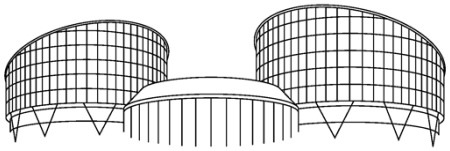

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ORTEGA ORTEGA v. SPAIN

(Application no. 36325/22)

JUDGMENT

Art 14 (+ Art 8) • Discrimination • Positive obligations • Domestic courts' upholding of applicant's dismissal allegedly in retaliation for her successful claim of discrimination based on sex in relation to her remuneration • Dismissal based on applicant's disclosure of payroll information as head of the finance department • States' positive obligation to ensure effective protection against reprisal by employers following discrimination claims on grounds of sex • Domestic courts' approach defective • Failure to engage in the consequence that the dismissal negated the applicant's protection against discrimination as afforded in separate proceedings • Failure to give sufficient weight to context of persistent sexual discrimination against the applicant and her unsuccessful attempts to end it internally • Failure to give sufficient weight to the purpose of the disclosure of private information and its limited impact • Failure to give sufficient weight to severity of the measure which could be indicative of retaliatory motive • Insufficient reasons given for upholding dismissal in case-circumstances • Failure to fulfil positive obligations to ensure effective protection against discrimination based on sex in the context of employment and equal remuneration

Prepared by the Registry. Does not bind the Court.

STRASBOURG

4 December 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ortega Ortega v. Spain,

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

Kateřina Šimáčková*, President*,
María Elósegui,
Gilberto Felici,
Andreas Zünd,
Diana Sârcu,
Mykola Gnatovskyy,
Vahe Grigoryan*, judges*,

and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 36325/22) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Spanish national, Ms Maria de la Peña Ortega Ortega ("the applicant"), on 12 July 2022;

the decision to give notice to the Spanish Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 12 November 2025,

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

INTRODUCTION

1. The application concerns the domestic courts' alleged failure to provide adequate protection against retaliation in the judicial proceedings concerning the applicant's dismissal. It raises issues under Articles 8 and 14 of the Convention.

THE FACTS

2. The applicant was born in 1969 and lives in Alhaurín de la Torre. She was represented by Mr A. Del Castillo Garcia, a lawyer practising in Malaga.

3. The Government were represented by their co-Agent, Ms H. E. Nicolás Martínez.

4. The facts of the case may be summarised as follows.

5. Between 1994 and 2017 the applicant worked for a company that provided administrative services to a bank and to other companies belonging to the bank's group. The applicant was the head of the finance department and, as part of her functions, she oversaw the staff payrolls. In 2017 she was involved in three different sets of judicial proceedings against the company.

I. PROCEEDINGS CONCERNING THE APPLICANT'S DISCRIMINATION CLAIM

6. On 6 April 2017 the applicant brought a conciliation claim (*papeleta de conciliación*) against the employer company in the Mediation, Arbitration and Conciliation Centre. She alleged that she was being discriminated against on grounds of sex, as she was receiving a lower remuneration than the rest of her colleagues who were in the same position, all of whom were men. She asked for equal remuneration and an amount in compensation. The claim included a detailed account of the sums received by each head of department in respect of various elements, including salaries and incentives, over several years.

7. In the absence of a settlement, on 8 June 2017 she lodged a judicial claim for the protection of her fundamental rights (*tutela de derechos fundamentales*) under Article 177 of the Employment Proceedings Act, reiterating her claims and asking for equal remuneration and for an amount in compensation for the pecuniary loss she had suffered on account of that discrimination. As the previous conciliation claim, the judicial claim also included a detailed account of the remunerations of her colleagues, the use of which was not challenged by the company.

8. On 10 August 2017 Malaga Employment Tribunal no. 2 upheld the applicant's claim.

9. The Employment Tribunal noted that the company was divided into four departments and that all the heads of department were men, except for the applicant. Their payrolls included two elements: the salary and the incentives, without any objective system in place to determine those incentives, which were based on the unilateral and discretional decision of the company.

10. Referring to the data contained in the applicant's claim – and without objecting to its use – the Employment Tribunal compared the applicant's remuneration with the remunerations of the other persons in the same position. It observed that between 2010 and 2017 the incentives granted to the other heads of departments had increased, while those of the applicant had remained unchanged or had even been reduced in some periods. In 2017 the company had decided to remove the incentives and the corresponding sums had been consolidated as part of the salary of each head of department. As a result, the applicant had had a consolidated annual salary of 33,672 euros (EUR), which had been lower than in previous years (EUR 35,000 in 2010 and EUR 38,722 in 2016), while her colleagues had had consolidated salaries ranging from EUR 43,000 to EUR 49,000. Consequently, during the relevant period, all the heads of the different departments had had salary increases of between 22% and 34% except for the applicant, whose salary had been reduced by 3.83%. The salary gap had thus extended from less than EUR 1,000 to EUR 14,000 annually. In addition, she

had been refused some specific bonuses granted to her colleagues and had been awarded a lower amount.

11. The Employment Tribunal held that those facts showed the existence of unjustified differences in salary, complained of by the applicant, which correlated with the sex of the heads of division and gave rise to "a suspicion" of discriminatory treatment. In those circumstances, the company had the burden of justifying that such differences were reasonable and based on objective grounds. However, the evidence had shown that the salary gap had been determined, unilaterally and progressively, by the company's manager, who had fixed the incentives discretionally, without any objective criteria, a fact which had been confirmed by him and by the other heads of department. The company had not shown that the different incentives had been based on a level of performance or achievement or on the basis of a higher strategic relevance of some departments over others. In sum, the company had failed to discharge its burden, as there was no evidence that the work carried out by the applicant had been of a lower value than the work of her colleagues in the context of the company's activity.

12. The Employment Tribunal, therefore, declared the existence of sex-based discrimination in relation to the applicant's remuneration. It ordered the company to adjust the applicant's salary from January 2017 to meet the salary increase granted to her colleagues (that is, to EUR 48,950.16) and to pay compensation in the amount of EUR 35,000 for the damage caused by that discrimination, including non-pecuniary damage.

13. On 14 February 2018 the Andalusia High Court dismissed an appeal lodged by the company and upheld the Employment Tribunal's judgment. It reiterated that it had been shown that the applicant had been receiving a lower salary than the male colleagues holding the same position and that the company had failed to demonstrate that such difference had been based on an objective and reasonable justification. It stated as follows:

> "It is indisputable that during the last years [the applicant] has received lower remuneration than the other heads of department, all of whom are men. Faced with these indications of discrimination, the company should have shown that this difference in remuneration of [the applicant] with respect to her colleagues, who hold similar professional categories, qualifications and positions of equal value (heads of department), had an objective and reasonable justification, free of any discriminatory purpose. Such justification has not been provided in the present case, as the [company] has merely pointed out that, in years well prior to [the period in question] ... the plaintiff received remuneration that was even higher than that of the other heads of department, that the different departments have different duties and responsibilities and that there are other company managers (regional representatives), men included, who receive lower pay than their female colleagues. This in no way constitutes an objective and reasonable justification for the different treatment concerning remuneration in respect of [the applicant] in recent years, especially considering that the extent to which the [applicant's] department has fewer powers and responsibilities than the rest of the company's departments has not been specified or clarified, and that in these proceedings, the [company] is not accused of discrimination based on sex with respect to all of the company's female employees, but only and exclusively with respect to the

> [applicant]. Consequently, since the company has failed to refute the existence of discrimination in remuneration between the [applicant] and her male colleagues, the appeal must be dismissed and the first-instance court's judgment regarding a violation of the right to equality and non-discrimination based on sex in respect of remuneration must be upheld."

It held that ordering the payment of fair remuneration starting from January 2017 was a logical consequence of the finding of a violation of the applicant's rights, as it constituted an adequate reparation measure. Such conclusion was not affected by the fact that the applicant had been dismissed in May 2017, as the remuneration should be paid until that date, irrespective of any judicial decisions concerning the dismissal, in the event that the applicant challenged it.

14. On 9 January 2019 the Supreme Court declared an appeal on points of law lodged by the company inadmissible and the judgment of the High Court became final. On 15 March 2019 the compensation was paid to the applicant.

II. PROCEEDINGS CONCERNING THE APPLICANT'S DISMISSAL

15. In parallel, on 2 May 2017 the applicant was dismissed from her job. In the letter informing her of her dismissal, the company stated that she had breached her duty of confidentiality and the company instructions regarding the protection of personal data. Specifically, she had disclosed personal data in her conciliation claim and she had shared it by email with third parties. The letter stated:

> "One of the inherent obligations of your position is the duty of confidentiality, as [this company], on account of its activity, manages documents containing highly sensitive and confidential information. This duty not only entails the impossibility of disclosing fiscal, commercial or other kind of data relating to the company's clients, but also an absolute prohibition against using personal data that may be accessed while performing your functions for a different purpose than performing the assigned tasks.
>
> By an email of 7 April 2017, the company direction became aware that on 6 April you lodged a conciliation claim [concerning an alleged salary discrimination] ... To substantiate your claim, you included detailed monthly and annual salaries and annual incentives of the other four heads of department of the company, specifying their names and surnames, for the period between 2006 and 2016. [This is] highly sensitive and confidential information to which you had access as a consequence of the performance of your functions as head of the finance department.
>
> It is clear that such conduct is a flagrant breach of your basic obligations in terms of confidentiality, professional secrets and data protection established by relevant laws, which may even amount to a criminal offence.
>
> Besides, your conduct entails a serious breach of the instructions given by the company ... to protect the data on salaries and remunerations of the company's staff, as well as your duty of confidentiality and [protection of] professional secrets ...
>
> This company has several files registered with the General Registry of the Spanish Data Protection Agency, including a file entitled 'Human resources'. This file ... to

which you have had access in the performance of your functions, has the purpose of managing salaries and human resources and has a [medium] level of security ...

