



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

FOURTH SECTION

CASE OF S.W. v. THE UNITED KINGDOM

(Application no. 87/18)

JUDGMENT

Art 8 • Private life • Unlawful and disproportionate interference by virtue of Family Court judge's direction to disseminate his adverse findings as to applicant's professional conduct to relevant local authorities and professional bodies • Failure to provide applicant opportunity to meet allegations during trial • Procedural shortcomings not offset by any effective counter-balancing measures

Art 13 (+ Art 8) • Lack of effective remedy • Gravamen of applicant's complaint under Art 8 not addressed by Court of Appeal • Inability to claim damages under Human Rights Act 1998 for judicial act done in good faith

STRASBOURG

22 June 2021

FINAL

22/09/2021

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of S.W. v. the United Kingdom,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Yonko Grozev, *President*,

Tim Eicke,

Faris Vehabović,

Iulia Antoanella Motoc,

Armen Harutyunyan,

Gabriele Kucsko-Stadlmayer,

Ana Maria Guerra Martins, *judges*,

and Andrea Tamietti, *Section Registrar*,

Having regard to:

the application (no. 87/18) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a British national, Ms S.W. (“the applicant”), on 20 December 2017;

the decision to give notice to the United Kingdom Government (“the Government”) of the complaints concerning Articles 6, 8 and 13 of the Convention;

the decision not to have the applicant’s name disclosed; and

the parties’ observations;

Having deliberated in private on 1 June 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The applicant complains that accusations of professional misconduct made by a Family Court judge in the course of a fact-finding hearing in which she gave evidence as a professional witness breached her rights under Articles 6 and 8 of the Convention. Furthermore, she complains that pursuant to section 9(3) of the Human Rights Act 1998 she was unable to claim damages for a judicial act done in good faith.

THE FACTS

2. The applicant was born in 1968 and lives in St. Albans. Before the Court she was represented by Mr M. Oswald of Bhatt Murphy Solicitors, a lawyer practising in London.

3. The Government were represented by their Agent, Ms S. Macrory of what is now the Foreign, Commonwealth and Development Office.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. THE PROCEEDINGS BEFORE THE FAMILY COURT

5. The applicant was a social worker. Between 2007 and 2014 her services were engaged through personnel agencies.

6. In 2012 she began working with a local authority. The same year, she was called as a professional witness in childcare proceedings concerning the alleged sexual abuse of a number of siblings (“the childcare proceedings”). Before the proceedings ended, her personnel agency assigned her to a different local authority.

7. The childcare proceedings were complex in nature but for the purposes of the present application the relevant stage was a fact-finding hearing before the Family Court which commenced on 9 September 2014.

8. In a judgment of 17 October 2014 the Family Court judge rejected the allegations of sexual abuse. He also criticised the local authority and the professionals involved in the case. In particular, he found that the applicant was the principal instigator in a joint enterprise to obtain evidence to prove the sexual abuse allegations, irrespective of the underlying truth and the relevant professional guidelines; that she had lied to the court about important aspects of the investigation; and that she had subjected one of the children involved to a high level of emotional abuse in the course of their interaction.

9. The applicant first became aware of the adverse findings two days earlier (15 October 2014), when, at the end of the hearing, the judge gave an oral judgment, reading from a list of bullet-points (henceforth: “the bullet point judgment”).

10. After delivery of the judgment but prior to it being finalised, the Family Court judge held a series of hearings which addressed submissions by the applicant on some aspects of the judgment, including the decision not to grant her anonymity. As a result, some changes were made to the text of the judgment but the adverse findings against the applicant remained, and the decision not to grant her anonymity was maintained.

11. On 3 November 2014 the Family Court judge, having indicated that all cases involving the applicant should be scrutinized carefully as a matter of urgency, directed that the judgment be sent to the local authority to which the applicant was then assigned and advised that his findings should be shared with other local authorities where she had worked and with the relevant professional bodies.

II. THE TERMINATION OF THE APPLICANT’S ASSIGNMENT

12. On 3 November 2014 the applicant was told by her personnel agency that her assignment with the local authority where she was then working had come to an end and she had been asked to leave. According to the applicant’s contractual terms, in cases of fraud, dishonesty or serious

misconduct the local authority had the right, without notice and without liability, to instruct her to cease work on an assignment at any time.

13. On 27 November 2014 the applicant contacted a company which acted as an intermediary between the personnel agency and the local authority to ask the reasons why she had been told not to return to work. They informed her the same day that her departure from the local authority “... was in relation to information provided by yourself early in your placement in relation to a critical court ruling/judgment from your time within another local authority”.

III. PROCEEDINGS BEFORE THE COURT OF APPEAL

14. The local authority and the applicant sought to appeal against the Family Court judgment. On 17 November 2016 the Court of Appeal, having given extensive consideration to the procedural situation, concluded that notwithstanding the fact that the applicant was not a full party to the childcare proceedings before the Family Court, by the conclusion of the first instance process she had become a “party” to the proceedings and it therefore had jurisdiction to entertain her appeal.

