November 2018
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" and "Surveillance at workplace".

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.

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 of public servants

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** (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** (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 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.

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.

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** (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 8** (right to respect for private and family life) 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 for having gone on strike

Ognevenko v. Russia

20 November 2018[1]

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.

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

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

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 and family 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, recently:

Radunović and Others v. Montenegro

25 October 2016

Dismissal on account of membership of a political party

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.

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.

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. Relying on Article 1 (protection of property) of Protocol No. 1 to the Convention, 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.

See also, recently:

Marunić v. Croatia

28 March 2017

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** (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.

Pensions

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

15 July 1998 (decision of the European Commission of Human Rights[2])

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** (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 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. He relied on Article 1 (protection of property) of Protocol No. 1 to the Convention.

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 of Protocol No. 1 to the Convention before the Supreme Court, sitting as an appeal court. It was for this

[2] 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.

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 of Protocol No. 1** (protection of property) 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. Relying on Article 1 (protection of property) of Protocol No. 1 to the Convention, 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** (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** (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** (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 of Protocol No. 1** (protection of property) 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.

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** (manifestly ill-founded). Where a State introduced a system of social security, it was fully entitled to lay down conditions for persons wishing to receive benefits. In particular, a condition to the effect that a person must make demonstrable efforts in order to obtain and take up generally accepted employment could not be considered unreasonable, nor could it be equated with compelling a person to perform forced or compulsory labour within the meaning of Article 4 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 rights guaranteed by Article 8 (right to respect for private life and correspondence) of the Convention. 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** (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. Relying on Article 8 (right to respect for private and family life) of the Convention, 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** (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 notably, under Article 8 (right to respect for private and family life) of the Convention, 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 of the Convention (right to respect for private life), 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 the importance of the confidentiality of lawyer-client relations and of legal professional privilege. It considered, however, that the obligation to report suspicions pursued the legitimate aim of prevention of disorder or crime, since it was intended to combat money laundering and related criminal offences, and that it was necessary in pursuit of that aim. On the latter point, it held that the obligation to report suspicions, as implemented in France, did not interfere disproportionately with legal professional privilege, since lawyers were not subject to the above requirement when defending litigants and the legislation had put in place a filter

to protect professional privilege, thus ensuring that lawyers did not submit their reports directly to the authorities, but to the president of their Bar association.

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 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.

Applications pending before the Grand Chamber

López Ribalda and Others v. Spain

9 January 2018 – Case referred to the Grand Chamber in May 2018

This case concerns the covert video surveillance of a Spanish supermarket chain's employees after suspicions of theft had arisen. The applicants were dismissed mainly on the basis of the video material, which they alleged had been obtained by breaching their right to privacy. The Spanish courts accepted the recordings in evidence and upheld the dismissal decisions.

In its Chamber judgment, the Court held that there had been a **violation of Article 8** of the Convention, finding that the Spanish courts had failed to strike a fair balance between the rights involved, namey the applicants' right to privacy and the employer's property rights. The Chamber noted in particular that under Spanish data protection legislation the applicants should have been informed that they were under surveillance, but they had not been. The employer's rights could have been safeguarded by other means and it could have provided the applicants at the least with general information about the surveillance. The Chamber held, however, that there had been **no violation of Article 6 § 1** (right to a fair trial) of the Convention. It found that the proceedings as whole had been fair because the video material was not the only evidence the domestic courts had relied on when upholding the dismissal decisions and the applicants had been able to challenge the recordings in court.

On 28 May 2018 the Grand Chamber Panel accepted the Government's request that the case be referred to the Grand Chamber.

On 28 November 2018 the Grand Chamber held a hearing in the case.

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 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.

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