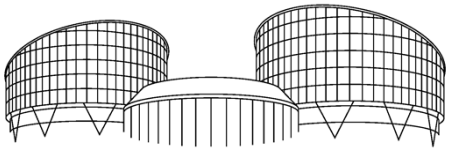

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

DECISION

Application no. 415/07
Roland KLAUSECKER
against Germany

The European Court of Human Rights (Fifth Section), sitting on 6 January 2015 as a Chamber composed of:

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Vincent A. De Gaetano,
André Potocki,
Helena Jäderblom,
Aleš Pejchal, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above application lodged on 22 December 2006,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Roland Klausecker, is a German national, who was born in 1973 and lives in Erlangen. He was represented before the Court by Mr U. Weber, a lawyer practising in Berlin.

2. The German Government ("the Government") were represented by their Agents, Mrs A. Wittling-Vogel and Mr H.-J. Behrens, of the Federal Ministry of Justice.

A. The circumstances of the case

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

1. Background to the case

4. In 1991 the applicant, aged 18, lost his left hand and left eye and part of the fingers of his right hand and suffered injuries to his left ear in an accident. He was subsequently recognised as being 100 per cent physically disabled.

5. He later graduated in mechanical engineering. From 1999 to 2005 he worked as a research assistant at university.

2. Proceedings before the European Patent Office

6. In 2005 the applicant applied for a post as a patent examiner at the European Patent Office in Munich. Having sat a series of technical and language tests in May 2005, the applicant was informed that he was being considered for employment as a permanent staff member as from November 2005 but that he had to undergo a medical examination before a final decision would be taken.

7. Following his medical examination on 23 June 2005, the examining doctor found in her report dated 4 July 2005 that the applicant was currently able to perform the tasks of a patent examiner. However, in view of the applicant's disability, it could not be excluded that his right hand would be constantly overstrained. This entailed a higher risk of absence due to illness and of premature incapacity to work for health reasons. Therefore, the doctor could not confirm that the applicant was medically fit, unreservedly, for recruitment as a patent examiner.

8. In a letter dated 12 August 2005 the department of human resources of the European Patent Office informed the applicant that he would not be offered employment. It confirmed that the applicant had passed the professional tests for the post. However, according to the results of his medical examination on 23 June 2005, which had been explained to him by its medical adviser on the phone earlier, he did not meet the physical requirements of the post as required by Article 8 of the Service Regulations for Permanent Employees of the European Patent Office (Service Regulations; see paragraph 34 below).

9. On 27 September 2005 the applicant requested that the President of the European Patent Office review the decision not to recruit him and that he consider his request as an internal appeal should he not accede to it. He claimed that the doctor's finding that he was presently fit for employment, but would possibly no longer be at some point in the future was insufficient to prove that he did not meet the physical requirements of the post and constituted unlawful discrimination against the disabled.

10. In a letter dated 2 November 2005 the applicant was informed that the President of the European Patent Office had dismissed his request to review the decision not to recruit him and that his internal appeal had been rejected as inadmissible. Under Article 107, read in conjunction with

Article 106 of the Service Regulations (see paragraph 36 below) only staff members were entitled to lodge an appeal against an act of the employment authority. Since the doctors who had examined the applicant in the recruitment procedure had found that he did not meet the physical requirements of the post as required by Article 8d of the Service Regulations, the applicant had failed to meet all the conditions for appointment and the President had therefore not consented to it. The applicant did not have standing to lodge an internal appeal against a refusal to appoint him.

11. In that letter, the applicant was further informed that he could appeal against the President's final decision to the Administrative Tribunal of the International Labour Organization (ILO), which was the highest level of jurisdiction for employment disputes between the European Patent Organisation (EPO) and its staff members. However, that Tribunal, in its judgment no. 1964, had previously rejected as irreceivable a complaint by a person whose application for a job at the EPO had likewise been rejected for failure to meet the physical requirements of the post as stipulated by Article 8d of the Service Regulations.

3. Proceedings before the German courts

12. In December 2005, the applicant, arguing that the EPO enjoyed immunity from the jurisdiction of the German courts, lodged a constitutional complaint with the Federal Constitutional Court directly. He complained that his right of access to court under Article 19 § 4 of the Basic Law (see paragraph 40 below) had been violated in that there was no remedy, either within the European Patent Office, before the German courts or before the Administrative Tribunal of the ILO, against the decision of the European Patent Office not to offer him employment. Moreover, the decision of the President of the Patent Office not to offer him employment because of his disability had breached his right to protection against discrimination under the second sentence of Article 3 § 3 of the Basic Law (see paragraph 39 below).

13. On 22 June 2006 the Federal Constitutional Court declined to consider the applicant's constitutional complaint (file no. 2 BvR 2093/05). It found that the complaint was inadmissible. A constitutional complaint only lay against acts of a "public authority" (*öffentliche Gewalt*) and the applicant had failed to demonstrate that such an act was at issue in his case.

14. The Federal Constitutional Court confirmed that the EPO had immunity from the jurisdiction of the domestic courts within the scope of its official activities under Article 8 of the European Patent Convention (EPC) read in conjunction with Article 3 of the Protocol on Privileges and Immunities of the EPO (see paragraphs 30-31 below). It further found that acts of a "public authority" were not only acts of German State authorities. The term also covered acts of supranational authorities, such as the

European Patent Organisation and its executive organ, the European Patent Office, which had an impact on the beneficiaries of fundamental rights in Germany.

15. However, the decision of the President of the European Patent Office here at issue could not be qualified as an act which had an impact on the beneficiaries of fundamental rights in Germany because it did not have any external legal effects within the German legal order. As a measure relating to the relationship between the international organisation and its staff or candidates for posts, it only concerned the internal sphere of the organisation. This conclusion was not altered by the fact that the applicant was a German national living in Germany who, had he been employed, would have worked in Germany. The court conceded that the applicant's recruitment would have been an act of a supranational nature which, changing his legal status, would have had a concrete effect within the German legal order. The refusal to employ him did not, however, have such an effect. The Federal Constitutional Court's jurisdiction did not extend to such internal measures.

16. The Federal Constitutional Court further found that in view of the inadmissibility of the applicant's constitutional complaint, it did not have to decide the question whether the level of protection in respect of staff issues within the European Patent Organisation complied with the standards set by the Basic Law, which had to be observed in the event of a transfer of sovereign powers.