15. The court then turned to the substantive issues. However, it observed at the outset that:

“It is necessary to stress that the issues canvassed in this appeal relate entirely to process. This court has not been asked to analyse the evidence underpinning the judge’s adverse findings nor to determine whether or not the judge was justified in criticizing the professionals as he did. The central point raised by each of the three appellants is that the prospect of them being the subject of such adverse findings was made known to them, for the very first time, when the judge gave an oral ‘bullet point’ judgment at the conclusion of the hearing. It is submitted that individual and collective adverse findings of the type that the judge went on to make in his judgment did not feature at all in the presentation of the case of any of the parties and were not raised in any manner by the judge during the hearing. In short terms it is said that these highly adverse findings ‘came out of the blue’ for the first time in the judgment. The findings both in nature and substance have the potential to impact adversely on the employment prospects and personal life of [the appellants], yet none of the three had been given any opportunity to know of or meet the allegations during the course of the trial process.”

16. Following a detailed review of the relevant case law of the European Court of Human Rights, the Court of Appeal found that the criticism of the applicant contained in the judgment of the Family Court would breach her rights under Article 8 of the Convention if the judgment was allowed to stand in the final form proposed. The Court of Appeal found the process by which the judge arrived at his criticisms to have been:

“manifestly unfair to a degree which wholly failed to meet the basic requirements of fairness established under Art 8 and/or common law. In short, the case that the judge came to find proved against S.W. ... fell entirely outside the issues that were properly before the court in the proceedings and had been fairly litigated during the extensive

hearing, the matters of potential adverse criticism had not been mentioned at all during the hearing by any party or by the judge, they had certainly never been ‘put’ to S.W. ... and the judge did not raise them even after the evidence had closed and he was hearing submissions.”

17. In respect of the complaint under Article 6 of the Convention, the Court of Appeal continued:

“I have thus far concentrated upon the case of S.W. ... with respect to fairness in the context of ECHR, Art 8 and the common law. The local authority is not able to engage with the rights established by Art 8, but it is entitled to the benefit of the right to a fair trial established by ECHR, Art 6 and to similar rights under the common law During the hearing of this appeal no issue was taken to the effect that there was a distinction to be drawn on the facts of this case between the fair trial rights of the individuals, on the one hand, and the local authority on the other. Given the firm and clear view that I have reached as to the degree to which the process adopted here fell short of the standard of fairness to which those affected were entitled, it is unnecessary to do more than record that the same conclusion, in the context of Art 6 and the common law, must apply with respect to the adverse findings made against the local authority which had not been canvassed during the hearing and were outside the issues in the case.”

18. The Court of Appeal further found that as the Family Court had acted in a manner that was incompatible with the applicant’s Convention rights, a remedy should therefore be available under sections 7 and 8 of the Human Rights Act 1998 (see paragraphs 33-34 below).

19. It first considered whether the post-judgment process (see paragraph 10 above) provided sufficient redress to the applicant and rejected that possibility, stating:

“Looking at this issue in general terms, it must, in some cases, be possible, where a court is contemplating making findings which may have arisen outside the original focus of the case, for the court to embark on a process which allows for those affected to make submissions and/or submit evidence in relation to those matters before final judgment is given ... For those additional steps to be an effective counter-balance to a process which might otherwise be seen as a whole to be unfair, they need, in my view, to be undertaken before the judge has reached a concluded decision on the controversial points. Whilst not impossible, it is difficult to conceive of circumstances where the overall fairness of the hearing could be rescued by any form of process after the judge has reached and announced his concluded decision. Where a court is considering making findings that have not, thus far, been foreshadowed in the proceedings I would suggest that, at the very least, the judge should alert the parties and, if necessary any affected witness, to the potential for such an outcome so that the steps ... and any other additional matters, can be openly canvassed during the hearing and before any judgment is given.”

20. Accordingly the Court of Appeal concluded:

“... it is incumbent on this court to provide a remedy and, so far as may be possible, to correct the effect of the unfairness that has occurred. In the present case what is sought is the removal from the judgment of any reference to the matters that were found by the judge against S.W. ... and the local authority that fell outside the parameters of the care proceedings and had not been raised properly, or at all, during the hearing. ... then redaction must follow, subject to any submissions as to detail. I

agree that this must be case. So that there is no ambiguity as to words such as ‘removal’ or ‘redaction’ in this context, I make it plain that the effect of any change in the content of the judge’s judgment that is now made as a result of the decision of this court is not simply to remove words from a judgment that is to be published; the effect is to set aside the judge’s findings on those matters so that those findings no longer stand or have any validity for any purposes. The effect is to be as if those findings, or potential findings, had never been made in any form by the judge.”

IV. THE APPLICANT’S CLAIM FOR COMPENSATION

21. Following the judgment of the Court of Appeal, the applicant considered bringing a claim, either under the Human Rights Act 1998 (see paragraph 35 below) or for the tort of misfeasance in public office (see paragraph 38 below), to obtain compensation. She made contact with specialist solicitors in December 2016 and in March 2017 counsel advised that the success of any claim would depend on proving that the Family Court judge had acted in bad faith. In order to make this assessment, counsel indicated that he would need to see the bullet-point judgment, the transcript of the hearing and the applicant’s correspondence with the judge. However, the Family Procedure Rules prohibited the disclosure of an unapproved draft judgment in care proceedings and the Court of Appeal judgment was subject to a reporting restriction order. As a consequence the applicant would have faced a criminal sanction had she shared the contents of the bullet-point judgment with her legal advisors. She was also unable to bring proceedings against the Family Court judge as she could not name him in publicly available court documents.

