocol No. 1 to the Convention of eight of the applications. It ruled in particular that the reduction in pension payments had been limited to recipients of higher pensions, had been temporary – lasting just under four years – and had been part of the effort to balance the State budget. The authorities had therefore struck a fair balance between ensuring the financial stability of the pension system – which was in the general interest of the public – and protecting the applicants' property rights in order to prevent them from bearing an individual and excessive burden. The Court also decided to **strike** the other three applications **out of** its **list of cases**. In one of those cases the Court had had no response to its correspondence, while the applicants in the other two cases had died without an heir submitting a request to pursue the proceedings before it.

Ban on exercising a profession

Gouarré Patte v. Andorra

12 January 2016

This case concerned the fact that it was impossible for the applicant, a doctor, to obtain revision of an ancillary penalty entailing a lifetime ban on practising his profession. The applicant had been sentenced to five years' imprisonment, one year of which was to be served in prison and the remainder on parole, for three sexual offences committed while carrying out his duties as a doctor. In application of the Criminal Code in force at the time, he was also sentenced to the ancillary penalty of a lifetime ban on practicing his profession. He complained in particular that the Andorran courts had failed to apply the principle of retrospective application of the criminal law more favourable to the defendant, explicitly recognised in Article 7 of the new Criminal Code.

The Court held that there had been a **violation of Article 7** (no punishment without law) of the Convention. It found, in particular, that the Andorran courts had maintained the application of the severest penalty although the legislature had subsequently provided for a milder sentence with retrospective application. Maintaining the application of a penalty which went beyond the conditions of the criminal legislation in force had led the Andorran courts to violate the principle of the rule of law and to breach the applicant's right to have imposed on him a penalty provided for by law. Moreover, in the light of its conclusions with regard to Article 7 of the Convention and to the extent that it had not been demonstrated that there existed an effective remedy available to the applicant to raise the issue of the application of the more favourable provisions of the new Criminal Code, the Court held that there had also been a **violation of Article 13** (right to an effective remedy) of the Convention **taken together with Article 7**.

Confiscation of wages

Paulet v. the United Kingdom

13 May 2014

This case concerned the confiscation of the applicant's wages following his conviction for obtaining employment using a false passport. The applicant complained that the confiscation order against him had been disproportionate as it had amounted to the confiscation of his entire savings over nearly four years of genuine work, without any distinction being made between his case and those involving more serious criminal offences such as drug trafficking or organised crime.

The Court held that there had been a **violation of Article 1** (protection of property) **of Protocol No. 1** to the Convention, finding that the United Kingdom courts' scope of review of the applicant's case had been too narrow. Notably, they had simply found that the confiscation order against the applicant had been in the public interest, without balancing that conclusion against his right to peaceful enjoyment of his possessions as required under the Convention.

Discrimination because of pregnancy

Napotnik v. Romania

20 October 2020

In this case, the applicant's diplomatic posting abroad, in the Romanian Embassy in Ljubljana, was terminated immediately after announcing her second pregnancy. The applicant alleged that she had been discriminated against at work, arguing that the sequence of events clearly indicated that her diplomatic posting had been terminated because she was pregnant.

The Court held that there had been **no violation of Article 1** (general prohibition of discrimination) **of Protocol No. 12** to the Convention. It found that the applicant had been treated differently on grounds of sex, but that the domestic authorities had sufficiently justified such difference in treatment by the need to ensure the functioning of the embassy's consular section, and ultimately to protect the rights of others, namely Romanians in need of assistance abroad. In any case, the applicant had not suffered any significant setbacks: she had neither been dismissed nor disciplined, and had in fact been promoted twice.

Jurčić v. Croatia

4 February 2021

This case concerned the denial to the applicant of employment health-insurance coverage during pregnancy. The authorities had claimed that her employment contract, which had been signed shortly before she had learned about her pregnancy, had been fictitious, and that she should not have started work while undergoing *in vitro* fertilisation. The applicant complained of the revocation of her health-insurance status, stating that it had been a result of discrimination against her as a woman undergoing *in vitro* fertilisation.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **read in conjunction with Article 1** (protection of property) **of Protocol No. 1** to the Convention. It found in particular that the Croatian authorities had failed to demonstrate any fraud, and had implied that pregnant women should not seek work, thus discriminating against the applicant. The Court also cautioned that gender stereotyping by the authorities as observed in the applicant's case presented a serious obstacle to the achievement of real substantive gender equality, one of the major goals of the member States of the Council of Europe. Stressing that a refusal to employ or recognise an employment-related benefit to a pregnant woman based on her pregnancy, amounts to direct discrimination on grounds of sex, the Court concluded that the difference in treatment of the applicant had not been objectively justified, leading to a violation of her Convention rights.

Dismissal

Dismissal and freedom of thought, conscience and religion

Larissis and Others v. Greece

24 February 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.

The Court held that there had been **no violation of Article 9** (freedom of thought, conscience and religion) of the Convention with regard to the measures taken against the applicants for the proselytising of air force service personnel, considering that it had been necessary for the State to protect junior airmen from being put under undue pressure by senior personnel. The Court further held that there had been a **violation of Article 9** of the Convention 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

15 February 2001 (decision on the admissibility)

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 Swiss Federal Court in 1997. She had previously worn a headscarf in school for a few years without causing any obvious disturbance. The applicant submitted in particular that the measure prohibiting her from wearing a

headscarf in the performance of her teaching duties infringed her freedom to manifest her religion, as guaranteed by Article 9 of the Convention.
The Court declared the application **inadmissible** as being manifestly ill-founded. It found that the measure had not been unreasonable, having regard in particular to the fact that the children for whom the applicant 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.

Siebenhaar v. Germany

3 February 2011

The applicant, a Catholic, was employed by a Protestant parish as a childcare assistant and later in the management of a kindergarten. Before the Court, 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.
The Court held that there had been **no violation of Article 9** (freedom of thought, conscience and religion) of the Convention. It found that 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

15 January 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 counsellor with a confidential sex therapy and relationship counselling service, complained about their dismissal for refusing to carry out certain of their duties which they considered would condone homosexuality.
The Court held that there had been a **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.
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 the applicant'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.

Ebrahimian v. France

26 November 2015

This case concerned the decision not to renew the contract of employment of a hospital social worker because of her refusal to stop wearing the Muslim veil. The applicant complained that the decision not to renew her contract as a social worker had been in breach of her right to freedom to manifest her religion.

The Court held that there had been **no violation of Article 9** (freedom of religion) of the Convention, finding that the French authorities had not exceeded their margin of appreciation in finding that there was no possibility of reconciling the applicant's religious convictions with the obligation to refrain from manifesting them, and in deciding to give precedence to the requirement of neutrality and impartiality of the State. The Court noted in particular that wearing the veil had been considered by the authorities as an ostentatious manifestation of religion that was incompatible with the requirement of neutrality incumbent on public officials in discharging their functions. The applicant had been ordered to observe the principle of secularism within the meaning of Article 1 of the French Constitution and the requirement of neutrality deriving from that principle. According to the national courts, it had been necessary to uphold the secular character of the State and thus protect the hospital patients from any risk of influence or partiality in the name of their right to their own freedom of conscience. The necessity of protecting the rights and liberties of others – that is, respect for everyone's religion – had formed the basis of the decision in question.

Dismissal and freedom of expression, assembly and association

Redfearn v. the United Kingdom

6 December 2012

This 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. The applicant complained that his dismissal had disproportionately interfered with his right to freedom of expression as well as to freedom of assembly and association.

The Court held that there had been a **violation of Article 11** (freedom of association) of the Convention. It found that a legal system which allowed dismissal from employment solely on account of an employee's membership of a political party carried with it the potential for abuse and was therefore deficient.

Ognevenko v. Russia[1]

20 November 2018

This case concerned the applicant's dismissal as a train driver for disciplinary breaches, including taking part in a strike.

The Court held that there had been a **violation of Article 11** (freedom of association) of the Convention. It noted in particular that train drivers and some other types of railway worker were included in occupations which were prohibited from striking. That restriction had not been sufficiently justified by the Russian Government and was in conflict with internationally recognised labour rules. The situation had led to the courts only being able to examine the applicant's formal compliance with the law without carrying out any balancing exercise. The Court further noted that the applicant had been punished with dismissal because he had gone on strike, which was the second disciplinary offence he had committed. Such sanctions inevitably had a "chilling effect" on others who might consider striking to protect their interests. Overall, the dismissal had therefore been a disproportionate restriction on his rights.

[1]. On 16 September 2022 the Russian Federation ceased to be a Party to the European Convention on Human Rights ("the Convention").

Straume v. Latvia

2 June 2022

The applicant was an air-traffic controller and chair of her trade union. The case concerned her treatment by her employer and ultimately her firing for statements made regarding safety in a letter to the State officials overseeing her State-owned employer on behalf of the union. She complained of the negative consequences she had suffered owing to the letter in question, and about her appeal hearing being closed to the public and that the judgments had not been delivered publicly.