4. Proceedings before the Administrative Tribunal of the ILO

17. On 1 February 2006 the applicant lodged a complaint with the Administrative Tribunal of the ILO against the decision of the President of the European Patent Office not to recruit him. He argued that the said decision constituted illegal discrimination on grounds of his disability. He stressed that he had passed all the technical and linguistic tests for the post and was able, in particular, to use a computer, as he was doing in his job as a research assistant at a university. He further argued that he had been denied a fair trial, in particular access to a tribunal, in that his internal appeal had not been examined in breach of Article 4 § 3 of the Service Regulations (see paragraph 33 below) and in that the President of the European Patent Office had failed to waive the Organisation's immunity in order to allow him to seek redress in the German courts.

18. In its reply, the European Patent Organisation submitted that the applicant's complaint was irreceivable as he had never been a permanent employee. In any event, the medical practitioner who had examined the applicant, the Office's medical adviser and its occupational health physician had all agreed that in view of the fact that the work of an examiner relied heavily on the use of a computer, the risk of damage to the applicant's health was too high and he was likely to suffer early invalidity. As the

applicant therefore did not meet the physical requirements of the post, he did not fall within the scope of Article 4 § 3 of the Service Regulations, which concerned physically handicapped persons "who possess the necessary qualifications and abilities".

19. In its judgment dated 11 July 2007 the Administrative Tribunal of the ILO dismissed the applicant's complaint as irreceivable (no. 2657, 103rd session). It stated that it had no option but to confirm its well-established case-law according to which it was a court of limited jurisdiction. Relying on Article II § 5 of its Statute (see paragraph 38 below) and its judgment no. 1964, it found that it had no jurisdiction in respect of external candidates for employment and persons who had not concluded, with the international organisation in question, a contract of employment of which all the essential terms had been agreed. Thus, persons who were applicants for a post in an international organisation but who had not been recruited were barred from access to it.

20. The Administrative Tribunal further found that it had no authority to order the EPO to waive its immunity. It noted, however, that its judgment created a legal vacuum and considered it highly desirable that the EPO should seek a solution affording the applicant access to a court, either by waiving its immunity or by submitting the dispute to arbitration.

5. Subsequent developments

21. By letter dated 8 August 2007 the European Patent Office informed the applicant that, having regard to the findings of the Administrative Tribunal of the ILO in its judgment no. 2657, the Office's President had decided to submit the Patent Office's impugned decision to an arbitral tribunal.

22. On 17 September 2007 the applicant, represented by counsel, declared to be ready, in principle, to participate in an arbitration procedure. He considered that the parties should agree on the composition of the arbitral tribunal and its rules of procedure together. Referring to the judgment of the Administrative Tribunal of the ILO in his case, he urged the European Patent Organisation, however, to renounce its immunity from jurisdiction in the first place.

23. On 2 October 2007 the European Patent Office replied that it was only ready to submit the dispute to arbitration, which, in its view, the Administrative Tribunal of the ILO had considered as an equally good alternative to a waiver of immunity. The Office declared to be ready to get back to the applicant in relation to the procedural questions concerning the arbitral procedure following advice by the Administrative Tribunal of the ILO on the constitution of an arbitral tribunal.

24. By letter dated 25 March 2008 the European Patent Organisation, represented by counsel, informed the applicant that the Administrative Tribunal of the ILO had declared not to be in a position to help the

European Patent Office in constituting an arbitral tribunal. The EPO therefore offered the applicant to conclude a contract of arbitration; that offer was valid until 15 April 2008. An international arbitral tribunal should determine the dispute under the rules the Administrative Tribunal of the ILO would have had to apply had it had jurisdiction to deal with the applicant's case.

25. Under that draft contract of arbitration submitted to the applicant, the dispute previously submitted to the Administrative Tribunal of the ILO should be determined by three arbitrators, two of whom were to be named by the parties respectively and the third one by the two arbitrators. The arbitrators should determine the dispute by applying the European Patent Convention, the Service Regulations and the general principles of international labour law as established by the Administrative Tribunal of the ILO. They should hear the parties, who may be represented by counsel, in an oral hearing in private. The arbitrators' fees and expenses were to be borne by the European Patent Organisation. The parties' costs and expenses were to be borne by the parties themselves respectively unless the arbitral tribunal ordered the reimbursement of the applicant's costs and expenses.

26. On 15 April 2008 the applicant declined the EPO's offer of March 2008 for an arbitration contract. He claimed that the arbitration procedure proposed violated essential procedural guarantees laid down in Article 6 of the Convention, including the right to a public hearing within a reasonable time. He was ready to negotiate an arbitration contract and to conclude an arbitration agreement in accordance with the findings of the Administrative Tribunal of the ILO.

27. By letter dated 29 April 2008 the European Patent Office informed the applicant that it intended to conduct the arbitration proceedings by applying the same rules as those which the Administrative Tribunal of the ILO would have applied had it declared the applicant's action admissible, that is, the rules which would have been applicable to staff and former staff members of the EPO. The EPO could not renounce its autonomy in labour matters conferred to it by its Member States. The EPO declared to be ready, however, to examine new, specific proposals concerning the procedure made by the applicant until 16 June 2008.

28. The applicant did not reply to the European Patent Office's letter of 29 April 2008.

B. Relevant domestic and international law

1. The legal status of the European Patent Office

29. The European Patent Office is an organ of the European Patent Organisation (EPO), an intergovernmental organisation which was set up on the basis of the Convention on the Grant of European Patents (European

Patent Convention – EPC) of 5 October 1973. The Organisation currently has 38 Member States, including Germany, which became a Member State of the EPO on 7 October 1977.

30. Under Article 8 of the EPC, the European Patent Organisation enjoys the privileges and immunities necessary for the performance of its duties in each Contracting State under the conditions defined in the Protocol on Privileges and Immunities annexed to the EPC.

31. The Protocol on Privileges and Immunities of the European Patent Organisation, in so far as relevant, provides:

Article 3

(1) Within the scope of its official activities the Organisation shall have immunity from jurisdiction and execution, except

(a) to the extent that the Organisation shall have expressly waived such immunity in a particular case;

(b) in the case of a civil action brought by a third party for damage resulting from an accident caused by a motor vehicle belonging to, or operated on behalf of, the Organisation, or in respect of a motor traffic offence involving such a vehicle;

(c) in respect of the enforcement of an arbitration award made under Article 23.

...

(4) The official activities of the Organisation shall, for the purposes of this Protocol, be such as are strictly necessary for its administrative and technical operation, as set out in the Convention.

Article 19

(1) The privileges and immunities provided for in this Protocol are not designed to give to employees of the European Patent Office or experts performing functions for or on behalf of the Organisation personal advantage. They are provided solely to ensure, in all circumstances, the unimpeded functioning of the Organisation and the complete independence of the persons to whom they are accorded.