22. The applicant therefore asked the domestic courts to vary the restriction on disclosing documents to her legal advisors and the reporting restriction order. The applications were granted in May and July 2017 respectively and in August 2017 her representatives reviewed the relevant documents.

23. On 10 September 2017 the applicant’s lawyers advised her that a claim for compensation would have no real prospect of success as she was unlikely to establish an absence of good faith on the part of the judge. In light of the European Court of Human Rights’ judgment in *Hammerton v. the United Kingdom* (no. 6287/10, § 146, 17 March 2016), she had no further domestic remedy available.

24. In order to bring an application to the Court, the applicant had to again apply to the domestic courts, this time for permission to disclose the draft judgments in her application. Permission was granted on 20 November 2017.

V. THE INVESTIGATION BY THE HEALTH CARE PROFESSIONS COUNCIL

25. The local authority referred the matter to the applicant's professional regulator, the Health Care Professions Council, which opened an investigation to assess her fitness to practice as a social worker.

26. On 24 April 2018 the Council confirmed to the applicant that the investigation would proceed no further. The Council observed that the Family Court judge:

“... found serious failings and misconduct with your handling of the case and directed that a review of all your cases be undertaken and that a summary of his findings be communicated to other local authorities with whom you have worked and to the relevant professional bodies.”

27. Nevertheless, having reviewed all the information it had received relating to the allegations the Council concluded that:

“... there is no evidence to suggest that your fitness to practice is impaired ... It is evident that the concerns were not raised with the [Council] on the [local authority's] own volition based on any internal review of specific incident, instead, the [local authority] were following the judge's instructions as contained in the excised sections of the fact finding judgment.

Secondly, it is evident that the [local authority] found no issues with your practice in this case, or any other, during your time with the [local authority].

Thirdly, the fact finding judgment provides no tangible evidence of behaviour which would constitute misconduct or lack of competence on your behalf.

Finally, the direct and indirect criticisms of [the judge] in the Appeal judgment are sufficiently clear to resolve any fitness to practise issues ...

In light of the above, it is concluded that there is no credible evidence to suggest that your fitness to practice is currently impaired ...”

VI. THE APPLICANT'S HEALTH

28. In April 2015 the applicant was diagnosed with fibromyalgia caused by her being under “a great deal of stress”. The same month she was assessed by the United Kingdom authorities as being unable to seek work and not expected to seek work. Since then she has been in receipt of Employment and Support Allowance, and continues to be unable to work due to her ill-health.

29. In a report dated 15 November 2018 a psychiatrist noted that the receipt of the Family Court judge's findings had been a “highly traumatic experience” which had triggered post-traumatic stress disorder. She was diagnosed with anxiety and depression and her mental state was considered to have impacted on her physical health, in particular her stress-induced fibromyalgia.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE HUMAN RIGHTS ACT 1998

30. Section 3(1) of the Human Rights Act 1998 provides that primary and subordinate legislation must be read and given effect in a way which is compatible with Convention rights so far as it is possible to do so. Section 1(1) of the Act defines “Convention rights” as the rights and fundamental freedoms set out in Articles 2 to 12 and 14 of the Convention, Articles 1 to 3 of Protocol No. 1 and Article 1 of Protocol No. 13.

31. Section 4(2) of the Human Rights Act provides that domestic courts may make a declaration of incompatibility if they are satisfied that a provision of primary legislation is incompatible with a Convention right.

32. Section 6(1) of the Human Rights Act provides that it is unlawful for a public authority to act in a way which is incompatible with a Convention right. Section 6(3) clarifies that “public authority” includes a court or tribunal and any person certain of whose functions are functions of a public nature.

33. Section 7(1) provides that a person claiming that a public authority has acted in a manner which is unlawful pursuant to section 6(1) of the Human Rights Act, or that it proposes to act in such a manner, may bring proceedings against the public authority or rely on the Convention right(s) concerned in any legal proceedings. He may only bring proceedings or rely on the Convention right(s) if he is, or would be, a victim of the unlawful act.

34. Section 8 of the Act sets out available remedies and provides:

“(1) In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.

...

(3) No award of damages is to be made unless, taking account of all the circumstances of the case, ...

the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.

(4) In determining—

(a) whether to award damages, ...

the court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention.”

35. At the relevant time section 9(3) of the Human Rights Act 1998 limited the possibility of claiming damages where the act or failure of which an individual complains is a judicial act or failure:

“In proceedings under this Act in respect of a judicial act done in good faith, damages may not be awarded otherwise than to compensate a person to the extent required by Article 5(5) of the Convention.”

