CIVIL SERVANTS AND HUMAN RIGHTS

(FREEDOM OF EXPRESSION AND THE RIGHT TO INFORMATION)

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Abstract: Taking the status of a civil servant for an employee of the public administration is a particularly important moment, from which arise rights and obligations of a particular importance. But keeping this special status, does it limit his right toinformation and his freedom of expression? To answer this question, through comparative method, we will analyze the current law governing the status of civil servants, the new draft act which enters into force on October 1-st, 2013. This status offers more protection in the exercise of duty, and at the same time, imposes a certain way of behavior according to the country's legal framework. In exercising a public function, a civil servant has rights, while he has also the obligation to respect the law, allowing at the same time citizens to exercise their freedom of expression and right to information. On the other hand, the employee has freedom of expression itself. On one hand, we will explain the reasons justifying the need for a new law, as well as innovations that brings this law. On the other hand, we will bring the jurisprudence of the European Court of Human Rights, to analyze the special position given to the employees of public administration in the European Union, as well as the principles this court defends. In the paper is also treated freedom of expression of public servants, citizens' right to information, the way that these two fundamental rights are treated by the albanian legislation, as the main principles of a democratic society.

Keywords: Civil Servants; Public Administration; Freedom of Expression; Right to Information.

INTRODUCTION

Taking the civil servant status for an employee of the public administration, is a particularly important moment, from which arise at the same time rights and obligations of a particular importance. This status offers more protection in exercising rights and duties, and at the same time behavior entails some ways of behaviour in conformity with the legal framework of the country. The civil service is an "institution" regulated by law.
In exercising public functions, civil servant hasits rights, while should respect the obligations defined by law, allowing citizens to exercise their freedom of expression and information. On the other hand, the employee has the freedom of expression itself. But this special status, does it restrict the right to information and freedom of expression of a civil servant? If so, to what extent can these rights be limited?
To respond to those questions, we will analyze the current law governing the status of civil servants till October 2013, and the new law which was voted in parliament and enters into force in October, thanks to the political consensus before the elections of 2013, and the case law of the European Court for Human Rights.
Civil servants should have the same rights as any citizen. In this context, they should be free to exercise: political rights (participation in political life, political party affiliation, the right to run as candidates in elections), collective rights (participation in trade unions, the right to strike, participation in decision-making for civil service), economic rights (employment, economic activity) as well as rights to employment in the civil service (right to fair and equal treatment by the institution, career development, salary right etc.).
The exercise of these rights may be restricted to civil servants for the sake of public interest, if the restriction of constitutional rights is allowed by the Constitution. This exercise should be regulated in such a way as to be consistent with the "*obligations*" of civil servants and the importance of his duties. However, restrictions on the exercise of their rights should be in accordance with the principle of proportionality.We will specifically examine how these rights and obligations are regulatedby the current law, the new law, and how are treated by the jurisprudence of the European Court of Human Rights (ECHR).

CURRENT LEGAL FRAMEWORK

Law no. 8549, dated 11.11.1999, "On the status of the civil servant".

Article 2 of Law no. 8549/1999 defines the term "*civil servant*". In terms of this law, civil servants are those employees of institutions of central or local public administration who exercise public authority in functions of a managerial, organizational, supervisory or implementing nature as established in Article 11 of law no. 8549/1999[1].
Whereas Article 3 of this law[2] defines that civil service is formed and operates on the basis of the principles of professionalism, independence and integrity, political neutrality, transparency, service to the public, career continuity, accountability and correctness in the application of binding legislation.
Article 19 of Law no. 8549/1999 defines the duties of civil servants, and among other things, the employee must:"*a)To know, respect, implement and act in accordance with the Constitution, the Administrative Procedures Code and the other law and regulations.*
b)To provide to the general public, interested parties and public institutions such information as is required, with the exception of state secrets, confidential information and information for internal use only, in accordance with laws and regulations.
c)To respect working hours and use them only for the fulfillment of their official duties. Hours and length of work are to be regulated for the civil service in the institutions of central administration by a decree of the Council of Ministers and for the civil service of the local administration by a decree of the organs of local government.