(2) The President of the European Patent Office has the duty to waive immunity where he considers that such immunity prevents the normal course of justice and that it is possible to dispense with such immunity without prejudicing the interests of the Organisation. The Administrative Council may waive immunity of the President for the same reasons.

Article 20

(1) The Organisation shall co-operate at all times with the competent authorities of the Contracting States in order to facilitate the proper administration of justice, to ensure the observance of police regulations and regulations concerning public health, labour inspection or other similar national legislation, and to prevent any abuse of the privileges, immunities and facilities provided for in this Protocol.

2. Provisions of the Service Regulations for Permanent Employees of the European Patent Office

32. Article 1 of the Service Regulations for Permanent Employees of the European Patent Office (Service Regulations), in so far as relevant, provides

that the Service Regulations shall apply to permanent employees of the European Patent Office and to former permanent employees of the Office in all cases expressly provided for in the Regulations.

33. Article 4 of the Service Regulations, on vacant posts, in so far as relevant, reads:

> (1) Vacant posts shall be filled by the appointing authority, having regard to the qualifications required and ability to perform the duties involved: ...
>
> - by recruitment and/or appointment as a result of a general competition open both to employees of the Office and to external candidates ...
>
> (3) "... Physically handicapped persons who possess the necessary qualifications and abilities required for a vacant post must not suffer discrimination on account of their disability."

34. Article 8 of the Service Regulations, in so far as relevant, provides:

> Conditions for appointment
>
> "To be eligible for appointment as a permanent employee, a candidate must fulfil the following requirements: ...
>
> d) he must meet the physical requirements of the post; ..."

35. Article 9 of the Service Regulations provides that before appointment, a successful candidate shall be medically examined by a medical practitioner designated by the President of the Office in order that the appointing authority may be satisfied that he fulfils the requirements of Article 8, sub-paragraph d).

36. Article 107 § 1, read in conjunction with Article 106 of the Service Regulations, provides that permanent employees, former permanent employees or rightful claimants on their behalf may lodge an internal appeal against an act adversely affecting them. An internal appeal shall be lodged with the appointing authority which gave the decision appealed against (Article 108 § 1 of the Service Regulations). If the President of the Office considers that a favourable reply cannot be given to the internal appeal, an Appeals Committee shall deliver an opinion on the matter; the authority concerned shall take a decision having regard to this opinion (Article 109 § 1 of the Service Regulations). When all internal means of appeal have been exhausted, a permanent employee, a former permanent employee, or a rightful claimant on his behalf, may appeal to the Administrative Tribunal of the ILO under the conditions provided in the Statute of that Tribunal (Article 109 § 3 of the Service Regulations).

3. Provisions concerning the Administrative Tribunal of the ILO

37. Article 13 of the European Patent Convention contains rules on disputes between the EPO and the employees of the European Patent Office. Under paragraph 1 of that provision, employees and former employees of the European Patent Office may apply to the Administrative Tribunal of the

International Labour Organization in the case of disputes with the EPO, in accordance with the Statute of the Tribunal and within the limits and subject to the conditions laid down in the Service Regulations for permanent employees. Under paragraph 2 of that provision, an appeal shall only be admissible if the person concerned has exhausted such other means of appeal as are available to him under the Service Regulations.

38. Article II of the Statute of the Administrative Tribunal of the ILO, in so far as relevant, provides:

> "5. The Tribunal shall also be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of any other international organization meeting the standards set out in the Annex hereto which has addressed to the Director-General a declaration recognizing, in accordance with its Constitution or internal administrative rules, the jurisdiction of the Tribunal for this purpose, as well as its Rules of Procedure, and which is approved by the Governing Body."

4. Provisions of the Basic Law

39. Article 3 § 3, second sentence, of the Basic Law stipulates that no one shall be discriminated against because of his disability.

40. Pursuant to Article 19 § 4 of the Basic Law, a person whose rights have been violated by a public authority may have recourse to the courts. If no other jurisdiction has been established, the civil courts have jurisdiction.

COMPLAINTS

41. The applicant complained, first, that the defendant State had failed to ensure that he had access to a tribunal in order to protect his civil right not to be discriminated against on grounds of his disability. He claimed, in particular, that the failure of the Federal Constitutional Court to consider his constitutional complaint and to protect his Convention rights had breached his rights under Article 6 and Article 13 of the Convention. In view of the limitation, by the Federal Constitutional Court, of its jurisdiction to protect fundamental rights, the latter had failed to meet the standards set by the Convention.

42. The applicant further complained that the failure of the European Patent Office to examine his internal appeal and the refusal of its President to waive the Patent Office's immunity in order to allow him to pursue his claim before the German courts had entailed a violation of Article 6 of the Convention. He argued that neither the European Patent Office's internal appeal process nor the procedure before the Administrative Tribunal of the ILO met the requirements of Article 6, in particular that of independence. Germany was to be held responsible for these deficient procedures.

THE LAW

43. The Court considers that the applicant's complaints about the lack of access to the German courts, on the one hand, and about the lack of access to, and the deficient procedures within the European Patent Office and before the Administrative Tribunal of the ILO, on the other hand, fall to be examined under Article 6 § 1 of the Convention alone, which, in so far as relevant, reads as follows:

> "1. In the determination of his civil rights and obligations, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law."

A. Alleged violation of Article 6 in the procedure before the German courts

1. Germany's responsibility for the procedure before the German courts

44. The Government conceded that the application was compatible *ratione personae* with the provisions of the Convention in so far as it concerned the refusal of the Federal Constitutional Court, in its decision of 22 June 2006, to grant legal protection against the acts of the EPO.

45. The Court considers that in so far as the applicant complained about his lack of access to the German Federal Constitutional Court in order to have his complaint about the decision of the European Patent Office not to offer him employment examined on the merits, he fell, as the addressee of the impugned court decision, within the "jurisdiction" of the German State for the purposes of Article 1. Therefore, his application is compatible *ratione personae* with the provisions of the Convention in this respect.

2. Applicability of Article 6 § 1 of the Convention

(a) The parties' submissions

46. In the Government's submission, Article 6 did not apply in the present case. The dispute concerning the applicant's recruitment as a patent examiner, that is, to international civil service, did not concern a "civil" right within the meaning of Article 6 § 1 (the Government referred, *inter alia*, to *Pellegrin v. France* [GC], no. 28541/95, §§ 59 ss., ECHR 1999-VIII in this respect). Moreover, the Convention did not guarantee a right to recruitment to the civil service (the Government referred, *inter alia*, to *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 57, ECHR 2007-II).

