REPORT
ON EUROPEAN LABOUR AND SOCIAL SECURITY LAW

HSI
Hugo Sinzheimer Institute for Labour and Social Security Law

The HSI is an institute of the Hans-Böckler-Stiftung

Edition 1/2025
Reporting period: 1 January - 31 March 2025

Contents

I. Editorial

HSI Report 1/2025 chronicles the development of case law and legislation in labour and social security law at the European and international level during the period from January to March 2025.

Among the cases in the **CJEU overview**, the opinion on Denmark's action for annulment of the Minimum Wage Directive deserves emphasis. In it, Advocate General *Emiliou* argues in favour of annulment of the Directive in its entirety. In the *Bervidi* case (C-38/24), Advocate General *Rantos* is of the opinion that indirect discrimination against employed carers of a child with a disability is also prohibited (associated discrimination). Current developments are also taking place in collective redundancy law, where Advocate General *Norkus* considers the envisaged change in the case law of the German Federal Labour Court on the effect of the standstill period to be non-compliant with EU law (*Tomann* – C-134/24). In the German referral proceedings in the case of *Jobcenter Arbeitplus Bielefeld* (C-397/23), Advocate General *de la Tour* comments on the right of residence in the context of caring for a family member.

Proceedings before the ECtHR concern, among other things, the scope of the Member States' discretionary powers to restrict freedom of expression in matters of morality and custom (*P. v. Poland* – No. 56310/15). The judgment in the case *N.Ö. v. Turkey* (No. 24733/15) concerns a case of sexual harassment in the work context. Newly pending are proceedings on the obligation to maintain minimum service levels for teachers during strike action (*Kiss v. Hungary* – No. 8412/23).

We wish you a stimulating read and look forward to receiving your feedback at hsi@boeckler.de.

The editors
Prof Dr Martin Gruber-Risak, Prof Dr Daniel Hlava and Dr Ernesto Klengel

→ back to overview

II. Proceedings before the CJEU

Compiled and commented by

Dr Ernesto Klengel, Katharina Ruhwedel und Antonia Seeland, LLM, Hugo Sinzheimer Institute of the Hans Böckler Foundation, Frankfurt/M.

Translated from the German by Allison Felmy

1. Collective redundancy

Opinions

Opinion of Advocate General Norkus of 27 February 2025 – C-134/24 – *Tomann*

Law: Art. 4(1) Collective Redundancies Directive 98/59/EC

Keywords: Missing or incorrect collective redundancy notification – Ineffectiveness of the dismissal

Core statement: A Dismissal in the context of a collective redundancy can only terminate the employment relationship after expiry of the standstill period. In addition, the notification of collective redundancies to the competent authority cannot be made up retroactively with the effect that the dismissal becomes effective after the expiry of the standstill period. Instead, notice of dismissal must be given again after the proper collective redundancy notification and can only take effect 30 days after the notification at the earliest.

Note: The Second and Sixth Chambers of the German Federal Labour Court (BAG) are preparing a paradigm shift in interpreting collective redundancy law. In order to ensure its conformity with EU law, the Chambers have submitted various questions to the CJEU. In the present proceedings, which are pending before the Second Chamber, the core issue is the effect of the standstill period.[1]

The Advocate General justifies his opinion that a dismissal in the context of a collective redundancy can only take effect after the expiry of the standstill period at the earliest. Anything else would jeopardise the main purpose of the Directive, which is to ensure that employee representatives are consulted and the competent authority is informed prior to a collective redundancy.[2] In particular, imposing sanctions on a purely administrative level when the dismissal is fully effective would jeopardise the practical effectiveness of the Directive.[3]

The Advocate General also rightly has doubts about the concept of the Second Chamber, according to which a delayed collective redundancy notification would merely suspend the effect of the dismissal. This would provide employers with an easy way to reverse the intended sequence of collective redundancy notification and dismissal.[4] If the CJEU follows the plea, the intended change in case law would hardly be implemented in accordance with EU law.

Opinion of Advocate General Norkus of 20 March 2025 – C-249/24 – *Ineo Infracom*

Law: Arts. 1 and 2 Collective Redundancies Directive 98/59/EC

[1] For more details, see the note on the reference for a preliminary ruling in *Tomann*, HSI-Report 3/2024, p. 5 et seqq.
[2] Opinion of Advocate General Norkus of 27 February 2025 – C-134/24 – *Tomann*, para. 79.
[3] Opinion of Advocate General Norkus of 27 February 2025 – C-134/24 – *Tomann*, para. 83.
[4] Opinion of Advocate General Norkus of 27 February 2025 – C-134/24 – *Tomann*, para. 83.

Keywords: Dismissal within the meaning of the Collective Redundancies Directive – Dismissal for operational reasons – Rejection of temporary transfer by affected employees – Consultation of the works council

Core statement: Dismissals for operational reasons due to the refusal of employees to apply the provisions of a collective agreement on internal staff mobility to their employment contracts may constitute "dismissals" within the meaning of this provision. They must be taken into account when determining the threshold at which they are to be considered collective redundancies.

Informing and consulting the works council before concluding a collective agreement on internal staff mobility with representative trade unions can exempt the employers concerned from the obligation to inform and consult the employee representatives before the collective redundancies.[5]

→ back to overview

2. Data protection

Decision

Judgment of the Court (Fifth Chamber) of 13 February 2025 – C-383/23 – *ILVA*

Law: Art. 83(4) to (6) GDPR

Keywords: Term "undertaking" – Calculation of the amount of the fine for a GDPR infringement – Consideration of total turnover

Core statement: The term “undertaking” in Article 83 GDPR corresponds to the concept of “undertaking” in Articles 101 and 102 TFEU. The maximum amount of a fine imposed on a company for a GDPR infringement is therefore determined on the basis of a percentage of the company's total global annual turnover in the previous financial year.

Opinion

Opinion of Advocate General Sanchez-Bordona of 20 March 2025 – C-655/23 – *Quirin Privatbank*

Law: Arts. 17, 79, 82 GDPR

Keywords: Application procedure – Disclosure of personal data of a job applicant – Claim for injunctive relief – Compensation – Non-material damage

Core statement: A person whose personal data has been unlawfully disclosed by the controller has a claim against the controller to prevent a similar breach of data protection in the future. Member States may require proof of the risk of repetition when structuring this claim or establish a rebuttable presumption of such a risk. The fact that a claim for injunctive relief exists

[5] See also the note on the question referred by the French Cour de cassation, HSI Report 2/2024, p. 3 et seq.

is not to be taken into account when assessing the amount of non-material damage to be compensated.

→ back to overview

3. Equal treatment

Opinions

Opinion of Advocate General Ćapeta of 13 February 2025 – C-417/23 – *Slagelse Almennyttige Boligselskab, Afdeling Schackenborgvænge*

Law: Arts. 1, 2 and 3 Racial Equality Directive 2000/43/EC

Keywords: Social housing – Residential areas with a predominantly "non-Western" population – Measures to reduce social housing – Concept of "ethnic origin" – Direct or indirect discrimination

Core statement: The term "ethnic origin" according to Articles 1 and 2 of the Racial Equality Directive can also include a non-homogeneous ethnic group of persons if the criterion for categorising persons in this group is their ethnic origin.

A regulation that uses terms such as "immigrants and their descendants from non-Western countries" to categorise a residential area in which the number of public housing units is to be reduced is direct discrimination.

Note: The Danish Public Housing Act aims to promote the integration of immigrants and their descendants. Residential areas are categorised according to the socio-economic criteria of the residents and the percentage of residents from "non-Western countries". For example, in areas defined as a "parallel society", more than 50% of the residents must be "immigrants and their descendants from a non-Western country". If an area fulfils the "parallel society" criteria for five years, it is classified as a "transformation area". This means that measures must be taken to reduce the proportion of public housing units in the area. Ultimately, this is often accompanied by unilateral termination of leases, which also affects the plaintiffs in the main proceedings.

Does this legislation infringe the Racial Equality Directive because it is to be categorised as discrimination on grounds of ethnic origin? The answer to this question by the Court of Justice is of general importance for the more detailed definition of the term "ethnic origin" within the meaning of the Racial Equality Directive[6] and for the distinction between direct and indirect discrimination.

The Advocate General bases her definition of the term "ethnic origin" on the judgments in *CHEZ*[7] and *Jyske Finans.*[8] According to these judgments, "ethnicity" is used to describe persons on the basis of several common characteristics such as religion, language, cultural and traditional origin, living environment and, under certain circumstances, nationality. These characteristics are not exhaustive and do not all have to be fulfilled. In contrast to the *CHEZ* case, however, the "non-Western" persons in this case are not a homogeneously perceived ethnic group (para. 83). What this group has in common, however, is the perception of the Danish legislature that this group *does not* have the characteristics of the other group ("Western" persons). The group is thus formed by excluding "non-Western" persons from the

[6] See also CJEU of 16 July 2015 – C-83/14 – *CHEZ Razpredelenie Bulgaria*; of 6 April 2017 – C-668/15 – *Jyske Finans*.
[7] CJEU of 16 July 2015 – C-83/14.
[8] CJEU of 6 April 2017 – C-668/15.

group of "Western" persons (para. 86-89). This means that the discrimination of a group not perceived as being homogeneous could also be covered by the Racial Equality Directive, as otherwise its purpose would be undermined.

