EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 28827/11
Marta ANDREASEN
against the United Kingdom
and 26 other member States of the European Union

The European Court of Human Rights (Fourth Section), sitting on 31 March 2015 as a Committee composed of:

George Nicolaou, *President,*
Ledi Bianku,
Faris Vehabović, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 2 March 2011,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Marta Andreasen, is a Spanish national, who was born in 1954 and lives in Barcelona. She was represented before the Court by Mr S. Tomas, a lawyer practising in Kerkrade.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

1. The background to the complaint

3. On 19 January 2000 the European Parliament adopted a resolution criticising the European Commission's accounting practice and urging it to reform its accounting system.

4. The European Commission subsequently appointed the applicant to the posts of Director for Execution of Budget and Chief Accountant. She assumed both positions on 1 January 2002. Following her appointment it

was decided that the applicant would prepare and present a memorandum to the Commission on modernising the accounting system.

5. On 13 February 2002 the applicant sent an email to the Director General for Budget ("M"). In the email she presented the weaknesses and incoherencies of the European Union's accounting system, paying particular regard to the low reliability of the computer systems used for financial management.

6. The applicant met with M and the Commissioner for Finances and Budget ("S") on 18 March 2002 to discuss the lack of reliability of the EU accounts. Two days' later the applicant asked M to request a Treasury audit by the Internal Audit Service.

7. Shortly thereafter the applicant sent M a draft of the memorandum on modernising the accounting system. However, during a meeting of the Directors of DG Budget, he expressed his dissatisfaction with it.

8. On 15 April 2002 the applicant complained in writing to S about M's failure to act. In particular, she complained that M had not appointed an independent expert to perform an internal audit. The applicant therefore informed S that she would withhold her signature from the European Commission's accounts until an independent audit was performed and a reliable accounting system had been put in place. On 19 April 2002 she again wrote to S, on this occasion informing her that she would continue to sign financial documents on the condition that she would not be held responsible for any anomalies that might occur.

9. During a meeting of the Directors of DG Budget on 22 April 2002, M expressed his dissatisfaction at the applicant's correspondence with S on the ground that she did not have the right to address her directly. After the meeting, the applicant sent a note to all of the Directors General in the Commission informing them of the unreliability of the accounting system, the potential risks that they faced and the importance of her proposals for urgent reform. However, on 26 April 2002 M wrote to all the Directors General and Heads of Services asking them to treat the applicant's note of 22 April 2002 as null and void. While he did not contest that there were shortcomings in the accounting system, he proposed to proceed in a more orderly way to improve the current system than that proposed by the applicant.

10. On 30 April 2002 the applicant again wrote to S informing her of the unreliability of the accounting system and stressing that she would not sign any financial documents unless it was clear that she would not be held responsible for any financial irregularities resulting from the accounting system. In her reply, S noted that there was a large consensus between DG Budget and herself to tackle the financial problems, but expressed her disagreement with the manner in which the applicant had handled the situation. In particular, she did not accept that the applicant could report directly to Directors General and Heads of Services without obtaining her

prior approval. Moreover, she noted that the applicant was not entitled to contact her directly without her notes either being approved by M or sent via him for prior approval.

11. The applicant sent an email to the President and the two Vice-Presidents of the Commission on 7 May 2002, informing them about the problems with the accounting system, the risk of fraud, the absence of a treasury audit during the past ten years and her request to have the audit performed by the Independent Audit Service. In response, S wrote a further note to the applicant condemning her for corresponding directly with the President and Vice-Presidents without first consulting either her or M.

12. On 22 May 2002 the applicant sent a letter to the President of the European Court of Auditors expressing her concerns about the Commission's accounting system and the risk of fraud. She also criticised the responses of M and S to her concerns and alleged that M was promoting a new financial regulation which increased the risk of error and fraud while disrespecting her proposals for reform.

13. On the same day the Commission decided to release the applicant from her role as Chief Accountant. S wrote to the applicant informing her that she considered her notes to be unacceptable and accused her of undermining the dignity of her position.

14. The applicant met with S and one of the two Vice-Presidents of the Commission ("K") on 23 May 2002. At the meeting she was informed that she was to be released from her role as Chief Accountant and that she would be transferred from the position of Director for Execution of Budget to another position.

15. On 24 May 2002 the applicant wrote to certain Members of the European Parliament, to the President and to Members of the European Court of Auditors complaining about the vulnerability of the accounting system and about the fact that S was not taking appropriate steps to rectify the problem. She further alleged that S was promoting a new financial regulation which increased the risk of error and fraud.