47. In the applicant's view, the right at issue in the proceedings had been "civil" for the purposes of Article 6 § 1 of the Convention. He had a "civil right" to be protected against unlawful discrimination on grounds of his

disability. That right was laid down in Article 4 of the Service Regulations, Articles 3 § 3 and 19 of the German Basic Law and in German and EU anti-discrimination law. He had been refused employment as a patent examiner solely on the grounds that he was physically handicapped, based on an insufficiently reasoned medical expert report, and had therefore been discriminated on account of his disability.

(b) The Court's assessment

48. The present case raises an issue in respect of the applicability of Article 6 § 1, first, in relation to the question whether a "civil" right was at issue. In the Government's submission, the application concerned, in substance, only the right to recruitment to the civil service. The Court consistently reiterated that neither the Convention nor its Protocols guaranteed a right of recruitment to the civil service; however, it did not follow that in other respects civil servants fell outside the scope of the Convention (see, *inter alia*, *Glasenapp v. Germany*, 28 August 1986, §§ 48-49, Series A no. 104; and *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 57, ECHR 2007-II). In the *Glasenapp* case, for instance, in which access to the civil service lay at the heart of the issue submitted to the Court and where the State authorities were found not to have done more than to verify whether the candidate for a post possessed the necessary qualifications for the job in question, the Court considered that that examination did not interfere with that applicant's Convention rights, notably her right under Article 10 (ibid., § 53).

49. However, in the present case, the applicant could be said to have relied on his substantive right to non-discrimination on grounds of his disability and not to have claimed a right of recruitment as such. The Court notes that before the Federal Constitutional Court, the applicant could invoke and has indeed relied on his substantive fundamental right under Article 3 § 3 of the Basic Law not to be discriminated against because of his disability (see paragraphs 12 and 39 above).

50. Second, the question arises whether the Court's case-law as developed in the case of *Vilho Eskelinen* (cited above, §§ 42 ss.) is applicable to the present case. If the present application must be considered as similar to the case of *Vilho Eskelinen*, which concerned a dispute raised by a civil servant over his conditions of employment, the applicability of Article 6 § 1 and, in particular, the existence of a "civil" right is equally to be verified.

51. The Court considers that the present case, in which the applicant was denied an examination of the merits of his complaint notably because the European Patent Office, which had taken the impugned decision, enjoyed immunity from jurisdiction of the German courts, differed from the situation at issue in the case of *Vilho Eskelinen* (cited above). Unlike the applicants in the latter case, the applicant in the present case was not a civil servant of

either the respondent State or the European Patent Office. Furthermore, the respondent State had not excluded access to a court for a post or category of staff including the applicant (compare *Vilho Eskelinen*, cited above, § 62). The exclusion of access to court was not linked to the applicant's position, but to the defendant EPO's status as an organisation enjoying immunity from jurisdiction. A grant of immunity is, moreover, to be seen not as qualifying an (existing) substantive right but as a procedural bar, preventing an applicant from bringing his claim before the court (see *Fogarty v. the United Kingdom* [GC], no. 37112/97, § 26, ECHR 2001-XI (extracts)).

52. In any event, the Court considers that it does not have to determine in the present case whether Article 6 § 1 is applicable and can proceed on the basis that this is the case for the reasons which follow.

3. Compliance with Article 6 § 1 of the Convention

(a) The parties' submissions

(i) The Government

53. The Government argued that, even assuming the applicability of Article 6 in the present case, the applicant's right of access to court under that provision had not been breached. The limitation, by the Federal Constitutional Court, of its control of the compliance with fundamental rights of acts of international organisations to cases in which the latter's acts had effects on the legal position of persons in Germany complied with the Convention. Under Article 1, the latter obliged the Contracting Parties only to secure the Convention rights to those within their "jurisdiction".

54. Moreover, even assuming an interference with the applicant's right of access to court under Article 6 by the Federal Constitutional Court's restriction of access to it, that interference had been justified. The exclusion of the applicant's access to the German courts under Article 8 of the European Patent Convention, read in conjunction with Article 3 of the Protocol on Privileges and Immunities of the EPO (see paragraphs 30-31 above), was justified on objective grounds of public interest. Immunity of international organisations from jurisdiction was indispensable in order to guarantee the functioning of such organisations and in order to prevent undue influence exercised by its Member States.

55. The internal system of judicial review within the EPO also guaranteed a protection of fundamental rights comparable to that secured by the Convention. Moreover, despite the restriction of access to that system of internal judicial review for job applicants, the applicant did have, in the circumstances of the present case, alternative means effectively to protect his Convention rights. The EPO had offered the applicant to conduct an arbitration procedure which would have afforded him effective protection.

56. The Government stressed that the applicant had discontinued the negotiations for an arbitration contract with the EPO, of which the European Patent Office was an organ, without giving reasons. The arbitration contract offered to the applicant had been reasonable. In particular, it had been reasonable for the EPO to allow only its internal law to be applied as that would also have been the case had the applicant's complaint been dealt with on the merits by the Administrative Tribunal of the ILO. The rights of disabled persons were also protected by the EPO and the Administrative Tribunal of the ILO which had expressly declared to protect fundamental rights. It had been the applicant's free decision, in applying for a job at the EPO, to subject himself to the internal rules of that organisation.

(ii) The applicant

57. The applicant argued that the limitation on his right of access to court had not been justified. According to the decision rendered by the Federal Constitutional Court in his case, that court would not have jurisdiction in cases in which an international organisation acted in a manner inconsistent with the Convention as long as its acts did not have legal effects in the German legal order. This did not meet the standards established by the Court in its case-law.

58. In the applicant's submission, the European Patent Office also had not offered reasonable alternatives to access to court. He had neither had access to the European Patent Office's internal appeals system nor to the Administrative Tribunal of the ILO. In any event, there was no body of human rights law within the EPO legal order which could afford a protection equivalent to that of the Convention.

59. The applicant further argued that he had not abandoned the negotiations for an arbitration contract without giving reasons. He submitted that the European Patent Office apparently had not made sufficient attempts to obtain assistance from the Administrative Tribunal of the ILO in constituting an arbitral tribunal. Furthermore, counsel acting for the EPO had not sent him a copy of his power of attorney, but had only given an assurance that he had been mandated by the EPO whereas he had a dispute with the European Patent Office and not the EPO. As the European Patent Office had failed to give him the information he had requested, it had not been him who had terminated the arbitral proceedings.

60. The applicant also submitted that the arbitral procedure proposed could not be considered as an adequate alternative to access to court. He considered that there had been serious deficiencies in the arbitral procedure – which would not have complied with the requirements of Article 6 of the Convention – proposed unilaterally by the EPO. Moreover, the applicable law in the arbitration procedure had been unduly limited to the internal law of the EPO and the latter failed to provide redress in this respect. Furthermore, as there was no clear definition of the fundamental rights and

the law prohibiting discrimination applicable, the arbitral tribunal could not have found his discrimination on grounds of disability to have been illegal and the arbitration therefore did not have reasonable prospects of success.