36. Following the Court’s judgment in *Hammerton* (cited above), section 9(3) was amended by The Human Rights Act 1998 (Remedial) Order 2020 (S.I. 2020/1160). It now reads as follows:

“In proceedings under this Act in respect of a judicial act done in good faith, damages may not be awarded otherwise than—

(a) to compensate a person to the extent required by Article 5(5) of the Convention, or

(b) to compensate a person for a judicial act that is incompatible with Article 6 of the Convention in circumstances where the person is detained and, but for the incompatibility, the person would not have been detained or would not have been detained for so long.”

37. The Joint Committee on Human Rights, which consists of twelve members appointed from both the House of Commons and the House of Lords, was created by a Standing Order of the House of Commons to examine matters relating to human rights within the United Kingdom and to report to Parliament on any draft remedial order made under the Human Rights Act 1998. The Committee welcomed the Human Rights Act 1998 (Remedial) Order 2020, which in its view addressed the specific finding by the Court in the case of Mr Hammerton and was therefore sufficient to address the incompatibility which arose from the very specific facts of his case. However, it expressed concern that the terms of the Order were drawn too tightly and would not do enough to prevent future similar violations of Article 13 of the Convention by the operation of section 9(3) of the Human Rights Act. Indeed, the Committee considered it likely that situations would arise, albeit rarely, where section 9(3), even if amended as proposed, would deprive an individual of an effective remedy for a breach of a Convention right. In the Committee’s view, it would have been open to the Government to go further. It therefore recommended that the Minister consider whether alternative drafting could give better effect to removing the incompatibility in section 9(3) with Article 13 of the Convention.

II. MISFEASANCE IN PUBLIC OFFICE

38. Misfeasance in public office occurs when a public official, public servant or public body knowingly and willingly acts to cause loss or harm to a third party. In order to establish the tort, it is not sufficient to demonstrate carelessness or lack of judgment on behalf of the public official. A greater degree of culpability is required: the public official must have either known he was abusing his power or been recklessly indifferent to the limits of his power; and must have intended to harm the claimant, had knowledge of the

probability of harming the claimant, or been recklessly indifferent to the possibility of harming the claimant.

THE LAW

I. PRELIMINARY REMARKS

39. The applicant complains under Articles 6 and 8 of the Convention that the proceedings before the Family Court were not “fair” and did not ensure that her right to respect for her private life was adequately safeguarded. She further complains under Article 13 of the Convention that she was unable to claim damages at the domestic level for the breaches of Articles 6 and 8. Since it is master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), the Court will focus on the complaint under Article 8, read alone and together with Article 13 of the Convention. In this respect, it would highlight the following points.

40. As the Court of Appeal expressly acknowledged that the process by which the Family Court judge arrived at his criticisms was “manifestly unfair to a degree which wholly failed to meet the basic requirements of fairness established under Art 8 and/or common law” (see paragraph 16 above), the parties’ submissions have focused on whether this judgment amounted to “adequate and sufficient redress” capable of depriving the applicant of her “victim status” within the meaning of Article 34 of the Convention, or whether the notion of an “effective remedy” under Article 13 of the Convention required that compensation be available to her for the alleged breach of her Convention rights. These two issues are inextricably linked, and in order to avoid repetition the Court will begin by examining whether Article 8 is applicable to the facts of the case and, if so, whether the judgment of the Court of Appeal deprived the applicant of her victim status in respect of her Article 8 complaint. It will then turn to consider whether there has been a violation of Article 8, taken alone or read in conjunction with Article 13 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION, READ ALONE AND TOGETHER WITH ARTICLE 13

41. The applicant complained that the findings of the Family Court judge, which she received no notice of until he gave his oral “bullet point” judgment at the conclusion of the hearing (see paragraph 9 above), violated her rights under Article 8 of the Convention, which, in so far as relevant, reads as follows:

“1. Everyone has the right to respect for his private ... life

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

42. She further complained that the inability of the domestic courts to award her damages for the alleged breach of her rights under Article 8 of the Convention denied her an effective remedy as required by Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Article 8 of the Convention

1. Scope of the complaint

43. Although the Court of Appeal accepted that the findings of the Family Court judge had the potential to impact adversely on the applicant’s employment prospects and personal life (see paragraph 15 above), the exact nature of this potential breach of Article 8 was not fully articulated. However, for the Court, the gravamen of the applicant’s complaint under Article 8 of the Convention is that the Family Court judge, having made the adverse findings without affording her the opportunity to meet them during the trial process, nevertheless directed that those findings be sent both to the local authorities where she had been assigned and to the relevant professional bodies (see paragraph 11 above).

2. Admissibility

(a) Applicability of Article 8 of the Convention

(i) The Government’s submissions

44. The Government did not dispute that Article 8 was in principle applicable to the facts of the case. They argued, however, that the applicant’s right to respect for her private life would only have been engaged if the judgment, insofar as it criticised her, had been allowed to stand in the form proposed by the Family Court judge.