... You are aware of the relevance of respecting the security of the personal data contained in those files and, to that aim, you were given a training guide on information security ... That guide, signed by you, contains the most relevant rules that you must respect when working with the information systems available for performing your functions ...

There is no doubt that you had perfect and exact knowledge of the duties and obligations as regards the protection of those data as established by the relevant laws ... You were aware of the legal protection of those data and of the company's duty to protect them, as well as the consequences for the company in the event of a failure to take the relevant measures.

Nevertheless, in clear breach of the instructions given by the company, and being perfectly aware of your duty to protect personal data, you have disclosed, in your own interests in the context of the conciliation proceedings, personal and sensitive information of other employees ... when the adequate course of action would have been to request the data necessary for your claim from the court, which is entitled to request that information from the company, which, in its turn, is compelled to submit it without breaching the Personal Data Protection Act.

The unlawfulness of your conduct is demonstrated by the fact that, being on temporary leave because of an incapacity to work and being aware of the prohibition, you pressured a subordinate ... to send you the list of payrolls of March [2017] ...

Those events put the company at a grave risk of being sanctioned for a serious breach of the Personal Data Protection Act.

Moreover, your conduct has not been limited to including the above-mentioned personal data in your claim ... but you have also disclosed them to third parties outside of the company. In particular, by emails of 6 and 7 April 2017 ... it has been shown that, before sending the conciliation claim to the company, the following email addresses had access to it [the email addresses of the applicant's lawyers and the applicant's personal account were listed] ... Furthermore, by the above-mentioned email of 7 April 2017, another person outside of the company, Mr M.A., also had access to the content of the claim.

The facts above are even more serious for two reasons: (i) [this company] ... has highly protective mechanisms in its corporate email accounts and, nevertheless, you disclosed in the context of your claim personal data to non-corporate email addresses that did not have the required security and (ii) you participated ... in a training course on data protection ... as shown by the diploma issued ... in November 2016.

In addition, those facts entail a flagrant violation of the instructions given by the company via an email of 14 November 2012 (addressed to you), ordering that the information on staff payrolls should not appear disaggregated for confidentiality reasons and to protect that information.

Moreover, your conduct constitutes a clear breach of the document on confidentiality that you signed in July 2011 setting out the prohibition on using personal data, to which you had access in the performance of your functions, for a different purpose than performing the assigned work, as well as the prohibition on disclosing to any external party the information of which you had knowledge as a consequence of your professional duties.

> Thus, the described facts show totally conscious conduct on your part entailing a breach of the contractual good faith and an abuse of trust in the performance of the functions assigned, as well as clear disobedience in respect of the company's instructions. Taking advantage of your situation and your position, you used, in a totally unjustified way, the sensitive and confidential information of other staff members, sending it to third parties. This makes it impossible for the company to maintain its professional relationship with you.
>
> Those facts constitute several professional infringements which are considered very serious, such as breach of contractual good faith, abuse of trust in the performance of work and lack of discipline or disobedience at work, as regulated in Article 54 § 2 (b) and (d) of the Labour Regulations ...
>
> Consequently, the company's direction has decided to order your disciplinary dismissal, effective today, in respect of the infringement and [to impose] the maximum sanction on account of the seriousness of the facts and the breach of the trust placed in you."

16. On 18 May 2017 the applicant lodged a conciliation claim in relation to her dismissal, stating that it had been based on inaccurate reasons and should therefore be considered null and void or, alternatively, unlawful (*improcedente*).

17. In the absence of an agreement, she lodged a judicial claim on 14 June 2017. She argued that the dismissal had been in retaliation for her having lodged the previous claim concerning discriminatory remuneration. Therefore, her dismissal had to be considered null and void, as it had breached her right to be protected against retaliation (*garantía de indemnidad*). Alternatively, she asked for the dismissal to be considered unlawful, since the reasons given in the dismissal letter were not accurate.

18. On 8 July 2019 Malaga Employment Tribunal no. 4 declared her dismissal from the company lawful (*procedente*), dismissing the applicant's claim and upholding the company's decision to dismiss her.

19. The Employment Tribunal declared it proved that the applicant had asked for an increase of her salary on multiple occasions between 2006 and 2013 and had complained about the differences in salary several times, both verbally and by email. It noted that the company had registered a file for human resources management with the Spanish Data Protection Agency with a medium level of security. It further observed that the applicant had been aware of the data protection policies: she had signed a confidentiality document, she had received specific training, she had received instructions from the managers by email and she had been informed of the possibility of sanctions in the event that she did not respect the relevant instructions. It was established that in January 2017, while she had been absent, and in March 2017, while she had been on temporary leave because of an incapacity to work, she had asked another colleague to send her a list of remunerations. On 7 April 2017 she had sent an email to four persons (Mr P.E., Ms G.P., Mr P.M. and Mr M.A.) containing the conciliation claim. Lastly, the Employment Tribunal observed that the applicant's leave due to incapacity

to work had been terminated in August 2018, its starting date and cause being unknown. Besides, the applicant had suffered from psychological and psychiatric distress prior to her dismissal and in September 2018 she had suffered from an episode of serious depression.

20. With regard to the alleged breach of her right to be protected against retaliation, the Employment Tribunal stated as follows:

> "[Pursuant to] Article 181 § 2 of the Employment Proceedings Act, an employee has to submit reasonable prima facie evidence (*indicio*) that company actions violated his or her fundamental rights, which, if verified, will result in a reversal of the burden of proof, requiring the defendant [the company] to show that there was an objective and reasonable justification, sufficiently proved, of the measures adopted and their proportionality.
>
> ... As established by the Constitutional Court's case-law, where an employee complains of discriminatory treatment or a violation of fundamental rights as a result of a company decision, giving rise to a reasonable suspicion or presumption substantiating [such] allegation, the proof of the existence of a reasonable ground for such action must be shifted to the employer. [This] is a real burden of proof and not a mere 'attempt at proof', as the employer has to persuade the judge, not of a doubt, but of the certainty that the decision was completely unrelated to any discriminatory purpose ...
>
> ...
>
> When the right to be protected against retaliation is relied on, the right to effective judicial protection under Article 24 of the Spanish Constitution is not only affected by irregularities in the proceedings that result in a deprivation of procedural safeguards, but that right may also be breached when its exercise or the preparatory or necessary actions taken by the employee to lodge a judicial claim result in a reprisal from the employer ...
>
> The breach of the right to be protected against retaliation requires a prior action from the employee and a [resulting] reprisal from the company. The [applicant] alleges that her dismissal was a consequence of her discrimination complaint, in particular, after she lodged the conciliation claim on 6 April 2017. The evidence undermines a causal link between [those facts], as the documents show that before 6 April 2017 and on multiple occasions the [applicant] raised the same claim, without any resulting sanction or her dismissal; [rather, she was] simply ignored by the company ...
>
> In conclusion, the facts reveal that no causal link can be established between the conciliation claim lodged on 6 April 2017 and the applicant's dismissal, as she raised several similar complaints with the company starting in 2006 and the company did not react to them. [This] refutes the causal link suggested by [the applicant] and there are therefore no sufficient signs of a breach of the right to be protected against retaliation. Besides, as will be explained, the [applicant] did engage in conduct that could be punished by dismissal."