[1]Law no. 8549, dated 11.11.1999, "On the status of the civil servant", Article 2.

[2]Law no. 8549, dated 11.11.1999, "On the status of the civil servant", Article 3.

ç) To improve their professional capabilities and to take part in training activities to this end.
d)Not to seek or accept any moral or material gain in the fulfillment of their obligations, with the exception of payments and other benefits accorded to them by Article 18.
dh) Not to undertake work or other activities that present a conflict of interest with, or hinder the performance of, their official duties and to inform the institution where they are employed of any gainful activity carried out outside of their official duties.
e)Not to use government property for private gain.
ë) To bear full responsibility for the legality of their activities during the fulfillment of their duties and, if they are not convinced of the legality of the orders and decrees they are carrying out, to immediately inform the order-giving organs or levels as well as the organs or levels to which the latter report. Civil servants are not obliged to comply with unlawful orders.
f)Not to go on strike.
g)Not to behave in a manner that is inconsistent with the rules of ethics.
Violation of the duties referred to in numbers (d), (dh), (e) and (f) of this article shall result in dismissal from the civil service, if proved through the respective disciplinary procedures."[3]

The provision made in letter "b" of this Article is intended to guarantee the right to information of citizens, forcing the employee to make available the information required. Exceptions are cases where this information is classified according to Law no. 8503/1999[4]. Specifically, the law provides that every person has the right to request information on official documents, which relate to the activities of state bodies and persons exercising public functions, without being obliged to explain the reasons. The public authority is obliged to provide any information about an official document, unless otherwise provided by law. Any information on an official document given to a person,can not be denied to any other person who requests it, unless this information constitutes personal data of the person to whom the information was given[5]. On the other hand, if the civil servant disregards this obligation, this does not constitutes a reason to start disciplinary proceedings for his dismissal from the civil service, on grounds of the interepretation of the provision that lists the obligations of civil servants.

Article 20 of the law[6], lays down the rights of a civil servant. A civil servant shall have the following rights:
"*a)To have a guaranteed job in the civil service in accordance with the provisions of this law.*
b)To be promoted and transferred laterally in accordance with Article 15 of this law.
c)To be protected by the State in the performance of his duties.
ç) To work and exercise other lawful activities beyond his duties and outside of working hours if such work and activities do not present a conflict of interest with, and do not hinder the performance of, his official duties.
d)To form and be members of labor unions and professional organizations. A special law shall set forth rules on labor union activities of the civil servants.
dh) To take part, through labor unions or representatives, in decision-making processes relating to working conditions.
e)To be members of political parties, but not of their central steering committees.
ë) To take annual paid leave and other leaves in cases and on conditions to be specified by the Council of Ministers.
f)To enjoy health benefits for themselves and dependent members of their families in accordance with the law.
g)To receive supplementary compensation and be reimbursed for expenditures for work outside of working hours and official travel in accordance with criteria set forth by the Council of Ministers.
gj) To work, with the approval and authorization of the Ministry of Foreign Affairs and the clearance of the [civil servant's] Personnel Director, for international organizations of which Albania is a member or for foreign governments where this is in the interests of the Republic of Albania. Upon conclusion of this activity, the official in question shall return to the same or an equivalent job.

[3]Law no. 8549, dated 11.11.1999, "On the status of the civil servant", Article 19.
[4]Law no. 8503, dated 30.06.1999 "On the right of information on official documents".
[5]Law no. 8503, dated 30.06.1999 "On the right of information on official documents", Article 3.
[6]Law no. 8549, dated 11.11.1999, "On the status of the civil servant", Article 20.

h)To be trained in relation to his job on a regular basis, at the expense of the state.
Should a civil servant be denied the rights guaranteed under this law, or should his rights be infringed upon, he may file an appeal in writing to the Civil Service Commission."