The Court held that there had been a **violation of Article 11** (freedom of assembly and association) **read in the light of Article 10** (freedom of expression) of the Convention, finding that, overall, the measures taken in the applicant's case – in particular the disciplinary investigation, her suspension, "idle standing" and dismissal – had not been proportionate to the legitimate aim pursued, namely that of protecting the rights of her employer, and had thus not been "necessary in a democratic society". The Court also held that there had been a **violation of Article 6** (right to a fair trial) of the Convention, owing to the failure to ensure the rights both to a public hearing and to the public delivery of the judgments in the present case. It noted, in particular, that the domestic courts had not justified the need to hold the civil proceedings in a closed courtroom and to not have the judgments delivered or made available publicly, despite the great need in this case for public scrutiny.

Hoppen and trade union of AB Amber Grid employees v. Lithuania

17 January 2023

This case concerned the first applicant's dismissal from his post as a head of department from a natural gas company in June 2019. He had at the time been elected as a deputy head of the applicant trade union and involved in the negotiation of a collective agreement on behalf of the union members with the company. The applicants complained, in particular, that the first applicant's dismissal had been based on discrimination owing to his union activity, and that it had harmed the applicant trade union's freedom of association.

The Court held that there had been **no violation of Article 14** (prohibition of discrimination) **read in conjunction with Article 11** (freedom of assembly and association) of the Convention in respect of the first applicant and **no violation of Article 11** read alone in respect of the applicant trade union. It found in the present case that the domestic legal framework had been adequate to protect the applicants from discrimination concerning trade-union activities, and they had had real and effective protection for any alleged violations of their rights. The Court noted in particular that the domestic courts had found that the first applicant had been fired for poor relations with colleagues and contractors and insufficient leadership and management skills. It was satisfied that in making that finding, the domestic courts had made an adequate assessment of the facts and the rulings had not been arbitrary. There had been sufficient safeguards against unfair dismissal on the grounds of trade-union activity.

Dede v. Türkiye

20 February 2024[2]

This case concerned the dismissal of a bank employee for having sent an email to the staff of his company's human resources department criticising a senior executive's management methods. The employer considered that the email had caused a nuisance which had disturbed peace and order in the workplace. The applicant alleged a breach of his freedom of expression.

The Court held that there had been a violation of **Article 10** (freedom of expression) of the Convention in respect of the applicant. It found that the national courts – with which the applicant had lodged a claim for wrongful dismissal on freedom of expression

[2]. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.

grounds – had not conducted a sufficiently detailed examination of the content of the email in question, in which the applicant had criticised alleged shortcomings in the company's management. In particular, they had not attempted to establish whether the applicant's email had created nuisances in the workplace or had had a negative impact on the employer. The Court noted in this connection that the criticisms contained in the applicant's email were of interest to the company in question and that it had been sent internally to a small group of recipients within the company. It further noted that the domestic courts had upheld the employer's decision to impose the heaviest sanction on the employee, without considering the possibility of applying a lighter penalty. The Court concluded that the national authorities had not convincingly demonstrated in their reasoning that – in rejecting the applicant's claim of wrongful dismissal – a fair balance had been struck between his freedom of expression and his employer's right to protect the company's legitimate interests.

Dismissal for previous occupation as KGB agent

Sidabras and Džiautas v. Lithuania

27 July 2004

The applicants were both dismissed of their position of tax inspectors because of their previous occupation as KGB agents. They complained in particular that being banned from finding employment in the private sector from 1999-2009 on the ground that they had been former KGB officers was in breach of Articles 8 (right to respect for private life) and 14 (prohibition of discrimination) of the Convention.

The Court concluded that the ban on the applicants seeking employment in various private-sector spheres had constituted a disproportionate measure, even having regard to the legitimacy of the aims pursued by that ban. It therefore held that there had been a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 8** (right to respect for private life) of the Convention.

On the same issue, see also: ***Rainys and Gasparavičius v. Lithuania***, judgment of 7 April 2005.

Sidabras and Others v. Lithuania

23 June 2015

The three applicants, formerly a tax inspector, a prosecutor and a lawyer in a private telecommunications company, complained about Lithuania's failure to repeal legislation ("the KGB Act") banning former KGB employees from working in certain spheres of the private sector, despite judgments of the European Court of Human Rights in their favour in 2004 and 2005 (see above).

The Court held that there had been **no violation of Article 14** (prohibition of discrimination), **taken in conjunction with Article 8** (right to respect for private life) of the Convention, on account of the first two applicants, not being able to obtain employment in the private sector, and, that there had been a **violation of Article 14**, **taken in conjunction with Article 8**, on account of the third applicant, not being able to obtain employment in the private sector. The Court found in particular that neither the first nor the second applicant had plausibly demonstrated that they had been discriminated against after its judgments in their case (see above). The first applicant had not provided any particular information as to who had refused to employ him as a result of restrictions under the relevant legislation, or when. Nor did the Court see anything to contradict the domestic courts' conclusion in his case that he had remained unemployed because he lacked the necessary qualifications. As concerned the second applicant, he had himself acknowledged that he was a trainee lawyer as of 2006 and that he had never attempted to obtain other private sector jobs. However, as concerned the third applicant, the Court was not convinced that the Lithuanian Government had demonstrated that the domestic courts' explicit reference to the KGB Act – namely, the fact that the third applicant's reinstatement to his job could not be resolved favourably while the KGB Act was still in force – had not been the decisive factor forming the legal

basis on which his claim for reinstatement in the telecommunications company had been rejected.

Dismissal of embassy employees

Cudak v. Lithuania

23 March 2010 (Grand Chamber)

The applicant, a Lithuanian national, worked as a secretary and switchboard operator with the Polish Embassy in Vilnius. In 1999 she complained to the Lithuanian Equal Opportunities Ombudsperson of sexual harassment by a male colleague. Although her complaint was upheld, the Embassy dismissed her on the grounds of unauthorised absence from work. The Lithuanian courts declined jurisdiction to try an action for unfair dismissal brought by the applicant after finding that her employers enjoyed State immunity from jurisdiction. The Lithuanian Supreme Court found that the applicant had exercised a public-service function during her employment at the Embassy and that it was apparent from her job title that her duties had facilitated the exercise by Poland of its sovereign functions, so justifying the application of the State-immunity rule.

As regards the applicability of Article 6 (right of access to court) of the Convention to the present case, the Court found that the applicant's status as a civil servant did not, on the facts, exclude her from Article 6 protection. Since the exclusion did not apply and the applicant's action before the Lithuanian Supreme Court was for compensation for wrongful dismissal, it concerned a civil right within the meaning of Article 6 § 1 of the Convention.

As regards the merits, the Court held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention. It found that by granting State immunity and declining jurisdiction to hear the applicant's claim, the Lithuanian courts had impaired the very essence of the applicant's right of access to court.

Sabeh El Leil v. France

29 June 2011 (Grand Chamber)

This case concerned the complaint of an ex-employee of the Kuwaiti embassy in Paris, that he had been deprived of access to a court to sue his employer for having dismissed him from his job in 2000. He complained that he had been deprived of his right of access to a court in violation of Article 6 § 1 (right to a fair trial) of the Convention, as a result of the French courts' finding that his employer enjoyed jurisdictional immunity.

As regards the applicability of Article 6 (right of access to court) of the Convention to the present case, the Court considered that the applicant's duties in the Embassy could not, as such, justify restrictions on his access to a court based on objective grounds in the State's interest. Moreover, the applicant's action before the French courts had concerned compensation for dismissal without genuine and serious cause. His dispute had thus concerned civil rights and Article 6 § 1 was applicable.

As regards the merits, the Court held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention. It found that the French 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 a court.

Wallishauser v. Austria

17 July 2012

A photographer for the United States of America embassy in Vienna, the applicant 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.

The Court held that there had been a **violation of Article 6 § 1** (right of access to court) of the Convention. It found that by accepting the United States' refusal to serve the summons 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.

See also, among others:

Radunović and Others v. Montenegro
25 October 2016

Benkharbouche and Janah v. the United Kingdom
5 April 2022

Dismissal on account of sexual orientation

Lustig-Prean and Beckett v. the United Kingdom and Smith and Grady v. the United Kingdom
27 September 1999

Perkins and R. v. the United Kingdom and Beck, Copp and Bazeley v. the United Kingdom
22 October 2002
These four cases concerned members of the United Kingdom armed forces, who had been discharged on the sole ground of their sexual orientation, in accordance with Ministry of Defence policy. They alleged in particular that the investigations into their sexuality and their discharge as a result of the absolute ban on homosexuals in the armed forces that existed at the time, had violated their rights under Articles 8 (right to respect for private life) and 14 (prohibition of discrimination) of the Convention.
In the four cases, the Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. It found that the measures taken against the applicants had constituted especially grave interferences with their private lives and had not been justified by "convincing and weighty reasons".
In *Smith and Grady* and *Beck, Copp and Bazeley*, the Court also held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention, in that the applicants did not have an effective domestic remedy in relation to the violation of their right to respect for their private lives.