61. The applicant further argued that he had not waived his right of access to court under Article 6 § 1 of the Convention because he had not agreed to an arbitral procedure. In any event, a procedure before an arbitral tribunal never met the requirements of Article 6 of the Convention as the latter was never established by law.

(b) The Court's assessment

(i) Recapitulation of the relevant principles

62. The Court recalls that the right of access to the courts secured by Article 6 § 1 of the Convention is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 59, ECHR 1999-I; *Beer and Regan v. Germany* [GC], no. 28934/95, § 49, 18 February 1999; *Fogarty*, cited above, § 33; *Lopez Cifuentes v. Spain* (dec.), no. 18754/06, § 31, 7 July 2009; *Eiffage S.A. and Others v. Switzerland* (dec.), no. 1742/05, 15 September 2009; *Cudak v. Lithuania* [GC], no. 15869/02, § 55, ECHR 2010; *Sabeh El Leil v. France* [GC], no. 34869/05, § 47, 29 June 2011; *Chapman v. Belgium* (dec.), no. 39619/06, § 45, 5 March 2013; and *Stichting Mothers of Srebrenica and Others v. the Netherlands* (dec.), no. 65542/12, § 139, ECHR 2013 (extracts)).

63. The Court is of the opinion that where States establish international organisations in order to pursue or strengthen their cooperation in certain fields of activities, and where they attribute to these organisations certain competences and accord them immunities, there may be implications as to the protection of fundamental rights. It would be incompatible with the purpose and object of the Convention, however, if the Contracting States were thereby absolved from their responsibility under the Convention in relation to the field of activity covered by such attribution. It should be recalled that the Convention is intended to guarantee not theoretical or illusory rights, but rights that are practical and effective. This is particularly true for the right of access to the courts in view of the prominent place held in a democratic

society by the right to a fair trial (see, *inter alia*, *Waite and Kennedy*, cited above, § 67; *Beer and Regan*, cited above, § 57; referring to *Airey v. Ireland*, 9 October 1979, § 24, Series A no. 32).

64. For the Court, therefore, a material factor in determining whether granting an international organisation immunity from jurisdiction of the domestic courts is permissible under the Convention is whether the applicants concerned had available to them reasonable alternative means to protect effectively their rights under the Convention (see *Waite and Kennedy*, cited above, § 68; *Beer and Regan*, cited above, § 58; and *Chapman*, cited above, § 51).

(ii) Application of those principles to the present case

65. The Court notes that the Federal Constitutional Court declared inadmissible the applicant's constitutional complaint alleging a breach of his right not to be discriminated by the decision of the President of the European Patent Office not to recruit him because of his disability. As the Patent Office's decision only concerned the internal sphere of the organisation, the court found that it did not have jurisdiction to examine its compliance with the fundamental rights laid down in the Basic Law. It further confirmed that the EPO had immunity from jurisdiction of the German (labour) courts within the scope of its official activities (see paragraphs 13-16 above).

66. Therefore, the applicant's access to the German courts was limited to access to the Federal Constitutional Court, where he could argue only a preliminary issue, the extent of the EPO's immunity (compare also *Waite and Kennedy*, cited above, § 58; and *Beer and Regan*, cited above, § 48).

67. In determining whether that limitation of the applicant's access to court pursued a legitimate aim, the Court is satisfied that, as the Government pointed out, granting immunity from German jurisdiction to the EPO aimed at guaranteeing the proper functioning of that international organisation. The Court has indeed previously stressed that the attribution of privileges and immunities to international organisations was an essential means of ensuring the proper functioning of such organisations free from unilateral interference by individual governments. Moreover, the immunity from jurisdiction commonly accorded by States to international organisations under the organisations' constituent instruments or supplementary agreements was a long-standing practice established in the interest of the good working of these organisations. The importance of this practice was enhanced by a trend towards extending and strengthening international cooperation in all domains of modern society (see *Waite and Kennedy*, cited above, § 63; and *Beer and Regan*, cited above, § 53). Therefore, the immunity from jurisdiction applied by the Federal Constitutional Court to the EPO in the present case had a legitimate objective.

68. As regards the proportionality of the limitation of the applicant's right of access to court in order to pursue that legitimate aim, the Court observes that the applicant was not only refused an examination of the merits of his complaint about discrimination in the recruitment procedure before the European Patent Office by the German Federal Constitutional Court. In his position as a candidate for a post, as opposed to a (former) staff member, he was also found not to have standing to lodge an internal appeal within the EPO under the Service Regulations of the European Patent Office (see paragraphs 10 and 36 above). Likewise, the Administrative Tribunal of the ILO dismissed the applicant's complaint about the impugned decision of the European Patent Office as inadmissible as it equally did not have jurisdiction in respect of external candidates for employment (see paragraphs 19 and 38 above). Therefore, the applicant's complaint about the impugned decision of the European Patent Office was not reviewed on the merits by any tribunal or other body.

69. Having regard to the importance in a democratic society of the right to a fair trial, of which the right of access to court is an essential aspect, the Court therefore considers it decisive whether the applicant had available to him reasonable alternative means to protect effectively his rights under the Convention.

70. The Court notes in this respect that in its judgment of 11 July 2007, the Administrative Tribunal of the ILO found that as a result of its lack of jurisdiction, there was a legal vacuum and that it was highly desirable that the EPO sought a solution affording the applicant access to a court, either by waiving its immunity or by submitting the dispute to arbitration (see paragraph 20 above). The European Patent Office, following up that proposal, subsequently declared to be ready to submit its impugned decision refusing to recruit the applicant to an arbitral tribunal. It offered the applicant to conclude a concrete contract of arbitration. Under that contract, three arbitrators were to hear the applicant's case in an oral hearing in private. They were to determine the case on the basis of the substantive rules which the Administrative Tribunal of the ILO would have applied had it had jurisdiction to adjudicate the case, that is, the European Patent Convention, the European Patent Office's Service Regulations and the general principles of international labour law as established by the Administrative Tribunal of the ILO (see paragraphs 24-25 above). It further offered to examine specific proposals concerning the procedure made by the applicant, who did not take up that offer (see paragraphs 27-28 above).

71. The Court finds that this offer of arbitration made to the applicant had awarded the applicant a reasonable opportunity to have his complaint about the European Patent Office's decision examined on the merits. It does not only fail to share the applicant's doubts about the mandate of counsel acting for the EPO, of which the European Patent Office is a body. In particular, it does not consider that the EPO's offer to have the dispute

examined (only) under the rules which would have been applicable before the Administrative Tribunal of the ILO was such as to make the arbitration procedure an unreasonable alternative to proceedings before the domestic courts.