21. The Employment Tribunal went on to assess whether the dismissal could be considered unlawful. It observed, firstly, that the dismissal letter extensively detailed the relevant facts, the misconduct and the imposed sanction. Referring to sections 10 and 11 of the Personal Data Protection Act, the Employment Tribunal concluded that the applicant had committed very serious misconduct (*falta muy grave*), as set out in Article 54 § 2 (d) of the

Labour Regulations and section 35(11) of the national collective agreement on administrative agencies in force at the relevant time. The Employment Tribunal stated as follows:

> "It is demonstrated on the basis of the evidence that [the applicant] communicated classified and sensitive information in respect of other heads of department of [the company], included in a file registered with the Spanish Data Protection Agency to which she had access owing to her position, to other staff of the company and to third parties not related to the company without the authorisation of the company or the affected persons, using them for her personal benefit and for a purpose unrelated to her functions. This conclusion is not refuted by her allegation, which is not supported by evidence, that she collected that information 'by heart', as, in any event, she had knowledge of those data on account of her functions in the company, without which she would not have had access to them, and she kept that information for years, despite the fact that once they had been reviewed every month, those data were irrelevant for [her work]. The fact that she used that information to bring judicial proceedings does not exonerate her from the obligations undertaken with the company, as, regardless of the legitimate aim she pursued, she could not unilaterally decide when, where and how to use the information protected by the Personal Data Protection Act. She should instead have used the relevant procedural mechanism to that end (preliminary proceedings or anticipated evidence) to obtain such information, with the legal consequences foreseen by the Employment Proceedings Act in the event of a failure by the company to submit that information.
>
> ... even in a hypothetical situation in which the exception of section 11(2)(d) of the Personal Data Protection Act is applicable, and leaving aside the judicial proceedings, [the applicant] would have also [been considered to have] committed very serious misconduct by using and communicating, for a purpose not related to her work, other persons' protected personal data, without authorisation by the company or the affected persons, thereby breaching the duty of secrecy regulated in section 10 of the Personal Data Protection Act and the confidentiality document she signed on 7 July 2011, being perfectly well informed of the instructions which, on account of the nature of the information she managed, had been imposed by the company and the Personal Data Protection Act.
>
> This conduct is contrary to the loyalty due by every worker to the company he or she works for, regardless of any lack of financial damage to the company, [as] regulated by Article 5 of the Labour Regulations, breaching the balance of the relationship between employee and employer and preventing its restoration, as it is serious and punishable conduct, in view of the fact that [in the present case] the employee failed to respect the basic duties of her job, breaching, in sum, the trust placed on her by the company, as she knew its data protection policy so she was conscious of her reprehensible conduct. The 'gradual theory' cannot be applied to conscious breaches of good faith and contractual loyalty.
>
> Since the proved facts and [the applicant's] misconduct constituted a lawful basis for her disciplinary dismissal, the decision is classified as lawful in accordance with Article 54 of the Labour Regulations and Article 108 § 1 of the Employment Proceedings Act and with the consequences provided for in Article 55 § 7 of the Labour Regulations and Article 109 of the Employment Proceedings Act."

22. The applicant appealed against that judgment. She alleged that ruling out the existence of a reprisal on the basis of the existence of previous claims that had received no reaction from the company amounted to a denial of the

workers' right to judicial protection. Such reasoning would mean that any reprisal against an employee who had raised his or her complaints with the company prior to a judicial claim would be devoid of a causal link. Besides, while in previous claims she had complained in general about the different remuneration received, it was in the conciliation claim when she had argued for the first time that such difference had been based on discriminatory treatment on grounds of sex. Moreover, there had been a clear temporal connection between her conciliation claim and her dismissal, which had taken place within a period of less than a month. Lastly, the Employment Tribunal had not duly considered that the recipients of the disputed email had been persons belonging either to the same company or to the same business group, meaning that they could have had access to the relevant data and that the data had only been used to defend her rights.

23. On 13 May 2020 the Andalusia High Court, in a chamber composed of the same judges who had delivered the above-mentioned judgment of 14 February 2018 in the discrimination proceedings (see paragraph 13 above), dismissed the applicant's appeal, stating as follows:

> "The dismissal letter [states that] by an email of 7 April 2017 the company knew that the previous day [the applicant] had lodged a conciliation claim with the Malaga Mediation, Arbitration and Conciliation Centre, claiming that there had been a salary gap ... That claim contained the monthly and annual salaries and annual incentives received by four heads of department, specifying their names and surnames, between 2006 and 2016. [The applicant] had access to that information as a consequence of her functions as head of the finance department. The content of that claim was communicated to persons outside of the company, as it was sent to the [personal email address of the applicant and email addresses of her lawyers] as well as to the email address of Mr M.A. [Even while] being in a situation of temporary inability to work, she sent an email to [an] employee of the finance department, who was directly managed by her, asking him to send her the payrolls of March 2017, to which he replied, sending the requested information.
>
> In the facts [part] of the contested judgment, the conduct attributed to [the applicant] in the dismissal letter was considered proved, as she had asked her subordinate for the information concerning the payrolls of March 2017, which she had obtained; the conciliation claim detailed the monthly and annual remunerations, disaggregated by various elements, of [the heads of department] between 2006 and 2016, and that claim was notified by [the applicant] through an email to the company, to the above-mentioned email addresses and to the email address of Mr M.A.
>
> It is true that the dismissal letter did not attribute to the applicant the sending of the above-mentioned email to Mr P.E, Ms G.P. and Mr P.M., which was also declared proved ... and that only the specific facts attributed in the dismissal letter can be taken into account.
>
> [The applicant], in her position of head of the finance department, had access to the file entitled 'Human resources', with a medium level of security, for the management of staff, remunerations and human resources ... On 7 July 2011 she signed a confidentiality document, committing not to use the personal data to which she had access for a different purpose than performing the assigned work, not to keep it in a different place from her workplace and not to communicate the data to persons outside

of the company. Despite this, after collecting the information in that file, breaching the duty of confidentiality, she used it to substantiate her [discrimination] claim ...

... The conflict between the duty of confidentiality and her fundamental right not to be discriminated against may be assessed. However, even accepting that she was entitled to use the company's classified data, to which she had access because of her job, to substantiate a [discrimination] claim, that conflict would under no circumstances entitle her to communicate those data to persons outside of the company, namely the owners of the above-mentioned email addresses and Mr M.A. Despite the allegations in the appeal, it has not been shown that the recipients of that email ... had previous knowledge of the classified data contained in the conciliation claim, it being irrelevant to that effect the fact that two of those [recipients] worked in other companies in the same business group ... Besides, the applicant had not obtained prior authorisation from her colleagues to use the data on their remuneration. Sending the conciliation claim to those persons, without a justifying reason, was a manifest breach of sections 10 and 11 of the Personal Data Protection Act, in relation to Article 5 § d of the Labour Regulations, which entails an infringement of the contractual good faith established in Article 54 § 2 (d) of the Labour Regulations.

The prima facie evidence of a violation of [the applicant's] right to be protected against retaliation, resulting from the fact that her dismissal was subsequent to the filing of a conciliation claim on a wage gap, is undermined, more than by the reiteration of verbal claims throughout her period of employment, by the veracity of the facts attributed in the dismissal letter. Consequently ... the appeal is dismissed and the [first-instance judgment] upheld."

24. The applicant subsequently lodged an appeal on points of law, reiterating her claims and submitting other judgments that, in her view, provided for a different legal outcome in relevantly similar situations. On 24 March 2021 the Supreme Court declared the cassation appeal inadmissible, stating that the two judgments submitted for contrast were not based on similar situations and did not raise similar issues.

25. The applicant lodged an *amparo* appeal with the Constitutional Court, alleging a violation of her right to effective judicial protection and of her right to equality (under Articles 24 and 14 of the Spanish Constitution respectively).

26. The applicant reiterated that the dismissal had solely been based on her previous claim against the company of discrimination based on sex with regard to her salary and, therefore, it had been in breach of her right to be protected against retaliation. She stressed in this regard the immediate temporal connection between her discrimination complaint, lodged in April 2017, and the dismissal, decided in May 2017. In practice, this had deprived the favourable judgment concerning the remuneration discrimination of its effect, as the termination of the contract meant that she did not receive the sums recognised as fair remuneration in that judgment.

The applicant also asserted that the judicial decisions on her dismissal had therefore been incoherent and had not duly taken into account her right to not to be discriminated against. In particular, the courts had considered that a generic declaration on confidentiality could hamper her right to lodge a remuneration discrimination claim. They had therefore failed to balance the

applicant's fundamental rights with her colleagues' right to privacy. The applicant stressed that she had obtained that information lawfully, that the information had been indispensable for arguing her claim, that there had been no other means offering a higher level of protection of those data and that the workers affected had not suffered any damage, so there had been no real breach of their rights. She further alleged that the use of that data had been accepted in the discrimination proceedings, so upholding her dismissal on that basis had been contradictory.

She argued that, on the other hand, the Employment Tribunal had considered an element not included in the dismissal letter – the sending of the email to external persons – as a ground for her dismissal and that the identity of the recipients, her relationship with the company and their knowledge of the relevant data had not been discussed in the proceedings before the Employment Tribunal.

The applicant insisted that her dismissal should be considered null and void, as it had been decided in breach of her fundamental rights. In sum, the discriminatory conduct of the company – as demonstrated by the domestic courts – had remained without any relevant consequences.

27. In order to justify the constitutional relevance of the *amparo* appeal, the applicant argued, firstly, that it raised an issue in which there was no constitutional case-law. Specifically, the decision on inadmissibility of the appeal on points of law had resulted in a breach of the right to be protected against retaliation. On the other hand, there was a need to clarify the relations between the different rights involved (the right not to be discriminated against, the right to communicate and receive information, the right to be protected against retaliation and the right to effective judicial protection), affected by the denial of access to an appeal on points of law, resulting in the upholding of the reprisal. The constitutional relevance would result from determining whether, indirectly, from the perspective of access to an appeal, an outcome in breach of the right to be protected against retaliation could be upheld. A failure to examine an alleged reprisal on the basis of the strict admissibility criteria of the Supreme Court would result in a situation of immunity for companies who acted in breach of fundamental rights.