Dismissal on grounds of gender

Emel Boyraz v. Turkey
2 December 2014
This case concerned a dismissal from public sector employment – a State-run electricity company – on grounds of gender. The applicant had worked as a security officer for almost three years before being dismissed in March 2004 because she was not a man and had not completed military service. She alleged that the decisions given against her in the domestic proceedings had amounted to discrimination on grounds of sex. She also complained about the excessive length as well as the unfairness of the administrative proceedings to dismiss her.
The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right for respect to private and family life) of the Convention. In the Court's opinion, the mere fact that security officers had to work on night shifts and in rural areas and had to use firearms and physical force under certain conditions had not in itself justified any difference in treatment between men and women. Moreover, the reason for the applicant's dismissal had not been her inability to assume such risks or responsibilities, there having been nothing to indicate that she had failed to fulfil her duties, but the decisions of Turkish administrative courts. The Court

also considered that the administrative courts had not substantiated the grounds for the requirement that only male staff could be employed as security officers in the branch of the State-run electricity company. In this case the Court also held that there had been a **violation of article 6 § 1** (right to a fair trial within a reasonable time) of the Convention.

Health-related dismissal

I.B. v. Greece (no. 552/10)

3 October 2013

This case concerned the dismissal of an HIV-positive employee in response to pressure from other employees in the company. The applicant alleged that there had been a violation of his right to a private life, the Greek Court of Cassation having found his dismissal – justified by the fact that he was HIV-positive – to be lawful. He also alleged that his dismissal was discriminatory.

The Court held that the applicant had been a victim of discrimination on account of his health status, in **breach of Article 8** (right to private life) **taken together with Article 14** (prohibition of discrimination) of the Convention. It observed in particular that the domestic courts had based their decision to reject his complaint about his dismissal on clearly inaccurate information, namely the contagious nature of his illness. They had provided insufficient explanation of how the employer's interests outweighed those of the applicant, thus failing to strike the correct balance between the rights of both parties.

Presumption of innocence

Felix Guţu v. the Republic of Moldova

20 October 2020

This case concerned the dismissal of an employee after criminal proceedings had been brought against him for embezzlement. The applicant alleged that the reasoning adopted by the civil courts to uphold his dismissal had breached his right to be presumed innocent.

The Court held that there had been a **violation of Article 6 § 2** (presumption of innocence) of the Convention, finding that the confirmation by the civil courts of the applicant's dismissal for theft, and the language used by them, had been incompatible with the presumption of innocence principle. It reiterated, in particular, that there was a fundamental distinction to be made between a statement that someone was merely suspected of having committed a crime and a clear judicial declaration, in the absence of a final conviction, that the individual had committed the crime in question. The applicant had been dismissed for committing a theft "established by a decision of the court or authority competent to apply administrative sanctions". The mere fact that the civil courts had confirmed this legal ground of dismissal, in spite of the amnesty discontinuing the criminal proceedings, had constituted a clear declaration that he was guilty of the offence in question. Moreover, the Supreme Court of Justice had declared, without any legal basis, that the request for an amnesty had in substance constituted an acknowledgment of guilt.

Taxation of severance pay

N.K.M. v. Hungary (no. 66529/11)

14 May 2013

This case concerned a civil servant who complained in particular that the imposition of a 98 per cent tax on part of her severance pay under a legislation entered into force ten weeks before her dismissal had amounted to an unjustified deprivation of property, with no remedy available.

The Court found that there had been a **violation of Article 1** (protection of property) **of Protocol No. 1** to the Convention. Despite the wide discretion that the Hungarian

authorities enjoyed in matters of taxation, it held that the means employed had been disproportionate to the legitimate aim pursued of protecting the public purse against excessive severance payments. Nor had the applicant been provided with a transitional period in which to adjust to the new severance scheme. Moreover, in depriving her of an acquired right which served the special social interest of reintegrating the labour market, the Hungarian authorities had exposed the applicant to an excessive individual burden.

Expropriation and deprivation of ones' "means of earning a living"

Lallement c. France

11 April 2002

A farmer, the applicant took over the family farm, which was run mainly as a dairy business, from his father. He, his dependent mother, his brother, who worked on the farm as a registered family assistant, and the latter's two children lived off the income from the farm. In 1993 the expropriations judge of the Department of Ardennes declared approximately 30% of the land on the applicant's farm expropriated in the public interest. The land concerned represented about 60% of the area given over to milk production. The applicant complained that the expropriation had deprived him of his source of income and that the compensation paid to him had not covered that specific loss.

The Court held that there had been a **violation of Article 1** (protection of property) **of Protocol No. 1** to the Convention. It noted that the expropriation complained of had made it financially unviable for the applicant to continue to farm the remaining portion of his land and had thus led to the loss of his source of income. Noting that the compensation paid had not specifically covered that loss, the Court held that it did not bear a reasonable relation to the value of the expropriated property.

See also the just satisfaction judgment in this case delivered by the Court on 12 June 2003.

Freedom of expression in the employment context

The protection of Article 10 (freedom of expression) of the Convention extends to the workplace in general and to public servants in particular (see, among others: ***Vogt v. Germany***, judgment of 26 September 1995; ***Ahmed and Others v. the United Kingdom***, judgment of 2 September 1998; ***Wille v. Liechtenstein***, judgment (Grand Chamber) of 28 October 1999; ***Fuentes Bobo v. Spain***, judgment of 29 February 2000). At the same time civil servants owe to their employer a duty of loyalty, reserve and discretion (***De Diego Nafría v. Spain***, judgment of 14 March 2002).

Guja v. the Republic of Moldova

12 February 2008 Grand Chamber)

The applicant, who was at the time the Head of the Press Department of the Moldovan Prosecutor General's Office, complained about his dismissal from the Prosecutor General's Office for divulging two documents which disclosed interference by a high-ranking politician in pending criminal proceedings.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. "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'" (§ 97 of the judgment).

See also: ***Guja v. Republic of Moldova (no. 2)***, judgment of 27 February 2018.

Heinisch v. Germany

21 July 2011

This case concerned the dismissal of a geriatric nurse after having brought a criminal complaint against her employer alleging deficiencies in the care provided. The applicant complained that her dismissal and the courts' refusal to order her reinstatement had violated her right to freedom of expression.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the applicant's dismissal without notice had been disproportionate and the domestic courts had failed to strike a fair balance between the need to protect the employer's reputation and the need to protect the applicant's right to freedom of expression.

Palomo Sánchez and Others v. Spain

12 September 2011 (Grand Chamber)

The applicants argued that their dismissal following an offensive and humiliating publication initiated by them – with a cartoon on the cover showing employees of the company giving sexual favours to the director of human resources – had infringed their right to freedom of expression, and that the real reason for their dismissal had been their trade union activity, thus breaching their right to freedom of assembly and association.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention. It found that the applicants' dismissal had not been a manifestly disproportionate or excessive sanction requiring the State to afford redress by annulling it or replacing it with a more lenient measure.

Vellutini and Michel v. France

6 October 2011

This cased concerned the conviction of the President and General Secretary of the municipal police officers' union for public defamation of a mayor, on the basis of statements made in their capacity as union officials.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the interference with the applicants' right to freedom of expression, in their capacity as trade-union representatives, had not been necessary in a democratic society. It noted in particular the impugned comments were not devoid of any factual basis. Moreover, the expressions used had not reflected any manifest personal animosity; on the contrary, they fell within the limits of admissible criticism afforded to trade-union representatives in a debate of general interest.

Szima v. Hungary

9 October 2012

This case concerned the fine and demotion of a police-union leader for allegations undermining police force.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention. It found that, by virtue of her position, the applicant had considerable influence and therefore had to exercise her right to freedom of expression in accordance with the duties and responsibilities which that right carried with it in view of her status and of the special requirement of discipline in the police force. The relatively mild sanction imposed on the applicant – demotion and a fine – could not be regarded as disproportionate in the circumstances.

Bucur and Toma v. Romania

10 January 2013

The first applicant, who worked for the Romanian intelligence service, was convicted 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.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention in respect of the first applicant. It found that the interference with his freedom of expression, and in particular with his right to impart information, had not been necessary in a democratic society.

Matúz v. Hungary

21 October 2014

The applicant, a journalist employed by the State television company, was dismissed in 2004 for breaching a confidentiality clause after he published a book concerning alleged censorship by a director of the company. He unsuccessfully challenged his dismissal in the domestic courts.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It noted in particular that the sanction imposed on the applicant – termination of the employment with immediate effect – was rather severe. Furthermore, the Hungarian courts had found against the applicant solely on the ground that publication of the book breached his contractual obligations, without considering his argument that he was exercising his freedom of expression in the public interest. They had thus failed to examine whether and how the subject matter of the applicant's book and the context of its publication could have affected the permissible scope of restriction on his freedom of expression.

Herbai v. Hungary

5 November 2019

This case concerned the applicant's dismissal from his job in human resources in a bank owing to his involvement with a website devoted to HR issues.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the domestic courts had failed to carry out an adequate exercise to balance the applicant's right to freedom of expression against the bank's right to protect its legitimate business interests. In particular, the Court disagreed with domestic court findings that articles on topics that were of interest to a professional audience could not benefit from free speech protection simply because they were not part of a debate of general public interest.