16. On 27 May 2002 S sent the applicant an email indicating that any external communications should first be authorised by M. On the same day the applicant sent an email to the members of the European Commission protesting against the decision to withdraw her from the position of Chief Accountant, alleging that M and S were attempting to "hide the past and make the future more vulnerable", and requesting a hearing before the Commission.

17. S wrote to the applicant again on 29 May 2002, asking her to "spell out" her accusations against her. In her reply, the applicant blamed M and S for failing to convey clear and transparent information to the relevant institutions.

18. On 3 June 2002 the applicant was transferred to the DG Personnel and Administration to assume the post of Adviser.

19. The applicant sent a letter to a number of Spanish MEPs on 6 June 2002, informing them of the vulnerability of the EU funds management system.

20. On 10 June 2002, upon realising that the applicant intended to speak to the press, the Director General for Personnel and Administration sent her a note to remind her that Article 17 of the Staff Regulations required her to seek his prior agreement before engaging in any press interviews. He further indicated that any failure on her part to respect this obligation would expose her to the possibility of disciplinary measures being taken against her.

2. Disciplinary proceedings against the applicant

21. K informed the applicant on 2 July 2002 that disciplinary proceedings were to be opened against her as her behaviour had contravened the obligation on employees to demonstrate co-operation and loyalty towards the organisation. In particular, it noted that on 22 May 2002 she had written a letter to the President and members of the Court defaming M and S, that she had failed to disclose that she had been suspended by her former employer, OECD, when she applied for the job, that she had ignored instructions given to her by her superiors, and that she had repeatedly communicated with members of the European Parliament and the Court of Auditors without obtaining the necessary authorisation from her superiors.

22. K notified the applicant that he had appointed the Director General of the Office of Official Publications ("C") to hear her case and that he would make contact to arrange a date for the hearing. However, the applicant would not agree to any meeting with C unless it was public and in the presence of journalists as she did not consider him to be impartial on account of the fact that he had been appointed by K. She did not accept delivery of his invitation to a hearing and did not answer K's telephone calls during the month of August.

23. The applicant gave an interview to BBC Radio on 1 August 2002. In the course of the interview she repeated her concerns about the EU financial management system and claimed that her concerns had been disregarded by M and S, both of whom had discouraged her from addressing shortcomings and notifying others of the problems.

24. On 26 August 2002 K added two additional grievances to those already levelled against the applicant, namely that she had been absent from work on 1 August 2002 without authorisation and that she had made public declarations about the organisation without authorisation.

25. The following day C advised K that the applicant's refusal to accept delivery of his invitation to a hearing was "not what the Commission was entitled to expect from an official" and, if the Commission wished to suspend her, it should spell out the concrete, practical consequences of suspension. The Commission suspended the applicant on 27 August 2002.

26. On 22 September 2002 the applicant sent a fresh complaint to the Spanish Members of the European Parliament and on 3 October 2002 she gave a new interview to the BBC.

27. The applicant was heard by C on 19 November 2002 in the framework of the disciplinary procedure. On 23 April 2003 C prepared his first report, concluding that the applicant had failed to observe her statutory obligations.

28. On 6 November 2003 K decided to add additional allegations against the applicant and a new hearing took place on 19 February 2004. On 3 March 2004 C prepared his second report, which also concluded that the applicant had failed to observe her statutory obligations.

29. The European Commission Appointing Authority established an *ad hoc* Disciplinary Board on 6 April 2004. There were five Board members, four of whom were Directors or Directors General responsible for the Commission's expenditure.

30. The Appointing Authority accused the applicant of having repeatedly made statements which were defamatory vis-à-vis M, S, the College of Commissioners, the European Parliament, the Council, the Court of Auditors and the European Union; of failing to make frank disclosure during the recruitment process; of having ignored clear and repeated instructions from her superiors; of having failed to observe the duty of discretion incumbent on officials by addressing the President, members of the Court of Auditors and members of the European Parliament without authorisation; for having been absent without authorisation on 1 August 2002; for having made public statements without authorisation; and for having spoken at public events without prior authorisation.

31. On a number of occasions the applicant sought to challenge the impartiality of the Disciplinary Board on the basis that they were officials reporting to the same Appointing Authority which had made the allegations against her. However, the Board strenuously rejected the suggestion that it was not objective or impartial.