Discrimination takes place on two levels – the unilateral option to terminate tenancy agreements and the stigmatisation of an ethnic group. According to Ćapeta, both are forms of direct discrimination. On the one hand, residents in transformation areas are treated less favourably than those in comparable areas whose population is predominantly "Western", as only the former are placed in a precarious position with regard to their right to housing. The decisive factor for this treatment is solely the ethnic distinction between "Western" and "non-Western" residents.[9] Secondly, the law is based on prejudice and stereotyping, as it generalises socially reproachable characteristics, which in the view of the Danish legislature ultimately are an indication of a lack of integration, applying them to all "non-Western" persons. This perpetuates stigmatisation and exacerbates exclusion, contrary to the aim of the law.[10]

Opinion of Advocate General Rantos of 13 March 2025 – C-38/24 – *Bervidi*

Law: Art. 1, Art. 2(1) and 2(2)(b), Art. 5 Equal Treatment Framework Directive 2000/78/EC

Keywords: Child with disability – Discrimination against the carer – Reasonable accommodation – Indirect discrimination through inflexible working time models

Core statement: Employees without disabilities can directly invoke the prohibition of indirect discrimination on grounds of disability under the Equal Treatment Framework Directive when claiming to be particularly disadvantaged in the workplace due to caring for their own child with a disability. The employer is obliged to take appropriate measures – in particular with regard to the adjustment of working hours and the modification of tasks. As part of these measures, employees must be enabled to provide the child with primary care, provided this does not represent a disproportionate burden for the employer.

Note: Advocate General *Rantos* is of the opinion that Article 2(1) of the Equal Treatment Framework Directive prohibits not only direct but also indirect discrimination on the basis of association with a person who bears the respective characteristic (discrimination by association): Drawing a distinction between these forms of discrimination would call into question the internal consistency of the Directive. He cites the judgment in the *Coleman* case as confirmation of this view.[11] Although this was a case of direct discrimination by association – the employee was discriminated against by her employer because of her child's disability, whereas in the present case the discrimination against the employee caring for her child only had an indirect effect via the organisation of working time, the Court of Justice stated in its judgment that the Equal Treatment Framework Directive aims to combat all forms of discrimination and must therefore be interpreted broadly. The UN Convention on the Rights of Persons with Disabilities (CRPD), which can be used for the interpretation of the Equal Treatment Framework Directive, likewise attaches no importance to the distinction between direct and indirect discrimination. Furthermore, the purpose of the Equal Treatment Framework Directive is to effectively realise the principle of equal treatment. There can be no real protection against discrimination in the workplace if action is not also taken against both forms of discrimination. The Equal Treatment Framework Directive can only be fully effective if it protects both the child with a disability and their carer in their professional context. The Advocate General also cites the case law of the Court of Justice in the *CHEZ* case[12] to support

[9] CJEU of 16 July 2015 – C-83/14 – *CHEZ Razpredelenie Bulgaria,* paras. 76, 95.

[10] UN Committee on the Elimination of Racial Discrimination, Concluding observations on the twenty-second to twenty-fourth periodic reports of Denmark, 2022, CERD/C/DNK/CO/22-24, paras. 10-12; Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of Denmark, E/C.12/DNK/CO/6, paras. 51 et seq.

[11] CJEU of 17 July 2008 – C-303/06 – *Coleman*, para. 43.

[12] CJEU of 16 July 2015 – C-83/14 – *CHEZ Razpredelenie Bulgaria*.

his argument. Although the case focused on the Racial Equality Directive 2000/43/EC and thus racial discrimination, the CJEU affirmed indirect discrimination by association in this context.

According to the Advocate General, Article 5 of the Equal Treatment Framework Directive is also applicable to indirect discrimination by association: The reasonable accommodation that the employer can make to adapt the workplace of a non-disabled carer includes, in particular, the organisation of working hours or the distribution of tasks. For the Advocate General, the introduction of an inflexible working time model is a typical example of a measure that can have indirect discriminatory effect.

If the CJEU were to agree with the Advocate General's opinion, this would have far-reaching consequences for German law, for example in the interpretation of Sections 1 and 7 of the Equal Treatment Act (AGG) as well as Section 19a of Book IV, Section 33c of Book I, and Section 164(2) of Book IX of the Social Code (SGB). In addition, the obligations of employers in cases of indirect discrimination by association would be defined more specifically.[13]

→ back to overview

4. Freedom of association

New pending case

Reference for a preliminary ruling from the Órgano Administrativo de Recursos Contractuales de la Comunidad Autónoma de Euskadi (Spain) lodged on 14 March 2024 – C-210/24 – *AESTE*

Law: Art. 67 Public Procurement Directive 2014/24/EU; Posting of Workers Directive 96/71/EC; Art. 56 TFEU; Art. 28 EU Charter of Fundamental Rights

Keyords: Public contracts – Award criteria – Criterion of the most economically advantageous tender – Right to collective bargaining and action – Freedom to provide services – Home care service

Note: The referring court asks whether a specific award criterion for the award of a public contract for the provision of home care services is suitable for determining the most economically advantageous tender within the meaning of Article 67 of the Public Procurement Directive. The criterion stipulates that a bidding company that proposes an increase in the total payroll cost in excess of the applicable sectoral collective agreement will be favourably considered. It also requires the successful bidder, following collective bargaining, to specify which form the pay increase is to take and to endeavour to conclude a collective agreement applicable to the staff assigned to the contract. Does such a criterion conflict with the freedom to provide services, the Public Procurement Directive or the Posting of Workers Directive? Does it violate the right to collective bargaining under Article 28 EU CFR?

→ back to overview

[13] On employers' obligations in the framework of Art. 5 Directive 2000/78/EC, see *Brose*, EuZA 2020, 157.

5. General matters

Decisions

Judgment of the General Court (Tenth Chamber) of 26 February 2025 – T-1076/23 – *Bowles and Others v. ECB*

Law: Art. 13 of the ECB Conditions of Employment

Keywords: ECB staff – Annual salary adjustment – Calculation method

Core statement: The objections raised by the plaintiffs against the application of the ECB's "General Salary Adjustment Methodology" do not prevail.

Note: In accordance with Article 13 of the Conditions of Employment of the European Central Bank (ECB), which are issued by the ECB unilaterally and without staff participation, the Governing Council of the ECB, acting on a proposal from the Executive Board, adopts a methodology to determine the level of salary adjustments for ECB employees ("General Salary Adjustment Methodology"). This takes effect on 1 January of each year. The plaintiffs, employees of the ECB, have been referred to the European Court of Justice in Luxembourg for legal action. They criticised several errors in the application of the methodology for 2023, which the General Court did not share.

Judgment of the Court (First Chamber) of 6 March 25 – C-575/23 – *ONB*

Law*:* Art. 2, Art. 3(2), Arts. 18 to 23 Copyright Directive 2001/29/EC; Arts. 7 to 9 Rental and Lending Directive 2006/115/EC

Keywords: Intellectual property – Copyright and related rights – Orchestra musicians – Principle of fair and proportionate remuneration – Automatic transfer of related rights to employers

Core statement: Related rights acquired in the course of their employment by performers whose employment relationship is based on administrative law cannot be assigned to the employer by way of a legislative act without the performers' consent.

Note: Orchestra musicians legally acquire related rights to the performances they provide in the course of their employment (cf. Art. 3(2) Copyright Directive, Secs. 73 et seqq. German Copyright Act). Under Belgian law, neighbouring rights of employees engaged under an administrative law statute are assigned to the employer without the prior consent of the performer by means of a legislative act. This provision is not in line with the rules of the Copyright Directive that apply to performers, as the CJEU has now ruled.

In German law, when an employment contract stipulates the creation of works,[14] it is assumed that employees are obliged to grant the employer the copyright in these works by virtue of an agreement (which may be tacit). Depending on the circumstances, the corresponding remuneration may be included in the salary.[15] The new CJEU case law raises the question of whether the assumption of a tacit agreement to transfer rights to the employer can be upheld.

New pending case

[14] *Becker*, in: Deinert/Wenckebach/Zwanziger, Handbuch Arbeitsrecht, § 57 marg. No. 80.
[15] *Becker*, in: Deinert/Wenckebach/Zwanziger, Handbuch Arbeitsrecht, § 57 marg. No. 82.

Action brought on 17 January 2025 by the Commission – C-25/25 – *Commission v. Republic of Bulgaria*

Law: Art. 16 Services Directive 2006/123/EC; Art. 56 TFEU

Keywords: Cross-border provision of social services – Maximum duration

Note: The Commission claims that the Republic of Bulgaria unlawfully restricts the freedom to provide services under Article 16 of the Services Directive and Articles 56 and 57 TFEU by enacting the Social Services Act, and therefore it is initiating infringement proceedings. The Act stipulates a maximum duration of six months per year for the temporary cross-border provision of social services by providers based in another Member State or in the European Economic Area. If the providers wish to continue providing social services there after this period, they are obliged to establish themselves on Bulgarian territory, which requires the granting of a license in accordance with Bulgarian legislation.