(ii) The Court’s assessment

45. The notion of “private life” within the meaning of Article 8 of the Convention is a broad concept which extends to a number of aspects relating to personal identity, including a person’s physical and psychological integrity (see *Von Hannover v. Germany*, no. 59320/00, § 50, ECHR 2004-VI, with further references). A person’s right to protection of his or her reputation is encompassed by Article 8 as part of the right to

respect for private life, since a person's reputation is part of his or her personal identity and psychological integrity (see *Pfeifer v. Austria*, no. 12556/03, § 35, ECHR 2007-XII, and *Petrie v. Italy*, no. 25322/12, § 39, 18 May 2017).

46. In order for Article 8 to come into play, the attack on personal honour and reputation must attain a certain level of seriousness and must have been carried out in a manner causing prejudice to personal enjoyment of the right to respect for private life (see *inter alia*, *Denisov v. Ukraine* [GC], no. 76639/11, § 112, 25 September 2018; *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012; *Delfi AS v. Estonia* [GC], no. 64569/09, § 137, ECHR 2015; and *Medžlis Islamske Zajednice Brčko and others v. Bosnia and Herzegovina* [GC], no. 17224/11, § 76, 27 June 2017). In this regard, the notion of "private life" does not exclude in principle activities of a professional or business nature since it is in the course of their working lives that the majority of people have a significant opportunity to develop relationships with the outside world (see *Denisov*, cited above, § 100; *Bărbulescu v. Romania* [GC], no. 61496/08, § 71, 5 September 2017, § 71; and *Niemietz v. Germany*, 16 December 1992, § 29, Series A no. 251-B). An attack on an individual's reputation which obstructs his or her ability to pursue a chosen professional activity may therefore have consequential effects on the enjoyment of the right to respect for his or her "private life" within the meaning of Article 8 (see, for example, *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 5930/00, § 50, ECHR 2004-VIII). Consequently, the Court has accepted that the adverse portrayal of an applicant's conduct in an authoritative judicial ruling could, by the way it stigmatised him, have a major impact on his personal and professional situation, as well as his honour and reputation (*Vicent Del Campo v. Spain*, no. 25527/13, § 48, 6 November 2018).

47. In the present case the Family Court judge found that the applicant was the principal instigator in a joint enterprise to obtain evidence to prove sexual abuse allegations, irrespective of the underlying truth and the relevant professional guidelines; that she had lied to the court about important aspects of the investigation; and that she had subjected one of the children involved to a high level of emotional abuse in the course of their interaction (see paragraph 8 above). The Court of Appeal accepted that these extremely serious allegations – which in its view had been reached by a process which was "manifestly unfair" (see paragraph 16 above) – had "the potential to impact adversely on [her] employment prospects and personal life" (see paragraph 15 above). The judge's findings were neither published nor widely disseminated; nevertheless, as he directed that they be shared with the local authorities where the applicant had worked and with the relevant professional bodies (see paragraph 11 above), this potential was at least partly realised. On the same day that the findings were shared with the local authority where the applicant was working, she was told by her

personnel agency that her assignment had been terminated (see paragraph 12 above). She was later informed that this decision was related to the judge's findings (see paragraph 13 above). Furthermore, given the nature and severity of the judge's criticisms, the Court has no reason to doubt that they would have caused the applicant considerable distress, and that, at least until the Court of Appeal set them aside some two years later, she would have been unable to obtain alternative employment as a social worker. It therefore considers that the judge's decision first to criticise the applicant in such strong terms without giving her an adequate opportunity to respond, and then to direct that those criticisms be shared with the local authorities where she worked and with the relevant professional bodies, significantly affected her ability to pursue her chosen professional activity, which in turn would have had consequential effects on the enjoyment of her right to respect for her "private life" within the meaning of Article 8 (see, *mutatis mutandis*, *Sidabras and Džiautas*, cited above, § 50 and *Vicent Del Campo*, cited above, § 48).

48. In light of the foregoing, the Court concludes that the interference with the applicant's right to respect for her private life reached a sufficient level of seriousness and caused sufficient prejudice to her enjoyment of that right for Article 8 to come into play.

(b) The question of "victim status"

(i) The parties' submissions

49. The Government argued that the applicant was no longer a victim in respect of the breach of Article 8. The findings of the Court of Appeal had constituted an acknowledgment of the wrongs that would be done to the applicant if the findings of the Family Court judge had been allowed to stand. In the Government's view, this remedy had constituted appropriate and sufficient redress as it rendered the adverse judicial findings invalid for all and any purpose. The effect of the remedy was therefore that no public statements could be made about the applicant, and it would be as if the original judicial findings had never been made.

50. In this regard, the Government considered it significant that the Court of Appeal's finding concerned proper judicial process only: it was not a finding that, in the circumstances of the case, the criticisms had not been warranted. The present case was therefore quite different from that of *Hammerton v. the United Kingdom* (no. 6287/10, 17 March 2016), in which the particular prejudice which required compensation was "a lengthened deprivation of liberty".