Gawlik v. Liechtenstein

16 February 2021

This case concerned a doctor who raised suspicions that euthanasia had been taking place in his hospital. In doing so, he went outside the hospital complaints structure and lodged a criminal complaint. The affair attracted significant media attention. The applicant complained that his dismissal without notice from his post for lodging a criminal complaint had breached his rights.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention, finding that the interference with the applicant's rights had been proportionate. While noting that he had not acted with improper motives, the Court nevertheless found that the applicant had been negligent in not verifying information. In the present case, it considered that the applicant's dismissal had been justified, especially given the effect on the hospital's and another staff member's reputations.

Melike v. Turkey

15 June 2021

This case concerned the dismissal without entitlement to compensation of the applicant, a contractual cleaner employed at the relevant time by the Ministry of National Education, for having clicked on the "Like" button under various Facebook articles posted by third parties.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that there had been no reasonable relationship of proportionality between the interference with the applicant's right to freedom of expression and the legitimate aim pursued by the national authorities. It noted, in particular, that the applicant had not been a civil servant with a special bond of trust and loyalty to her

hierarchy, but a contractual employee subject to employment law. The Court reiterated in this connection that the duty of loyalty, reserve and discretion owed by employees in private-law employment relationships to their employer could not be as strong as the duty of loyalty and reserve required of members of the civil service. The Court also noted that the disciplinary committee and the national courts had not taken account of all the relevant facts and factors in reaching their conclusion that the applicant's actions were such as to disturb the peace and tranquillity of her workplace. Accordingly, the reasons given in the present case to justify the applicant's dismissal could not be regarded as relevant and sufficient. The Court also held that the penalty imposed on the applicant (immediate termination of her employment contract without entitlement to compensation) had been extremely severe, particularly in view of her seniority in her post and her age.

Halet v. Luxembourg

14 February 2023 (Grand Chamber judgment)

This case concerned the disclosure by the applicant, while he was employed by a private company, of confidential documents protected by professional secrecy, comprising 14 tax returns of multinational companies and two accompanying letters, obtained from his workplace. Following a complaint by his employer, and at the close of criminal proceedings against him, he was ordered by the Court of Appeal on appeal to pay a criminal fine of 1,000 euros, and to pay a symbolic sum of 1 euro in compensation for the non-pecuniary damage sustained by his employer. The applicant submitted that his criminal conviction had amounted to a disproportionate interference with his right to freedom of expression.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention in the present case. In view, in particular, of its findings as to the importance, at both national and European level, of the public debate on the tax practices of multinational companies, to which the information disclosed by the applicant had made an essential contribution, the Court considered that the public interest in the disclosure of that information outweighed all of the detrimental effects arising from it. Thus, after weighing up all the interests concerned and taken account of the nature, severity and chilling effect of the applicant's criminal conviction, the Court concluded that the interference with his right to freedom of expression, in particular his freedom to impart information, had not been "necessary in a democratic society".

Allée v. France

18 January 2024[3]

This case concerned the criminal conviction of the applicant, who was employed as a secretary in a faith-based educational association at the relevant time, for public defamation following her allegations of harassment and sexual assault against a senior executive of the association in question. The claims had been sent by email to six people from both inside and outside the association.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that there had been no reasonable relationship of proportionality between the restriction on the applicant's right to freedom of expression and the legitimate aim pursued, namely the protection of reputation or rights of others. It stressed, in particular, the need, under Article 10, to provide appropriate protection to individuals alleging that they had been subjected to mental or sexual harassment. In the present case, the Court considered that the domestic courts' refusal to adapt the concept of sufficient factual basis and the criteria for assessing good faith to the circumstances of the case had placed an excessive burden of proof on the applicant, by requiring that she provide evidence of the acts she wished to report. The Court also noted that the email, sent by the applicant to six people of whom only one had been an external party, had had only a minor impact on her alleged harasser's reputation. Lastly, although the financial penalty imposed on the applicant could not be described as particularly severe,

[3]. This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

she had nonetheless been convicted of a criminal offence. By its nature, such a conviction had a chilling effect, which could discourage people from reporting such serious actions as those amounting, in their view, to mental or sexual harassment, or even sexual assault.

See also, among others:

Marunić v. Croatia
28 March 2017

Matalas v. Greece
25 March 2021

Norman v. the United Kingdom
6 July 2021

Harassment in the workplace

Špadijer v. Montenegro
9 November 2021
This case concerned the alleged bullying of the applicant – at the time a prison guard – following her reporting an incident involving male prison guards coming into the women's prison where she worked and their inappropriate contact with female prisoners. The applicant notably complained of the psychological damage caused by her constantly being bullied and of the authorities' failure to protect her.
Overall, the Court found that the manner in which the legal mechanisms had been implemented in the applicant's case – including the important whistle-blowing context – had been inadequate, constituting a **violation of** the positive obligation on the State to protect the applicant under **Article 8** (right to respect for private life) of the Convention.

C. v. Romania (no. 47358/20)
30 August 2022
This case concerned allegations of sexual harassment in the workplace following a criminal complaint lodged by the applicant, a cleaning lady in a railway station, against the railway station manager, accusing him of repeatedly trying to force himself on her. The applicant complained that the manner in which the authorities, and notably the prosecutors and the courts, had reacted to and examined the humiliating and embarrassing situation in which she had been placed had deprived her of a fair resolution of her complaints and had had negative consequences on her private life, her relationship with her work colleagues and her health in general
The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention in the present case. Without expressing an opinion as to whether the station manager was guilty of sexual harassment, it found that the investigation of the case had contained significant flaws amounting to a breach of the State's obligations under Article 8 of the Convention. The Court observed in particular that the applicant had lodged a criminal complaint against the railway station manager for sexual harassment, that the investigation had started promptly and that both the prosecutor's office and the District Court had acknowledged that the railway station manager had behaved in the way alleged by the applicant but considered that that had not constituted the criminal offence of sexual harassment. However, nothing in the domestic decisions showed how the authorities had reached their conclusion. The Court also noted with concern that the prosecutor's office's decision had contained a detailed account of the insinuations made by the railway station manager in his statements about the applicant's private life and the alleged motives for her actions and accusations – in the Court's eyes, constituting secondary victimisation – whereas, they might have been no more than a smokescreen. In the same vein, during the criminal investigation, the applicant had had to undergo a witness confrontation with the head of passenger safety. No explanation

had been given by the prosecutor as to the necessity of that confrontation and its impact on the applicant. Lastly, the applicant had been forced to leave her place of employment, whereas that element had not been taken into account in the authorities' assessment of her grievances.

Occupational health

Eternit v. France

27 March 2012 (decision on the admissibility)

This 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. The applicant company complained that it had not had access to the medical evidence on which the diagnosis of its former employee's occupational disease had been based, and had thus been deprived of any possibility of effectively challenging the decision that the disease was occupation-related.

The Court declared the application **inadmissible** as being manifestly ill-founded. It 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. It accordingly concluded that the principle of equality of arms had been respected in this case.

Howald Moor and Others v. Switzerland

11 March 2014

This case concerned a worker who was diagnosed in May 2004 with malignant pleural mesothelioma (a highly aggressive malignant tumour) caused by his exposure to asbestos in the course of his work in the 1960s and 1970s. He died in 2005. The applicants, his wife and two daughters, complained mainly that their right of access to a court had been breached, as the Swiss courts had dismissed their claims for damages against the deceased's employer and the national authorities, on the grounds that they were time-barred.

In view of the exceptional circumstances in the present case the Court considered that the application of the limitation periods had restricted the applicants' access to a court to the point of **breaching Article 6 § 1** (right to a fair trial) of the Convention. While it was satisfied that the legal rule on limitation periods pursued a legitimate aim, namely legal certainty, it observed however that the systematic application of the rule to persons suffering from diseases which could not be diagnosed until many years after the triggering events deprived those persons of the chance to assert their rights before the courts. The Court therefore considered that in cases where it was scientifically proven that a person could not know that he or she was suffering from a certain disease, that fact should be taken into account in calculating the limitation period.

Dolopoulos v. Greece

17 November 2015 (decision on the admissibility)

This case concerned the circumstances in which a bank branch manager developed a psychiatric illness and severe depression which, in his view, were caused in part by harassing tactics on the part of his managers. The applicant alleged a breach of the State's duty to protect employees in his situation against the risk of work-related illness. He referred in particular to the fact that his illness had not been declared to the Labour Inspectorate and to the rejection of his complaint by the public prosecutor at the Court of Appeal on the ground that psychiatric illnesses were not included in the list of occupational diseases.

The Court declared the application inadmissible as being manifestly ill-founded. It found in particular that, despite the fact that psychiatric illnesses had not been included by the

Greek legislature in the list of occupational diseases, the applicant had had avenues available to him by which to complain of the deterioration of his mental health at work and, if appropriate, to obtain compensation for non-pecuniary damage. It noted that the applicant had made use of those avenues, as appeal proceedings were currently pending. It therefore concluded that the Greek authorities had not failed to protect the applicant's physical and mental well-being or to secure his right to respect for his private life.