72. The Court notes in that context that it has previously found, in particular, that, bearing in mind the legitimate aim of immunities of international organisations, the test of proportionality cannot be applied in such a way as to compel an international organisation to submit itself to national litigation in relation to employment conditions prescribed under national labour law. To read Article 6 § 1 of the Convention and its guarantee of access to court as necessarily requiring the application of national legislation in such matters would, in the Court's view, thwart the proper functioning of international organisations and run counter to the current trend towards extending and strengthening international cooperation (see *Waite and Kennedy*, cited above, § 72; and *Beer and Regan*, cited above, § 62).

73. It had therefore been reasonable to propose the applicant a determination of his labour dispute with the European Patent Office under the rules which would have been applicable to him had he become a staff member of that organisation (but not to offer him a more advantageous treatment compared to those staff members). The Court further notes in that context that the applicant himself had relied, *inter alia*, on an anti-discrimination provision contained in the Service Regulations (Article 4 § 3) and that it was uncontested that the Administrative Tribunal of the ILO had declared to protect fundamental rights, which entailed a right not to be discriminated on grounds of disability, in its case-law.

74. Moreover, the Court considers that the fact alone that the oral hearing before the arbitral tribunal, in which the parties could be represented by counsel, was not to be public did not make the arbitration procedure offered an unreasonable alternative to domestic court proceedings either. It refers in this respect, *mutatis mutandis*, to its findings in the case of *Gasparini* (cited above), in which it had considered that the lack of publicity of a hearing before an internal body of an international organisation in labour disputes did not render the proceedings before that body manifestly deficient for the purposes of the Convention.

75. Finally, the Court notes that there is a current trend in international law towards a relaxation of the rule of State immunity as regards State's employment disputes with the staff, in particular, of their diplomatic missions abroad (see, in particular, *Cudak*, cited above, § 63; and *Sabeh El Leil*, cited above, § 53). However, the Court is not aware of any such trend in international law in relation to the jurisdictional immunity of international organisations, as opposed to that of States. It further notes that issues of recruitment of an individual are, in any event, not covered by that

trend in relation to State immunity (see, in particular, *Fogarty*, cited above, § 38; *Cudak*, cited above, § 63; and *Sabeh El Leil*, cited above, §§ 18 ss.).

76. Having regard to the foregoing, the Court considers that, in having been offered the arbitral procedure in question, the applicant had available to him reasonable alternative means to protect effectively his rights under the Convention. Therefore, the limitations placed on the applicant's access to the German courts had been proportionate to the legitimate aims pursued by the grant of immunity from jurisdiction to the EPO and the very essence of the applicant's right of access to court under Article 6 § 1 was not impaired.

77. It follows that this part of the application must be dismissed as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged violation of Article 6 in the procedure before the bodies of the European Patent Office and the Administrative Tribunal of the ILO

78. In so far as the applicant complained about his lack of access to, and the unfairness of the proceedings both before the bodies of the European Patent Office and before the Administrative Tribunal of the ILO, the Court has to examine, first, whether the applicant fell within the respondent State's jurisdiction (Article 1 of the Convention) in these respects.

1. Jurisdiction on account of the EPO's seat and premises on German territory

79. The Government contested the view expressed by the applicant, who argued that Germany had jurisdiction in relation to the act of the European Patent Office at issue as the Office's decision not to recruit him had been taken at the EPO's site in Munich and thus on German territory.

80. The Court recognises that Convention liability normally arises in respect of an individual who is "within the jurisdiction" of a Contracting State, in the sense of being physically present on its territory. However, exceptions have been recognised in the Court's case-law. The Court has notably accepted that where States establish international organisations in order to pursue or strengthen their cooperation in certain fields of activities, and where they attribute to these organisations certain competences and accord them immunities, there may be implications as to the protection of fundamental rights (see *Waite and Kennedy*, cited above, § 67; *Galić v. the Netherlands* (dec.), no. 22617/07, § 43, 9 June 2009; and *Blagojević v. the Netherlands* (dec.), no. 49032/07, § 43, 9 June 2009). In particular, the Court considered that the sole fact that an international organisation or tribunal has its seat and premises on the territory of the respondent State is not a sufficient ground to attribute the matters complained of to the State

concerned (compare *Galić*, cited above, § 46; *Blagojević*, cited above, § 46; and *Lopez Cifuentes*, cited above, § 25).

81. Consequently, the fact alone that the impugned decision of the European Patent Office was taken on German territory at the Office's seat does not bring the act within Germany's jurisdiction for the purposes of Article 1 of the Convention.

2. Jurisdiction on account of an intervention, by Germany, in the labour dispute before the bodies of the European Patent Office and the Administrative Tribunal of the ILO or other act or omission engaging its responsibility

(a) The parties' submissions

(i) The Government

82. In the Government's submission, the application was incompatible *ratione personae* with the provisions of the Convention as Germany could not be held responsible for the acts of the EPO or the Administrative Tribunal of the ILO. The acts of the European Patent Office, an organ of the European Patent Organisation, could not be attributed to Germany in the present case. The EPO was an independent organisation with legal personality and did not fall under German jurisdiction. Its acts in the labour dispute at issue did not have any consequences on the applicant's rights under the German legal order.

83. Moreover, Germany had neither directly been involved in the dispute between the applicant and the international organisation – for instance by a participation in the procedure before the said institutions – nor indirectly, for instance by taking measures to execute the organisation's or the tribunal's decision.

84. Germany further could not be held responsible for the impugned act as a result of a generally insufficient protection of Convention rights within the European Patent Organisation. First of all, the impugned act, concerning the refusal of the recruitment of a person as a staff member, had remained internal and had not had any consequences on the German legal order. The act was therefore not attributable to Germany in this respect.

85. Moreover, the criteria under which the Court considered Member States indirectly responsible for acts of international organisations were not met. The EPO's system of review in relation to internal employment disputes guaranteed a protection equivalent to that laid down in the Convention. In particular, the fact that candidates for jobs were barred from these review procedures did not disclose a manifestly deficient protection of Convention rights within the meaning of the Court's case-law as developed, for instance, in *Waite and Kennedy* (cited above, § 69). The Convention equally did not grant legal protection against measures relating to the

recruitment to civil service, even after the Court's judgment in the case of *Vilho Eskelinen* (cited above). The applicant in the present case also had at his disposal reasonable alternative means to protect his Convention rights effectively. The EPO had offered the applicant to conduct an arbitration procedure but the applicant had discontinued negotiations to that effect without giving reasons.