51. The applicant argued that she was and remained a victim of the breach of her rights under Article 8 of the Convention. Contrary to the Government's submissions, she claimed that the Court of Appeal judgment did not provide appropriate and sufficient redress. The inevitable

consequence of the Family Court’s judge’s decision to order the draft judgment to be sent to the local authority where the applicant worked was that the local authority immediately terminated her position. The local authority had been entitled to take this step and in the applicant’s view it had been entirely proper for it to do so. Given the terms of the judgment there was no prospect of any other responsible local authority permitting the applicant to work as a social worker at least until the Court of Appeal gave judgment on 17 November 2016; and the stress precipitated by the judge’s findings left her unable to work thereafter. However, by reason of section 9(3) of the Human Rights Act 1998 (see paragraph 35 above) she has been unable to obtain compensation for any of these matters.

(ii) *The Court’s assessment*

52. The Court reiterates that it falls, firstly, to the national authorities to redress any violation of the Convention. In this regard, the question whether an applicant can claim to be the victim of the violation alleged is relevant at all stages of the proceedings under the Convention (see, *inter alia*, *Gäfgen v. Germany* [GC], no. 22978/05, § 115, ECHR 2010, and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 179, ECHR 2006-V). A decision or measure favourable to the applicant is not, in principle, sufficient to deprive him of his status as a “victim” for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see, *inter alia*, *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI and *Scordino (no. 1)*, cited above, § 180).

53. As regards the first condition, the Court notes that in the present case the Court of Appeal expressly acknowledged that the Family Court judge – in making his adverse findings without giving the applicant any opportunity to know of or meet the allegations during the course of the trial process – had acted in a manner which was incompatible with her rights under Article 8 of the Convention (see paragraph 16 above).

54. As to the second condition, the question of whether redress is appropriate and sufficient to remedy a breach of a Convention right is dependent on all the circumstances of the case, having regard, in particular, to the nature of the Convention violation at stake (see, for instance, *Gäfgen*, cited above, § 116). In the present case, the Court of Appeal set aside the impugned findings of the Family Court judge with the consequence that those findings no longer had any validity for any purpose. The effect was as if those findings had never been made in any form by the judge (see paragraph 20 above). However, while the Court of Appeal judgment prevented the adverse findings from being widely disseminated, it did not address the gravamen of the applicant’s complaint under Article 8 of the Convention: namely, that upon the judge’s direction his adverse findings were sent to the local authorities where the applicant had worked and to the

relevant professional bodies without her having been given an opportunity to meet them in the course of the hearing (see paragraph 43 above). Consequently, it did not provide the applicant with redress for the loss or damage which she claims flowed from their disclosure to the local authorities and professional bodies.

55. It is not for the Court, at this juncture, to assess the loss or damage the applicant suffered in this respect. However, in concluding that Article 8 was applicable, the Court has accepted that she did suffer prejudice, both personally and professionally (see paragraphs 47-48 above), which the Court of Appeal judgment did not remedy. Accordingly, the Court finds that the applicant can still claim to be a “victim” of the alleged violation and the Government’s objection of incompatibility *ratione personae* must be dismissed.

(c) Non-exhaustion of domestic remedies

56. The Government initially contented that the complaint could be rejected for non-exhaustion of domestic remedies pursuant to Article 35 § 1 of the Convention because the applicant did not bring a claim against her employer for unfair dismissal or suspension in breach of contract. However, the Government subsequently withdrew that contention as they accepted that at the relevant time the applicant had not been an “employee”.

(d) Conclusions on admissibility

57. The Court is satisfied that the complaint raises arguable issues under Article 8 of the Convention, so that it cannot be rejected as manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. The Court further considers that the complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

3. Merits

(a) The parties’ submissions

58. The applicant submitted that the findings of the Family Court judge had resulted in the termination of her employment and adversely affected her future prospects for gaining employment. Furthermore, the procedure in which these findings were made did not ensure due respect for the interests safeguarded by Article 8 of the Convention.

59. The Government reiterated that there could be no breach of Article 8 of the Convention since the judgment of the Court of Appeal rendered for all purposes the original judicial findings to be of no effect.

(b) The Court's assessment

60. In finding Article 8 to be applicable to the facts of the case, the Court has acknowledged that there was an interference with the applicant's right to respect for her private life (see paragraph 48 above). Such an interference will give rise to a breach of Article 8 of the Convention unless it can be shown that it was "in accordance with the law", pursued one or more of the legitimate aims referred to in paragraph 2 and was "necessary in a democratic society" in order to achieve them (see, among many examples, *Dubská and Krejzová v. the Czech Republic* [GC], nos. 28859/11 and 28473/12, § 166, 15 November 2016).

61. Whilst Article 8 of the Convention contains no explicit procedural requirements, the decision-making process leading to measures of interference must ensure due respect for the applicant's interests (see, for example, *Fernández Martínez v. Spain* [GC], no. 56030/07, § 147, ECHR 2014 (extracts)). In the specific context of court proceedings, it is first and foremost the responsibility of the presiding judge to ensure that the Article 8 rights of persons giving evidence are adequately protected (*Y. v. Slovenia*, no. 41107/10, § 109, ECHR 2015 (extracts)). The Court has therefore found that the failure to inform, question, summon or otherwise notify an individual of a complaint against him before he was identified in a judgment, coupled with the failure to afford him anonymity, violated Article 8 of the Convention because the interference with the applicant's private life was not accompanied by effective and adequate safeguards (*Vicent del Campo*, cited above, §§ 50-55).

