



## Complaints about lack of access to court in two cases concerning employment in international organisations declared inadmissible

The cases of [Klausecker v. Germany](#) (application no. 415/07) and [Perez v. Germany](#) (no. 15521/08) concerned complaints related to employment in international organisations – the European Patent Office and the United Nations (UN) – and the alleged lack of access to the national courts in respect of those complaints.

In its decisions in these cases, the European Court of Human Rights has – by a majority in the case of **Klausecker** and unanimously in the case of **Perez** – declared the applications inadmissible. The decisions are final.

In the first case, brought by a physically handicapped person who was refused employment with the European Patent Office, the Court found in particular that the organisation's immunity from jurisdiction of the German courts had been proportionate in the circumstances of the case. Mr Klausecker would have had a reasonable alternative means to protect his rights under the Convention, namely by participating in an arbitration procedure.

In the second case, brought by a former staff member of the UN, the Court concluded that Ms Perez had failed to exhaust the national remedies. She had complained in a substantiated manner that there had been manifest deficiencies in the UN internal appeal proceedings. In the circumstances of her case, the German Federal Constitutional Court would therefore have had jurisdiction to examine whether the level of fundamental rights protection in the dispute concerning her dismissal had complied with the Constitution.

### Principal facts

The applicant in the first case, Roland Klausecker, is a German national who was born in 1973 and lives in Erlangen. The applicant in the second case, Amalia Perez, is a Spanish national, who was born in 1950 and lives in Madrid.

Mr Klausecker is physically handicapped after he lost one eye, one hand and part of the fingers of his other hand in an accident at the age of 18. He later graduated in mechanical engineering and then worked as a research assistant at a university. Having applied to work at the European Patent Office in Munich, and passed the necessary professional exams, he was refused employment as patent examiner there in 2005, as he was considered not to meet the physical requirements of the post.

Both Mr Klausecker's internal appeal within the European Patent Office against that decision and his complaint to the Administrative Tribunal of the International Labour Organisation (ILO) were rejected as inadmissible, in November 2005 and July 2007, respectively, as job applicants did not have standing to lodge such motions. As the European Patent Organisation ("the EPO") (of which the European Patent Office is part) had immunity from jurisdiction of the German labour or civil courts, Mr Klausecker lodged a complaint directly with the Federal Constitutional Court, which was equally rejected, on 22 June 2006, as inadmissible for lack of jurisdiction (file no. 2 BvR 2093/05). The European Patent Office subsequently offered Mr Klausecker to have the dispute determined by an arbitral tribunal, which he eventually refused in 2008, alleging in particular that the arbitration procedure proposed would be in breach of essential procedural guarantees, including the right to a public hearing within reasonable time.

Ms Perez is a former staff member of the United Nations (UN). Having worked for the organisation since 1970, she was promoted several times and, in 1998, moved to the UN Volunteer Programme, based in Bonn, Germany. After her professional performance had previously been rated by consecutive supervisors as fully satisfactory or exceptional, she was included in a reassignment scheme in 2002 after three negative appraisal reports. As she was subsequently unable to find a new post within the organisation, she was dismissed in 2003. Her internal administrative complaints as well as her appeal to the UN Joint Appeals Board and the UN Administrative Tribunal, challenging her dismissal, were unsuccessful.

## Complaints, procedure and composition of the Court

The application in the case of **Klausecker** was lodged with the European Court of Human Rights on 22 December 2006, and the application in the case of **Perez** was lodged on 20 March 2008.

Both applicants relied on Article 6 (right to a fair trial), essentially complaining about the lack of access to the German courts to challenge their refusal of employment and dismissal, respectively. Mr Klausecker also complained, in particular, of the lack of access to and the deficient procedures within the European Patent Office and the Administrative Tribunal of the ILO, for which he considered Germany was to be held responsible. Ms Perez also alleged that the UN internal appeal proceedings did not meet the requirements of a fair trial by an independent and impartial tribunal and that Germany was to be held responsible for that.