Order to repay mistakenly paid unemployment benefits

Čakarević v. Croatia

26 April 2018

This case concerned the applicant's complaint that she had been ordered to repay unemployment benefits after the employment office made a mistake in authorising the payments. The applicant alleged in particular that ordering her to repay the benefits had resulted in her being deprived of her possessions.

The Court held that there had been a **violation of Article 1** (protection of property) **of Protocol No. 1** to the Convention in the present case, finding that, given the applicant's ill health and lack of income, the domestic authorities had violated her rights by placing an excessive individual burden on her. The Court observed in particular that the applicant, who was unemployed and suffered from ill health, had done nothing to mislead the employment office about her circumstances. The authorities themselves had made the mistake of paying her benefits for about three years longer than the law allowed. However, it had been the applicant who had alone been ordered to right the situation, including having to pay statutory interest.

Parental leave

Konstantin Markin v. Russia[4]

22 March 2012 (Grand Chamber)

This case concerned the refusal by the Russian authorities to grant the applicant, a divorced radio intelligence operator in the armed forces, parental leave. The applicant complained of a difference in treatment in relation to the female personnel of the armed forces and to civilian women.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) in conjunction with **Article 8** (right to respect for private and family life) of the Convention, finding that the exclusion of servicemen from the entitlement to parental leave, while servicewomen were entitled to such leave, could not be said to be reasonably or objectively justified. This difference in treatment, of which the applicant was a victim, had therefore amounted to discrimination on grounds of sex. In particular, looking at the situation across the Convention States, the Court noted that in the majority of European counties, including Russia itself, the laws allowed civilian men and women alike to take parental leave. In addition, in a significant number of States both servicemen and servicewomen were entitled to parental leave. Consequently, that showed that contemporary European societies had moved towards a more equal sharing between men and women of the responsibility for the upbringing of their children. In this judgment, the Court accepted that, given the importance of the army for the protection of national security, certain restrictions on the entitlement to parental leave could be justifiable provided they were not discriminatory (for example, military personnel, be it male or female, could be excluded from parental leave entitlement if they could not be easily replaced because of their particular hierarchical position, rare technical qualifications, or involvement in active military actions). In Russia, by contrast, the

[4]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

entitlement to parental leave depended exclusively on the sex of the person. By excluding servicemen from that entitlement, the legal provision imposed a blanket restriction. The Court found that, as such a general and automatic restriction applied to a group of people on the basis of their sex, it fell outside of any acceptable margin of appreciation of the State. Given that the applicant could easily have been replaced by servicewomen in his function as a radio operator, there had been no justification for excluding him from the entitlement to parental leave.

Hulea v. Romania

2 October 2012

This case concerned the refusal to award compensation to a serviceman for discrimination with respect to his right to parental leave.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for private and family life) of the Convention, finding that the Romanian courts' refusal to award the applicant compensation for the violation of his right not to be discriminated against in the exercise of his rights concerning his family life did not appear to have been based on sufficient grounds. In this respect, it was irrelevant that the Court of Appeal had not advanced discriminatory grounds in its decision, since it had refused, without sufficient reasons, to compensate the non-pecuniary damage caused by the discrimination experienced by the applicant on account of the refusal to grant him parental leave.

Gruba and Others v. Russia[5]

6 July 2021

This case concerned the difference in entitlement to parental leave for male and female police officers. The four applicants had had their requests for parental leave rejected, essentially because such leave could only be granted to a male police officer if his child had been left without the care of a mother. They complained that the refusal to grant them parental leave had amounted to gender discrimination.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for private and family life) of the Convention in respect of all four applicants, finding that they had been subjected to discrimination on grounds of sex. It noted, in particular, that: the difference in treatment between policemen and policewomen as regards entitlement to parental leave could not be said to be reasonably and objectively justified; and there was no reasonable relationship of proportionality between the legitimate aim of maintaining the operational effectiveness of the police and the contested difference in treatment. In the present case, the Court also reiterated that sexist stereotypes, such as the perception of women as primary child carers and men as primary breadwinners, could not provide sufficient justification for a difference in treatment between men and women as regards entitlement to parental leave.

Pensions

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

15 July 1998 (decision of the European Commission of Human Rights[6])

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 European Commission of Human Rights declared the application **inadmissible** as being manifestly ill-founded. It found in particular that the suspension of the applicant's pension had not interfered with any property right under Article 1 (protection of

[5]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

[6] Together with the European Court of Human Rights and the Committee of Ministers of the Council of Europe, the European Commission of Human Rights, which sat in Strasbourg from July 1954 to October 1999, supervised Contracting States' compliance with their obligations under the European Convention on Human Rights. The Commission ceased to exist when the Court became permanent on 1st November 1998.

property) of Protocol No. 1 to the Convention, 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

Azinas v. Cyprus

28 April 2004 (Grand Chamber)

The applicant worked for the Nicosia Public Service, as Governor of the Department of Co-operative Development, from the time the Republic of Cyprus was established in 1960 until his dismissal. In July 1982 the Public Service Commission brought disciplinary proceedings against him and decided to dismiss him retrospectively on the ground that in April 1981 he was found guilty by Nicosia District Court of theft, breach of trust and abuse of authority. He was sentenced to 18 months' imprisonment. The applicant's appeal against both conviction and sentence was dismissed by the Supreme Court in October 1981. The Public Service Commission held that the applicant had managed the Department as if its resources were his private property. The disciplinary sentence of dismissal also resulted in the forfeiture of the applicant's retirement benefits, including his pension. He appealed unsuccessfully. Before the Court, the applicant complained, in particular, about his dismissal and the consequent forfeiture of his pension rights.

The Court, finding the Cypriot Government's objection that the relevant "effective" domestic remedy had not been exhausted by the applicant to be well-founded, declared the application **inadmissible**. The applicant had not cited Article 1 (protection of property) of Protocol No. 1 to the Convention before the Supreme Court, sitting as an appeal court. It was for this reason that the Supreme Court never ruled on whether the applicant's dismissal violated his property right to a pension. The applicant did not therefore provide the Cypriot courts with the opportunity which was in principle intended to be given to States which had ratified the European Convention on Human Rights by Article 35 (admissibility criteria) of the Convention, namely the opportunity of addressing, and thereby preventing or putting right, the particular Convention violation alleged.

Stummer v. Austria

7 July 2011 (Grand Chamber)

The applicant, who spent some twenty-eight years of his life in prison, complained in particular that the exemption of prison work from affiliation to the old-age pension system was discriminatory and deprived him of receiving pension benefits.

The Court held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 1** (protection of property) **of Protocol No. 1** to the Convention. While Austria was required to keep the issue raised by the applicant's case under review, it found that by not having affiliated working prisoners to the old-age pension system to date, it had not exceeded the margin of appreciation afforded to it in that matter.

E.B. (no. 2) v. Hungary (no. 34929/11)

15 January 2013 (decision on the admissibility)

This case concerned changes to the Hungarian pension system in 2010 via new laws. The applicant complained that the new legislation effectively amounted to confiscating her private pension contributions to the benefit of the State budget. She alleged in particular that, even if she was entitled to a full State pension under the new legislation, this fell short of a private pension scheme which was directly related to her contributions and investment strategy. She also complained that, as she intended to work abroad, it was not for certain that she would accumulate enough years' service to be entitled to a State pension.

The Court declared the application **inadmissible** as being manifestly ill-founded. It held that there had been no interference with the applicant's property rights, including her legitimate expectation to receive a pension in the future, as she was entitled to future pension payments through the contributions she had made during the entire period of her employment either to a private pension fund or the State fund.

Cichopek and 1,627 other applications v. Poland

14 May 2013 (decision on the admissibility)

Pursuant to the provisions of a law enacted in 2009, the pension rights accumulated by former members of the Polish State Security Service between 1944 and 1990 during the communist regime were reduced. The applicants maintained that they had been required to bear an excessive burden on account of the abrupt, drastic and belated change to their personal circumstances brought about by a law which they considered to be punitive in its effect and a form of collective punishment for their previous employment.

The Court declared the applications **inadmissible** as being manifestly ill-founded. It found that generally the pension reduction scheme did not impose an excessive burden on the applicants: they did not suffer a loss of means of subsistence or a total deprivation of benefits and the scheme was still more advantageous than other pension schemes. The Court also found that the applicants' service in the secret police, created to infringe the very human rights protected under the Convention, should be regarded as a relevant circumstance for defining and justifying the category of persons to be affected by reductions of pension benefits. The Polish authorities did not extend the personal scope of these measures beyond what was necessary to achieve the legitimate aim pursued; putting an end to pension privileges enjoyed by members of former communist political police, in order to ensure the greater fairness of the pension system.