→ back to overview

6. Minimum wage

Opinion

Opinion of Advocate General Emiliou of 14 January 2025 – C-19/23 – *Denmark v. Parliament and Council*

Law: Arts. 4, 5 Minimum Wage Directive (EU) 2022/2041; Art. 153(5) TFEU

Keywords: Action for annulment – Adequate minimum wages in the EU – Action plans to promote collective bargaining – Competence of the EU for regulations on "pay" and "right of association" – Procedure for determining adequate minimum wages – Partial annulment of the Directive

Core statement: In the Advocate General's view, the EU's Minimum Wage Directive must be declared null and void in its entirety, as its regulatory content falls under the areas excluded from the EU's legislative competence, pay and the right of association, set out in Article 153(5) TFEU. It therefore violates the principle of conferral laid down in Article 5(2) TEU.

Note: Denmark and Sweden have filed an action seeking annulment of the EU Minimum Wage Directive.[16] The Minimum Wage Directive seeks to "improv[e] living and working conditions in the Union, in particular the adequacy of minimum wages for workers in order to contribute to upward social convergence and reduce wage inequality" (Art. 1 Minimum Wage Directive). At its core, it contains two regulations: if the coverage rate of collective agreements in a Member State is less than 80%, national action plans must be developed to increase this (Art. 4 Minimum Wage Directive). In addition, those Member States that set minimum wages at national level must include at least the following criteria: "the purchasing power of statutory minimum wages, taking into account the cost of living", "the general level of wages and their distribution", "the growth rate of wages" and "long-term national productivity levels and developments" (Art. 5(2) Minimum Wage Directive). Finally, the assessment of the appropriateness of statutory minimum wages should be based on certain reference values (Art. 5(4) Minimum Wage Directive).

[16] More details on the actions filed can be found in *Franzen*, EuZA 2023, 361 et seq. and HSI-Report 3/2023, p. 9 et seqq.

Advocate General *Emiliou's* opinion is a bombshell: he agrees with the plaintiffs' arguments and proposes the complete annulment of the Minimum Wage Directive on the grounds of incompatibility with Article 153(5) TFEU and violation of the principle of conferral pursuant to Article 5(2) TEU. The exclusion regarding pay encompasses all aspects of wage-setting – including the framework conditions for fixing the level of pay. However, the exemption provision for the right of "coalitions" is not affected.

However, his argument regarding the regulatory effect in relation to pay fails to recognise the scope of this exception and is not convincing on legal grounds.[17] The regulatory effect of the Minimum Wage Directive is – to put it cautiously – very limited, historically probably not least due to the question of competence of the EU. It only concerns criteria for determining the level of minimum wages – how they are applied and what weight they have is left to the Member States. In particular, a specific level of pay cannot be derived from the Directive. Wage-setting is therefore still primarily the responsibility of the coalitions. Therefore, contrary to the Advocate General's assumption, this component of the Minimum Wage Directive is not covered by the exemption provision of Article 153(5) TFEU.

The obligation to submit action plans to promote collective bargaining also has no direct regulatory effect on pay or coalitions. The exemption provision of Article 153(5) TFEU must also be interpreted in light of the social dimension of Union law. Freedom of association is part of the European social order and is enshrined in Article 12(1) and Article 28 EU CFR. The EU therefore also has a constitutional mandate to ensure the actual functional conditions of collective labour relations without, however, being able to shape them itself. Article 5 of the Minimum Wage Directive does justice to this. It neither interferes with the freedom of association itself nor with the competence of the Member States to organise it. In the course of the austerity policy in the years after 2010, the EU initiated cuts to collective rights in various legal systems of southern European states, whereby the restriction of competences for pay and coalitions was not an obstacle.[18] Now it is taking the path of minimum harmonisation of social and collective rights, which is inextricably linked to the creation of the European Single Market according to the concept of the basic treaties.

→ back to overview

7. Professional law

Decisions

Order of the General Court (Third Chamber) of 3 February 2025 – T-1126/23 – *Asociația Inițiativa pentru Justiție v. Commission*

Law: Art. 263(4) TFEU; Art. 47 EU Charter of Fundamental Rights

Keywords: Professional association of public prosecutors – Admissibility of an action for annulment – Standing to sue – Judicial reform – Fight against corruption

[17] See the analysis of the Opinion of the Attorney General by *Langbein* in the A&W blog of 3 March 2025: Steht die EU-Mindestlohnrichtlinie vor dem Aus?, https://www.awblog.at/Europa/EU-Mindestlohnrichtlinie-vor-dem-Aus; for more details on the question of competence see *Ahmed/Streuter*, AuR 2024, 281; *Eichenhofer*, AuR 2021, 148; *Kovács*, SR 2023, 70, 73 et seq.; *Sagan/Witschen/Schneider*, ZESAR 2021, 103 et seq.

[18] On the consequences, see for example *Heinlein,* AuR 2016, 453 using the example of Spain; *Schiek/Zahn*, Europäisches Arbeitsrecht, 4th ed. 2025, marg. No. 82; on the CJEU's assessment of austerity policy measures, e.g. *Farahat/Krenn*, Der Staat 2018, 357 et seqq.

Core statement: The subject of the underlying complaint was the Commission's decision to terminate the Cooperation and Verification Mechanism (CVM). The aim of the CVM was to monitor judicial reform and the fight against corruption in Romania. A professional association of Romanian public prosecutors brought an action against the cancellation decision, arguing that this would expose them to more unlawful disciplinary proceedings. The action was dismissed as inadmissible as the CJEU did not consider the association to be authorised to bring an action – it was not directly affected by the subject matter of the action.

Judgment of the Court (Grand Chamber) of 25 February 2025 – C-146/23 – *Sąd Rejonowy w Białymstoku*

Law: Art. 19(1) subpara. 2 in conjunction with Art. 2 TEU; Art. 47 EU Charter of Fundamental Rights

Keywords: Principle of judicial independence – Determination of the remuneration of judges – Powers of the legislative and executive branches

Core statement: The remuneration of judges must fulfil certain requirements as a guarantee of judicial independence: Its determination must have a legal basis and be objective, predictable, stable and transparent. It must also be sufficiently high, depending on the socio-economic context and the average salary in the respective Member State. Any deviation from these requirements must be justified by a public interest objective and must be necessary, proportionate and temporary.

Judgment of the Court (Third Chamber) of 27 February 2025 – C-674/23 – *AEON NEPREMIČNINE and Others*

Law: Art. 15(2) and (3) Services Directive 2006/123/EC; Arts. 16 and 38 EU Charter of Fundamental Rights

Keywords: Real estate brokerage – National commission cap – Freedom to provide services – Entrepreneurial freedom – Consumer protection – Proportionality

Core statement: The cap on commissions for real estate agents acting on behalf of natural persons at 4% of the purchase price or one month's rent is generally compatible with EU law. However, this regulation must be proportionate within the meaning of Article 15(3) lit. c of the Services Directive.

→ back to overview

8. Social security

Decisions

Judgment of the Court (Fifth Chamber) of 16 January 2025 – C-277/23 – *Ministarstvo financija*

Law: Arts. 20, 21, 165(2) second indent TFEU

Keywords: Freedom of movement for educational purposes – Basic tax-free allowance for a dependent child – Participation of the child in the Erasmus+ programme – Granting of a mobility allowance – Taxation of the mobility allowance – Tax disadvantages

Core statement: If a dependent child participates in the Erasmus+ programme and receives a mobility allowance as part of this programme, this financial support may not be taken into account when calculating the basic income tax allowance to which a taxable parent is entitled for this child, which may result in the loss of the entitlement to an increase in this allowance.

Judgment of the Court (Seventh Chamber) of 23 January 2025 – C-421/23 – *ONSS*

Law: Art. 76(6) Coordination Regulation (EC) 883/2004

Keywords: Posted workers – False A1 certificates – Obligation to conduct a dialogue and conciliation procedure

Core statement: The provisions of the Coordination Regulation also apply if it is undisputed between the parties involved that the A1 certificate in question is false. The dialogue and conciliation procedure between the institutions involved must also be carried out in the context of criminal proceedings against the employer for the use of falsified A1 certificates.

Note: Posted workers are integrated into the social security system in only one Member State. The Coordination Regulation defines which social security system the workers are assigned to. It applies regardless of whether an A1 certificate has been issued in the country of origin. It is therefore also applicable if the A1 certificate is indisputably falsified.

The question of whether the social insurance institutions and other authorities at the place of employment can simply disregard an undisputedly false A1 certificate – or whether they must first carry out the dialogue and conciliation procedure with the social insurance institutions of the country of origin provided for in Article 76 of the Coordination Regulation – is more difficult to assess from a legal perspective. The institutions at the place of work must then contact the institutions in the country of origin in order to clarify the validity of the A1 certificate. The Court of Justice has now clarified that the dialogue and conciliation procedure must be carried out by the authorities, but also by the courts,[19] despite the clear facts of the case.[20] However, it points out that the request can be made informally to the authorities of the country of origin. If they then confirm that the certificate does not originate from them, the authorities and courts of the host state may assume that the certificate has been falsified.

[19] See for example CJEU of 2 March 2023 – C-410/21 and -C-661/21 – *DRV Intertrans and others*, para. 59.