86. Furthermore, under Article 13 § 1 of the European Patent Convention (see paragraph 37 above), (former) staff members had the right to lodge a complaint with the Administrative Tribunal of the ILO in disputes with the EPO in accordance with the conditions laid down in the Service Regulations. Prior to lodging a complaint with the Administrative Tribunal of the ILO, they had to lodge a complaint in accordance with Articles 106 ss. of the Service Regulations (see Article 13 § 2 of the European Patent Convention). The Appeals Committee competent for dealing with these complaints could not itself determine the dispute, but could only make recommendations to the President of the European Patent Office (Article 109 § 1 of the Service Regulations, see paragraph 36 above). However, it was sufficient for the purposes of Article 6 of the Convention that the Administrative Tribunal of the ILO met the requirements of an independent tribunal. Moreover, the latter took into consideration fundamental rights in its judgments. A catalogue of fundamental rights was not indispensable therefor.

(ii) The applicant

87. The applicant submitted that Germany had had the authority to intervene in the procedure before the European Patent Office where the immunities claimed by the EPO were not necessary for the proper functioning of the European Patent Office. The immunity granted to the EPO under the Protocol on Privileges and Immunities of the European Patent Organisation and the Headquarters Agreement between the EPO and the German Government was not absolute, but functional. In the present case, the EPO's immunity could be dispensed with without prejudicing its legitimate interests.

88. The applicant further argued that Germany remained responsible under the Convention for the acts of the EPO even after having delegated sovereign powers to it. He relied, *inter alia*, on the Court's judgments in the cases of *Matthews* (*Matthews v. the United Kingdom* [GC], no. 24833/94, ECHR 1999-I) and *Bosphorus* (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, ECHR 2005-VI) in this respect. Germany was to be held responsible for the acts of the European Patent Office as the latter had failed to protect human rights, both as regards the substantive guarantees and as regards the mechanisms controlling their observance, at a level at least equivalent to that provided by the Convention.

89. On the one hand, he had not had access to any tribunal at all. On the other hand, there was no internal law within the European Patent Office defining and offering protection of human rights on which he could have relied. The Administrative Tribunal of the ILO, which applied the provisions of the EPO internal legal order, thus did not have a body of fundamental rights to apply. The Member States of the European Patent Convention, including Germany, were to be held responsible for this lack of a clear body of human rights law. They had thus failed to ensure that the level of human rights protection by the European Patent Office was equivalent to that guaranteed by the Convention.

90. The applicant further argued that the act at issue was a discrimination against disabled persons. Existing German law on the protection of the disabled should apply because these provisions were not excluded by the privileges and functional immunities granted to the EPO.

(b) The Court's assessment

91. The Court notes that the present application arose from a labour dispute between the applicant and an international organisation following the European Patent Office's decision not to recruit the applicant, decision which the applicant contested notably before that Office and before the Administrative Tribunal of the ILO.

(i) Recapitulation of the relevant principles

92. The Court recalls that it recently gave decisions in a number of applications where the impugned decision emanated from an internal body of an international organisation or an international tribunal outside the jurisdiction of the respondent States, in the context of a labour dispute that lay entirely within the internal legal order of an international organisation that had a legal personality separate from that of its Member States. It was decisive for the respondent States to be held responsible under the Convention in those cases whether the States concerned had intervened directly or indirectly in the dispute, and whether an act or omission of those States or their authorities could be considered to engage their responsibility under the Convention. If that was not the case, the Court considered the applicants not to have been "within the jurisdiction" of the respondent States concerned for the purposes of Article 1 of the Convention and therefore declared the applications to be incompatible *ratione personae* with the provisions of the Convention in this respect (see, *inter alia*, *Boivin v. 34 Member States of the Council of Europe* (dec.), no. 73250/01, ECHR 2008; *Connolly v. 15 Member States of the European Union* (dec.), no. 73274/01, 9 December 2008; *Beygo v. 46 Member States of the Council of Europe* (dec.), no. 36099/06, 16 June 2009; *Lopez Cifuentes*, cited above, §§ 27-30; see also, *mutatis mutandis*, *Etablissements Biret et Cie S.A. and Biret International v. 15 Member States of the European Union* (dec.),

no. 13762/04, 9 December 2008; see also the references to that case-law in *Gasparini v. Italy and Belgium* (dec.), no. 10750/03, 12 May 2009, and *Rambus Inc. v. Germany* (dec.), no. 40382/04, 16 June 2009, in which the Court considered the respective applications as manifestly ill-founded on further, additional grounds).

93. The Court clarified in this context that respondent States were directly or indirectly involved in the dispute at issue, for the purposes of the above case-law, in particular, if State authorities applied or enforced legal provisions emanating from an international organisation against an applicant (see, for instance, *Matthews v. the United Kingdom* [GC], no. 24833/94, ECHR 1999-I; and *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, ECHR 2005-VI).

94. The Court further reiterates that in its recent decisions concerning the Contracting Parties' jurisdiction in relation to acts of international organisations and tribunals in labour disputes of those organisations with their staff, it has examined the applicants' complaints in these respects also in the light of the principles established in cases in which it was called upon to answer the question whether the Member States of the Convention could be held responsible under the Convention for acts or omissions following from their membership of an international organisation. These principles have been recalled and developed in particular in the case of *Bosphorus* (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi*, cited above) (see, *inter alia*, *Boivin*, cited above; *Connolly*, cited above; *Rambus*, cited above; *Beygo*, cited above; and *Lopez Cifuentes*, cited above, § 24).

95. In *Bosphorus*, the Court held that, while a Contracting Party was not prohibited by the Convention from transferring sovereign power to an international organisation in order to pursue cooperation in certain fields of activity, that Party remained responsible under Article 1 of the Convention for all acts and omissions of its own organs (ibid., §§ 152-153). However, where such State action was taken in compliance with international legal obligations flowing from its membership of an international organisation and where the relevant organisation protected fundamental rights in a manner which could be considered at least equivalent to that which the Convention provided, a presumption arose that the State had not departed from the requirements of the Convention. Such presumption could be rebutted if, in the circumstances of a particular case, it was considered that the protection of Convention rights was manifestly deficient. In such cases, the interest of international cooperation would be outweighed by the Convention's role as a "constitutional instrument of European public order" in the field of human rights (ibid., §§ 155-156; see also *Cooperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A. v. the Netherlands* (dec.), no. 13645/05, ECHR 2009; and *Rambus*, cited above).

