



An accountant, fired from an embassy in Paris, could not contest his dismissal, in breach of the Convention

In today's Grand Chamber judgment in the case [Sabeh El Leil v. France](#) (application no. 34869/05), which is final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 6 § 1 (right of access to a court) of the European Convention on Human Rights.

The case concerned the complaint of an ex-employee of the Kuwaiti embassy in Paris, that he had been deprived of access to a court to sue his employer for having dismissed him from his job in 2000.

Principal facts

The applicant, Farouk Sabeh El Leil, is a French national. He was employed as an accountant in the Kuwaiti embassy in Paris (the Embassy) as of 25 August 1980 and for an indefinite duration. He was promoted to head accountant in 1985.

In March 2000, the Embassy terminated Mr Sabeh El Leil's contract on economic grounds, citing in particular the restructuring of all Embassy's departments. Mr Sabeh El Leil appealed before the Paris Employment Tribunal, which awarded him, in a November 2000 judgment, damages equivalent to 82,224.60 Euros (EUR). Disagreeing with the amount of the award, Mr Sabeh El Leil appealed. The Paris Court of Appeals set aside the judgment awarding compensation. In particular, it found Mr Sabeh El Leil's claim inadmissible because the State of Kuwait enjoyed jurisdictional immunity on the basis of which it was not subject to court actions against it in France.

Complaints, procedure and composition of the Court

Mr Sabeh El Leil complained that he had been deprived of his right of access to a court in violation of Article 6 § 1 of the Convention, as a result of the French courts' finding that his employer enjoyed jurisdictional immunity.

The application was lodged with the European Court of Human Rights on 23 September 2005 and declared admissible on 21 October 2008. On 9 December 2008, the Court's Chamber relinquished jurisdiction in favour of the Grand Chamber, neither of the parties having objected.

Judgment was given by the Grand Chamber of 17, composed as follows:

Nicolas **Bratza** (the United Kingdom), *President*,
Jean-Paul **Costa** (France),
Christos **Rozakis** (Greece),
Peer **Lorenzen** (Denmark),

¹ Grand Chamber judgments are final (Article 44 of the Convention).

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 George **Nicolaou** (Cyprus),
 Ann **Power** (Ireland),
 Zdravka **Kalaydjieva** (Bulgaria),
 Mihai **Poalelungi** (Moldova),
 Angelika **Nußberger** (Germany),
 Julia **Laffranque** (Estonia), *Judges,*

and also Vincent **Berger**, *Jurisconsult.*

Decision of the Court

Admissibility

The Court recalled that States had to be given an opportunity to redress human rights breaches at home before having to defend their position before an international court. Mr Sabeh El Leil had argued before the French courts that the jurisdictional immunity of the State of Kuwait could not be triggered, because he had not officially acted on behalf of the State of Kuwait or exercised a function in the interest of the public diplomatic service. Consequently, Mr Sabeh El Leil had raised before the domestic courts the substance of his complaint about not having had access to a court, and therefore that complaint was admissible before the Court too.

Access to a court (Article 6 § 1)

Referring to its previous case-law, the Court noted that Mr Sabeh El Leil had also requested compensation for dismissal without genuine or serious cause and that his duties in the embassy could not justify restrictions on his access to a court based on objective grounds in the State's interest. Article 6 § 1 was thus applicable in his case.

The Court then observed that the concept of State immunity stemmed from international law which aimed at promoting good relations between States through respect of the other State's sovereignty. However, the application of absolute State immunity had been clearly weakened for a number of years, in particular with the adoption of the 2004 UN Convention on Jurisdictional Immunities of States and their Property. That convention had created a significant exception in respect of State immunity through the introduction of the principle that immunity did not apply to employment contracts between States and staff of its diplomatic missions abroad, except in a limited number of situations to which the case of Mr Sabeh El Leil did not belong. The applicant, who had not been a diplomatic or consular agent of Kuwait, nor a national of that State, had not been covered by any of the exceptions enumerated in the 2004 Convention. In particular, he had not been employed to officially act on behalf of the State of Kuwait, and it had not been established that there was any risk of interference with the security interests of the State of Kuwait.

The Court further noted that, while France had not yet ratified the Convention on Jurisdictional Immunities of States and their Property, it had signed that convention in 2007 and ratification was pending before the French Parliament. In addition, the Court emphasised that the 2004 Convention was part of customary law, and as such it applied even to countries which had not ratified it, including France.

On the other hand, Mr Sabeh El Leil had been hired and worked as an accountant until his dismissal in 2000 on economic grounds. Two documents issued concerning him, an official note of 1985 promoting him to head accountant and a certificate of 2000, only referred to him as an accountant, without mentioning any other role or function that might have been assigned to him. While the domestic courts had referred to certain additional responsibilities that Mr Sabeh El Leil had supposedly assumed, they had not specified why they had found that, through those activities, he was officially acting on behalf of the State of Kuwait.

The Court concluded that the French courts had dismissed the complaint of Mr Sabeh El Leil without giving relevant and sufficient reasons, thus impairing the very essence of his right of access to a court, in violation of Article 6 § 1.

Just satisfaction (Article 41)

The Court held, by sixteen votes to one, that France was to pay Mr Sabeh El Leil 60,000 euros (EUR) in respect of all kind of damage and EUR 16,768 for costs and expenses.

The judgment is available in English and French.

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