Markovics and Others v. Hungary

24 June 2014 (decision on the admissibility)

These applications concerned the restructuring of retired servicemen's pensions in Hungary and raised essentially identical issues, primarily the replacement – under legislation enacted in November 2011 – of former servicemen's retirement pensions, which were not subject to income tax, by an allowance of equal amount which is taxable under the general personal income tax rate. The applicants complained that this conversion constituted an unjustified and discriminatory interference with their property rights which could not be challenged effectively before any national authority.

The Court declared the applications **inadmissible** as being manifestly ill-founded. It found in particular that the reduction in the applicants' benefits had been reasonable and commensurate. The applicants continued to receive a service allowance reasonably related to the value of their previous service pension. Indeed, they had neither totally been divested of their only means of subsistence nor had they been placed at risk of having insufficient means with which to live. The Court was also satisfied that any difference in treatment had respected a reasonable relation of proportionality between the aim pursued, namely the rationalisation of the pension system, and the means employed, namely a commensurate reduction of benefits.

Philippou v. Cyprus

14 June 2016

This case concerned a civil servant who automatically lost his public service retirement benefits when dismissed following disciplinary proceedings brought against him in 2005. The applicant pointed out in particular that, although he had repaid his debt to society having been convicted by a criminal court, served a prison sentence, reimbursed the amount due, and lost his job, all his retirement benefits had automatically been forfeited.

The Court held that there had been **no violation of Article 1** (protection of property) **of Protocol No. 1** to the Convention. Weighing the seriousness of the offences committed by the applicant, involving a total of 223 criminal charges of, among other things, dishonesty, obtaining money under false pretences, forging cheques and abuse of office, against the effect of the disciplinary measures, the Court found that he had not been made to bear an individual and excessive burden.

Mauriello v. Italy

13 September 2016 (decision on the admissibility)

This case concerned the fact that the retirement pension contributions paid by the applicant during her ten-year career were not reimbursed, since she did not qualify for a civil servant's pension because she had not paid contributions for 15 years as required under domestic law. The applicant complained that she had been deprived of all the pension contributions deducted from her salary during her career and that she did not receive any corresponding amount in the form of a retirement pension or a lump sum.

The Court declared the application **inadmissible** as being manifestly ill-founded. It noted in particular that the obligation to pay retirement pension contributions amounted to an interference with the applicant's right to the peaceful enjoyment of her possessions, but held that it had been provided for by law. The Court found, however, that the interference did not amount to a disproportionate interference with the applicant's right to the peaceful enjoyment of her possessions, bearing in mind that the States enjoyed a wide margin of appreciation in choosing their retirement systems and that the Convention did not require them to adopt a specific model. The Court also noted that the applicant had begun to work and to pay contributions at a date when it was already certain that she would not obtain a pension entitlement, given that the national legislation stipulated at least 15 years' employment to qualify for such entitlement, and the applicant had been paying contributions for only 10 years when she reached the compulsory retirement age. Lastly, the Court noted that the applicant had provided no information about her allegedly poor financial position, which prevented her from making voluntary payments into a pension account, thus enabling her to obtain a pension.

Fábián v. Hungary

5 September 2017 (Grand Chamber)

This case concerned the suspension of the applicant's old-age pension on the grounds that he continued to be employed in the public sector. The applicant complained about the suspension of disbursement of his pension. He also alleged that he had been subjected to an unjustified difference in treatment compared with pension recipients working in the private sector and those working in certain categories within the public sector.

The Grand Chamber held that there had been **no violation of Article 1** (protection of property) **of Protocol No. 1** to the Convention, that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention, **taken in conjunction with Article 1 of Protocol No. 1** as concerned the applicant's complaint about the difference in treatment with pensioners working in the private sector, and that his complaint relating to an allegedly unjustified difference in treatment between pensioners employed in different categories within the public sector had been introduced out of time and was therefore inadmissible. In its judgment, the Grand Chamber found in particular that a fair balance had been struck between the demands of the general interest of the community and the requirements of the protection of the fundamental rights of the applicant, who had not been made to bear an excessive individual burden. The Court observed that the Contracting States enjoyed a wide margin of appreciation with regard to the funding methods of public pension schemes, and noted that the interference in question had pursued an aim in the general interest, namely protecting the public purse and ensuring the long-term sustainability of the Hungarian pension system. The Court also noted that the suspension of disbursement of the applicant's pension had been temporary. Furthermore, he had been able to choose between discontinuing his employment in the civil service and continuing to receive his pension, or remaining in that employment and having his pension payments suspended, and had opted for the latter. Moreover, the applicant had not been left without any means of subsistence as he had continued to receive his salary. The Court also found that the applicant had not demonstrated that, as a member of the civil service whose employment, remuneration and social benefits were dependent on the State budget, he had been in a relevantly similar situation to pensioners employed in the private sector, whose salaries were funded through private budgets outside the State's direct control.

Savickis and Others v. Latvia

9 June 2022 (Grand Chamber)

This case concerned the applicants' allegations of discrimination in the calculation of their State pensions as "permanently resident non-citizens" of Latvia, as contrasted with Latvian citizens[7]. The applicants complained that in their status as "permanently resident non-citizens" they had been treated unfairly vis-à-vis Latvian citizens in respect of the amount of their retirement pension and eligibility for early retirement.

The Court held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 1 of Protocol No. 1** (protection of property) to the Convention, finding that the domestic authorities had acted within their discretion concerning the assessment of the applicants' pension entitlements. In particular, although the difference between payments had been solely down to nationality, the Court noted that taking Latvian nationality had been open to the applicants, especially given the long time-frame. It noted the broad discretion that Governments had in setting social-security payments, and held that rebuilding the Latvian nation's life following the restoration of independence was sufficient to justify the difference in treatment.

P.C. v. Ireland (no. 26922/19)

1 September 2022

This case concerned the statutory disqualification of a convicted prisoner from receipt of the State-contributory-pension for the duration of his or her imprisonment. The applicant, who was born in 1940, complained in particular of having been disqualified from receipt of his pension and of being discriminated against on several grounds.

The Court held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 1** (protection of property) **of Protocol No. 1** in the present case. Concerning in particular the allegation of discrimination in the policy, the Court found: that the applicant had not provided any evidence of discrimination against older people; that comparisons with prisoners with alternative sources of income did not fall under Article 14; and that the applicant's situation was not sufficiently analogous to that of either individuals detained in secure psychiatric units or those detained on remand to make out an argument of discrimination on that basis.

Pending applications

Taipale v. Finland (no. 5855/18) and Tulokas v. Finland (no. 5854/18)

Applications communicated to the Government of Finland on 12 July 2018

These applications concern national legislation providing, in certain situations, for higher taxation of pension income than earned income.

The Court gave notice of the applications to the Government of Finland and put questions to the parties under Articles 13 (right to an effective remedy) and 14 (prohibition of discrimination) of the Convention and Article 1 (general prohibition of discrimination) of Protocol No. 12 to the Convention.

[7]. Under the law, the calculation of the amount of such non-citizens' pensions largely excludes periods of work done up to 1991 in other territories of the former Soviet Union, outside Latvian territory. However, such periods are included for the calculation of the pensions of Latvian citizens.

Prostitution

Pending applications

M. A. and Others v. France (no. 63664/19) and four other applications

Applications declared admissible on 27 June 2023

These applications concern the creation, under French criminal law, of the offence of purchasing sexual relations. According to the applicants, 261 men and women of various nationalities, who engage lawfully in prostitution, the possibility of criminal proceedings being brought against clients pushes those engaged in prostitution into operating in a clandestine manner and in isolation, exposes them to greater risks for their physical integrity and lives, and affects their freedom to define how they live their private lives.

Without ruling on the merits at this stage, the Court declared the application admissible after acknowledging that the applicants were entitled to claim to be victims, within the meaning of Article 34 (admissibility criteria) of the Convention, of the alleged violation of their rights under Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private life) of the Convention. The decision does not prejudge the merits of the application, on which the Court will rule in a subsequent judgment.

Receipt of benefits conditioned by obligation to take up "generally accepted" employment

Schuitemaker v. the Netherlands

4 May 2010 (decision on the admissibility)

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. Before the Court, 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 (prohibition of slavery and forced labour) of the Convention.

The Court declared the application **inadmissible** as being manifestly ill-founded. It noted in particular that, 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 of the Convention.

Reconciling professional and family life

García Mateos v. Spain

19 February 2013

This 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. The applicant complained that her right to a fair hearing within a reasonable time had been breached and that she had suffered discrimination on grounds of sex. She complained that she had not obtained redress for the breach of her fundamental right and that she had had no effective remedy before the Spanish Constitutional Court.

The Court held that there had been a **violation of Article 6 § 1** (right to a fair hearing within a reasonable time) **combined with Article 14** (prohibition of discrimination) of the Convention. It found that the violation of the principle of non-discrimination on

grounds of sex, as established by the Spanish Constitutional Court's ruling in favour of the applicant, had never been remedied on account of the non-enforcement of the relevant decision and the failure to provide her with compensation.

Respect for private life in the employment context

Copland v. the United Kingdom

3 April 2007

The applicant was employed by Carmarthenshire College, a statutory body administered by the State. In 1995 she became the personal assistant to the College Principal and was required to work closely with the newly-appointed Deputy Principal. Before the Court, 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.