62. In the present case, in directing that his findings be shared with other local authorities and the relevant professional bodies, the Family Court judge was undoubtedly pursuing the legitimate aim of protecting the rights and freedoms of others. Nonetheless, in view of the Court of Appeal's finding that he arrived at his criticism by a process which was "manifestly unfair to a degree which wholly failed to meet the basic requirements of fairness established under Art 8 and/or common law" (see paragraph 16 above), the Court considers that the interference with the applicant's Article 8 rights was neither in accordance with the law nor necessary in a democratic society. The case that the judge found to be "proved" against the applicant fell entirely outside the issues that were properly before the court, and it had not been put to the applicant – or even mentioned – during the hearing (see paragraph 16 above). Moreover, these procedural shortcomings were not offset by any effective counter-balancing measures. Although the applicant was able to make some submissions to the judge after she became aware of his criticism of her, this only happened after the judge had reached and announced his concluded decision (see paragraphs 10 and 19 above). As such, this process was wholly incapable of protecting the applicant's right to respect for her private life and reputation.

63. In light of the foregoing, the Court considers that the judge's direction that his adverse findings be sent to the local authorities and relevant professional bodies without giving the applicant an opportunity to meet them in the course of the hearing interfered both unlawfully and disproportionately with her right to respect for her private life under Article 8 of the Convention.

64. There has therefore been a violation of that provision.

B. Article 13 of the Convention

1. The parties' submissions

65. The applicant argued that the Human Rights Act 1998 excluded from the scope of "Convention rights" the right to an effective remedy guaranteed by Article 13 of the Convention. Although sections 7-9 of the Human Rights Act conferred the right to bring proceedings for breach of the Convention, by virtue of section 9(3) of the Act (see paragraph 35 above) there was no right to claim damages in respect of a judicial act done in good faith. Therefore, like the applicant in *Hammerton* (cited above), she was unable to claim damages domestically despite the clear findings of a violation of her Convention rights.

66. The applicant further noted that following *Hammerton* the respondent State had amended the Human Rights Act so as to permit an award of damages for a breach of Article 6 in contempt of court proceedings where, as a result of the breach, the person was committed to prison or spent more time in prison than he or she otherwise would have (see paragraph 36 above). It was difficult to see why the blanket prohibition on awarding damages could not also be removed in a case such as hers.

67. The Government reiterated that in their view the remedy afforded by the Court of Appeal had been sufficient in all the circumstances of the case. The Court of Appeal had set aside the judicial findings and ended any basis for complaint. Alternatively, although the Government accepted that any attempt by the applicant to establish a lack of good faith would have been unlikely to succeed, it nevertheless argued that the non-availability of damages by virtue of section 9(3) of the Human Rights Act 1998 fell within the margin of appreciation afforded to it in deciding how to remedy judicial shortcomings.

2. The Court's assessment

68. The Court reiterates that Article 13 of the Convention requires domestic legal systems to make available an effective remedy empowering the competent national authority to address the substance of an "arguable" complaint under the Convention (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 108, ECHR 2001-V). Its object is to provide a means

whereby individuals can obtain appropriate relief at national level for violations of their Convention rights before having to set in motion the international machinery of complaint before the Court (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI).

69. However, the protection afforded by Article 13 does not go so far as to require any particular form of remedy, Contracting States being afforded a margin of discretion in conforming to their obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or the omissions of the authorities of the respondent State (see, for example, *Kaya v. Turkey*, 19 February 1998, § 106, *Reports of Judgments and Decisions* 1998-I).

70. In light of its findings at paragraphs 48, 55 and 57 above, the Court considers that the applicant's Article 8 complaint was "arguable" for the purposes of Article 13 of the Convention. Therefore, Article 13 is applicable in the present case (see, for instance and *a contrario*, *Walter v. Italy* (dec.), no. 18059/06, 11 July 2006), and as the complaint under this Article is not inadmissible on any other grounds, it must be declared admissible.

71. The Court has further found that the judgment of the Court of Appeal did not afford the applicant appropriate and sufficient redress for her complaint under Article 8 of the Convention (see paragraph 55 above). It has not been suggested that any other remedy was available to the applicant which would have provided her with the opportunity of obtaining such redress. It is not in dispute that she would only have been entitled to damages for misfeasance in public office if she could show that the judge had knowingly or recklessly abused his power and either intended to cause her harm, or was recklessly indifferent to the probability of causing her harm (see paragraph 38 above). Furthermore, the Government expressly accepted that she could not have made a claim for damages under the Human Rights Act 1998 because any attempt to establish the necessary lack of good faith on the part of the judge would have been unlikely to succeed (see paragraph 35 above).

72. In this respect, although the Court of Appeal clearly held that the process by which the judge arrived at his criticisms was "manifestly unfair to a degree which wholly failed to meet the basic requirements of fairness established under Art 8 and/or common law" (see paragraph 16 above), the applicant was nevertheless advised by counsel that a claim for compensation would have no real prospect of success as she was unlikely to establish an absence of good faith on the part of the judge (see paragraph 23 above); a fact expressly accepted by the Government (see paragraph 55 above). The Court does not see any reason to depart from this assessment and therefore

proceeds on the basis that a claim for compensation would not have been successful.