32. In the proceedings before the Board the applicant was initially represented by Queen's Counsel. However, in July 2004 she informed the Board that she intended to conduct her own defence. On 3 September 2004 the applicant informed the Board that she had introduced a complaint under Article 90 of the Staff Regulations alleging that the disciplinary proceedings were unfair and that she would take no further part in them until the Appointing Authority had replied to her complaint. A hearing went ahead on 9 September 2004 in the applicant's absence. In a decision dated 10 September 2004 the Board found that all the allegations against the applicant had been proven and recommended that she be removed from her post.

33. The applicant was dismissed on 13 October 2004.

34. On 12 November 2004 the applicant made a complaint under Article 90(2) of the EU Staff Regulations against the decision of the Disciplinary Board. In particular, she complained that the procedure that led to the decision was unfair, that the Board's findings of fact ignored contrary facts which she had put forward, and that the penalty imposed was wholly disproportionate to the matters complained of.

35. The Appointing Authority rejected the applicant's complaints on 15 March 2005. Insofar as she had complained that the disciplinary proceedings were substantively unfair, it cited a number of decisions of the EU Court of First Instance which held that Article 6 of the Convention did not apply to proceedings before the Disciplinary Board. The Appointing Authority also held that there had been no conflict of interest in the disciplinary proceedings as the Disciplinary Board was fully independent. Moreover, the Appointing Authority did not consider that the Board had ignored any facts put forward by the applicant and it did not consider her punishment to be disproportionate.

3. Before the EU Civil Service Tribunal

36. In an application lodged on 6 June 2005 with the EU Court of First Instance, which later became the EU Civil Service Tribunal, the applicant requested that the decision of 13 October 2004 be annulled, that she be reinstated to her original posts and that she be awarded pecuniary and non-pecuniary damages. She complained that the disciplinary proceedings had violated Article 6 of the Convention as they were not fair, the Disciplinary Board was neither impartial nor independent, and the proceedings were not conducted within a reasonable time; that the Disciplinary Board had been constituted according to the old Staff Regulations rather than the new Staff Regulations; that there had been a violation of the principle of *ne bis in idem* as she had been sanctioned twice for the same offence; that her suspension from her post had lasted more than twenty-six months in breach of both Article 24 of Annex IX of the new Staff Regulations and Article 6 of the Convention; and that the disciplinary decision had no proper basis.

37. The Tribunal issued judgment on 8 November 2007. It observed that pursuant to the Staff Regulations the Appointing Authority and the Disciplinary Board had exclusive responsibility for initiating disciplinary proceedings and review by the Community judicature in an action for annulment was confined to ascertaining, solely in light of the pleas put forward, the legality of the disciplinary proceedings and the reality, scope and gravity of the facts established by the Appointing Authority for the purposes of the contested disciplinary measure. In other words, the institution had wide discretion when deciding whether or not to remove an official from his or her post and the Court's review was confined to

ascertaining that the facts found were materially accurate and that there had been no manifest error in the assessment of the facts.

38. The Tribunal found that the Article 6 complaint was ill-founded because, following *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, § 51, Series A no. 43, Contracting States were not obliged to submit disputes over 'civil rights and obligations' to a procedure conducted at each of its stages before tribunals meeting the Article's various requirements. Rather, demands of flexibility and efficiency could justify the prior intervention of administrative or professional bodies and, *a fortiori*, of judicial bodies which did not satisfy the said requirements in every respect. As the Tribunal found that it had sufficient power of review it did not accept that the Disciplinary Board lacked independence and impartiality in the sense required by Article 6 of the Convention.

39. The Tribunal also noted that the new Staff Regulations, which came into force on 1 May 2004, had made certain changes to the establishment and composition of disciplinary boards. However, the Disciplinary Board in the present case had been established before 1 May 2004 and there was no obligation to apply the new Staff Regulations retrospectively.

40. The Tribunal also rejected the applicant's *ne bis in idem* complaint, finding that her suspension was of a provisional nature and, as such, was not a disciplinary measure.

41. With regard to the length of the disciplinary proceedings, the time-limits existed to prevent officials from being suspended for long periods without pay. As such, they were only mandatory where the official had been suspended without pay, which was not the case with the applicant. The Tribunal nevertheless accepted that disciplinary authorities were under an obligation to conduct disciplinary proceedings with due diligence but found that in the present case the Commission had acted within a reasonable time. In any case, the court noted that the applicant had contributed to any delay by continuing with her misconduct, which had in turn necessitated the preparation of further reports.

42. Insofar as the applicant had complained that the decision of the Disciplinary Board had no legal basis, the Tribunal found that there had been no manifest error in its assessment of the facts, the Disciplinary Board's conclusions had been reasonable and the applicant had been given adequate information to enable her to know the reasons for the decision taken.