[20] Cf. already CJEU of 2 April 2020 – C-370/17 and C-37/18 – *CRPNPAC and Vueling Airlines*, para. 72 with further references on the case where there are indications that a certificate issued by the competent body is incorrect, with comments in HSI Report 2/2020, p. 32 et seq.; CJEU of 6 February 2018 – C-359/16 – *Altun And Others*, para. 54, with comments in HSI Newsletter 1/2018, p. 33 et seqq.

Opinion

Opinion of Advocate General de la Tour of 13 February 2024 – C-397/23 – *Jobcenter Arbeitplus Bielefeld*

Law: Arts. 18, 20, 21 TFEU; Art. 24 Free Movement Directive 2004/38/EC

Keywords: "Mobile" EU citizens – Right of residence as a prerequisite for social welfare benefits – Residence permit in the context of parental responsibilities – Differentiation depending on the nationality of the child – Discrimination

Core statement: The granting of a residence permit for "mobile" Union citizens for the purpose of exercising parental responsibility may not be made conditional on the minor unmarried child having the nationality of the host Member State, while the residence permit is refused if the child has the nationality of another Member State.

Note: In the underlying legal dispute, the Bielefeld Job Centre rejected the application for benefits under Book II of the Social Code (SGB II) from a Polish citizen who was in Germany as a job-seeking "mobile" EU citizen. In the opinion of the Job Centre, he had no right of residence due to exercising parental responsibility for his minor child because he had Polish citizenship and not German citizenship, as required by Section 28(1) No. 3 of the Residence Act. In the opinion of the Advocate General, this provision of the Residence Act violates the prohibition of discrimination on grounds of nationality pursuant to Article 18 TFEU because it links the condition for the granting of a residence permit to the (German) nationality of the child and thus favours parents of German children. In contrast to the Commission's view, the Advocate General does not consider the principle of equal treatment with nationals laid down in Article 24 of the Free Movement of Persons Directive to be applicable in this case, as the subject matter of the dispute concerns the conditions for a right of residence and not access to basic social security benefits. According to Article 24 of the Free Movement of Persons Directive, every citizen of the Union who resides in a host Member State on the basis of this Directive enjoys the same treatment as a national. The right to equal treatment also extends to family members who are not nationals of a Member State and who enjoy the right of residence or the right of permanent residence. This provision – equal treatment with nationals – can therefore only apply once the right of residence has already been recognised. This means that Article 24 of the Free Movement of Persons Directive does not apply to the right of residence.

Reference for a preliminary ruling

Reference for a preliminary ruling from the Administrativen sad Blagoevgrad (Bulgaria) lodged on 4 February 2025 – C-116/25 – *NOI-Blagoevgrad*

Law: Art. 62(1) and (2) Coordination Regulation (EC) No. 883/2004

Keywords: Unemployment benefits – Calculation on the basis of remuneration for the last period of employment – Longer required insurance period under national law – Further periods of employment not taken into account – Unequal treatment

Note: Since 12 August 2024, new modalities for determining the amount of unemployment benefits apply in Bulgaria for persons who have completed insurance periods under the law of another Member State: If foreign insurance periods were completed in the last 24 months before unemployment (the general assessment period under Bulgarian law), these must now be taken into account when determining the amount of benefits. Prior to the new regulation,

the amount of benefit was determined exclusively on the basis of income during the last employment – and thus in accordance with Article 62(1) and (2) of the Coordination Regulation. In practice, this former method of calculation can lead, on the one hand, to the amount of benefit being calculated solely on the basis of this last employment in the case of persons who worked under the law of another Member State before becoming unemployed and, on the other hand, to not all income earned during the assessment period (here 24 months) being taken into account if the last period of employment was shorter than this period. For the claimant in the main proceedings, who was employed in Spain for a few weeks before becoming unemployed, the calculation based on the new legal situation means that, in addition to the Spanish income, the income previously earned in Bulgaria must also be taken into account. This reduces the amount of benefits. On the other hand, the referring court points out that there could be unequal treatment of persons with periods of employment exclusively under Bulgarian law and those who have also completed periods of employment under the law of another Member State. Against this background, it wishes to have the conformity of the new provision with EU law examined.

→ back to overview

9. Temporary work

New pending case

Reference for a preliminary ruling from the Federal Labour Court (Germany) dated 13 February 2025 – C-136/25 – *Pemak*

Law: Art. 1(1), Art. 3(1)(d) and Art. 5(5) Temporary Agency Work Directive 2008/104/EC

Keywords: Transfer of business between group companies – Transferor and transferee as one borrowing company – Concretisation of the term "temporary"

Note: In the present proceedings, the focus is on the interpretation of the maximum assignment period in accordance with EU law pursuant to Section 9(1)(1b) in conjunction with Section 10 of the Act on Temporary Agency Work (AÜG). Is it to be calculated based on the establishment or the whole company?

In the underlying case, the transferor of the business and the transferee belong to the same group of companies. The temporary worker, who was deployed in the same workplace before and after the transfer of business, claims that an employment relationship between him and the user undertaking is deemed to exist because the maximum duration of the assignment has been exceeded. This depends on whether the transferor and transferee are to be regarded as one and the same user undertaking within the meaning of Article 3 of the Temporary Agency Work Directive. The BAG has referred this fundamental question to the CJEU: If the Court answers in the affirmative, Section 1(1b) AÜG would have to be interpreted in such a way that the deployment periods of the temporary workers before and after the transfer of business are to be added together.

The second question referred to the CJEU relates to the particular constellation of the present case, in which the transferor and the transferee of the business belong to the same group and the temporary worker was continuously deployed in the same workplace. Are – at least in this case – the transferor and the transferee to be regarded as the same undertaking within the meaning of Article 3 of the Temporary Agency Work Directive? Here, the BAG refers to the

Albron Catering judgment,[21] in which the CJEU considered the user undertaking to be the employer and assumed that the transferee of the business could take on the position of the user undertaking – and thus be regarded as the employer. In the event that the CJEU answers the first two questions in the negative, the BAG wishes to have the question clarified as to whether and in what way the misuse control pursuant to Article 5(5) Temporary Agency Work Directive is to be taken into account and whether the above-described constellation of assignment is an misuse of rights.

→ back to overview

10. Whistleblowing

Infringement proceedings

Judgments of the Court of Justice (Sixth Chamber) of 6 March 2025 – C-149/23 to C-155/23 – *Commission v. Germany*; *Luxembourg*; *Czech Republic*; *Estonia*; *Hungary*

Law: Arts. 258, 260(3) TFEU; Art. 26(1) and (3) Whistleblower Directive (EU) 2019/1937

Keywords: Failure to transpose and to communicate transposition measures – Financial penalties – Level of penalties

Core statement: Germany, Luxembourg, the Czech Republic, Estonia and Hungary are condemned for failing to transpose, or to transpose in a timely manner, the Whistleblower Directive. Germany did not transpose the Whistleblower Directive into national law at federal level until 2023 through the Whistleblower Protection Act (Hinweisgeberschutzgesetz).[22] The implementation of Article 8(1) and (9), which concerns internal reporting channels within local authorities, took place even later in the state laws. However, the transposition deadline and an extension of this deadline had already expired on 17 December 2021 and 15 December 2022, respectively. The justifications put forward by Germany – including lengthy discussions about an excessive material scope of application, economic effects and the reference to the external reporting offices introduced at federal level – cannot be invoked, as the two-year transposition period is to be regarded as sufficient and internal reporting channels are of particular importance for preventing violations of Union law. The states mentioned are ordered to pay lump sums of varying amounts; Estonia is also ordered to pay a daily penalty payment. The lump sum to be paid by Germany amounts to €34,000,000.

→ back to overview

[21] CJEU of 21 October 2010 – C-242/09 – *Albron Catering*; for more details on this and the consequences for cases of intra-group transfers, see *Winter*, in: Franzen/Gallner/Oetker, Kommentar zum Europäischen Arbeitsrecht, 5th ed. 2024, Art. 2 Directive 2001/23/EC, marg. No. 12.

[22] Federal Law Gazette I No. 140 2023.

III. Proceedings before the ECtHR

Compiled and commented by Karsten Jessolat, DGB Rechtsschutz GmbH, Gewerkschaftliches Centrum für Revision und Europäisches Recht, Kassel

1. Freedom of association

New proceedings (notified to the respective government)

No. 8412/23 – *Kiss v. Hungary* (Second section) – lodged on 31 January 2023 – communicated on 29 January 2025

Law: Art. 11 ECHR (freedom of assembly and association)

Keywords: Implementation of strike action – Maintenance of minimum services – Legal intervention in the right to strike

Note: The complainant is a teacher at a school in Budapest. On 31 January 2022, she took part in the organisation of a nationwide teachers' strike as a member of a strike committee. On 2 October 2022, she took part in a strike for two hours of the school day. She also took part in strikes and civil disobedience actions as well as a solidarity campaign on six other days.

In May 2022, the Hungarian parliament passed a law stipulating that minimum services must be maintained during strikes in the education sector. This means that teachers are effectively no longer able to take part in strikes.

The complainant filed a constitutional complaint in September 2022 seeking to have the law repealed. This was declared inadmissible.

Before the Court, the complainant argued that the law constituted a disproportionate interference with her right to strike while not pursuing a legitimate aim. This violates Article 11 ECHR and Article 18 ECHR.