28. On 17 January 2022 the Constitutional Court declared the *amparo* appeal inadmissible, stating that the applicant had not duly fulfilled the obligation to justify its constitutional relevance.

III. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

29. On 30 May 2017 the company accused the applicant of unlawful disclosure of secrets on the basis of the same facts contained in the dismissal letter.

30. On 27 June 2017 Malaga investigating court no. 7 decided to stay the proceedings (*sobreseimiento provisional*), considering, firstly, that the

circumstances in which the applicant had seized the relevant data were unclear and, secondly, that the purpose had not been to disclose the secrets or violate the private lives of third parties, but to demonstrate relevant information in the framework of proceedings against the company.

31. On 11 December 2017 the Malaga *Audiencia Provincial* upheld an appeal lodged by the company against that decision. It noted that the use of unlawfully obtained information on salaries to substantiate a judicial claim had in some cases been considered an offence in family law cases and that that case-law could, in principle, be applicable in other areas. On the other hand, the investigating judge had not taken any investigative measures to determine the way in which the seizure of the data had taken place. Lastly, even accepting that the applicant had not had an intention to disclose that data, she had been aware that she had not been entitled to access and disclose such information. The *Audiencia Provincial* thus sent the case back to the investigating court to take investigative measures, as requested by the company.

32. The investigating court, after examining the applicant and several witnesses, delivered a new decision staying the proceedings. It stated that the applicant had had access to the data on account of her position at the company and it reiterated that her purpose had not been to disclose the secrets or violate the private lives of third parties, but to demonstrate relevant information in the framework of the discrimination proceedings against the company. It noted that the existence of the alleged discrimination had been recognised in those proceedings and that the company had not argued that the evidence had been unlawfully obtained. It appears that that decision was not challenged by the company.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

33. The Institutional Law 3/2007 of 22 March 2007 on effective equality between women and men, in so far as relevant, provides:

Article 5. Equal treatment and opportunities in access to employment, vocational training and promotion, and working conditions

> "The principle of equal treatment and opportunities for women and men, applicable in the field of private and public employment, shall be guaranteed, under the terms provided for in the relevant legislation, in access to employment, including self-employment, in vocational training, in professional promotion, in working conditions, including remuneration and dismissal, and in membership and participation in trade unions and employers' organisations or in any organisation whose members exercise a specific profession, including the benefits granted by them".

Article 9. Protection against reprisal

"Any adverse treatment or negative effect suffered by a person as a result of lodging a complaint, claim, report, lawsuit or appeal of any kind, intended to prevent discrimination and demand effective compliance with the principle of equal treatment of women and men, shall also be considered discrimination on the basis of sex".

34. The relevant provisions of the Labour Regulations, as applicable at the relevant time, stated as follows:

Article 5. Workers' duties

"The basic duties of workers are:

(a) to fulfil the specific obligations of their job, in accordance with the rules of good faith and due diligence;

(b) to observe the occupational risk prevention measures adopted;

(c) to comply with the employer's orders and instructions in the regular exercise of their managerial powers;

(d) to refrain from competing with the company's activities under the terms established in this law

(e) to contribute to improving productivity; [and]

(f) any other duties arising, where applicable, from the relevant employment contracts.

... "

Article 17. Non-discrimination in employment relations

"1. Any regulatory provisions, clauses in collective agreements, individual agreements and unilateral decisions by the employer that give rise to direct or indirect discrimination based on sex ... in employment, as well as in matters of remuneration, working hours and other working conditions, shall be considered null and void.

Any orders to discriminate and any decisions by the employer that constitute unfavourable treatment of workers in response to a complaint brought within the company or to an administrative or judicial action aimed at demanding compliance with the principle of equal treatment and non-discrimination shall also be considered null and void.

..."

Article 54. Disciplinary dismissal

"1. The employment contract may be terminated by a decision of the employer through dismissal on the basis of a serious and culpable breach of contract by the employee.

2. The following shall be considered breaches of contract:

...

(b) insubordination or disobedience at work;

...

(d) breach of contractual good faith and breach of trust in the performance of work."

Article 55. Form and effects of disciplinary dismissal

"1. The employee must be notified in writing of the dismissal, stating the grounds on which it is based and the date on which it will take effect.

Collective agreements may establish other formal requirements for the dismissal.

...

3. Dismissals shall be classified as lawful, unlawful or null (*procedente, improcedente o nulo*).

4. A dismissal shall be considered lawful when the breach alleged in the employer's written notification is proven. Otherwise, it shall be unlawful, as well as if the [written notification] does not comply with the provisions of paragraph 1.

5. A dismissal motivated by any of the grounds of discrimination prohibited by the Constitution or the law, or [ordered] in violation of the employee's fundamental rights and freedoms, shall be considered null.

...

6. An unfair dismissal shall have the effect of the immediate reinstatement of the worker, with payment of the salaries not received.

7. A lawful dismissal shall validate the termination of the employment contract ... with no right to compensation or salaries accrued during the proceedings."

35. The relevant parts of the Employment Proceedings Act, as in force at the relevant time, read as follows:

Article 76. Request for preparatory and preliminary actions

"1. A person intending to lodge a claim may request from the judicial body that the defendant ... submit a document which ... is needed for the trial.

...

4. When the preliminary action requested may affect the right to private life or another fundamental right, the court, in the event of the absence of the affected person's consent, may allow such action in the form and with the guarantees provided for in ... Article 90."

Article 77. Prior exhibition of documents

"1. In all cases where the examination of books and accounts or any other document proves essential to substantiate the claim ... the person who intends to lodge a claim ... may request the court to provide such documents.

2. The court shall deliver a reasoned decision ... establishing the manner of carrying out the communication of the above-mentioned elements and adopting, where appropriate, the necessary measures so that the examination is carried out in the least burdensome manner and without the documents [being removed from] their owner. For [this] purpose, it may order that the party in possession of the documents provide the interested party or his or her accounting expert with a copy of them, preferably in electronic format, allowing the comparison of that copy or version with the original document.

..."

Article 90. Admissibility of evidence

"...

4. When access to documents or files ... that may affect the right to private life or other fundamental rights is necessary for the purposes of the proceedings, the court may allow such action, if there are no alternative means of [obtaining the] evidence, by means of a reasoned decision, after weighing the interests at stake through a proportionality analysis and with minimum [interference], fixing the conditions of access, the guarantees of conservation and submission [of the evidence] to the proceedings, the collection and handing over of copies and the intervention of the parties ... where appropriate.

..."

Article 105. Parties' position

"...

2. The defendant shall not be allowed during the trial to [raise] any grounds justifying the dismissal other than those contained in the written communication.

..."

Article 108. Classification of the dismissal in the judgment

"1. In the operative part of the judgment, the judge shall classify the dismissal as lawful, unlawful or null.

It shall be considered lawful when the breach alleged in the employer's written notification is proven. Otherwise, it shall be considered unlawful, as well as if the form does not comply with the provisions of paragraph 1 of Article 55 of the Labour Regulations.

2. A dismissal based on any of the grounds of discrimination provided for by the Constitution or the law, or implemented in breach of fundamental rights and freedoms, shall be considered null and void."

Article 109. Effects of lawful dismissal

"If the dismissal is deemed fair, the termination of the employment contract shall be validated, with no right to compensation or salaries accrued during the proceedings.

..."

Article 177. Legal standing

"1. Any worker or union which, while relying on a legitimate right or interest, considers that the rights to freedom of association, strike or other fundamental rights and freedoms, including the prohibition against discriminatory treatment and harassment, have been violated, may seek protection through this procedure when the claim arises within the scope of [employment relationships] ...

..."

Article 181. Conciliation and trial

"...

2. At the hearing, once the existence of prima facie evidence (*indicios*) that a violation of a fundamental right or freedom has been justified, it shall be the defendant's responsibility to provide an objective and reasonable justification, sufficiently proven, for the measures adopted and their proportionality."

36. The Order of 13 February 2017 of the General Directorate of Employment, registering and publishing the national collective agreement on administrative agencies, in its relevant part, states as follows:

Article 35. Misconduct

"... The following shall be considered serious misconduct.

...

4. Disclosing or commenting, outside of the workplace, on fiscal, commercial or other kinds of data relating to the company's clients.

5. Copying, manipulating, altering, misplacing, destroying or transferring, either totally or partially, electronic files and data of all kinds and removing them from the company."

Article 36. Sanctions

"The maximum sanctions that may be imposed on those who commit misconduct shall be the following ...

For very serious misconduct: at the company's discretion, suspension of employment and salary for a period of from 11 to 60 days or dismissal."

37. The relevant sections of Institutional Law no. 15/1999 of 13 December 1999 on Personal Data Protection – subsequently overturned by Institutional Law no. 3/2018, of 5 December 2018 on Personal Data Protection and digital rights – as in force at the material time, provided as follows:

Section 10. Duty of secrecy

"The manager of the file and those involved in any phase of the processing of personal data are bound by professional secrecy regarding the data and by the duty to save them. These obligations shall continue to exist even after their relationship with the file owner or, where applicable, the file manager ends."