The Court held that there had been a **violation of Article 8** (right to respect for private life and correspondence) of the Convention. It considered that the collection and storage of personal information relating to the applicant 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

16 June 2009 (decision on the admissibility)

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 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 on-going 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.

The Court declared the application **inadmissible** as being manifestly ill-founded. It found that 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 as guaranteed by Article 10 of the Convention and the applicant's right to respect for her private life and correspondence under Article 8 of the Convention.

Obst v. Germany and Schüth v. Germany

23 September 2010

Both cases concerned the applicants' dismissal from a Church for engaging in an extra-marital relationship. In the first case, the applicant had grown up in the Mormon faith and married in 1980 in accordance with Mormon rites. After holding various positions in the Mormon Church, he was appointed to the post of director for Europe of the public relations department in 1986. In December 1993 he confided to his pastor that he had been having an affair with another woman. The pastor advised him to tell his superior, which he did. His superior dismissed him without notice a few days later for adultery. In the second case, the applicant had been the organist and choirmaster in a Catholic parish since the mid-1980s and until 1994, when he separated from his wife. Since 1995

he has been living with his new partner. In July 1997, after his children had told people in their kindergarten that their father was going to have another child, the dean of the parish discussed the matter with the applicant. A few days later the parish gave the applicant notice that he was being dismissed for adultery from April 1998. The applicants complained of the refusal of the domestic courts to overturn their dismissal.
In these cases, the Court for the first time addressed the dismissal of Church employees on grounds of conduct falling within the sphere of their private lives.
In the first case, it held that there had been **no violation of Article 8** (right to respect for private life) of the Convention. Having regard to the wider margin of appreciation of the State in the present case and in particular the fact that the labour courts had to strike a balance between several private interests, it considered that Article 8 did not require the State to afford the applicant a higher degree of protection.
In the second case, it held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. In the present case, the labour courts had not sufficiently explained the reasons why, according to the conclusions of the Labour Court of Appeal, the interests of the parish far outweighed those of the applicant, and they had failed to weigh the rights of the applicant against those of the Church employer in a manner compatible with the Convention. Consequently, the State had not afforded the applicant the necessary protection.

Köpke v. Germany

5 October 2010 (decision on the admissibility)

The applicant, a supermarket cashier, was dismissed without notice for theft, following a covert video surveillance operation carried out by her employer with the help of a private detective agency. She unsuccessfully challenged her dismissal before the labour courts. Her constitutional complaint was likewise dismissed.
The Court declared **inadmissible** as being manifestly ill-founded, the applicant's complaint under Article 8 (right to respect of private life) of the Convention. It observed that 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. It concluded that 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

19 October 2010

This case concerned the dismissal of a judge by the National Legal Service Council 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). The applicant alleged that her dismissal by the National Legal Service Council had been based on aspects of her private life and that no effective remedy had been available to her.
The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, as the interference with the applicant's private life had not been proportionate to the legitimate aim pursued. It further held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention **read in conjunction with Article 8**, as the applicant had not had access to a remedy meeting the minimum requirements of Article 13 for the purposes of her Article 8 complaint.

Gillberg v. Sweden

3 April 2012 (Grand Chamber)

This 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) of the Convention **did not apply** in this case. It held in particular that the applicant 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.

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

24 July 2012

This case concerned the suspension of a civil servant for more than six years while criminal proceedings against him were on-going, and the ban on his engaging in any other gainful employment in the public and private sectors, except in teaching and research. The applicant complained in particular that, as a result of his suspension, it had been impossible for him to receive his salary and to seek other employment.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. It 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.

The Court further held in this case that there had been a **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) of the Convention, a **violation of Article 6 § 1** (right to a fair trial within a reasonable time) and a violation of **Article 13** (right to an effective remedy) **in conjunction with Article 6 § 1 and with Article 8** of the Convention.

Michaud v. France

6 December 2012

This 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 (right to respect for private life) of the Convention, which protects the confidentiality of lawyer-client relations.

The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention. It stressed in particular 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, the Court 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.

Radu v. the Republic of Moldova

15 April 2014

This case concerned the applicant's complaint about a State-owned hospital's disclosure of medical information about her to her employer. She was a lecturer at the Police Academy and in August 2003, pregnant with twins, was hospitalised for a fortnight due to a risk of her miscarrying. She gave a sick note certifying her absence from work. However, the Police Academy requested further information from the hospital concerning her sick leave, and it replied, providing more information about her pregnancy, her state of health and the treatment she had been given. The information was widely circulated at the applicant's place of work and, shortly afterwards, she had a miscarriage due to stress. She unsuccessfully brought proceedings against the hospital and the Police Academy claiming compensation for a breach of her right to private life.

The Court held that there had been **violation of Article 8** (right to respect for private life) of the Convention. It found in particular that the interference complained of by the applicant was not "in accordance with the law" within the meaning of Article 8 of the Convention.

Fernandez Martinez v. Spain

12 June 2014 (Grand Chamber)

This case concerned the non-renewal of the contract of a married priest and father of five who taught Catholic religion and ethics, after he had been granted dispensation from celibacy and following an event at which he had publicly displayed his active commitment to a movement opposing Church doctrine. The applicant alleged in particular that the non-renewal of his contract because of his personal and family situation had infringed his right to respect for his private and family life.

The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention finding that, having regard to the margin of appreciation afforded to the State, the interference with the applicant's right to respect for his private life had not been disproportionate. In the Court's view, it was in particular not unreasonable for the Church to expect particular loyalty of religious education teachers, since they could be regarded as its representatives. In the instant case, the Court found that the Spanish courts had sufficiently taken into account all the relevant factors and had weighed up the competing interests in a detailed and comprehensive manner, within the limits imposed by the respect that was due to the autonomy of the Catholic Church. In the light of the review by the domestic courts, the principle of the Church's autonomy did not seem to have been invoked improperly: it could not be said that the Bishop's decision had been insufficiently reasoned or arbitrary, or that it had been taken with an aim that was incompatible with the exercise of the Catholic Church's autonomy, as recognised and protected under the European Convention.

See also: ***Travaš v. Croatia***, judgment of 4 October 2016.

Sõro v. Estonia

3 September 2015

This case concerned the applicant's complaint about the fact that information about his employment during the Soviet era as a driver for the Committee for State Security of the USSR (the KGB) had been published in the Estonian State Gazette in 2004.

The Court held that there had been **violation of Article 8** (right to respect for private life) of the Convention. It found that in the applicant's case this measure had been disproportionate to the aims sought. In particular, under the relevant national legislation, information about all employees of the former security services – including drivers, as in the applicant's case – was published, regardless of the specific function they had performed.

Versini-Campinchi and Crasnianski v. France

16 June 2016

The applicants, lawyers, complained of the interception and transcription of their conversations with one of their clients and the use of the corresponding phone-tapping records in the disciplinary proceedings brought against them.

The Court held that there had been **no violation of Article 8** (right to respect for private life and correspondence) of the Convention, finding that the interference in question was not disproportionate to the legitimate aim pursued –prevention of disorder – and could be regarded as necessary in a democratic society. It considered in particular that, as the transcription of the conversation between the applicant and her client had been based on the fact that the contents could give rise to the presumption that the applicant had herself committed an offence, and the domestic courts had satisfied themselves that the transcription did not infringe her client's rights of defence, the fact that the former was the latter's lawyer did not suffice to constitute a violation of Article 8 of the Convention in the applicant's regard.

Vukota-Bojic v. Switzerland

18 October 2016

The applicant had been involved in a road traffic accident, and subsequently requested a disability pension. Following a dispute with her insurer on the amount of disability pension and years of litigation later, her insurer requested that she undergo a fresh medical examination, in order to establish additional evidence about her condition. When she refused, the insurer hired private investigators to conduct secret surveillance of her. The evidence that they obtained was used in subsequent court proceedings, which resulted in a reduction of the applicant's benefits. She complained that the surveillance had been in breach of her right to respect for private life, and that it should not have been admitted in the proceedings.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. It found in particular that the insurer's actions engaged state liability under the Convention, since the respondent insurance company was regarded as a public authority under Swiss law. It also held that the secret surveillance ordered had interfered with the applicant's private life, even though it had been carried out in public places, since the investigators had collected and stored data in a systematic way and had used it for a specific purpose. Furthermore, the surveillance had not been prescribed by law, since provisions of Swiss law on which it had been based were insufficiently precise. In particular, they had failed to regulate with clarity when and for how long surveillance could be conducted, and how data obtained by surveillance should be stored and accessed. The Court further found that the use of the surveillance evidence in the applicant's case against her insurer had not made the proceedings unfair and therefore held that there had been **no violation of Article 6** (right to a fair trial) of the Convention. In this respect it noted in particular that the applicant had been given a fair opportunity to challenge the evidence obtained by the surveillance, and that the Swiss court had given a reasoned decision as to why it should be admitted.

