



Dismissal of an employee on account of his HIV infection was contrary to the European Convention on Human Rights

In today's Chamber judgment in the case of [I.B. v. Greece](#) (application no. 552/10), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) taken together with Article 14 (prohibition of discrimination) of the European Convention on Human Rights.

The case concerned the dismissal of an HIV-positive employee in response to pressure from other employees in the company.

The Court considered that the applicant had been a victim of discrimination on account of his being HIV-positive. The domestic courts had based their decision to reject his complaint about his dismissal on clearly inaccurate information, namely the contagious nature of his illness. They had provided insufficient explanation of how the employer's interests outweighed those of the applicant, thus failing to strike the correct balance between the rights of both parties.

The applicant had been a victim of discrimination on account of his health status, in breach of Article 8 taken together with Article 14.

Principal facts

The applicant, I.B., is a Greek national who was born in 1980 and lives in Athens (Greece).

The applicant had been working since 2001 in a company which manufactures jewellery.

In January 2005 he told three of his colleagues about his fear that he had contracted the human immunodeficiency virus (HIV); this was subsequently confirmed by a test. Shortly afterwards his employer received a letter from those three colleagues, indicating that the applicant had AIDS and that the company ought to dismiss him. Information about the applicant's state of health began to circulate throughout the company, which employed 70 people. The staff called for his dismissal. The employer invited an occupational-health doctor to speak to the employees; he tried to reassure them by explaining the precautions to be taken.

On 21 February 2005 33 of the company's employees sent the director a letter inviting her to dismiss the applicant in order to "preserve their health and their right to work". On 23 February 2005 the employer dismissed the applicant, paying him the allowance provided for under Greek law. Shortly afterwards the applicant was reemployed by another company.

The applicant brought proceedings before the Athens Court of First Instance.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

On 13 June 2006 the court held that the dismissal had been illegal. It found that the termination of the applicant's contract had been based solely on his health status, and emphasised that the employer's attitude amounted to a misuse of its powers. The court noted that the employer had dismissed the applicant in order to preserve what it erroneously believed to be an issue of peaceful working relations within the company. Lastly, the court held that it was not necessary to order that the applicant be reinstated, as he had found new employment in the meantime.

The employer and the applicant lodged an appeal against that judgment.

By a judgment of 29 January 2008, the court of appeal acknowledged that, in dismissing the applicant, the employer had given in to pressure from staff members, with a view to preserving a good working environment within the company. The court of appeal noted that the fears of the company's employees were scientifically unfounded, as the occupational-health doctor had explained to them.

The court of appeal stressed that where an employee's illness did not have an adverse impact on the employment relationship or the smooth functioning of the company (absenteeism, reduced capacity to work), illness could not serve as an objective justification for termination of an employment contract. Yet to date the applicant had not been absent from his work and no absence on grounds of ill-health was foreseeable in the immediate future. The court of appeal noted that the applicant's health could not have a detrimental effect on the smooth functioning of the company in the future.

The applicant lodged an appeal on points of law against the appeal judgment, emphasising that it had wrongly dismissed his request to be reinstated in his post in the company.

By a judgment of 17 March 2009, the Court of Cassation quashed the court of appeal's judgment and held that the termination of an employment contract was not wrongful where it was justified by the employer's interests "in the correct sense of that term", such as the restoration of harmonious collaboration between employees or the company's smooth functioning. The Court of Cassation dismissed the applicant's appeal on points of law.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life) taken together with Article 14 (prohibition of discrimination), the applicant alleged that there had been a violation of his right to a private life, the Court of Cassation having found his dismissal – justified by the fact that he was HIV-positive – to be lawful. He also alleged under Article 14 that his dismissal was discriminatory and that the ground relied on by the Court of Cassation – the need to preserve the working environment in the company – could not be taken as the basis for a difference in treatment.

The application was lodged with the European Court of Human Rights on 2 December 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

Isabelle **Berro-Lefèvre** (Monaco), *President*,
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"),
Julia **Laffranque** (Estonia),
Linos-Alexandre **Sicilianos** (Greece),
Erik **Møse** (Norway),

and also *Søren Nielsen*, *Section Registrar*.

Decision of the Court

Article 8 taken together with Article 14

According to the Court's established case-law, discrimination meant treating differently, without an objective and reasonable justification, persons in relevantly similar or comparable situations.

The Court considered that if the applicant's situation was compared to that of the other employees, it was clear that the applicant had been treated less favourably than another colleague would have been, on account of the fact that he was HIV-positive. In the Court's view, the problem originated in the attitude of rejection adopted by the applicant's colleagues when faced with his HIV-positive status.

The court of appeal had held that the threat of disruption to the company was based on scientifically unfounded reactions and that where an employee's illness did not have an adverse effect on the employment relationship or the smooth running of the company, it could not be taken as an objective justification for termination of the contract. It had explicitly recognised that the applicant's HIV-positive status had no effect on his ability to carry out his work and there was no evidence that it would lead to an adverse impact on his contract, justifying its termination. The company's very existence was not threatened by the pressure exerted by the employees. The employees' prejudice could not be used as a pretext for ending the contract of an HIV-positive employee. The need to protect the employer's interests had to be carefully balanced against the need to protect the interests of the employee, who was the weaker party to the contract, especially where that employee was HIV-positive.

In contrast, the Court of Cassation had not weighed up the competing interests in such a detailed and in-depth manner as the court of appeal.

While the Court of Cassation had also not disputed the fact that the applicant's illness had no adverse effect on the fulfilment of his employment contract, it had nonetheless based its decision on clearly inaccurate information, namely the contagious nature of the applicant's illness. In so doing, the Court of Cassation had ascribed to the smooth functioning of the company the same meaning which the employees wished to give it, and had aligned the definition of such smooth functioning with the employees' subjective and erroneous perception of that issue.

The Court considered that the Court of Cassation had not provided an adequate explanation of how the employer's interests outweighed those of the applicant, and had failed to strike a correct balance between the rights of the two parties.

The applicant had been a victim of discrimination on account of his health status, in breach of Article 8 taken together with Article 14.

Just satisfaction (Article 41)

The court held that Greece was to pay the applicant 6,339.18 euros (EUR) in respect of pecuniary damage and EUR 8,000 in respect of non-pecuniary damage.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.