43. Finally, the Tribunal concluded that the Disciplinary Board had considered all the necessary circumstances in finding that revocation was an appropriate sanction.

4. Before the EU General Court

44. The applicant appealed to the EU General Court arguing that the Civil Service Tribunal had not properly considered whether or not the

Disciplinary Board had taken account of all the relevant criteria in considering the severity of the disciplinary measure to be imposed; that there had been a violation of the principle of legality of the acts of the European Union; that the Civil Service Tribunal had relied on allegations made by the Commission without checking their veracity; that the Civil Service Tribunal had erred in interpreting Articles 11, 12, 17 and 21 of the old Staff Regulations; and that the Civil Service Tribunal had not had sufficient jurisdiction to remedy any deficiencies in the disciplinary proceedings which resulted in a violation of Article 6 of the Convention read alone and together with Article 13.

45. The EU General Court dismissed her appeal on 9 September 2010. In doing so, it found that the question of the proportionality of a disciplinary measure constituted a point of law which was subject to review by the appeal court provided that the review could be conducted without calling into question the findings and assessments of facts made by the Civil Service Tribunal. Insofar as the court could consider the question of proportionality, it concluded that the Civil Service Tribunal had considered, in a legally correct manner, the appropriate criteria for determining the severity of a disciplinary measure and had responded to a sufficient legal standard to the arguments upon which the applicant relied in seeking an assessment of the proportionality of the disciplinary measure imposed.

46. Insofar as the applicant complained that there had been a violation of the principle of legality of the acts of the European Union, the court found her complaints to be confused and contradictory and observed that, in any case, the applicant had failed to demonstrate any error of law on the part of the Civil Service Tribunal.

47. In response to the applicant's complaint that the Civil Service Tribunal had relied on allegations made by the Commission without checking their veracity, the court found that there had been no material misrepresentation of the facts.

48. The court further rejected in its entirety the applicant's complaint that the Civil Service Tribunal had erred in interpreting Articles 11, 12, 17 and 21 of the old Staff Regulations. It found that she had failed to demonstrate any misrepresentation of facts, any error of law or any procedural irregularity in the Civil Service Tribunal's conclusions.

49. Finally, the Court held that the judicial review conducted by the European Union judicature in the context of an action for annulment allowed a party a sufficient and effective remedy before an independent and impartial tribunal within the meaning of Article 6 § 1 of the Convention and therefore made it possible to rectify and failures and inadequacies in the disciplinary procedure. In particular, the action for annulment before the Civil Service Tribunal enabled that Tribunal to correct both factual and legal errors and to review the proportionality between the alleged wrongful conduct and the disputed disciplinary measure.

B. Relevant law and practice

1. Staff Regulations of Officials of the European Communities

50. At the relevant time the Staff Regulations provided as follows:

"Article 86

1. Any failure by an official or former official to comply with his obligations under these Staff Regulations, whether intentionally or through negligence on his part, shall make him liable to disciplinary action.

2. Disciplinary measures shall take one of the following:
(a) written warning;
(b) reprimand;
(c) deferment of advancement to a higher step;
(d) relegation in step;
(e) downgrading;
(f) removal from post and, where appropriate, reduction of withdrawal of entitlement to retirement pension, but the consequences of this measure shall not affect dependants of the official;
(g) where the official has left the service, withdrawal in whole or part either temporarily or permanently, of entitlement to retirement pension; this provision shall not apply so as to affect those under him.

3. A single offence shall not give rise to more than one disciplinary measure.

Article 87

The appointing authority shall have the right to issue a written warning or a reprimand without consulting the Disciplinary Board, on a proposal from the official's immediate superior or on its own initiative. The official concerned shall be heard before such action is taken.

Other measures shall be ordered by the appointing authority after the disciplinary procedure provided for in Annex IX has been completed. This procedure shall be initiated by the appointing authority after hearing the official concerned.

Article 88

Where an allegation of serious misconduct is made against an official by the appointing authority, whether this amounts to failure to carry out his official duties or to a breach of law, the authority may order that he be suspended forthwith.

The decision that an official be suspended shall specify whether he is to continue to receive his remuneration during the period of suspension or what part thereof is to be withheld: the part withheld shall not be more than half the official's basic salary.

A final decision shall be taken within four months from the date when the decision that an official be suspended came into force. Where no decision has been taken by the end of four months, the official shall again receive his full remuneration.