Section 11. Data communication

"1. The personal data subject to processing may only be communicated to a third party for the fulfilment of purposes directly relating to the legitimate functions of the transferor and the transferee with the prior consent of the person concerned.

2. The consent required in the previous section shall not be required:

...

(d) when the communication to be made is addressed to ... judges or courts ... in the exercise of their assigned functions ..."

38. According to the Constitutional Court's case-law, the right to be protected against retaliation in the context of employment is one of the aspects of the right to effective judicial protection enshrined in Article 24 of the Constitution. For example, in judgment no. 16/2006 of 19 January 2006, the Constitutional Court stated as follows:

"... the violation of effective judicial protection does not only occur on account of irregularities within the proceedings that result in the deprivation of procedural guarantees, but this right may also be infringed when its exercise, or the performance of the preparatory or preliminary acts necessary for [its exercise], results in detrimental consequences in the sphere of public or private relations for the person involved ... In the field of labour relations, the protection against retaliation results in the impossibility of imposing retaliatory measures against a worker for exercising their rights, from which it follows that any action taken by an employer motivated by the fact that a worker has brought legal proceedings seeking the recognition of rights to which they believed they were entitled must be classified as discriminatory and [declared] manifestly null and void, it being contrary to that same fundamental right, since one of the basic labour rights of every worker is the right to bring individual actions arising from [issues related to] their employment contract.

The prohibition of dismissal as a response to the exercise by the worker of the protection of their rights also follows from Article 5 (c) of Convention no. 158 of the International Labour Organization ... a rule that must be taken into account, pursuant to Article 10 § 2 of the Constitution, for the purposes of interpreting fundamental rights. This provision expressly excludes from the valid causes for termination of an employment contract 'the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities' ...

It is also necessary to bear in mind the importance of the rule on the distribution of the burden of proof in such cases. According to the established doctrine of this court, when it is alleged that a particular decision actually conceals conduct that infringes the fundamental rights of the affected party, it is incumbent upon the author of the measure to prove that it is based on reasonable grounds and is not intended to infringe a fundamental right. However, for this shift in the burden of proof to the defendant to take effect, it is not sufficient for the plaintiff to label the company's conduct as discriminatory; rather, the plaintiff must provide evidence that gives rise to a reasonable suspicion, appearance or presumption in favour of such an allegation. Once this circumstantial evidence has been presented, the defendant assumes the burden of proving that the facts motivating their decision were legitimate or, even without justifying their legitimacy, that they were reasonably unrelated to any motive that infringes fundamental rights. Therefore, the defendant is not required to prove a negative fact – non-discrimination – but rather the reasonableness and proportionality of the measure adopted and its nature as completely unrelated to any purpose that infringes fundamental rights."

II. RELEVANT INTERNATIONAL MATERIAL

39. The European Social Charter of 1961, ratified by Spain in 1980, provides as relevant:

Article 4. The right to fair remuneration

"With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake: ...

3. to recognise the right of men and women workers to equal pay for work of equal value ..."

Article 1 of the Additional Protocol to the European Social Charter, ratified by Spain in 2000, reads as follows:

Article 1 – Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

"1. With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

– access to employment, protection against dismissal and occupational resettlement;

– vocational guidance, training, retraining and rehabilitation;

– terms of employment and working conditions including remuneration;

– career development including promotion."

This provision was subsequently included in Article 20 of the European Social Charter (revised), ratified by Spain in 2021.

40. The European Committee of Social Rights, in its 2020 Conclusions concerning Spain, observed the following:

Article 1 of the 1988 Additional Protocol - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

"Obligation to guarantee the right to equal pay for equal work or work of equal value

...

Effective remedies

The Committee recalls that domestic law must provide for appropriate and effective remedies in the event of alleged pay discrimination. Workers who claim that they have suffered discrimination must be able to take their case to court. Effective access to courts must be guaranteed for victims of pay discrimination. Therefore, proceedings should be affordable and timely. Moreover, any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and from being sufficiently dissuasive is contrary to the Charter. The burden of proof must be shifted meaning that where a person believes she or he has suffered discrimination on grounds of sex and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus should be on the defendant to prove that there has been no infringement of the principle of non-discrimination (Conclusions XIII-5, Statement of interpretation on Article 1 of the 1988 Additional Protocol). Employees who try to enforce their right to equality must be legally protected against any form of reprisals from their employers, including not only dismissal, but also downgrading, changes to working conditions and so on.

...

The report states that the victims of discrimination have access to courts on the basis of Article 24 of the Constitution. It further states, in reply to the specific questions relating to the shift in the burden of proof and ceilings of compensation for pay discrimination victims, that the legislation provides for the shift in the burden of proof. However, there are no specific examples about how this is applied in practice and the Committee requests that the next report indicates information on the number of cases relating to pay discrimination decided by Spanish courts and the practice followed regarding the shift in the burden of proof. Retaliatory dismissal is forbidden and the period in which dismissal is forbidden after a maternity or paternity leave has been extended from 9 to 12 months. There are no ceilings of compensation for pay discrimination victims.

...

The Committee concludes that the situation in Spain is in conformity with Article 1 of the 1988 Additional Protocol."

41. The principle of equal pay is also enshrined in the laws of the European Union (EU). Article 157 of the Treaty on the Functioning of the European Union provides:

Article 157

"1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

..."

42. The Charter of Fundamental Rights of the European Union establishes in this regard:

Article 23

"Equality between women and men

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex."

43. The EU has adopted several directives concerning the implementation of the principle of equal treatment in matters of employment, such as the Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, which provides as relevant:

Article 17
Defence of rights

"1. Member States shall ensure that, after possible recourse to other competent authorities including where they deem it appropriate conciliation procedures, judicial procedures for the enforcement of obligations under this Directive are available to all

persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

..."

Article 24
Victimisation

"Member States shall introduce into their national legal systems such measures as are necessary to protect employees, including those who are employees' representatives provided for by national laws and/or practices, against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment."

44. The Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms, regulates the employee's right to receive information on individual and average pay levels. It also includes provisions on penalties applicable to infringements of the principle of equal pay. Regarding the enforcement of such principle, it states as follows:

Article 14
Defence of rights

"Member States shall ensure that, after possible recourse to conciliation, court proceedings for the enforcement of rights and obligations relating to the principle of equal pay are available to all workers who consider themselves wronged by a failure to apply the principle of equal pay. Such proceedings shall be easily accessible to workers and to persons who act on their behalf, even after the end of the employment relationship in which the discrimination is alleged to have occurred."

Article 25
Victimisation and protection against less favourable treatment

"1. Workers and their workers' representatives shall not be treated less favourably on the ground that they have exercised their rights relating to equal pay or have supported another person in the protection of that person's rights.

2. Member States shall introduce in their national legal systems such measures as are necessary to protect workers, including workers who are workers' representatives, against dismissal or other adverse treatment by an employer as a reaction to a complaint within the employer's organisation or to any administrative procedure or court proceedings for the purpose of the enforcement of any rights or obligations relating to the principle of equal pay."

45. The International Labour Organization Equal Remuneration Convention (no. 100) of 1951, ratified by Spain in 1967, states:

Article 2

"1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value."

46. The Universal Declaration of Human Rights states:

Article 23

"...

2. Everyone, without any discrimination, has the right to equal pay for equal work."

47. The United Nations (UN) Convention on the Elimination of All Forms of Discrimination against Women, provides as relevant:

Article 11

"1. States parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: ... (d) the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 TAKEN TOGETHER WITH ARTICLE 8

48. The applicant complained that the domestic courts, by upholding her dismissal, had failed to protect her against retaliation for her successful complaint of discrimination based on sex. She relied on Articles 6 and 14 of the Convention.

49. Having regard to its case-law and the nature of the applicant's complaint above, the Court, being the master of the characterisation to be given in law to the facts of a case (see, for instance, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018), is of the view that the issues raised should be addressed from the perspective of Article 14 of the Convention, taken in conjunction with Article 8, which read as follows:

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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."

A. Admissibility

1. Applicability of Article 14, taken in conjunction with Article 8 of the Convention

50. The Government submitted that Article 8 of the Convention was not applicable to the circumstances of the present case, as the dismissal had not affected the applicant's private and family life.

51. Although the applicant did not submit any specific arguments in this regard, she complained that her dismissal had been a retaliation against her based on her previous discrimination claim. She further argued that the dismissal had resulted in a sanction being imposed on her for using data without which it would not have been possible to obtain protection against sexual discrimination and that, by upholding the dismissal, the domestic courts had *de facto* deprived of their useful effects the judgments in her favour acknowledging the violation of her right not to be discriminated against on grounds of sex.

52. As the Court has consistently held, Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded thereby. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of them (see *Konstantin Markin v. Russia* [GC], no. 30078/06, § 124, ECHR 2012 (extracts), and *Beeler v. Switzerland* [GC], no. 78630/12, §§ 47-48, 11 October 2022).