The Court will have to examine a purported violation of Article 11 ECHR against the standards of its previous case law,[23] in particular whether the statutory restriction of the right to strike violates Article 18 ECHR.[24]

No. 63413/16 – *Abbagnano and Others v. Italy* (First Section) – lodged on 10 March 2025

Law: Art. 11 ECHR (freedom of assembly and association); Art. 13 ECHR (right to an effective remedy); Art. 6 ECHR (right to a fair trial)

Keywords: Prevention of collective bargaining – Reduction in public spending – Unconstitutionality of a law

Note: The complainants are 8,924 healthcare workers who are members of a trade union, 106 municipal employees and a Chamber of Commerce official. In 2010, a law was passed in Italy to reduce public spending, which provided for a temporary suspension of collective bargaining with the trade unions. In addition, wages and salaries were frozen from 2010 to 2015. In a judgment dated 24 June 2015, the Constitutional Court ruled that the wage freeze did not

[23] ECtHR of 8 April 2014 – No. 31045/10 – *National Union of Rail, Maritime and Transport Workers v. United Kingdom*.
[24] ECtHR of 19 October 2021 – No. 40072/13 – *Todorova v. Bulgaria*.

violate the principle of proportionality, as it was an appropriate measure to reduce public spending during the financial crisis. The suspension of collective bargaining imposed by the law, in contrast, was declared unconstitutional. However, it is up to the legislature to take the necessary measures to pave the way for collective bargaining. The Italian legislature has not yet taken action; for the years 2016 and 2018 no collective bargaining negotiations were held. Several Italian courts have pointed out the unconstitutional situation in their rulings and ordered the government to resume collective bargaining, but this has so far come to nothing.

In particular, the complaint asserts that a law that has been declared unconstitutional disproportionately interferes with the freedom of association.[25] In addition, this could also violate Article 1 of Protocol No. 1.[26] Furthermore, the Court will have to examine the question of whether employees who do not belong to a trade union are authorised to lodge a complaint.

→ back to overview

2. Freedom of speech

Decision

Judgment (First Section) of 13 February 2025 – No. 56310/15 – *P. v. Poland*

Law: Art. 10 ECHR (Freedom of expression)

Keywords: Dismissal of a teacher – Writing an internet blog with sexual content – National code of ethics

Core statement: In the absence of a uniform European standard on questions of morality, the national authorities and courts have a margin of discretion with regard to the restriction of freedom of expression, whereby the existence of an urgent social need must be demonstrated to justify an intervention.

Notes: The complainant was employed as a teacher at a secondary school in *Koszalin* from 2007 to 2013. He is homosexual, which had been known to the school principal for some time. He was judged to be a very good teacher. No reprimands or complaints were ever made against him.

In June 2013, the complainant took his partner with him on two school trips. On the basis of a regulation issued by the Minister of Education and the established practice of the school where the complainant was employed, it was forbidden to take external persons on school trips without the authorisation of the school principal.

In the period from April to July 2013, the complainant published several posts relating to his sexual orientation in a public blog on a website on which photos and texts with explicit sexual content were published.

After the school principal became aware of this, she initiated disciplinary proceedings against the complainant with the competent disciplinary authority, which were based on the accusation that he had taken his partner with him as an accompanying person on school trips without

[25] ECtHR of 14 December 2023 – Nos. 59433/18, 59477/18, 59481/18 and 59494/18 – *Humpert and others v. Germany*; ECtHR of 12 November 2008 – No. 34503/97 – *Demir and Baykara v. Turkey.*

[26] ECtHR of 13 12.2016 – No. 53080/13 – *Béláné Nagy v. Hungary*; ECtHR of 29 November 1991 – No. 12742/87 – *Pine Valley Developments Ltd v. Ireland*.

authorisation. Secondly, he was accused of participating in an internet blog that contained texts and images with obscene content, which led to the assumption that the complainant was not morally suitable to teach pupils.

After an oral hearing, the disciplinary commission found that the complainant had proven himself “unworthy of the teaching profession” due to the violations of rules he had committed and ordered his dismissal from the teaching profession. In response to the appeal lodged against the disciplinary order, the Appeals Commission initially discontinued the disciplinary proceedings. The appeal by the Ministry of National Education led to the cancellation of the decision and the dismissal of the complainant from the teaching profession. No further legal remedy against this decision was provided for.

The complaint alleges a violation of Article 8 ECHR in conjunction with Article 14 ECHR. In this respect, the complainant is of the opinion that the disciplinary measure interferes with his private life, which is protected by the Convention, in a discriminatory manner due to his sexual orientation and his relationship with a same-sex partner. The complainant also claims that the dismissal from the teaching profession violated his right to freedom of expression under Article 10 ECHR.

With reference to its previous case law,[27] the Court again points out that the area of the employment relationship can also fall under the term "private life" within the meaning of Article 8 ECHR. Both the reasons for the contested measure and its consequences can have an impact on the private life of the person concerned.[28] It is true that the private sphere protected by Article 8 ECHR can affect a person's sexual life regardless of their sexual orientation. However, there are no indications of this from the facts established by the Court in the present case. In particular, it was not apparent that the disciplinary measure was related to the complainant's homosexuality and that he was discriminated against for this reason. Rather, the dismissal from the school service was justified on the one hand by breaches of duty in connection with the organisation of school trips and on the other hand by the content of his texts published on the internet blog. Therefore, Article 8 ECHR in conjunction with Article 14 ECHR did not apply to the present case.

Insofar as the complaint is based on a violation of Article 10 ECHR, the Court finds that the complainant was obliged under domestic law to adhere to fundamental moral principles in order to protect the pupils he taught. Although freedom of expression is one of the essential foundations of a democratic society, statements with offensive, shocking or disturbing content are excluded from the protection of Article 10 ECHR.[29] The Court recognises that, in the view of the domestic authorities and courts, the complainant's blog posts violated the prevailing moral standards in Poland. However, it is not possible to find a uniform European code of morality in the legal and social systems of the Council of Europe Member States, as the perception of their requirements depends on time and place and is characterised by profound differences of opinion on the subject.[30] For this reason, national authorities and courts have a greater margin of appreciation in the scope of freedom of expression with regard to people's ideas on morality, because they have a more detailed knowledge of the values prevailing in their country than international courts.[31] However, in the event of an interference with the right to freedom of expression, the state bodies must demonstrate in detail the pressing social needs invoked to justify it. [32]

---

[27] ECtHR of 12 June 2024 – No. 56030/07 – *Fernández Martínez v. Spain*; ECtHR of 17 December 2020 – No. 73544/14 – *Mile Novaković v. Croatia*; ECtHR of 25 September 2018 – No. 76639/11 – *Denisov v. Ukraine*.

[28] ECtHR of 25 September 2018 – No. 76639/11 – *Denisov v. Ukraine.*

[29] ECtHR of 27 June 2017 – No. 17224/11 – *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina*.

[30] ECtHR of 10 September 2019 – No. 25047/05 – *Pryanishnikov v. Russia*.

[31] ECtHR of 7 July 2022 – No. 81292/17 – *Chocholáč v. Slovakia*; ECtHR of 22 November 2016 – No. 4982/07 – *Kaos GL v. Turkey*; ECtHR of 24 May 1988 – No. 10737/84 – *Müller and others v. Switzerland*.

[32] ECtHR of 30/06/2015 – No. 41418/04 – *Khoroshenko v. Russia*.

On this basis, the Court concludes that, according to the findings of the national courts, the applicant's behaviour was contrary to the prevailing moral standards in Poland. However, the applicant's behaviour was not related to the performance of his duties as a teacher. In particular, the disciplinary proceedings were not triggered by the intervention of pupils or parents because the latter feared for the moral integrity of their children. It should also be noted that the applicant's behaviour was not considered unlawful, especially as no civil or criminal proceedings had been brought against him. The Court recognises that teachers exercise a profession that fulfils an important public task and that they therefore enjoy a high level of trust. The associated special duties and responsibilities therefore also apply to a certain extent to extracurricular behaviour. However, it must be taken into account in the present case that, according to the findings of the domestic authorities and courts, the complainant did not attempt to influence the moral and civic attitudes of his pupils, either within or outside the classroom. Taking these circumstances into account, the Court considers the disciplinary measure imposed on the complainant to be disproportionate, particularly in view of the complainant's very good performance as a teacher and his previously unobjectionable behaviour.

The Court therefore found a violation of Article 10 ECHR by four votes to three and ordered the defendant government to pay compensation in the amount of € 2,600.

In a joint dissenting opinion, Judges Poláčková, Wojtyczek and Paczolay took the view that there was no violation of Article 10 ECHR, as the disciplinary measure imposed on the complainant could not be considered disproportionate.

→ back to overview

3. Procedural law

Decisions

Judgment (Fifth section) of 9 January 2025 – No. 21766/22 – *Cavca v. Republic of Moldova*

Law: Art. 6 ECHR (right to a fair trial)

Keywords: Disciplinary proceedings against a civil servant – Allegation of corruption – Verification of integrity through undercover investigations

Core statement: Establishing the professional integrity of public officials through covert investigations is in itself compatible with Article 6 ECHR if domestic law provides for the possibility of having the planning, conduct and assessment of such an investigation reviewed by the courts in adversarial proceedings.