DRAFT ACT ON THE STATUS OF THE CIVIL SERVANT

Drafting a new civil service law in Albania, was one of the priorities of the Strategy ofPublic Administration Reform 2009-2013[7], of the albanian government, and one of the conditiones impsoed by the European Commision.In this context, in 2010, the Public Administration Department, with the assistance of SIGMA, conducted a situation analysis of the current enforcement of the civil service law, focusing especially in the emerging problems in its implementation in practice. After this analysis, a draft concept paper was developed on the need for changes of the legislation in this field. The document was discussed with all stakeholders. After collecting opinions and discussions, the new bill was drafted[8].Any civil service law should contain a set of provisions dealing with the rights and obligations of civil servants. These provisions aim at ensuring the professional ethos of civil servants on the one side and at guaranteeing the neutrality, impartiality and integrity of the civil servant as well as the corresponding duties and benefits provided by the state as the employing institution[9].

The bill, unlike the current law on civil servant status, lists all rights and obligations of civil servants in different provisions, detailing each of these rights and obligations. So, it is notable that the bill has strictly applied the rules of technical legislative, and in function of the principle of clarity, has detailed every duty and right of employees in specific provisions, by avoiding to the maximum the risk for subjective interpretations.This bill[10] is based on several pillars, specifically:
It is a general law, which establishes principles and general standards of management.
Provides a homogeneous legal regime of the civil service[11]. The new law aims to provide a homogeneous legal regime for all positions that exercise public authority granted by public law and that are responsible for protecting the public interest. The main objective is to create a homogeneous regime for all positions related to the exercise of public authority, granted by public law and that are responsible for protecting the general interest of the state, where the strengthening of the legal protection of neutrality for the civil civilians, is necessary in order to better protect individual rights and legal expectations of the citizens.
Creates the Albanian School of Public Administration[12], as an institution depending on the Ministry responsible for public administration. The mission of the school is expected to be professional training of public administration officials, but also individuals outside the administration.
Strengthens the Civil Service Commissioner (CSC)[13]. Strengthening and increasing the powers of the CSC, while providing the necessary legal instruments for the implementation and execution of its decisions and the establishment of an efficient and convenient system of reporting decisions of management taken by the institutions.
Employment in the civil service will be provided on a permanent basis and only with civil servants. Employment in civil service positions should be acceptable only with individuals with civil servant status and not on contractual basis. In principle, the civil servants should be employed for an indefinite period (permanent); fixed-term employment should be limited to exceptional cases of emergency, which should be determined by the legal framework.
Career development and promotion. Career Development Mechanisms will be lateral (within the same

[7]Decision no. 1017, 18.09.2009 of the Council of Ministers "*On approval of the Regional Public Administration Reform, 2009-2013, in the framework of the National Strategy for Development and Integration*".
[8]ZhaniShapo, Dr. Hans-Achim Roll, SIGMA consultants, at the request of the Department of Public Administration (DoPA) under the Ministry of the Interior, "*Draft concept paper on a new civil service law in Albania*", 2010.
[9]ZhaniShapo, Dr. Hans-Achim Roll, SIGMA consultants, at the request of the Department of Public Administration (DoPA) under the Ministry of the Interior, "*Draft concept paper on a new civil service law in Albania*", 2010, pg.36.
[10]Law no. 152/2013, "On the civil servant".
[11]Law no. 152/2013, "On the civil servant", Article 1.
[12]Law no. 152/2013, "On the civil servant", Article 8.
[13]Law no. 152/2013, "On the civil servant", Articles11, 12, 13, 14, 15.

category) and promotional (to a higher category). Parallel movings should be done through a procedure of internal competition based on position (competition for a given position) in order to select the best candidate possible within the civil service. Promotion should be based on an open competition, organized for a fixed position and the competition will be based on a preferencial bonus system for existing civil servants.