53. For the purposes of the applicability of Article 14 in conjunction with Article 8, the Court reiterates that the notion of "private life" is a broad concept, not susceptible to exhaustive definition. It covers the physical and moral integrity of the person and sometimes encompasses aspects of an individual's physical and social identity, including the right to establish and develop relationships with other human beings, the right to "personal development" or the right to self-determination as such (see *Schüth v. Germany*, no. 1620/03, § 53, ECHR 2010, and *I.B. v. Greece*, no. 552/10, § 67, ECHR 2013). As the Court has previously held, some typical aspects of

private life may be affected in employment-related disputes by dismissal, demotion, non-admission to a profession or other similarly unfavourable measures (see *Denisov v. Ukraine* [GC], no. 76639/11, § 115, 25 September 2018). The Court has also ruled on cases where a complaint under Article 8 was based on a failure on the part of the domestic authorities to protect the applicants' private sphere against interferences by their employers (see *Obst v. Germany*, no. 425/03, 23 September 2010; *Schüth*, cited above; *I.B. v. Greece*, cited above; and *Platini v. Switzerland* (dec.), no. 526/18, § 52, 11 February 2020).

54. In the present case, the Court observes that, according to the domestic courts' decisions, the applicant had been experiencing a situation of discrimination concerning her remuneration for several years. Once she had decided to take legal action, she was faced with dismissal, which, in her view, was a retaliation against such action. The applicant's complaint is, in essence, that the decisions to uphold her dismissal resulted in a serious curtailment of the effects of the recognition by the domestic courts of the violation of her right not to be discriminated against.

55. The Court further takes into account that the applicant worked for the same company for more than 20 years and that, according to the information submitted by the parties, she was unemployed for almost five years following her dismissal. Therefore, the confirmation of the applicant's dismissal by the domestic courts had clearly negative financial consequences (see, *mutatis mutandis*, *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, § 86, 12 January 2023). Moreover, the fact that her dismissal was a disciplinary one, based on very serious misconduct, and that such considerations were upheld by the domestic courts directly concerned her personal integrity and professional competence and suggests that her professional reputation was affected (see, *mutatis mutandis*, *Ovcharenko and Kolos*, cited above, § 86, and *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 166, ECHR 2013). In the Court's view, such combination of circumstances also had adverse effects on her self-perception and self-respect (see, *mutatis mutandis*, *Emel Boyraz v. Turkey*, no. 61960/08, § 44, 2 December 2014, concerning a dismissal based on grounds of sex).

56. The Court thus concludes that the facts of the case fall within the ambit of Article 8 of the Convention.

57. It further observes that the question whether Article 14 in conjunction with Article 8 give rise to a positive obligation to protect in circumstances such as those in the present case – where the applicant sought the domestic courts' protection against alleged retaliation following a successful claim of discrimination based on sex – falls to be dealt with on the merits.

2. Non-exhaustion of domestic remedies

58. The Government submitted, in the context of their objection regarding the applicability of Article 8, that the applicant had not complained, either

explicitly or implicitly, of a violation of Article 8 of the Convention before the domestic courts. The Court considers that this argument concerns the issue of exhaustion of domestic remedies. The Government also argued that the applicant had failed to duly exhaust the available domestic remedies inasmuch as she had failed to properly justify the constitutional relevance of her *amparo* appeal. They referred in this regard to *Alvarez Juan v. Spain* (no. 33799/16, 29 September 2020). They further stated that the arguments submitted to justify such relevance, specifically those relating to the lack of analysis of the merits of her claim by the Supreme Court, had been manifestly inappropriate, as they had not been connected to the alleged violations raised in the *amparo* appeal.

59. The applicant argued that she had exhausted all available remedies and reiterated that the domestic courts had failed to protect her against retaliation by the company. The applicant also asserted that she had met the formal requirement of justifying the constitutional relevance of her *amparo* appeal, but the Constitutional Court had considered that such relevance had not been present in her case. The fact that the Constitutional Court had not accepted those arguments should not be considered a failure to make use of that specific remedy.

60. The Court notes, firstly, that the applicant consistently argued throughout the judicial proceedings concerning her dismissal that the dismissal had been a reprisal for her lodging of a discrimination claim against the company and she asked the domestic courts to uphold her right to be protected against such retaliation (see paragraphs 17, 21 and 26 above). The Court, in view of its previous conclusions (see paragraphs 53-56 above), considers that such claims fell within the ambit of Article 8 and, therefore, concludes that the applicant raised before the domestic courts, at least in substance, the related complaint.

61. Secondly, the Court has held that the fact that the Constitutional Court declared an *amparo* appeal inadmissible on the grounds that it did not have special constitutional significance as required or, as the case may be, that the appellant had not demonstrated the existence of such significance, does not prevent the Court from ruling on the admissibility and merits of an application (see *Arribas Antón v. Spain*, no. 16563/11, § 51, 20 January 2015, and the cases cited therein). Conversely, a complete failure by an applicant to fulfil the obligation of justifying the constitutional relevance of his or her *amparo* appeal (*no haber satisfecho en modo alguno*) would render the application inadmissible for non-exhaustion of domestic remedies (see *Alvarez Juan*, cited above, §§ 49-51, where the Court considered that the applicant had failed to fulfil such obligation, both in form, that is, by including a specific part of her appeal indicating that it was of special constitutional importance at least for her, and in substance, that is, by stating the reasons why she considered her appeal to be of the required constitutional importance).

62. In the present case, the applicant set out, in a separate part of the application to the Constitutional Court, the reasons why her *amparo* appeal had special constitutional significance for her (see paragraph 27 above). The Court considers that it sufficiently identified the elements on which the alleged relevance was based, namely the existence of a situation of conflict of rights and the need for the Constitutional Court to clarify the relations between them, as well as the unintended consequences of allowing a breach of the right to be protected against retaliation by relying on the inadmissibility grounds of an appeal on points of law, which, in the applicant's view, were too strict to function adequately in the framework of employment proceedings.

63. The Court thus considers that the applicant gave the domestic courts and ultimately the Constitutional Court the opportunity to remedy the alleged violation (see *Saber and Boughassal v. Spain*, nos. 76550/13 and 45938/14, § 30, 18 December 2018). Accordingly, the Government's objection must be dismissed.

3. Conclusion on admissibility

64. Having dismissed the Government's objections, the Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

65. The applicant argued that the domestic courts had failed to guarantee her right to be protected from retaliation by upholding her dismissal, which had been a reprisal against her for previously lodging the claim concerning discriminatory treatment in respect of her remuneration. By ordering her dismissal, the company had ensured that, regardless of the results of the discrimination claim, her right to equal remuneration would not be respected.

66. The domestic courts had overlooked the fact that her conduct had been adequate and proportionate, as she had needed to prove the existence of a discriminatory situation. She had had no other means of obtaining the relevant information and her actions had not caused any damage to her colleagues. In her view, the possibility of requesting the necessary information from the courts, as regulated in Article 77 of the Employment Proceedings Act (see paragraphs 35 above and 71 below), had only been relevant in cases where the claimant had not had access to such information, but this had not been the circumstance in the present case. Furthermore, the data had only been shared

with some members of the company who had already had access to that information and with the applicant's lawyers.

67. Moreover, the domestic courts had used the relevant information as a basis for the finding of a breach of her right to non-discrimination. The same court had considered the same evidence with opposing results in the discrimination proceedings and the dismissal proceedings, thus restricting the effects of the judgment declaring a situation of discrimination against her on grounds of sex.

68. The domestic courts' decisions upholding her dismissal had infringed the redress of her right not to be discriminated against on grounds of sex, as had been recognised in the discrimination proceedings. Owing to the termination of her contract, she had not enjoyed the level of salary she had been entitled to in accordance with the decision of Malaga Employment Tribunal no. 2 (see paragraph 12 above).

(b) The Government

69. The Government held that the domestic courts' judgments contained adequate and sufficient reasons for their rulings.

70. With regard to the right to be protected against retaliation, the Government asserted that the domestic courts had considered it proved that, despite an appearance of possible retaliation, there had been no causal link between the applicant's discrimination claim and her dismissal. On the contrary, the dismissal had been based on the applicant's failure to fulfil her professional obligations. In the absence of a retaliatory intent, the applicant's dismissal, regardless of other considerations of domestic law, could not be considered a violation of her fundamental rights subject to review by the Court.

71. On the other hand, the applicant had had other avenues for legitimately obtaining the information needed to substantiate her discrimination claim without breaching her duties in terms of confidentiality and data protection. Specifically, she could have requested the documentation from the court, which in turn would have requested the company to provide it (as established in Article 77 of the Employment Proceedings Act – see paragraph 35 above), but she had not advanced any reasons not to resort to that option.

72. The Government stressed that the discrimination proceedings had taken place after the applicant's dismissal, so the fact that the company had not challenged the use of the data in those proceedings was irrelevant. Besides, the fact that the access to those data had been in breach of the applicant's professional duties did not necessarily imply that it could not be considered evidence in accordance with procedural rules.