73. In light of the foregoing, the Court would accept that the applicant did not have access to an effective remedy at the national level capable of addressing the substance of her Article 8 complaint and by virtue of which she could obtain appropriate relief.

74. There has therefore been a violation of Article 13 of the Convention, read together with Article 8.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

75. Lastly, the applicant complained that the proceedings in the Family Court had been in breach of her rights under Article 6 § 1 the Convention, which provides, insofar as relevant:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

76. The Government argued that this complaint should be declared inadmissible, either because Article 6 was not applicable or because the applicant could no longer claim to be a victim of the alleged violation.

77. For Article 6 § 1 in its “civil” limb to be applicable, there must be a “dispute” regarding a “right” which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether it is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, among many authorities, *Denisov*, cited above, § 44, and *Regner v. the Czech Republic* [GC], no. 35289/11, § 99, ECHR 2017).

78. The Court has stressed that the question of the applicability of Article 6 cannot depend on the recognition of the formal status of “party” by national law (see *Arnoldi v. Italy*, no. 35637/04, § 28, 7 December 2017). In the present case, the Court of Appeal accepted that, even though she was not a full party to the childcare proceedings, the applicant had become a “party” by the conclusion of the first instance process (see paragraph 14 above). It is not, however, necessary for the Court to reach any conclusion as to whether, for the purposes of Article 6 of the Convention, the applicant had a “civil right” for which the Family Court proceedings were directly decisive, since it has already examined the main legal questions raised in the present application. There is therefore no need to give a separate ruling on the admissibility and merits of the complaint under Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Centre for Legal Resources on behalf of*

Valentin Câmpeanu v. Romania [GC], no. 47848/08, §§ 155-156, ECHR 2014 with further references).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

80. In respect of non-pecuniary damage the applicant claimed 40,000 British pounds (GBP). In respect of pecuniary damage she claimed a total of GBP 1,057,406. That sum included a claim for GBP 189,766 in respect of past loss of earnings calculated for the period 3 November 2014 to 1 July 2019; and GBP 498,526 in respect of future loss of earnings from the period 1 July 2019 until her retirement. The remaining sums were for medication and the care and assistance provided by the applicant’s husband.

81. The Government argued that there was no causal link between the alleged violation of the Convention and the claim for pecuniary damage or, in the alternative, that the applicant’s claim was excessive.

82. The Court notes at the outset that the violations of Articles 8 and 13 of the Convention in the present case were principally procedural; that is, that the Family Court judge directed that his adverse findings be sent to the local authorities that employed the applicant and to the relevant professional bodies despite the fact that she had not been given an opportunity to meet those allegations in the course of the proceedings; and that there was no domestic remedy available which would have permitted her to claim compensation for the pecuniary and non-pecuniary damage that she suffered as a result. Although the Court of Appeal criticised the process by which the judge’s adverse findings were reached, it did not analyse the evidence underpinning those findings or determine whether or not the judge was justified in criticizing the applicant as he did. It is not the applicant’s fault that the domestic courts did not analyse the evidence underpinning the judge’s findings; presumably, had she been able to bring a claim for compensation the national courts would have had to examine precisely these issues. Nonetheless, in the absence of any such findings the Court cannot discern a direct causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim.

83. On the other hand, the Court acknowledges that the applicant was denied the opportunity to bring a claim for a substantial quantum of damages, and it considers that this loss of opportunity warrants monetary

compensation. In addition, the applicant certainly suffered non-pecuniary damage through anxiety and distress. Although none of the elements cited above lends itself to a process of calculation or precise quantification, the Court, making an assessment on an equitable basis, as required by Article 41, and having regard to what is just, fair and reasonable in all the circumstances of the case, including not only the position of the applicant but the overall context in which the breach occurred (see *Molla Sali v. Greece* (just satisfaction) [GC], no. 20452/14, § 33, 18 June 2020 together with the cases referred to therein), awards the applicant 24,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

84. The applicant also claimed GBP 34,849 pounds for the costs and expenses incurred before the domestic courts and GBP 74,033 for those incurred before this Court.

85. The Government argued that the applicant's costs before the domestic courts were not recoverable in the present proceedings, since she had achieved the desired outcome and the present complaints are pursued on a quite separate basis to the case pursued domestically. More generally, they argued that the costs were excessive and had not been actually or necessarily incurred.

86. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. The Court considers that the legal costs claimed by the applicant were both actually incurred and were referable to the violations it has found. However, it agrees with the Government that the claim for costs is excessive. Regard being had to the documents in its possession and the aforementioned criteria, the Court considers it reasonable to award EUR 60,000, plus any tax that may be chargeable, to cover costs under all heads.

C. Default interest

87. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning Articles 8 and 13 admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention read together with Article 8;
4. *Holds* that it is not necessary to examine the admissibility and merits of the complaint under Article 6 § 1 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 24,000 (twenty-four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; and
 - (ii) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 June 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Andrea Tamietti
Registrar

Yonko Grozev
President