Note: The complainant was the head of a subdivision of the State Environmental Protection Inspectorate (EPI). He had not previously been the subject of disciplinary action. In 2019, the National Anti-Corruption Agency (NAC) initiated a procedure to check the professional integrity of EPI employees. The aim of the random checks, which were carried out undercover, was to identify cases of corruption.

In the course of this inspection, the complainant was made aware of the illegal felling of trees by an undercover NAC investigator. The alleged offender offered the complainant the chainsaw as a bribe, which he accepted.

As a result of this incident, disciplinary proceedings were initiated against the complainant, which ended with his dismissal from the service. As part of the judicial review of the disciplinary order, the complainant argued that he had been incited by the undercover investigator to commit a criminal offence. The claim was dismissed on the grounds that the plaintiff had been convicted of an act of corruption. Further appeals against this decision were unsuccessful.

The complainant alleges a violation of Article 6 ECHR, as he was lured into a trap by the undercover investigator and thus incited to commit a criminal offence. This procedure is contrary to the right to a fair trial.

With regard to the admissibility of the complaint, the Court points out that the disciplinary proceedings against the complainant do not concern a criminal charge within the meaning of Article 6 ECHR and that the standard is therefore only applicable to the civil law part of the case.[33]

Firstly, the Court points out the great difficulties faced by public authorities in investigating corruption. It further stresses that corruption has become a major problem in many Member States of the Council of Europe, necessitating the use of special investigative techniques. Under these circumstances, the use of covert investigation methods cannot in itself violate the right to a fair trial, although their use must be kept within clear limits due to the risk of inciting criminal offences.[34]

In the present case, the Court first states that the guarantees applicable to criminal proceedings with regard to the use of an *agent provocateur* may also be relevant in disciplinary proceedings leading to dismissal from the service.[35] It must then be examined whether a provocation actually took place and whether it was still a legitimate means or already an incitement to commit a criminal offence.[36] It must also be considered whether pressure was exerted on the alleged perpetrators to commit a criminal offence. In any case, it is up to the state authorities to prove that there was no incitement to commit a criminal offence, but that the measures were a legitimate form of covert investigation. In any case, the ordering of covert investigative measures and their surveillance must be based on a constitutional procedure that is open to judicial review.[37]

Applying these principles, the Court concludes that in the disciplinary proceedings in which his dismissal from service was decided, the complainant expressly pointed out that he had been lured into an ambush and thus provoked into committing the offence. However, the national courts did not pursue this objection and therefore failed to review whether this action was still a legitimate undercover investigation or already an incitement to commit a criminal offence. As a result, the guarantees of a fair trial were not observed.

For this reason, the ECtHR unanimously found a violation of Article 6 ECHR and considered this finding to be sufficient just satisfaction for the applicant.

Judgment (Fifth Section) of 9 January 2025 – No. 38127/22 – *Zafferani and Others v. San Marino*

Law: Art. 6 ECHR (right to a fair trial)

[33] ECtHR of 9 February 2021 – No. 15227/19 – *Xhoxhaj v. Albania*; ECtHR of 28 January 2020 – No. 30226/10 – *Ali Rıza and others v. Turkey*; ECtHR of 6 November 2018 – Nos. 55391/13, 57728/13 and 74041/13 – *Ramos Nunes de Carvalho e Sá v. Portugal*.

[34] ECtHR of 5 February 2008 – No. 74420/01 – *Ramanauskas v. Lithuania*.

[35] ECtHR of 17 October 2019 – Nos. 1874/13 and 8567/13 – *López Ribalda and Others v. Spain*.

[36] ECtHR of 15 October 2020 – No. 40495/15 – *Akbay and others v. Germany*; ECtHR of 4 November 2010 – No. 18757/06 – *Bannikova v. Russia*.

[37] ECtHR of 4 April 2017 – No. 2742/12 – *Matanović v. Croatia*; ECtHR of 5 February 2008 – No. 74420/01 – *Ramanauskas v. Lithuania*; ECtHR of 27 October 2004 – Nos. 39647/98 and 40461/98 – *Edwards and Lewis v. United Kingdom*.

Keywords: Recognition of periods of service – Retroactive amendment to the law – Interference in pending court proceedings

Core statement: If the amendment of a law affects the outcome of a pending legal dispute, there must be compelling reasons in the public interest for an immediate and retroactive application of the amended legal provisions so that they can have an effect on the proceedings that have not yet been decided.

Note: The seven complainants are officers of the Uniformed Unit of the Fortress Guard (*Nucleo Uniformato della Guardia di Rocca*), a military organisation of San Marino. They were recruited between 2006 and 2008 and, after a successful one-year probationary period, were offered permanent employment. This should also have been linked to promotion to a higher career. In fact, the employment relationships of the complainants were only recognised as permanent employment relationships in January 2016. On the basis of a law from 2015, they then applied for the retroactive adjustment of their career path for the period from the start of the permanent employment relationship, as determined after the end of the probationary period. The claims asserted amounted to approximately €25,000 to €50,000. The law was amended in July 2016, after the complainants had submitted their applications, to the effect that all economic benefits resulting from the retroactive career adjustment only began to run from 1 February 2016. As a result, the complainants' claims were rejected in November 2018. Appeals against this were unsuccessful before the national courts.

The complainants are of the opinion that the state has interfered in pending court proceedings due to the change in the law in July 2016 in order to bring about a favourable outcome for itself. This constitutes an inadmissible violation of Article 6 ECHR.

With regard to the admissibility of the complaint, the Court points out that both labour disputes between private parties and legal disputes between civil servants and the state as employer relating to property claims fall within the scope of Article 6 ECHR. [38]

In principle, the state legislature is not prevented from amending the rights derived from existing provisions by means of new retroactive provisions. However, the principle of the rule of law and the principle of a fair trial in accordance with Article 6 ECHR prohibit any intervention by the legislature in the administration of justice that is likely to influence a judicial decision, unless this is justified by overriding reasons in the public interest.[39] Respect for the rule of law and the principle of a fair trial require that the reasons invoked to justify retroactive legislation must be assessed with the utmost care.[40] The settlement of legal disputes by the legislature instead of the courts cannot be justified by financial considerations.[41]

Applying these principles to the present case, the ECtHR considers the respondent government's argument that the amendment was merely intended to close an existing loophole to be unconvincing. Such a loophole could not be established. Further compelling reasons in the public interest that would justify state interference in judicial proceedings have not been presented. The legislative intervention, even if it took place during the administrative proceedings and not only during the judicial dispute, led to the legislature influencing the subsequent judicial decision, in which the state and the complainant were involved.

[38] ECtHR of 19 April 2007 – No. 63235/00 – *Vilho Eskelinen and Others v. Finland*.

[39] ECtHR of 16 March 2021 – No. 45187/12 – *Hussein and Others v. Belgium*; ECtHR of 2 April 2019 – No. 37766/05 – *Dimopulos v. Turkey*; ECtHR of 29 March 2006 – No. 36813/97 – *Scordino v. Italy*; ECtHR of 9 December 1994 – No. 13427/87 – *Stran Greek Refineries and Stratis Andreadis v. Greece*; ECtHR of 28 October 1990 -Nos. 24846/94, 34165/96, 34166/96 and others *- Zielinski, Pradal, Gonzalez and Others v. France*.

[40] ECtHR of 3 November 2022 – No. 49812/09 *- Vegotex International S.A. v. Belgium*; ECtHR of 31 May 2011 – Nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08 – *Maggio and Others v. Italy*.

[41] ECtHR of 24/06/2014 – Nos. 48357/07, 52677/07, 52687/07 and 52701/07 – *Azienda Agricola Silverfunghi S.a.s. and Others v. Italy*; ECtHR of 29/03/2006 – No. 36813/97 – *Scordino v. Italy*.

The Court therefore unanimously recognised a violation of Article 6 ECHR. The complainants were each awarded compensation of between € 2,250 and € 5,300.

Judgment (Fifth Section) of 23 January 2025 – No. 20140/23 – *Suren Antonyan v. Armenia*

Law: Art. 6 ECHR (right to a fair trial)

Keywords: Dismissal of a judge – Independence of a disciplinary commission – Access to a court

Core statement: The impartiality of a court must be determined by subjective criteria, namely the personal conviction and behaviour of a judge, whereby objective facts must be examined to determine whether the court offers sufficient guarantees to exclude any reasonable doubt as to impartiality.

Note: The complainant was a judge of a civil and administrative chamber at the Court of Appeal. In this capacity, he was involved in a decision that was later the subject of the *Amirkhanyan v. Turkey* case pending before the Court,[42] which found a violation of Article 6 ECHR in conjunction with Article 1 Protocol No. 1. For this reason, disciplinary proceedings were initiated against the complainant on the grounds that he had violated both domestic law and the ECHR by overturning a final court decision. In January 2023, the complainant was removed from office by the Supreme Judicial Council (SJC). There was no right of appeal against this decision.

As a state body, the SJC is exclusively responsible for deciding on disciplinary measures against judges. Its five judicial and five non-judicial members are appointed for five years, with the judicial members being elected by the General Assembly of Judges and the non-judicial members by the parliamentary groups of the National Assembly.