73. Lastly, the Government asserted that neither the dismissal decision nor the decisions of the domestic courts could be considered to have produced a situation of discrimination on grounds of sex. The applicant had apparently

received the compensation established in the judgment of Malaga Employment Tribunal no. 2 and had not referred to any circumstances preventing the enforcement of that judgment. With regard to the dismissal itself, they reiterated that it had been based on her breach of professional duties, and not on her sex or on the fact that she had lodged a discrimination complaint.

2. The Court's assessment

(a) General principles

74. The Court has held that Article 14 may impose positive obligations on member States to ensure compliance with the principle of non-discrimination in relations between private individuals. It has affirmed in this regard that it cannot remain passive where a national court's interpretation of a legal act, be it a testamentary disposition, a private contract, a public document, a statutory provision or an administrative practice, appears unreasonable, arbitrary or blatantly inconsistent with the prohibition of discrimination established by Article 14 and more broadly with the principles underlying the Convention (see *Pla and Puncernau v. Andorra*, no. 69498/01, § 59, ECHR 2004-VIII, and *Dimici v. Turkey*, no. 70133/16, § 127, 5 July 2022). The Court has further affirmed that the advancement of gender equality is today a major goal in the member States of the Council of Europe and very weighty reasons would have to be put forward before such a difference of treatment could be regarded as compatible with the Convention (see *Emel Boyraz*, cited above, § 51).

75. The Court has also held that it is crucially important that individuals affected by discriminatory treatment should be provided with an opportunity to challenge it and should have the right to take legal action to obtain damages and other relief (see, in the context of discrimination against members of a trade union, *Danilenkov and Others v. Russia*, no. 67336/01, § 124, ECHR 2009 (extracts), and *Zakharova and Others v. Russia*, no. 12736/10, § 35, 8 March 2022). It has affirmed in this connection that States are required under Articles 11 and 14 of the Convention to set up a judicial system that ensures real and effective protection against anti-union discrimination (see *Danilenkov and Others*, cited above, § 124, and *Zakharova and Others*, cited above, § 35).

76. The Court set out the general principles concerning the State's positive obligations under Article 8 in *López Ribalda and Others v. Spain* [GC] (nos. 1874/13 and 8567/13, 17 October 2019), which, in its relevant part, states as follows:

> "110. The Court reiterates that although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in effective respect for private or family life. These obligations may necessitate the adoption of

measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (see *Söderman v. Sweden* [GC], no. 5786/08, § 78, ECHR 2013, and [*Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 98, ECHR 2012]. The responsibility of the State may thus be engaged if the facts complained of stemmed from a failure on its part to secure to those concerned the enjoyment of a right enshrined in Article 8 of the Convention (see *Bărbulescu v. Romania* [GC], no. 61496/08, § 110, 5 September 2017, and *Schüth*, [cited above] §§ 54 and 57).

111. ... While the boundaries between the State's positive and negative obligations under the Convention do not lend themselves to precise definition, the applicable principles are nonetheless similar. In both contexts regard must be had in particular to the fair balance that has to be struck between the competing private and public interests, subject in any event to the margin of appreciation enjoyed by the State (see *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06 and 3 others, § 62, ECHR 2011, and *Bărbulescu*, cited above, § 112). The margin of appreciation goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by independent courts. In exercising its supervisory function, the Court does not have to take the place of the national courts but to review, in the light of the case as a whole, whether their decisions were compatible with the provisions of the Convention relied upon (see *Peck v. the United Kingdom*, no. 44647/98, § 77, ECHR 2003-I *Peck*, and *Von Hannover (no. 2)*, cited above, § 105).

112. The choice of the means calculated to secure compliance with Article 8 of the Convention in the sphere of the relations of individuals between themselves is in principle a matter that falls within the Contracting States' margin of appreciation. There are different ways of ensuring respect for private life and the nature of the State's obligation will depend on the particular aspect of private life that is at issue (see *Von Hannover (no. 2)*, cited above, § 104; *Söderman*, cited above, § 79; and *Bărbulescu*, cited above, § 113)."

(b) Application of those principles to the present case

(i) The positive obligation in issue

77. In the present case, the measure complained of by the applicant, namely her dismissal allegedly in retaliation for a successful claim of discrimination based on sex, was not imposed by a State authority, but by a private company. It is not disputed that in the proceedings related to her claim of discrimination based on sex which preceded the impugned dismissal, the domestic courts acted in accordance with the State's positive obligations regarding protection against sexual discrimination. Therefore, the first question for the Court is whether, in the circumstances of the present case, the respondent State's positive obligations under Article 14 in conjunction with Article 8 of the Convention extended to providing protection against allegedly retaliatory measures in the form of dismissal from work following a claim of discrimination based on sex.

78. The Court has stated that the advancement of gender equality is a major goal in the member States of the Council of Europe (see *Emel Boyraz*, cited above, § 51). It further observes that the right to equal remuneration is recognised by several international treaties – including the European Social

Charter, the Treaty on the Functioning of the European Union, the Charter of Fundamental Rights of the European Union, several EU directives, the International Labour Organization Equal Remuneration Convention and the UN Convention on the Elimination of All Forms of Discrimination against Women – some of which have been in force, including in respect of Spain, for several decades (see paragraphs 39-47 above). In some of these instruments, namely the European Social Charter and EU directives, the right to be protected against measures taken by the employer, particularly dismissal, in reaction to complaints which were aimed at enforcing compliance with the principle of equal treatment are considered an important aspect of the right to equal remuneration (see paragraphs 39, 43 and 44 above).

79. The Court has stated that it is crucially important that individuals affected by discriminatory treatment should be provided with an opportunity to challenge it and should have the right to take legal action to obtain damages and other relief (see paragraph 75 above). In the Court's view, such right to take legal action would be severely impaired if it was not accompanied by real and effective protection in case of retaliation for that action. The Court recalls in this regard that the Convention is intended to protect effective rights, not illusory ones (see, *mutatis mutandis*, *Cuenca Zarzoso v. Spain*, no. 23383/12, § 51, 16 January 2018).

80. In view of the foregoing, the Court considers that the States' positive obligations under Article 14 in conjunction with Article 8 of the Convention require them to ensure real and effective protection against any form of reprisal by employers in connection with complaints brought to ensure respect of the right not to be discriminated against on grounds of sex (see paragraph 75 above). Therefore, where the domestic courts are called to rule on measures allegedly taken by an employer in retaliation against the exercise of the right not to be discriminated against on grounds of sex, they are bound to secure to those concerned the enjoyment of the rights enshrined in Article 14 in conjunction with Article 8 of the Convention (see paragraph 76 above). They must have due regard to the allegedly retaliatory nature of the impugned measure and the context and carefully balance the relevant interests at stake, providing relevant and sufficient reasons to justify their decisions.

(ii) Compliance with the positive obligation in issue

81. The Court observes, firstly, that domestic law provides for equal treatment of men and women in matters of employment and remuneration, as well as for protection against reprisals in this connection (see paragraphs 33 and 34 above) and that, moreover, Article 24 of the Constitution guarantees access to courts and protection from retaliation for victims of discrimination (see paragraph 38 above).

82. The Court does not discern any deficiencies in respect of the regulatory framework applicable in the respondent State that might entail a

violation of the State's above-mentioned positive obligations. It further notes in this regard that the European Committee of Social Rights has found that the situation in Spain concerning the obligation to guarantee the right to equal pay is in conformity with the European Social Charter and the Protocols thereto (see paragraph 40 above).

83. The Court will thus ascertain whether the application of domestic law by the employment tribunals which examined the applicant's case provided sufficient protection of her right not to be discriminated against in conjunction with her right to respect for her private life by taking into account the relevant context and the importance of protection against retaliatory action when sexual discrimination had already been established and by weighing up the competing interests at stake.

84. The Court reiterates in that regard that it is in the first place for the national courts to interpret and apply domestic law and that, whilst it is not its task to substitute its own opinion for that of the domestic courts, it must nonetheless ascertain whether the effects of the domestic court's findings are compatible with the Convention (see *Schüth*, cited above, § 65, and the cases cited therein). In exercising its supervisory function, the Court's task is to determine whether, in the light of the case as a whole, the reasons given by the domestic authorities to examine the applicant's allegedly retaliatory dismissal were relevant and sufficient (see, *mutatis mutandis*, *Palomo Sánchez and Others*, cited above, § 63).

85. The Court notes, firstly, that the Employment Tribunal dismissed the applicant's argument concerning the violation of her right to be protected against retaliation on the basis that previous complaints raised with the company concerning the discriminatory treatment against her had not led to any retaliatory reaction by the company (see paragraph 20 above). The High Court, for its part, stated that the existence of a breach of the applicant's right to be protected against retaliation had been ruled out "more than by the reiteration of verbal claims throughout her period of employment, by the veracity of the facts attributed in the dismissal letter" (see paragraph 23 above).