Where no disciplinary action has been taken in respect of an official, or no measure other than a written warning, reprimand or deferment of advancement to a higher step has been ordered, or if no final decision has been taken within the period specified in the preceding paragraph, the official concerned shall be entitled to reimbursement of the amount of remuneration withheld.

Where, however, the official is prosecuted for those same acts, a final decision shall be taken only after a final verdict has been reached by the court hearing the case.

...

Article 90

1. Any person to whom these Staff Regulations apply may submit to the appointing authority a request that it take a decision relating to him. The authority shall notify the person concerned of its reasoned decision within four months from the date on which the request was made. If at the end of that period no reply to the request has been received, this shall be deemed to constitute an implied decision rejecting it, against which a complaint may be lodged in accordance with the following paragraph.

2. Any person to whom these Staff Regulations apply may submit to the appointing authority a complaint against an act adversely affecting him, either where the said authority has taken a decision or where it has failed to adopt a measure prescribed by the Staff Regulations. The complaint must be lodged within three months. The period shall start to run:

– on the date of publication of the act if it is a measure of a general nature;

– on the date of notification of the decision to the person concerned, but in no case later than the date on which the latter received such notification, if the measure affects a specified person; if, however, an act affecting a specified person also contains a complaint against another person, the period shall start to run in respect of that other person on the date on which he receives notification thereof but in no case later than the date of publication;

– on the date of expiry of the period prescribed for reply where the complaint concerns an implied decision rejecting a request as provided for in paragraph 1.

The authority shall notify the person concerned of its reasoned decision within four months from the date on which the complaint was lodged. If at the end of that period no reply to the complaint has been received, this shall be deemed to constitute an implied decision rejecting it, against which an appeal may be lodged under Article 91.

3. A request or complaint by an official shall be submitted through his immediate superior, except where it concerns that person, in which case it may be submitted direct to the authority next above.

Article 91

1. The Court of Justice of the European Communities shall have jurisdiction in any dispute between the Communities and any person to whom these Staff Regulations apply regarding the legality of an act adversely affecting such person within the meaning of Article 90(2). In disputes of a financial character the Court of Justice shall have unlimited jurisdiction.

2. An appeal to the Court of Justice of the European Communities shall lie only if:

– the appointing authority has previously had a complaint submitted to it pursuant to Article 90(2) within the period prescribed therein, and

– the complaint has been rejected by express decisions or by implied decision.

3. Appeals under paragraph 2 shall be filed within three months. The period shall begin:

– on the date of notification of the decision taken in response to the complaint;

– on the date of expiry of the period prescribed for the reply where the appeal is against an implied decision rejecting a complaint submitted pursuant to Article 90(2); nevertheless, where a complaint is rejected by express decision after being rejected by implied decision but before the period for lodging an appeal has expired, the period for lodging the appeal shall start to run afresh.

4. By way of derogation from paragraph 2, the person concerned may, after submitting a complaint to the appointing authority pursuant to Article 90(2), immediately file an appeal with the Court of Justice, provided that such appeal is accompanied by an application either for a stay of execution of the contested act or for the adoption of interim measures. The proceedings in the principal action before the Court of Justice shall then be suspended until such time as an express or implied decision rejecting the complaint is taken.

5. Appeals under this Article shall be investigated and heard as provided for in the Rules of Procedure of the Court of Justice of the European Communities.

Article 91a

Requests and complaints relating to the areas to which the third subparagraph of Article 2 has been applied shall be lodged with the appointing authority entrusted with the exercise of powers. Any appeals shall be made against the institution to which that appointing authority is answerable."

2. The jurisdiction of the General Court

51. Article 225 A of the Treaty on European Union (subsequently Article 257 of the Treaty on the Functioning of the European Union) provided that:

"The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish specialised courts attached to the General Court to hear and determine at first instance certain classes of action or proceeding brought in specific areas. The European Parliament and the Council shall act by means of regulations either on a proposal from the Commission after consultation of the Court of Justice or at the request of the Court of Justice after consultation of the Commission.

The regulation establishing a specialised court shall lay down the rules on the organisation of the court and the extent of the jurisdiction conferred upon it.

Decisions given by specialised courts may be subject to a right of appeal on points of law only or, when provided for in the regulation establishing the specialised court, a right of appeal also on matters of fact, before the General Court."

52. Article 11 of Annex 1 to the Statute of the Court of Justice of the European Union further provides that:

"1. An appeal to the General Court shall be limited to points of law. It shall lie on the grounds of lack of jurisdiction of the Civil Service Tribunal, a breach of procedure before it which adversely affects the interests of the appellant, as well as the infringement of Union law by the Tribunal.