The new law on civil service reflects two different sets of principles regarding two aspects, as follows:

1. Principles dealing with the status and with employment relations of civil servants:

- employment relations of civil servants shall be governed by law or on the basis of law to promote legal certainty, legal accountability and legal predictability in the civil service;
- decisions with regard to civil servants shall be based on merit and ensure fairness and effectiveness in employment relations;
- the stability of the civil service and of employment relations shall be protected;
- professionalism of civil servants shall be ensured by developing their competences.[14]

2. Principles dealing with how civil servants perform their activity:the main obligation imposed on civil servants under this principle is that of being impartial. Impartiality is promoted and protected by a number of other principles such as:

- *legality*: civil servants shall perform their duties on the basis of the Constitution, laws, other regulations and in the public interest;
- *accountability*: civil servants shall be personally accountable for their actions; the activities of civil servants shall aim at ensuring efficiency and effectiveness;
- *non-discrimination*: by applying this general principle civil servants shall ensure that no one is discriminated against on the grounds of religion, race, gender, political or other opinion, language, national or social origin or disability.
- *transparency*: openness and transparency shall be ensured as provided for in the law or on the basis of a law.
- *responsiveness*: civil servants are required to respond promptly and react appropriately to any petition, initiative, or appeal submitted by individuals, private organizations or other organs of the public administration;
- *avoiding conflicts of interest*: civil servants shall not allow their private interest to interfere with their public position and shall abstain from performing any private or public activities that are incompatible with their public position and which might generate conflict of interest[15].

Determination of the above principles in the draft, was made with the intention to serve as a guide for civil servants, and not to remain merely as declarative principles, the interpretation of which then leaves room for subjectivity.

After this theoretical approach, we will see how are established in the draft law the rights of civil servants. Thus, Article 37[16] of the draft law defines **political rights** as follows:

"*1.Civil servants have the right to participate in political activities outside working hours. Civil servants should not publicly express their beliefs or political preferences.*

2.Civil servants in senior management may not be members of political parties. Civil servants of other categories have the right to be members of political parties, but may not be members of their governing bodies.

3.A civil servant has the right to run in elections and be elected to the Assembly of the Republic of Albania or local government. In this case, the employee is forced to ask for the suspension from duty."

As we see, civil servant is allowed, or rather, his right to participate in political activities, to be a member of a political party, run in local or central elections, is guaranteed by law. At the same time, there are some constraints, such as the obligation to refrain from public expression of political preferences. From the analysis of the provision, it is difficult tw conclude if there are sanctiones in cases the civil servant does not comply with

[14]ZhaniShapo, Dr. Hans-Achim Roll, SIGMA consultants, at the request of the Department of Public Administration (DoPA) under the Ministry of the Interior, "*Draft concept paper on a new civil service law in Albania*", 2010, pg.17.

[15]ZhaniShapo, Dr. Hans-Achim Roll, SIGMA consultants, at the request of the Department of Public Administration (DoPA) under the Ministry of the Interior, "*Draft concept paper on a new civil service law in Albania*", 2010, pg.17.

[16]Law no. 152/2013, "On the civil servant".

this obligation. Also, he may not be a member of governing bodies, and when seeking to run in the elections, should ask for his suspension.It seems this provision was formulated this way, to guarantee political neutrality and impartiality, reinforcing these principles in the draft law, through provisions dealing with restrictions on political activities, provisions already dealt with separately, and well-defined. Civil servants continue to be allowed to join political parties, but excluding them from being members of their governing bodies, as long as they exercise functions as civil servants. They must refrain from expressing their political views while performing their official duties, or while working, exercising self-control.

Article 36 guarantees the **right to membership in syndicates and professional associations**. Specifically, states that:"*1. Civil servants have the right to establish and join a syndicate and professional association in order to protect their interests in the civil service. He also can be elected in the their governing bodies and participate in their activities, overtime.*
2. A civil Servant of senior category, is prohibited to be at the same time part of the executivebodies of the syndicate or professional association."

Right to strike: The current civil service law recognizes the right of civil servants to create and to be members of syndicates and/or professional organizations (Article 20/d), and prohibits the right to strike (Article 19/f) and tries to compensate for this prohibition by providing that the right of association (Article 20/d) in the civil service shall be exercised in accordance with another law.In EU legislation there is no special rule concerning the right to strike in the civil service, and in different countries, the right to strike is treated differently, ranging from: total prohibition (eg. civil service in Germany , permanent civil servants do not have the right to strike), partial restriction in particular sectors, or strict regulation on how to exercise this right in some sectors.
In general, we can say that the right to strike with a "*political nature*" is banned in the civil service. While the right to strike not for political reasons, it is generally known to the public sector employees, except those employed in the armed forces and those employeed in "*essential services*", or the issue is limited to the obligation to provide service of a "*minimum urgent nature*" that prevents atrophy of a specific area, or does not create a danger to life, health or national security.Complete prohibition is "*disproportionate*" and must be excluded.