86. The Court observes that the domestic courts' above-mentioned reasoning failed to have regard to the fact that the absence of retaliatory measures lasted as long as the applicant only raised the discrimination issue internally, within the company, and that its reaction changed following the lodging of the claim by the applicant on 6 April 2017, which was the first time she raised her claims against the company before an external – administrative or judicial – body. At that point, for the first time, the applicant's conflict with the company's management left the internal sphere of the company and was exposed to the domestic authorities. In addition, it was in the claim of 6 April 2017 that the applicant raised for the first time the issue of the salary gap as one which affected her fundamental right not to be discriminated against on grounds of sex (see paragraph 22 above), thus

requiring the company to justify that such gap had had an objective justification. In the Court's view, the domestic courts failed to have sufficient regard to the relevant context by omitting to note the difference between the applicant's claim of 6 April 2017 and her previous internal contact with the company's management and the fact that the allegedly retaliatory measure followed swiftly after the former. Furthermore, the Court fails to see how the absence of a reaction from an employer faced with repeated internal complaints by an employee – which in itself may be indicative of an intention not to guarantee the potentially affected rights – could be seen as a fact ruling out any retaliatory intent on its part when the conflict escalated to the stage of administrative or judicial proceedings.

87. Secondly, the domestic courts considered that the applicant's dismissal had been based on very serious misconduct. They held that, even accepting that the applicant might have used the relevant private data to substantiate her claim, she would not have been entitled to share that data with persons external to the company who had had no prior knowledge of that information. Furthermore, she had had a duty of secrecy in respect of the data she had managed as head of the finance department, including the relevant payrolls, and she had not obtained the consent of the concerned persons. Such conduct had therefore been in breach of the Labour Regulations and the Institutional Law on Data Protection.

88. The Court observes that the domestic courts were faced with several conflicting interests: on the one hand, the applicant's right not to be discriminated against on grounds of sex in the employment context and her right to bring the necessary actions in defence of that right, without being exposed to reprisals, and on the other hand, the right to the protection of her colleagues' personal data and the company's duty to protect that data.

89. The Court has held that the protection of personal data is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 of the Convention (see *L.B. v. Hungary* [GC], no. 36345/16, § 103, 9 March 2023). The Court acknowledges that the company had a duty to protect its employees' right to privacy and that it was entitled to take measures to ensure the fulfilment by its employees of their professional duties in this regard. It therefore accepts that a disclosure of private information in the context of work may call for disciplinary measures or sanctions against an employee. However, the domestic courts were required to strike a balance between the various interests involved and to assess whether the dismissal – a severe disciplinary measure – was justified in the specific circumstances of the case, having regard, in particular, to the relevant context and the imperative to secure effective protection against discrimination.

90. The Court notes in this regard, firstly, that while the domestic courts did not challenge the applicant's position regarding the reasons for her disclosing the payroll information, they did not appear to have sufficiently

taken into account the fact that there had been a situation of longstanding conflict between the applicant and the company in respect of sexual discrimination, that she had suffered discriminatory treatment for several years, as later acknowledged by the domestic courts, and that she had complained to the company's management repeatedly to no avail. Without putting into question the domestic courts' finding that the disclosure of the payroll data had been in breach of the applicant's duties as an employee, the Court considers that the above-mentioned elements were highly relevant to the assessment of the context and gravity of that breach and, therefore, to the justification for the type of disciplinary measure that the employer had chosen to impose (which was a very severe one). An assessment of the facts above was, in turn, undoubtedly relevant to the question whether retaliatory intent had motivated, at least partly, the dismissal.

91. In particular, in the domestic proceedings, it was not disputed that the applicant had collected the remuneration data and included it in her claim with the sole purpose of substantiating it. Also, the use of such data as evidence in the discrimination proceedings was not challenged by the company and constituted the basis for the finding of a violation of the applicant's right not to be discriminated against (see paragraphs 10-12 above; see, *mutatis mutandis*, *M.P. v. Portugal*, no. 27516/14, § 48, 7 September 2021). While it was undoubtedly relevant to note, as the domestic courts did, that the applicant could have requested such information through the domestic courts (see paragraphs 15, 21, 35 and 71 above) and that she had not been entitled to share it with third parties outside of the company (see paragraph 23 above), in performing the relevant assessment of the justification for the dismissal, the domestic courts should also have considered the other related elements noted above (see *M.P. v. Portugal*, cited above, §§ 47-52; see also paragraph 90 above and paragraphs 93-94 below).

92. Furthermore, the domestic courts did not take into account the fact that the relevant email was part of an email chain of 6 and 7 April 2017 strictly related to the applicant's discrimination claim: the applicant's lawyer sent the conciliation claim to the applicant's private email account and to another lawyer also representing the applicant in the conciliation claim and she subsequently forwarded it to her corporate account and, from that account, to four persons (Mr P.E., Ms G.P., Mr P.M. and Mr M.A.), informing them that such document had been submitted to the Mediation, Arbitration and Conciliation Centre (see paragraphs 15, 19 and 23 above).

93. It is not entirely clear from the text of the High Court's judgment whether it considered that the irregular disclosure of information had concerned three or six persons (that is, Mr M.A., the applicants' two lawyers and, potentially, Mr P.E., Ms G.P., and Mr P.M.). Be that as it may, the fact that the message was addressed to a limited number of persons who were directly or indirectly involved in the conflict between the applicant and the company, without the existence of any intention to publicly disseminate the

information, was relevant for assessing the proportionality of her dismissal (see, *mutatis mutandis*, *Dede v. Türkiye*, no. 48340/20, § 50, 20 February 2024, concerning an applicant's dismissal following an internal email criticising management methods, in which the Court found a violation of Article 10 of the Convention).

94. The courts' decisions also did not contain any assessment of the impact of the disclosure of personal data on the persons concerned, taking into account the nature of the data (see, *mutatis mutandis*, *Le Marrec v. France* (dec.), no. 52319/22, § 78, 5 November 2024) and the apparent absence of any complaints lodged by the persons affected (see, *mutatis mutandis*, *Matúz v. Hungary*, no. 73571/10, § 37, 21 October 2014).

95. In sum, in the Court's view, the domestic courts upheld the applicant's dismissal by applying a defective approach, not compatible with the positive obligations regarding protection against discrimination. The dismissal had the effect of negating the protection against discrimination afforded in the separate anti-discrimination proceedings; the domestic courts did not engage with this consequence. Furthermore, they failed to give sufficient weight to relevant elements such as the context of persistent sexual discrimination to which the applicant had been subjected, the repeated failure by the company to react to the applicant's attempts to end it via internal means, the purpose of the disclosure of private information, the limited impact of such disclosure, and the severity of the measure taken against the applicant, which could be indicative of a retaliatory motive. The Court thus considers that the reasons given by the domestic courts to uphold the applicant's dismissal were not sufficient in the circumstances of the present case.

96. While the Court cannot speculate – and indeed it is not its role in the present case to decide – on whether a careful consideration of the factors above should have resulted in the annulment of the dismissal, the foregoing considerations are sufficient to enable the Court to conclude that the respondent State failed to fulfil its positive obligations to ensure effective protection against discrimination on the grounds of sex in the context of employment and equal remuneration.

97. There has accordingly been a violation of Article 14 of the Convention, taken in conjunction with Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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."

99. The applicant claimed 981,836.92 euros (EUR) in respect of pecuniary damage. That sum was calculated on the basis of the amount of

salary recognised in the discrimination proceedings and (i) the number of days which had elapsed between her dismissal and the date on which the just satisfaction claim was lodged (27 March 2024), to calculate the resulting damage; and (ii) the number of days between 28 March 2024 and the date on which she would allegedly be able to retire (30 December 2036), to calculate the loss of earnings.

She further asked the court to grant her a fair and reasonable sum in respect of non-pecuniary damage, taking into consideration the circumstances of the case. In particular, she submitted that she had suffered from psychological damage as a result of enduring an unfair dismissal and that the loss of her job, considering that she was a 54-year-old woman, placed her in a difficult situation.

The applicant did not make any claim for the reimbursement of her costs.

100. The Government argued that the award in respect of pecuniary damage should be calculated taking into account two important facts of which the applicant had not informed the Court, namely, that she had been working at a new job since 15 February 2022 and that, between the date of her dismissal and the date on which she had started her new job she had been receiving various unemployment benefits. They further asserted that in the absence of any indication as to an amount of compensation claimed in respect of non-pecuniary damage, no award should be granted on that basis.

101. The Court considers that there is no direct causal link between the violation found and the pecuniary damage claimed and, in any event, observes that the applicant did not submit any relevant documents to substantiate her claim in respect of pecuniary damage. It therefore rejects this claim. Furthermore, the Court notes that domestic law provides for the possibility of reviewing final decisions which have been declared in breach of Convention rights by a judgment of the Court, under Article 236 of the Employment Proceedings Act and Articles 510 and 511 of the Civil Procedure Act, provided that the violation, by its nature and seriousness, has effects that persist and cannot be ceased in any other way than by judicial review (see *Valverde Digon v. Spain*, no. 22386/19, § 86, 26 January 2023).

102. Regarding non-pecuniary damage, having regard to the nature of the violation found, the Court considers it appropriate to award the applicant EUR 12,000 in respect of non-pecuniary damage.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 14 of the Convention, taken in conjunction with Article 8 of the Convention;

3. *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, EUR 12,000, (twelve thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

2. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 December 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Kateřina Šimáčková President