96. The Court subsequently examined complaints about acts of international organisations and tribunals in labour disputes in the light of its case-law relating to States' responsibility established in the case of *Bosphorus* (cited above), in particular in the case of *Gasparini* (cited above). The *Gasparini* case differed from the *Bosphorus* case. In the *Bosphorus* case, an action taken by the respondent State itself (detention of an aircraft) in order to implement legal provisions emanating from international organisations was at issue (ibid., §§ 19 ss.). The case of *Gasparini* (cited above) concerned the compliance with the Convention of internal procedures on labour disputes within an international organisation, without the respondent State having intervened in that procedure as such.

97. In *Gasparini* (cited above), the Court deducted from the principles developed in the *Bosphorus* case that, when transferring part of their sovereign powers to an international organisation of which they are a member, Contracting Parties to the Convention were under an obligation to monitor that the rights guaranteed by the Convention received within that organisation an "equivalent protection" to that secured by the Convention system. In fact, a Contracting Party's responsibility under the Convention could be engaged if it subsequently turned out that the protection of fundamental rights offered by the international organisation concerned was "manifestly deficient" (see *Bosphorus*, cited above). Conversely, an alleged violation of the Convention was not attributable to a Contracting Party because of a decision or measure emanating from an organ of an international organisation of which it is a member where it has not been established nor even been alleged that the protection of fundamental rights generally offered by the said international organisation was not "equivalent" to that secured by the Convention and where the State concerned neither directly nor indirectly intervened in the commission of the impugned act (see *Boivin*, cited above).

(ii) Application of those principles to the present case

98. In the present case, the Court notes that, in so far as the acts of and the procedure before the bodies of the European Patent Office and the Administrative Tribunal of the ILO as such are at issue, the German authorities neither directly nor indirectly intervened in the proceedings before these bodies. In particular, they did not take any measures in order to implement or enforce decisions taken by those bodies.

99. However, the Court having regard to Germany's membership in the EPO and to the principles developed in the case of *Gasparini* (see paragraph 97 above), also has to take note of the applicant's allegation in the present case that the EPO's internal labour dispute settlement mechanism, including recourse to the ILO tribunal, failed to secure an equivalent protection of fundamental rights compared to the level of protection provided by the Convention. The Court observes that while the

applicant claimed a general lack of equivalent protection of fundamental rights within the EPO's internal labour dispute settlement mechanism he based his argumentation only on two specific grounds. He argued, on the one hand, that access to a tribunal was excluded for those having been refused employment. However, as shown above (see paragraphs 48-51), the Convention itself does not require in all circumstances full access to a tribunal in respect of complaints concerning the refusal of a person's recruitment to civil service.

100. The applicant submitted, on the other hand, that within the EPO there was no internal body of human rights law. However, as can be concluded from the Court's findings in its judgment in the case of *Bosphorus* (cited above, §§ 159 to 165), the fact that an international organisation does not dispose of a binding written catalogue of fundamental rights as such does not warrant the conclusion that it lacks a protection of fundamental rights equivalent to that under the Convention system as long as the organisation at issue effectively protects those rights in practice. The Court refers in this respect to its above finding (see paragraph 73) that it was uncontested that the Administrative Tribunal of the ILO had declared to protect fundamental rights, which entailed a right not to be discriminated on grounds of disability, in its case-law. In addition, the Court has already found that the fact alone that the oral hearing before the ILO tribunal was not to be public could not alter that finding (compare *Gasparini*, cited above).

101. The Court therefore does not see any reason to consider, in the light of the elements brought before it by the applicant, that since the transfer by Germany of its sovereign powers to the EPO the rights guaranteed by the Convention would generally not receive within the EPO an "equivalent protection" to that secured by the Convention system. Consequently, Germany's responsibility under the Convention will only be engaged if the protection of fundamental rights offered by the EPO in the present case was "manifestly deficient" (compare, *mutatis mutandis*, *Bosphorus*, cited above, § 156). The Court is therefore called upon to examine whether the fact that a candidate for a job is denied access to the procedures for review of the decision of the European Patent Office not to recruit him before the European Patent Office itself and before the Administrative Tribunal of the ILO, which is at issue in the present case, disclosed a manifest deficiency in the protection of human rights within the EPO.

102. The Court recalls that in the applicant's case, the EPO's internal labour dispute mechanism in relation to candidates for a job was shown to function as follows: The applicant's internal appeal under the Service Regulations of the European Patent Office was rejected as inadmissible because he was found not to have standing to lodge such an appeal. Such an appeal was only open to (former) staff members of the European Patent Office, as opposed to job applicants (see paragraphs 10 and 36 above).

Likewise, the applicant's complaint to the Administrative Tribunal of the ILO was rejected as inadmissible by reference to that Tribunal's well-established case-law because that court did not have jurisdiction in respect of external job applicants (see paragraphs 19 and 38 above). In none of the review procedures set up within or by the EPO, the applicant's complaint about his discriminatory treatment in the recruitment procedure before the European Patent Office had therefore been examined on the merits.

103. However, the Court finds that, as the Government rightly pointed out, under the Court's case-law, the Convention itself permits restrictions on the access to a tribunal in relation to measures concerning an applicant's recruitment to civil service. As shown above, an issue arises already as regards the applicability of Article 6 in this respect (see in detail paragraphs 48-52 above).

104. In any event, as regards compliance with Article 6 of the Convention of restrictions on access to court in employment disputes of applicants with international organisations, the Court recalls that it has consistently held in relation to access to the domestic courts of the Contracting Parties to the Convention that limitations to the right of access to court by granting immunity from jurisdiction to those organisations was proportionate to the legitimate aim of strengthening international cooperation, in particular, if the persons concerned had available reasonable alternative means to effectively protect their Convention rights (see, in particular, *Waite and Kennedy*, cited above, §§ 50 ss. and paragraph 64 above).

105. The Court refers to its above finding that the limitations placed on the applicant's access to the German domestic courts had been proportionate to the legitimate aims pursued by the grant of immunity from jurisdiction to the EPO and the very essence of the applicant's right of access to court under Article 6 § 1 was not impaired. This finding was based, in particular, on the fact that the offer of arbitration made by the EPO to the applicant had made available to him a reasonable alternative means to have his complaint about the European Patent Office's decision examined on the merits (see paragraphs 68-74 above).

106. The Court considers that therefore, the fact that the applicant was denied access to the review procedures set up by the EPO, an international organisation with legal personality which is not a party to the Convention, in relation to the decision of the President of the European Patent Office not to recruit him, but was offered by the EPO an arbitration procedure to have the impugned act of the Office examined, *a fortiori* does not disclose a manifestly deficient protection of fundamental rights within the EPO.

107. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Done in English and notified in writing on 29 January 2015.

Claudia Westerdiek
Registrar

Mark Villiger
President