Bărbulescu v. Romania

5 September 2017 (Grand Chamber)

This case concerned the decision of a private company to dismiss an employee – the applicant – after monitoring his electronic communications and accessing their contents. The applicant complained that his employer's decision was based on a breach of his privacy and that the domestic courts had failed to protect his right to respect for his private life and correspondence.

The Grand Chamber held, by eleven votes to six, that there had been a **violation of Article 8** (right to respect for private life and correspondence) of the Convention, finding that the Romanian authorities had not adequately protected the applicant's right to respect for his private life and correspondence. They had consequently failed to strike a fair balance between the interests at stake. In particular, the national courts had failed to determine whether the applicant had received prior notice from his employer of the possibility that his communications might be monitored; nor had they had regard either to the fact that he had not been informed of the nature or the extent of the monitoring, or the degree of intrusion into his private life and correspondence. In addition, the national courts had failed to determine, firstly, the specific reasons justifying the introduction of the monitoring measures; secondly, whether the employer could have used measures entailing less intrusion into the applicant's private life and correspondence; and thirdly, whether the communications might have been accessed without his knowledge.

Libert v. France

22 February 2018

This case concerned the dismissal of an SNCF (French national railway company) employee after the seizure of his work computer had revealed the storage of pornographic files and forged certificates drawn up for third persons. The applicant complained in particular that his employer had opened, in his absence, personal files stored on the hard drive of his work computer.

The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention, finding that in the present case the French authorities had not overstepped the margin of appreciation available to them. The Court noted in particular that the consultation of the files by the applicant's employer had pursed a legitimate aim of protecting the rights of employers, who might legitimately wish to ensure that their employees were using the computer facilities which they had placed at their disposal in line with their contractual obligations and the applicable regulations. The Court also observed that French law comprised a privacy protection mechanism allowing employers to open professional files, although they could not surreptitiously open files identified as being personal. They could only open the latter type of files in the employee's presence. The domestic courts had ruled that the said mechanism would not have prevented the employer from opening the files at issue since they had not been duly identified as being private. Lastly, the Court considered that the domestic courts had properly assessed the applicant's allegation of a violation of his right to respect for his private life, and that those courts' decisions had been based on relevant and sufficient grounds.

Garamukanwa v. the United Kingdom

14 May 2019 (decision on the admissibility)

This case concerned the applicant's dismissal by a state-run health service after an investigation for harassment based on photographs stored on his iPhone, and on emails and WhatsApp correspondence. The applicant complained that the domestic courts' decisions upholding his dismissal had constituted a breach of his right to privacy.

The Court declared **inadmissible** the applicant's complaint under Article 8 (right to respect for private life and correspondence) of the Convention. It found in particular that the applicant could not reasonably have expected that the photographs and communications relied on by the disciplinary panel to dismiss him would remain private. The Court also noted that the applicant had already been told by his employer that his behaviour was inappropriate almost a year before the police had started investigating the harassment claims and his suspension from his post.

Yılmaz v. Turkey

4 June 2019

This case concerned the refusal by the Ministry of Education to appoint the applicant to a teaching post abroad even though he had passed a competitive examination. The applicant contended that his appointment had been refused for reasons relating to his and his wife's private life.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, finding that the decision not to appoint the applicant to a post abroad had been motivated by factors relating to his private life and based on the findings of a security investigation that had revealed information about his way of life and his wife's clothing. The interference with the applicant's right to respect for his private life had therefore not been necessary in a democratic society.

López Ribalda and Others v. Spain

17 October 2019 (Grand Chamber)

This case concerned the covert video-surveillance of employees which led to their dismissal. The applicants complained about the covert video-surveillance and the Spanish courts' use of the data obtained to find that their dismissals had been fair. The applicants who signed settlement agreements also complained that the agreements had been made under duress owing to the video material and should not have been accepted as evidence that their dismissals had been fair.

The Grand Chamber held that there had been **no violation of Article 8** (right to respect for private life) of the Convention in respect of the five applicants. It found in particular that the Spanish courts had carefully balanced the rights of the applicants – supermarket employees suspected of theft – and those of the employer, and had carried out a thorough examination of the justification for the video-surveillance. A key argument

made by the applicants was that they had not been given prior notification of the surveillance, despite such a legal requirement, but the Court found that there had been a clear justification for such a measure owing to a reasonable suspicion of serious misconduct and to the losses involved, taking account of the extent and the consequences of the measure. In the present case the domestic courts had thus not exceeded their power of discretion ("margin of appreciation") in finding the monitoring proportionate and legitimate. The Court also held that there had been **no violation of Article 6 § 1** (right to a fair trial) of the Convention, finding in particular that the use of the video material as evidence had not undermined the fairness of the trial.

Right to individual application

Boškoćević v. Serbia

5 March 2024[8]

The applicant, who was an employee of a national park in Kosovo[9], had lodged an application with the European Court to complain about the non-enforcement of a judgment in his favour with regard to outstanding wages. The case essentially concerned his complaint that his managing director had sent him a letter warning him that he had breached his duties and risked dismissal shortly after he had lodged his application with the Court.

The Court held that there had been a **violation of Article 34** (right of individual application) of the Convention in respect of the applicant. Firstly, it disagreed with the Serbian Government's argument that it could not be held responsible for the conduct of the applicant's employer. The latter, a statutory corporation, had been founded in the public interest – to preserve the natural resources of the Šar Mountains – and had an annual business plan and tariffs approved by Government. It could not therefore be considered a "non-governmental organisation". Furthermore, the warning letter sent to the applicant had been signed by the national park's managing director and certified with an official seal. The Court went on to reiterate that in order for the Convention system of individual application to effectively operate it was imperative that applicants or potential applicants be able to communicate freely with the Court without any pressure from the authorities to withdraw or amend their complaints. The applicant had been clearly and directly threatened with dismissal for applying to the Court and for any failure to submit copies of all related correspondence. The Court concluded that that type of communication had constituted "pressure" and "intimidation", in violation of Article 34 of the Convention.

Safety in the employment context

Vilnes and Others v. Norway

5 December 2013

This case concerned former complaints by divers that they are disabled as a result of diving in the North Sea for oil companies during the pioneer period of oil exploration (from 1965 to 1990). All the applicants complained that Norway had failed to take appropriate steps to protect deep sea divers' health and lives when working in the North Sea and, as concerned three of the applicants, at testing facilities. They all also alleged that the State had failed to provide them with adequate information about the risks involved in both deep sea diving and test diving.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, on account of the failure of the Norwegian authorities to ensure

[8]. This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.
[9]. All reference to Kosovo, whether to the territory, institutions or population, shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

that the applicants received essential information enabling them to assess the risks to their health and lives resulting from the use of rapid decompression tables. It further held that there had been **no violation of Article 2** (right to life) or **Article 8** of the Convention as regards the remainder of the applicants' complaints about the authorities' failure to prevent their health and lives from being put in jeopardy, and that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention.
This case complements the Court's case-law on access to information under Articles 2 and 8 of the Convention, notably in so far as it establishes an obligation on the authorities to ensure that employees receive essential information enabling them to assess occupational risks to their health and safety.

Brincat and Others v. Malta

24 July 2014
This case concerned ship-yard repair workers who were exposed to asbestos for a number of decades beginning in the 1950s to the early 2000s which led to them suffering from asbestos related conditions. The applicants complained in particular about their or their deceased relative's exposure to asbestos and the Maltese Government's failure to protect them from its fatal consequences.
The Court held that there had been a **violation of Article 2** (right to life) of the Convention in respect of the applicants whose relative had died, and a **violation of Article 8** (right to respect for private and family life) of the Convention in respect of the remainder of the applicants. It found in particular that, in view of the seriousness of the threat posed by asbestos, and despite the room for manoeuvre ("margin of appreciation") left to States to decide how to manage such risks, the Maltese Government had failed to satisfy their positive obligations under the Convention, to legislate or take other practical measures to ensure that the applicants were adequately protected and informed of the risk to their health and lives. Indeed, at least from the early 1970s, the Maltese Government had been aware or should have been aware that the ship-yard workers could suffer from consequences resulting from the exposure to asbestos, yet they had taken no positive steps to counter that risk until 2003.

Sexual violence in the workplace

Vučković v. Croatia

12 December 2023
This case concerned the sexual assaults that the applicant, a nurse, suffered at the hands of an ambulance driver colleague while working shifts together. Her assailant was sentenced to 10 months' imprisonment, but that sentence was commuted to community service on appeal. The applicant complained of the commuting of the sentence of her co-worker, arguing that it had been disproportionately lenient given the seriousness of the offences committed.
The Court held that there had been a **violation of Articles 3** (prohibition of inhuman and degrading treatment) **and 8** (right to respect for private a life) of the Convention, finding that the Croatian State had not dealt appropriately with the repeated sexual violence that the applicant had been subjected to in her workplace. In particular, the Court found concerning that the appellate court had chosen to replace the prison sentence with community service without giving adequate reasons or considering in any way the interests of the victim. Such an approach suggested that the Croatian courts were lenient in punishing violence against women.

Media Contact:
Tel.: +33 (0)3 90 21 42 08