2. No appeal shall lie regarding only the amount of the costs or the party ordered to pay them."

3. Relevant EU case law

53. In the case of *E v. ESC*, T-183/96 the EU Court of First Instance underlined that it could not substitute its own decision for that of a disciplinary authority. It interpreted its competence in appeals against a disciplinary decision in the following terms:

> "to control whether the chosen sanction is not obviously disproportionate to the facts maintained in the decision".

COMPLAINTS

54. The applicant complained under Article 6 § 1 of the Convention that the Member States' failure to transpose the Termination of Employment Convention into legislation regulating the termination of employment of commonly employed accountants interfered with her right of access to a court and that the disciplinary procedures were not concluded within a reasonable time.

55. She further complained under Article 13 read together with Article 6 § 1 that she was denied an effective remedy because the disciplinary proceedings were not considered by an independent tribunal which was either objectively or subjectively impartial, that the disciplinary hearings were not public, and that the jurisdiction of the Civil Service Tribunal and the General Court had been limited to the question of whether her dismissal was obviously disproportionate.

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THE LAW

A. The complaint concerning the Member States' failure to transpose the Termination of Employment Convention

56. The applicant complained that the actions of the European Commission violated Articles 4 and 5(c) of the Termination of Employment Convention and the failure of the Member States to transpose that Convention into legislation regulating the termination of employment of commonly employed accountants amounted to a denial of her right of access to a Court. However, the applicant was able to challenge her dismissal before the EU courts and for the reasons indicated in paragraph 72 below the Court considers that these courts exercised adequate jurisdiction for the purposes of Article 6 § 1 of the Convention.

57. Consequently, the Court considers this complaint to be inadmissible as manifestly ill-founded under Article 35 § 3(a) of the Convention.

B. The complaints concerning the disciplinary proceedings

58. The Court is not bound by the legal characterisation given by an applicant to the facts of the case (see, for example, *Guerra and Others v. Italy* judgment of 19 February 1998, Reports 1998-I, p. 223, § 44). As such, it considers that it would be more appropriate to examine all of the applicant's complaints about the conduct of the disciplinary proceedings (namely, the complaints concerning the independence and impartiality of the Disciplinary Board and the Appointing Authority, the lack of a public hearing before the Disciplinary Board, the insufficiency of the scope of the review by the Civil Service Tribunal and the General Court, and the length of the proceedings) under Article 6 § 1 of the Convention standing alone.

59. Article 1 of the Convention reads as follows:

> "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

60. As provided by this Article, the engagement undertaken by a Contracting State is confined to "securing" ("reconnaître" in the French text) the listed rights and freedoms to persons within its own "jurisdiction". "Jurisdiction" under Article 1 is a threshold criterion. The exercise of jurisdiction is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions imputable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention (see, as recent authorities, *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 70, ECHR 2012, and *Al-Jedda v. the United Kingdom* [GC], no. 27021/08, § 74, ECHR 2011).

61. In the present case, the majority of the applicant's complaints are directed against the disciplinary procedure applicable to officials of the European Union. They must therefore be examined in light of the principles which the Court has laid down in cases where it has been called upon to determine whether the responsibility of State Parties could be engaged under the Convention because of acts or omissions linked to their membership of an internal organisation.

62. In *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, ECHR 2005-VI (§§ 152-156) the Court said:

> "38. The Convention does not, on the one hand, prohibit Contracting Parties from transferring sovereign power to an international (including a supranational) organisation in order to pursue cooperation in certain fields of activity (see *M. & Co.*, p. 144, and *Matthews*, § 32, both cited above). Moreover, even as the holder of such transferred sovereign power, that organisation is not itself held responsible under the Convention for proceedings before, or decisions of, its organs as long as it is not a Contracting Party (see *Confédération française démocratique du travail v. European*

Communities, no. 8030/77, Commission decision of 10 July 1978, DR 13, p. 231; *Dufay v. European Communities*, no. 13539/88, Commission decision of 19 January 1989, unreported; and *M. & Co.*, p. 144, and *Matthews*, § 32, both cited above).

39. On the other hand, it has also been accepted that a Contracting Party is responsible under Article 1 of the Convention for all acts and omissions of its organs regardless of whether the act or omission in question was a consequence of domestic law or of the necessity to comply with international legal obligations. Article 1 makes no distinction as to the type of rule or measure concerned and does not exclude any part of a Contracting Party's "jurisdiction" from scrutiny under the Convention (see *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, *Reports* 1998-I, pp. 17-18, § 29).