The decisions were given by a Chamber of seven, composed as follows:

Mark **Villiger** (Liechtenstein), *President*,  
Boštjan M. **Zupančič** (Slovenia),  
Vincent A. **de Gaetano** (Malta),  
Angelika **Nußberger** (Germany),  
André **Potocki** (France),  
Helena **Jäderblom** (Sweden),  
Aleš **Pejchal** (the Czech Republic), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

### Article 6

#### **Klausecker**

As regards Mr Klausecker's complaint about his lack of access to the German courts, the Court was satisfied that granting the EPO immunity from German jurisdiction aimed at guaranteeing the proper functioning of that international organisation and thus pursued a legitimate aim.

As to the question of whether limiting Mr Klausecker's access to the German courts had been proportionate to that aim, the Court considered it decisive whether there had been a reasonable alternative means to effectively protect his rights under the Convention. It came to the conclusion that he had indeed had such an alternative means available, as he had been offered to participate in an arbitration procedure. In reaching that conclusion, the Court noted in particular that under the arbitration contract offered by the EPO, the arbitrators would have determined the case on the basis of the rules which the Administrative Tribunal of the ILO would have applied had it had jurisdiction. The fact alone that the oral hearing before that tribunal, in which the parties could be represented by counsel, would not have been public did not make the arbitration procedure an unreasonable alternative to national court proceedings. Given that Mr Klausecker had had a reasonable alternative

means to protect his rights under the Convention, the limitation on his access to the German courts had been proportionate. It followed that this part of the application had to be dismissed as manifestly ill-founded.

As regards Mr Klausecker's complaint about the lack of access to and the allegedly deficient procedures within the European Patent Office and the Administrative Tribunal of the ILO, the Court noted that, under the Court's case-law, Germany could only be held responsible in the circumstances of the case if the protection of fundamental rights offered by the EPO in his case was manifestly deficient. Having regard to the finding that by offering Mr Klausecker to participate in the arbitration procedure EPO had made available to him a reasonable alternative means to have his complaint examined in substance, the Court considered that the protection of fundamental rights within the EPO had not been manifestly deficient in his case. Accordingly this part of the application also had to be rejected.

### *Perez*

As regards Ms Perez's allegations about the deficiencies in the UN internal appeal proceedings, the Court observed that there were strong elements pointing to the conclusion that she complained in a substantiated manner that there had been manifest deficiencies. It had indeed been confirmed by a panel of external, independent experts that the UN internal justice system in force at the time had been marked by a number of shortcomings.

However, the Court left open the question of whether Germany was to be held responsible for the alleged deficiencies in Ms Perez's case, as it came to the conclusion that she had failed to exhaust the national remedies.

In reaching that conclusion, the Court took note of the German Government's submission that a constitutional complaint would have been an effective remedy in respect of those complaints. It followed from several relevant decisions of the German Constitutional Court that – despite the immunity of international organisations from the jurisdiction of the German courts – the Constitutional Court had jurisdiction to examine whether the level of fundamental rights protection in employment disputes in international organisations complied with the Constitution. That jurisdiction was exercised only under restrictive conditions. In particular, a complainant had to show that the act complained of had a concrete effect within the German legal order – which was arguably the case when a complainant's dismissal was concerned, as in Ms Perez's case. Moreover, a complainant would have to claim in a substantiated manner that the level of protection of fundamental rights by the organisation concerned was manifestly below the level required by the Constitution – an allegation which had indeed been made by Ms Perez.

A complaint to the German Constitutional Court would therefore have been an effective remedy, which Ms Perez had failed to exhaust in respect of her complaint about the alleged deficiencies in the UN internal appeal proceedings. This part of the application therefore had to be rejected.

Similar considerations applied as regards Ms Perez's complaint of a lack of access to the German courts in general to challenge her dismissal by the UN. She could have complained before the Constitutional Court about that lack of access as a result of the UN's immunity from jurisdiction. This part of the application thus had to be rejected for non-exhaustion of the national remedies as well.

*The decisions are available only in English.*

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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.