In the disciplinary proceedings, the complainant requested the rejection of the chairman of the SJC due to concerns about bias. He claimed that he was friends with the incumbent Minister of Justice and that the wife of the chairman held shares in a local law firm together with the Minister of Justice. The application for recusal was rejected by the SJC.

With reference to Article 6 ECHR, the complainant criticises the lack of independence and impartiality of the SJC, as the non-judicial members are nominated by the legislature in a non-transparent procedure and their appointment is politically motivated. In addition, the application for recusal filed against the chairman of the SJC in the disciplinary proceedings had been rejected with insufficient justification. Finally, the complainant had had no opportunity to challenge the dismissal decision, so that he was denied the right of access to a court.

According to the case law of the ECtHR, a court within the meaning of Article 6(1) ECHR does not necessarily have to be integrated into the usual state judicial apparatus.[43] What is decisive is that it is characterised in the material sense of the word by its judicial function, that is, that it has to decide on matters that fall within its jurisdiction and has to take decisions on a case on the basis of legal norms and in accordance with a prescribed procedure.[44] Only a body that is vested with full judicial powers and acts independently of the executive and the legislature can be regarded as a court within the meaning of Article 6(1) ECHR.[45]

---

[42] ECtHR of 3 December 2015 – No. 22343/08 – *Amirkhanyan v. Armenia*.

[43] ECtHR of 17 January 2023 – No. 30745/18 – *Cotora v. Romania*; ECtHR of 9 March 2021 – No. 76521/12 – *Eminağaoğlu v. Turkey*; ECtHR of 9 July 2013 – No. 51160/06 – *Di Giovanni v. Italy*, ECtHR of 1 July 1997 – No. 23196/94 – *Rolf Gustafson v. Sweden*.

[44] ECtHR of 1 December 2020 – No. 26374/18 – *Guðmundur Andri Ástráðsson v. Iceland*.

[45] ECtHR of 1 December 2020 – No. 26374/18 – *Guðmundur Andri Ástráðsson v. Iceland*; ECtHR of 5 February 2009 – No. 22330/05 – *Olujić v. Croatia*.

Measured against this, the SJC is a court within the meaning of Article 6(1) ECHR, as it is responsible under national law for decisions in disciplinary proceedings against judges and acts as a court. Even if its decisions cannot be appealed against, the proceedings are nevertheless adversarial in nature.

Insofar as the complainant criticises the participation of non-judicial members in the SJC, their inclusion in a disciplinary body cannot call its independence into question.[46] The manner in which the non-judicial members are appointed does not constitute an interference with the independence of the SJC, as domestic law guarantees sufficient protection against undue influence by the legislature.

With regard to the allegation of bias on the part of the chairman of the SJC, the close relationship between the Minister of Justice and the chairman gave rise to concerns. Therefore, the grounds for refusal put forward by the complainant should have been seriously examined. Insofar as the SJC merely assumed that the lack of impartiality of one member could not call into question the impartiality of the entire body, it failed to dispel the justified doubts about the impartiality of its chairman. The complainant was therefore denied the necessary procedural guarantees.

The ECtHR therefore unanimously found a violation of Article 6(1) ECHR. The defendant government was ordered to pay € 3,600 to the applicant.

Judgment (Second Section) of 25 March 2025 – No. 61590/19 – *Onat and Others v. Turkey*

Law: Art. 6 ECHR (right to a fair trial)

Keywords: Termination of employment – Alleged connection to a terrorist organisation – Presumption of innocence

Core statement: The right to a fair trial implies the duty of national courts to examine the concerns raised by litigants with regard to the facts and legal aspects relevant to the decision and to give clear reasons for the decision on a claim.

Note: The complaints concern the termination of the employment contracts of the seven complainants due to their alleged links to a terrorist organisation. Following the attempted coup on 15 July 2016, a state of emergency was declared in Turkey. As a result, decrees issued by the Council of Ministers made it possible to terminate employment contracts solely on the grounds that the individuals concerned were suspected of having been involved in the coup attempt. The complainants, who were employed by various private companies commissioned by local authorities, were dismissed without notice on this basis. The actions for protection against dismissal asserted the lack of good cause for dismissal. The complainants also argued that the criminal proceedings brought against them did not lead to a conviction, but were dropped or ended in acquittals.

The labour courts dismissed the claims because the suspicion of links to a terrorist organisation had arisen from the criminal proceedings initiated against the complainants. The acquittals or dismissals of the proceedings were irrelevant. A final conviction for membership of a terrorist organisation was not a prerequisite for dismissal.

In addition to the lack of effective judicial review within the meaning of Article 6(1) ECHR, the complaint alleges in particular that the labour courts have disregarded the innocence of the complainants as established by the criminal courts and therefore also violate Article 6(2) ECHR.

[46] ECtHR of 9 January 2023 – No. 21722/11 – *Oleksandr Volkov v. Ukraine*; ECtHR of 23 June 1981 – No. 7238/75 – *Le Compte, Van Leuven and De Meyere v. Belgium*.

With regard to the presumption of innocence guaranteed by Article 6(2) ECHR, the Court points out that, on the one hand, the provision serves to prevent the prejudgment of a person accused of a crime. On the other hand, the presumption of innocence continues to apply after the criminal proceedings have been concluded, even if they end in an acquittal or dismissal.[47] Furthermore, the presumption of innocence as a procedural guarantee is not limited to criminal cases.[4849] It may be applicable under Article 6(2) ECHR in other proceedings that are related to criminal proceedings, such as disciplinary or unfair dismissal proceedings.

Applying these principles, the Court came to the conclusion that the labour courts had not based the validity of the dismissals on the criminal proceedings that had previously been pending. Rather, the decisions dismissing the claims were based on the ministerial decree, which authorised dismissals solely on suspicion of association with a terrorist organisation. Therefore, a violation of Article 6(2) ECHR was denied.

According to the case law of the ECtHR on the scope of review of domestic courts, they must give sufficient reasons for their decisions.[50] For labour law disputes arising from the decree of 23 July 2016, the Court ruled that, in applying this regulation, the labour courts must fully review the related dismissals in terms of both fact and law. This means that findings must be made as to whether there are indications from the employee's behaviour that suggest a connection to a terrorist organisation and therefore constitute good cause for dismissal.[51] However, the domestic courts did not establish any facts in this regard, taking into account the complainants' submissions, but referred exclusively to the employer's facts and conclusions. For this reason, the decisions of the labour courts lack a comprehensive statement of reasons within the meaning of Article 6(1) ECHR.

The ECtHR therefore unanimously recognised a violation of Article 6(1) ECHR. Each of the complainants was awarded compensation in the amount of €1,500.

→ back to overview

4. Prohibition of discrimination

New proceedings (notified to the respective government)

No. 13605/23 – *Mukhopadov v. Ukraine* (Fifth Section) – lodged on 17 March 2023 – communicated on 16 January 2025

Law: Art. 8 ECHR (right to respect for private and family life) in conjunction with Art. 14 ECHR (prohibition of discrimination). Art. 14 ECHR (prohibition of discrimination); Art. 10 ECHR (freedom of expression)

Keywords: Termination of employment – Refusal to comply with unlawful orders – Criminal complaint against superior

[47] ECtHR of 11/06/2024 – Nos. 32483/19 and 35049/19 – *Nealon and Hallam v. United Kingdom*.
[48] ECtHR of 24 May 2011 – No. 53466/07 – *Konstas v. Greece*.
[49] ECtHR of 10 October 2023 – No. 58073/17 – *U.Y. v. Turkey*; ECtHR of 27 June 2023 – No. 11643/20 – *Ispiryan v. Lithuania*; ECtHR of 27 November 2018 – Nos. 53561/09 and 13952/11 – *Urat v. Turkey*; ECtHR of 12 April 2011 – No. 34388/05 – Çelik *(Bozkurt) v. Turkey*; ECtHR of 16 October 2008 – Nos. 39627/05 and 39631/05 – *Taliadorou and Stylianou v. Cyprus*; ECtHR of 13/09/2007 – No. 27521/04 – *Moullet v. France*.
[50] ECtHR of 15 December 2020 – No. 33399/18 – *Pişkin v. Turkey*; see HSI-Report 4/2020, p. 30 et seq.; ECtHR of 6 November 2018 – Nos. 55391/13, 57728/13 and 74041/13 – *Ramos Nunes de Carvalho e Sá v. Portugal*.
[51] ECtHR of 15 December 2020 – No. 33399/18 – *Pişkin v. Turkey*; see HSI Report 4/2020, p. 30 et seq.

Note: The complainant was employed by the state forestry department. He refused to comply with unlawful orders from his superior and filed a criminal complaint against him for coercion to commit unlawful acts. As a result, the employment relationship was terminated. In response to the action brought against this, the national courts declared the dismissal invalid and awarded the plaintiff compensation. A simultaneous complaint of discrimination and the associated claim for damages were rejected.

The complainant claims to have been discriminated against by the obligation to comply with unlawful orders and due to filing a criminal complaint against his superior and therefore alleges a violation of Article 8 ECHR in conjunction with Article 14 ECHR.