40. In reconciling both these positions and thereby establishing the extent to which a State's action can be justified by its compliance with obligations flowing from its membership of an international organisation to which it has transferred part of its sovereignty, the Court has recognised that absolving Contracting States completely from their Convention responsibility in the areas covered by such a transfer would be incompatible with the purpose and object of the Convention; the guarantees of the Convention could be limited or excluded at will, thereby depriving it of its peremptory character and undermining the practical and effective nature of its safeguards (see *M. & Co*., p. 145, and *Waite and Kennedy*, § 67, both cited above). The State is considered to retain Convention liability in respect of treaty commitments subsequent to the entry into force of the Convention (see *mutatis mutandis*, *Matthews*, cited above, §§ 29 and 32-34, and *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 47, ECHR 2001-VIII).

41. In the Court's view, State action taken in compliance with such legal obligations is justified as long as the relevant organisation is considered to protect fundamental rights, as regards both the substantive guarantees offered and the mechanisms controlling their observance, in a manner which can be considered at least equivalent to that for which the Convention provides (see *M. & Co.*, cited above, p. 145, an approach with which the parties and the European Commission agreed). By "equivalent" the Court means "comparable"; any requirement that the organisation's protection be "identical" could run counter to the interest of international cooperation pursued (see paragraph 150 above). However, any such finding of equivalence could not be final and would be susceptible to review in the light of any relevant change in fundamental rights protection.

42. If such equivalent protection is considered to be provided by the organisation, the presumption will be that a State has not departed from the requirements of the Convention when it does no more than implement legal obligations flowing from its membership of the organisation.

43. However, any such presumption can be rebutted if, in the circumstances of a particular case, it is considered that the protection of Convention rights was manifestly deficient. In such cases, the interest of international cooperation would be outweighed by the Convention's role as a "constitutional instrument of European public order" in the field of human rights (see *Loizidou v. Turkey* (preliminary objections), judgment of 23 March 1995, Series A no. 310, pp. 27-28, § 75)."

63. In *Bosphorus* the Court noted that the measure in question (the detention in Ireland of an aircraft leased by the applicant company, on the basis of an EC Council Regulation that was itself applying a Resolution of the United Nations Security Council) had been taken by the authorities of

the respondent State on its territory following a decision by that State's Minister for Transport (see *Bosphorus*, cited above, § 137). In those circumstances the Court did not consider that any question arose as to its competence, notably *ratione personae*, vis-à-vis Ireland. However, it went on to observe that the protection of fundamental rights afforded by Community law was, at the relevant time, "equivalent" to that of the Convention system, and thus concluded that the impugned measure had not entailed a violation of Article 1 of Protocol No. 1.

64. The Court distinguished the subsequent cases of *Behrami and Behrami v. France* (dec.) [GC] no. 71412/01, 31 May 2007 and *Saramati v. France, Germany and Norway* (dec.) [GC], no. 78166/01, 31 May 2007, both of which concerned the responsibility of Member States for the actions of their troops that formed part of an international security force in Kosovo established by a resolution of the UN Security Council. The Court found that the respondent States' responsibility could not be engaged on account of the impugned acts and omissions of the force, which were directly attributable to the United Nations. As the United Nations had a legal personality separate from that of its Member States and was not a Contracting Party to the Convention, the Court concluded that the applicants' complaints in those cases had to be declared incompatible *ratione personae* with the provisions of the Convention (§§ 151-52).

65. The complaint in *Boivin v. 34 Member States of the Council of Europe* (dec.), no. 73250/01, ECHR 2008-...., concerned a decision not to appoint the applicant to a staff post in Eurocontrol. He complained about the decision using the organisation's internal complaints procedure before filing his complaints with the International Labour Organisation Arbitration Tribunal ("ILOAT"). The Court observed that the applicant's complaints were, in reality, directed against the judgment of ILOAT and as the impugned decision had emanated from an international tribunal outside the jurisdiction of the respondent States, in the context of a labour dispute which lay entirely within the internal legal order of Eurocontrol, no act or omission of the respondent States could be considered to engage their responsibility under the Convention.

66. The Court adopted a similar approach in *Connolly v. 15 Member States of the European Union* (dec.), no. 73274/01, which concerned a labour dispute between an employee of the European Commission and the Commission itself. The applicant brought a complaint against all EU Member States under Articles 6 and 13 of the Convention on the ground that the Court of First Instance and the European Court of Justice had denied his request to submit written observations on the opinion of the Advocate General. The Court found the complaint to be inadmissible *ratione personae* as the complaints were really directed against the decisions of the EU Courts, actions which could not be attributed to the respondent States.