The bill, in Article 35 recognizes the right to strike, except as otherwise is provided expressly by law. Thus, a special law covering specific sectors, that for particular fields of the civil service that are considered to provide "essential services", will determine the limits in exercising this right, or will prohibit it. Criteria for determining the correct proportional exceptions and limitations relevant to the right to strike are well articulated in several official documents of international organizations such as the International Labour Organization (ILO) and the Council of Europe.

Transparency and confidentiality: Article 44[17] establishes the obligation of transparency and confidentiality as follows:"1. *A civil servant is obliged to exercise its duties in civil service with transparency and provide to the public and parties any information necessary, except when it is classified as a state secret by law.*
2. Civil servants should not use the information collected during exercising of his duty for purposes other than those set out by law. Civil servants have an obligation to ensure the protection and non proliferation of personal data and those related to commercial or professional activities of persons, protected by law,and which he knows because of his duty."
The new law provides that transparency is a fundamental principle during the activity of a civil servant and confidentiality is applicable only in cases specified by law.

Article 41 of the draft law[18], guarantees the right to information and appeal of a civil servant. Thus, civil servants have the right to be informed of the initiation of any administrative proceeding and any final decision concerning his relationship with the civil service, has the right to control his personnel file and require changing

[17]Law no. 152/2013, "On the civil servant".
[18]Law no. 152/2013, "On the civil servant".

its data. A civil servant has the right to appeal to the competent court for administrative disputes against any act or omission that violates the rights and legitimate interests in the civil service relationship.

CASE LAW OF ECHR (A consistant case law in support of civil servants)

Otto v. Germany[19]

In this case, the applicant complains that the refusal to promote him violated his rights to freedom of expression. He relies on Article 10 of the Convention[20]. As to the applicability of Article 10 and the existence of an interference, the Court points out that the right of recruitment to the civil service was deliberately omitted from the Convention. Consequently, the refusal to appoint a person as a civil servant cannot as such provide the basis for a complaint under the Convention. This does not mean, however, that a person who has already been appointed as a civil servant cannot complain of not being further promoted if that omission violates one of his or her rights under the Convention. Civil servants do not fall outside the scope of the Convention (see Wille v. Liechtenstein, 28 October 1999, ECHR 1999-VII § 41).Accordingly, the status of civil servant obtained by the applicant when he was appointed by the Baden-Wuerttemberg police in 1968 did not deprive him of the protection of Article 10.

In order to determine whether this provision was infringed it must first be ascertained whether the disputed measure amounted to an interference with the exercise of freedom of expression or whether it was lying within the sphere of the right of access to the civil service, a right not secured in the Convention. In the instant case, the Court considered likewise that recruitment to the civil service does not lie at the heart of the issue submitted to it. Even though the applicant complains about the omission to further promote him to the position of a chief inspector, he was informed that the reason he had not been considered suitable for promotion was because of his membership and activities for a political party, Die Republikaner. It follows that there was indeed an interference with the exercise of the right protected by Article 10 of the Convention.Such an interference gives rise to a breach of Article 10 unless it can be shown that it was "*prescribed by law*", pursued one or more legitimate aim or aims as defined in paragraph 2 and was "necessary in a democratic society" to attain them.

a) Prescribed by law:In its letter dated 7 February 1995, the Tübingen Regional Council informed the applicant that it would not consider him suitable for promotion on account of his political activities for Die Republikaner which was not compatible with the applicant's duty of loyalty. It based its decision on Section 11 (1) of the Baden-Wuerttemberg Public Servant Act, according to which nominations shall be carried out on the basis of, inter alia, suitability. The measure had therefore been prescribed by law.

