



The Italian courts should have agreed to hear industrial disputes concerning an employee of the French school in Rome

In today's Chamber judgment in the case of [Guadagnino v. Italy and France](#) (application no. 2555/03), which is not final,¹ the European Court of Human Rights held, unanimously, that there had been:

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

The complaint against France was declared inadmissible.

The case concerned an Italian national, a former employee working under contract at the French school in Rome, who complained of being unable to have industrial disputes heard by either the Italian or the French courts.

Principal facts

The applicant, Marianna Guadagnino, is an Italian national who was born in 1936 and lives in Rome (Italy). She worked between 1969 and 1996 at the French school in Rome ("the School") as an assistant in the publications department, under individual contracts signed with the French Ministry of Education. Those contracts provided for Italian law to apply to Ms Guadagnino's employment relationship.

Ms Guadagnino brought two sets of legal proceedings in Italy in connection with her employment.

The first set of proceedings concerned retrospective adjustment of her job status. Having unsuccessfully applied to be regraded by the School, she applied to the Rome District Court in December 1995 for a declaration that her claim was well-founded and for payment of the difference between the pay awards that she had received and those to which she claimed she was entitled. The School responded that it was for the French rather than the Italian courts to deal with the dispute. On 20 June 1997 the Italian Court of Cassation confirmed that the Italian courts had no jurisdiction in the matter (the fact that Italian law applied to the contract being insignificant in that respect).

The second set of proceedings was brought by Ms Guadagnino to challenge her dismissal in 1996 on the ground that she had reached the upper age limit of 60. Arguing that the age limit set by Italian law was 65 and not 60, in September 2007 she brought an action against the School in the Rome District Court for her dismissal to be set aside, for reinstatement and for the payment of various pay awards. The Italian Court of Cassation again found that the Italian courts had no jurisdiction in relation to claims regarding the

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

lawfulness of the dismissal; it pointed out that according to its established case-law, proceedings involving employees of French cultural institutions were a matter for the French courts. The Italian courts did, however, have jurisdiction over the payment of pay awards. Despite that, Ms Guadagnino did not pursue the case in the Italian district court.

In July 2001 Ms Guadagnino applied to the French *Conseil d'Etat* for retrospective adjustment of her job status and for her dismissal to be declared null and void (including the payment of pay awards). The *Conseil d'Etat* dismissed her claims, holding that the French courts had no jurisdiction in such matters.

Note concerning French law:

According to the French Jurisdiction Disputes Court (*Tribunal des Conflits*), the ordinary courts have exclusive jurisdiction to deal with disputes concerning the performance and termination of international contracts of employment entered into by the State authorities (which was not disputed by Ms Guadagnino and the respondent Governments). More precisely, the French Civil Code (Article 15) establishes the jurisdiction of the French labour courts, as confirmed by the Court of Cassation in 1996.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1, the applicant complained that neither the Italian nor the French courts had agreed to hear her claims for retrospective adjustment of her job status (including the payment of pay awards). She felt that she had been denied justice.

The application was lodged with the European Court of Human Rights on 14 January 2003. The Court delivered a [decision on admissibility](#) on 12 April 2007.

Judgment was given by a Chamber of seven, composed as follows:

Françoise **Tulkens** (Belgium), *President*,
Ireneu **Cabral Barreto** (Portugal),
Jean-Paul **Costa** (France),
Vladimiro **Zagrebelsky** (Italy),
Danutė **Jočienė** (Lithuania),
Dragoljub **Popović** (Serbia),
András **Sajó** (Hungary), *Judges*,

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Inadmissibility of the application concerning France

The Court observed that, according to French case-law (the Jurisdiction Disputes Court and the Court of Cassation), the French labour courts had jurisdiction in relation to the performance and termination of international contracts of employment entered into by the French State (even where such contracts were not governed by French law).

It was of course regrettable that Ms Guadagnino's contracts of employment – and the agreements entered into by France and Italy when the French School in Rome was set up – had been silent as to jurisdiction in the event of a dispute. The fact remained that an effective remedy had been available to Ms Guadagnino in France and that she had not used it.

The admissibility criterion, whereby the remedies available in a State must be exhausted before an application could be made to the Court against that State (Article 35) was therefore not met and the application was inadmissible in so far as it was brought against France.

Complaint under Article 6 § 1 against Italy

The Court found firstly that the Italian Court of Cassation had ruled that the Italian courts had jurisdiction to deal with the matter of payment of pay awards but that Ms Guadagnino had declined to pursue proceedings in relation to that issue in Italy. She could not therefore claim that the situation had led to a violation of the Convention.

It remained for the Court to determine whether Ms Guadagnino's right of access to a court had been violated as a result of the Italian Court of Cassation's finding that the Italian courts did not have jurisdiction to deal with her other claims for retrospective adjustment of her job status and for her dismissal to be declared void.

In accordance with its case-law, the Court sought to ascertain whether the restriction placed by the Court of Cassation on the right of access to a court had pursued a legitimate aim, and whether it was proportionate to the aim pursued.

It considered that the first condition (legitimate aim) had been met, since the Italian Court of Cassation had refrained from dealing with the case in so far as it involved France for the purpose of complying with international law – which itself tended to favour courtesy and good relations between States through respect for the sovereignty of another State. However, as regards the second condition (proportionality), the Court reiterated that it had already found² that in reality, there was a trend in international law towards limiting States' "immunity from jurisdiction" in relation to employment-related disputes. In particular, according to the 2004 (United Nations) Convention on Jurisdictional Immunities of States and their Property, Italy was bound under international law to comply with procedures relating to contracts of employment between a State and an individual for work to be performed in another State not covered by the State immunity rule, provided that the best interests of the employer State were not affected. Italy had failed to comply with that rule. It had therefore disproportionately limited the access to a court to which Ms Guadagnino was entitled.

The Court found, unanimously, that Italy had breached Article 6 § 1.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Italy was to pay the applicant 15,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

The judgment is available only in French.

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² [Cudak v. Lithuania](#) (Grand Chamber), 23 March 2010

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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.