67. However, in the case of *Gasparini v. Italy and Belgium* (dec.), no. 10750/03, 12 May 2009, in which the applicant complained that proceedings before the NATO Appeals Board were not conducted in public, the Court distinguished *Boivin* and *Connolly* on the ground that the conflict was directed against a structural deficit in the organisation's procedures for conflict resolution rather than against a decision of an organ of the organisation. Member States had an obligation when transferring sovereign powers to an international organisation to ensure that Convention rights were afforded "equivalent protection" and were not marred by a manifest deficiency. Nevertheless, in that case the Court considered the applicant's complaints to be manifestly ill-founded.

68. In *Beygo v. 46 Member States of the Council of Europe* (dec.), no. 36099/06, 16 June 2009 the applicant had argued that the Administrative Tribunal of the Council of Europe had not been an independent and impartial tribunal for the purposes of Article 6 of the Convention. The Court held that the applicant did not fall within the jurisdiction of a Contracting State because it saw no evidence of any act or omission on the part of those States or their authorities capable of engaging their responsibility under the Convention. Furthermore, the applicant had not claimed that, in transferring their powers to the Administrative Tribunal, the Contracting States of the Council of Europe had failed to fulfil their obligations under the Convention by not providing an "equivalent" system of fundamental rights protection.

69. Finally, in the recent case of *Perez v. Germany* (dec.) no. 15521/08, 29 January 2015 the applicant was a former staff member of the United Nations who was reassigned after three negative appraisals before being dismissed when no new post could be found for her. She complained under Article 6 of the Convention about the lack of access to the German courts to challenge her dismissal and the fairness of the internal appeal proceedings in the United Nations. The Court noted that the applicant had complained in a substantiated manner that there had been manifest deficiencies in the United Nations internal appeal proceedings and noted that a panel of external, independent experts had found the United Nations internal justice system in force at the time to be marked by a number of shortcomings. However, the Court left open the question of whether Germany was to be held responsible for the alleged deficiencies as it came to the conclusion that the applicant had failed to exhaust domestic remedies.

70. In the present case the Court does not consider that the applicant has "complained in a substantiated manner either that there were manifest deficiencies in the internal appeal proceedings" of the European Union or that in transferring their powers to that organisation the Member States failed to fulfil their obligations under the Convention by not providing an "equivalent" system of fundamental rights protection. As such, the present case can be distinguished from both *Gasparini* and *Perez*, in which the applicants made detailed submissions about the failings of the internal

appeal procedures and explicitly argued that these amounted to manifest deficiencies which the Member States ought to have been aware of at the time they transferred powers to the organization.

71. Indeed, aside from her complaint about the failure to transpose the Termination of Employment Convention, the applicant in the present case has not identified any specific act or omission on the part of the Member States or their authorities which would be capable of engaging their responsibility under the Convention (see *Beygo*, cited above). On the contrary, her complaints were essentially directed at the decision of the Disciplinary Board and the proportionality of the disciplinary measures taken against her (see *Connolly*, cited above). As this decision emanated from an international tribunal outside the jurisdiction of the respondent States, no act or omission could be attributed to them so as to engage their responsibility under the Convention.

72. The Court therefore considers these complaints to be inadmissible *ratione personae*.

73. In any case, even if these complaints had been admissible *ratione personae*, the Court considers that the decision by the Disciplinary Board to dismiss the applicant was subject to judicial scrutiny of the scope required by Article 6 § 1 of the Convention (see, amongst many authorities, *Zumtobel v. Austria*, 21 September 1993, § §§ 31-32, Series A no. 268‑A; *Bryan v. the United Kingdom*, 22 November 1995, §§ 43-47, Series A no. 335-A; *Müller and Others v. Austria* (dec.), no. 26507/95, 23 November 1999; and *Crompton v. the United Kingdom*, no. 42509/05, §§ 71 and 79, 27 October 2009). In this regard, it observes both the Civil Service Tribunal and the EU General Court addressed all of the grounds raised by the applicant and gave full reasons for rejecting each in turn. As such, there was a sufficiency of review and, more importantly, there could not be said to have been any "manifest deficiency" in the protection of the applicant's Convention rights in the disciplinary proceedings before the EU courts.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 23 April 2015.

Fatoş Aracı
Deputy Registrar

George Nicolaou
President