→ back to overview

5. Protection of privacy

Decisions

Judgment (Fifth Section) of 27 March 2025 – Nos. 16111/19 and 4737/21 – *Golovchuk v. Ukraine*

Law: Art. 8 ECHR (right to respect for private and family life); Art. 6 ECHR (right to a fair trial)

Keywords: Termination of service as a judge – Judicial reform – Possibility of assignment to another court – Access to a court

Core statement: Although states are not prevented from taking legitimate and necessary measures to reform the judiciary in order to combat corruption, due to their independence judges must be particularly protected from interference affecting their status or career.

Note: The complainant was elected as a judge at the High Administrative Court (HAC), one of Ukraine's three appellate courts, for an indefinite period in 2008. In 2016, the Ukrainian parliament passed a law to reform the judiciary, which was intended in particular to combat corruption. Among other things, the law provided for the formation of a new Supreme Court and the dissolution of the three existing appellate courts. In 2016 and 2018, the complainant unsuccessfully took part in two selection procedures to fill vacant judicial posts at the new Supreme Court. She was not assigned a position as a judge at another court, meaning that the complainant has been unemployed since 2016, with continued payment of her salary. In February 2024, she was transferred to early retirement at her own request.

The complainant argues before the Court of Justice that she was forced to take part in a selection procedure after the dissolution of the HAC and that she was de facto removed from office as a result of her unsuccessful participation. This violated Article 8 ECHR. In addition, she had no effective legal remedies against being prevented from exercising judicial office, so that she had no access to a court within the meaning of Article 6 ECHR.

The Court points out at the outset that States are entitled to take legitimate and necessary measures to eliminate corruption within the judiciary as part of a reform of the judicial system. However, insofar as these measures affect the status or career of judges, it must be taken into account that these persons are under special protection in view of the prominent position that the judiciary occupies in a democratic society.[52]

[52] ECtHR of 6 November 2018 – Nos. 55391/13, 57728/13 and 74041/13 – *Ramos Nunes de Carvalho e Sá v. Portugal*.

With reference to its decision in the case of *Gumenyuk and Others,*[53] the Court found that the consequences of the implementation of the judicial reform in Ukraine in 2016, insofar as they affect the performance of judges' duties, fall within the scope of Article 8 ECHR. In addition, the result of this decision is that the de facto dismissal of judges due to the judicial reform violates Article 8 ECHR.[54] Even if – in contrast to the facts underlying the case of *Gumenyuk and Others* – the court at which the complainant worked was completely dissolved in the present case, the complainant was entitled under domestic law to continued employment as a judge, if necessary at another court. Furthermore, after her application for a position as a judge at the Supreme Court was unsuccessful, the complainant never refused a transfer to another court, although employment in another judicial post was expressly provided for in this case. The fact that the appellant retired early does not alter her right to appeal, as she was prevented from exercising her office for six years. The Court then came to the conclusion that the interference with the right under Article 8 ECHR was unlawful, so that the question of whether it pursued a legitimate aim and whether it was necessary in a democratic society no longer had to be examined.[55]

Furthermore, insofar as the complaint alleges a violation of Article 6 ECHR, the ECtHR found it admissible with reference to its case law.[56] In particular, the present case is comparable to the case of *Gumenyuk and Others* in this respect as well.

The Court again emphasised that the right of access to a court is one of the fundamental procedural rights for the protection of judges. In addition to combating corruption, the objectives of the judicial reform were also to guarantee fair domestic justice and speed up proceedings. Denying judges the right to justice is not compatible with these endeavours. As the complainant did not have the opportunity to have the de facto termination of her activities reviewed by a court, she was denied the right of access to a court.

The ECtHR therefore unanimously found a violation of both Article 8 ECHR and Article 6 ECHR and ordered the defendant government to pay the applicant compensation in the amount of €5,000.

Judgment (Second Section) of 14 January 2025 – No. 24733/15 – *N.Ö. v. Turkey*

Law: Art. 8 ECHR (right to respect for private and family life) in conjunction with Art. 14 ECHR (prohibition of discrimination)

Keywords: Sexual assault by superior – Lack of reaction by state authorities – Requirements for clarification of facts

Core statement: Even if the national authorities have a margin of discretion in the choice of means to ensure the protection of private life, they are obliged to take measures enabling effective prosecution to protect against serious offences against sexual self-determination that fundamentally affect private life.

Note: See note by *Lörcher* in the German version of HSI Report 1/2025, p. 12 et seqq.

[53] ECtHR of 22 July 2021 – No. 11423/19 – *Gumenyuk and others v. Ukraine*.
[54] ECtHR of 22 July 2021 – No. 11423/19 – *Gumenyuk and others v. Ukraine*.
[55] ECtHR of 12 January 2023 – Nos. 27276/15 and 33692/15 – *Ovcharenko and Kolos v. Ukraine*.
[56] ECtHR of 12 January 2023 – Nos. 27276/15 and 33692/15 – *Ovcharenko and Kolos v. Ukraine*; ECtHR of 22 July 2021 – No. 11423/19 – *Gumenyuk and others v. Ukraine*.

New proceedings (notified to the respective government)

No. 33053/22 – *Toloraia v. Georgia* (Fourth Section) – lodged on 30 June 2022 – communicated on 22 January 2025

Law: Art. 6 ECHR (right to a fair trial); Art. 8 ECHR (right to respect for private and family life)

Keywords: Dismissal of a senior civil servant – Dissolution of the authority – Decision of the legislature – Lack of legal remedy

Note: In 2018, a state authority was created by law with the task of conducting internal investigations of law enforcement agencies and monitoring the processing of personal data and covert investigative measures. In 2019, the complainant was appointed head of this authority for a period of six years.

In 2021, this authority was abolished by law and two separate authorities were established instead, one responsible for data protection and the other for the Special Investigative Service. The consequence of the dissolution of the authority was the premature termination of the complainant's employment.

She brought an action against the termination of her employment, which was dismissed on the grounds that the review of the illegality of a law passed by parliament did not fall within the jurisdiction of the courts. The appeal lodged against this was dismissed. A constitutional complaint filed in parallel to these proceedings was partially successful insofar as the amendment to the law was declared unconstitutional because it resulted in the premature termination of the complainant's employment without adequate compensation or the offer of an equivalent position.

With regard to the complaint alleging a violation of the right of access to a court and a violation of the right to respect for private life, the Court will have to examine whether Article 6 ECHR applies to the present case.[57] The question also arises as to whether Article 8 ECHR is relevant with regard to the reasons for the complainant's dismissal.[58]

→ back to overview

6. Protection of property

New proceedings (notified to the respective government)

No. 28660/23 – *Biernacka v. Poland* (First Section) – lodged on 13 July 2021 – communicated on 7 February 2025

Law: Art. 1 Protocol No. 1 (Protection of property)

Keywords: Reduction of pension – Retroactive amendment of law – Service under a totalitarian regime

Note: In 2017, Poland's law of 18 February 1994 on retirement pensions for police officers and state security authorities was amended, leading to a recalculation of and consequently a reduction in the complainant's pension. The administrative decisions issued in this context took

[57] ECtHR of 9 April 2024 – No. 73532/16 – *Sözen v. Turkey*; ECtHR of 23 June 2016 – No. 20261/12 – *Baka v. Hungary*.
[58] ECtHR of 15 December 2020 – No. 33399/18 – *Pişkin v. Turkey*; ECtHR of 25 September 2018 – No. 76639/11 – *Denisov v. Ukraine*.

immediate effect. The action brought against this was dismissed by the domestic courts on the grounds that the complainant had served a totalitarian regime during her active service and that the reduction in benefits was therefore justified.

The complainant asserts an interference with her property protected by Article 1 of Protocol No. 1, whereby the Court must examine in particular whether the interference is provided for by law and whether the complainant is unduly burdened by it.

No. 66041/17 – *Koşucu v. Turkey* (Second Section) – lodged on 21 July 2017 – communicated on 19 March 2025

Law: Art. 1 Protocol No. 1 (Protection of property)

Keywords: Termination of employment – Granting of a retirement pension – Incorrect calculation of the duration of employment

Note: The complainant was informed by the National Social Security Institute that he met the requirements for the granting of an old-age pension and could retire in May 2011 upon application. In view of this, he terminated his employment contract and applied for an old-age pension to be granted from that date. This was refused on the grounds that he had not yet reached the required period of service of 25 years and could therefore only claim the pension from September 2012. The complainant brought an action for payment of the pension from May 2011 up to and including August 2012. The action was dismissed on the grounds that it was the complainant's responsibility to decide when he wanted to retire. The date on which payment of retirement benefits begins depends on the fulfilment of a period of service of 25 years. Further appeals against this decision were unsuccessful.

The complainant argues that the rejection of his claim, which he bases on the incorrect information provided by the social security institution about the start of the old-age pension, constitutes an interference with his property protected by Article 1 of Protocol No. 1.[59]

→ back to overview

[59] ECtHR of 12 December 2019 – No. 32141/10 – *Romeva v. North Macedonia*; ECtHR of 15 September 2009 – No. 10373/05 – *Moskal v. Poland*.

Contact and Copyright
Hugo Sinzheimer Institute for Labour and Social Security Law (HSI)
of the Hans Böckler Foundation
Wilhelm-Leuschner-Strasse 79
60329 Frankfurt am Main
Phone +49 69 6693-2953
hsi@boeckler.de
www.hugo-sinzheimer-institut.de
You can also find us on Twitter: twitter.com/ArbeitsrechtHSI