b) Legitimate aim:Like in the Vogt v. Germany case, the present restriction of freedom of expression ultimately derived from civil servants' duty of political loyalty. In the Vogt v. Germany case, the Court noted that a number of Contracting States impose a duty of discretion on their civil servants, founded on the notion that the civil service is the guarantor of the constitution and democracy. The Court found that this notion has a special importance in Germany because of the country's experience under the Weimar Republic, which, when the Federal Republic was founded after the nightmare of Nazism, led to its constitution being based on the principle of a "*democracy capable of defending itself*". Moreover, the Court noted in the case of Rekvényi v. Hungary ([GC], no. 25390/94, § 41, Reports of Judgments and Decisions 1999-III), which concerned an obligation imposed on certain categories of public officials including police officers to refrain from political activities, that a number of Contracting States restrict certain political activities on the part of their police. Bearing in mind the role of the police in society, the Court recognised that it is a legitimate aim in any democratic society to have a politically neutral police force (see the Rekvényi v. Hungary judgment, cited above, § 46). Against this background the Court concluded that the decision not to promote the applicant pursued a legitimate aim within the meaning of paragraph 2 of Article 10.

c) "Necessary in a democratic society": While having regard to the circumstances of the case, the Court has to determine whether a fair balance has been struck between the fundamental right of the individual to freedom of expression and the legitimate interest of a democratic State in ensuring that its civil service properly furthers the purposes enumerated in Article 10 § 2. In doing so, the Court will bear in mind that whenever civil servants' right to freedom of expression is in issue the "*duties and responsibilities*" referred to in Article 10 § 2 assume a

[19]ECHR, *Otto v. Germany*, no.28348/09

[20]Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 1950

special significance, which justifies leaving to the national authorities a certain margin of appreciation in determining whether the impugned interference is proportionate to the above aim.In connection with the above, the Court considers that a Contracting State does not overstep its margin of appreciation when assessing the suitability for promotion of a civil servant with regard to active membership in a party that pursues anti-constitutional goals. Even though no criticism had been levelled at the way the applicant actually performed his duties, the Court notes that the applicant bore a special responsibility as a senior civil servant with the police. That responsibility which, in the eyes of the public, requires police officers to have particular balanced views removed from party politics would even increase upon the applicant's promotion.The Court noted that the measure in question, which was the refusal to promote the applicant to the position of chief inspector, differs significantly from the very severe measure in the Vogt v. Germany case, which concerned the dismissal of a secondary-school teacher. Unlike Mrs Vogt, the applicant was not threatened with losing his livelihood by not receiving further promotion.
The Court also considered the measure in question to be less severe than the interference in the case of Wille v. Liechtenstein (cited above), in which the President of the Liechtenstein Administrative Court had been informed that never again would he be appointed to public office due to his opinions expressed in public. The Court further noted that the applicant had already been promoted several times during his professional career with the Baden-Wuerttemberg police, the last promotion dating back to 1993, which was only a year before his employer learned about his political activities and hence decided not to promote him further. The Court also noted that the applicant's non-promotion occurred in 1995, that is, at a very advanced stage of his career, which ended in 2002.In these circumstances, the Tübingen Regional Council's refusal to promote the applicant and its subsequent confirmation by the domestic courts cannot be said to have amounted to a disproportionate and hence unjustified restriction of the applicant's right to freedom of expression.This complaint was rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 and 4 of the Convention.

Vogt v.Germany[21]

The applicant, who taught German and French in a State secondary school, was appointed to a permanent teaching post as a civil servant with tenure for life. A report drawn up in March 1981 found that both her professional qualifications and her performance were fully satisfactory. Ms Vogt has, by her own account, been a member of the Deutsche KommunistischePartie (DKP) since 1979. After a preliminary investigation the Weser-Ems regional council instituted disciplinary proceedings against her on the ground that she had failed to comply with her duty of political loyalty as a result of the various political activities in which she had engaged since the autumn of 1980. Three statements of charges listed Ms Vogt's public political activities on behalf of the DKP that were considered to be incompatible with her status as a civil servant. On 12 August 1986 the Weser-Ems regional council provisionally dismissed Ms Vogt and from October of that year she was paid only 60 percent of her salary. On 15 October 1987 the Disciplinary Division of the Oldenburg Administrative Court found that the applicant had failed to comply with her duty of political loyalty in that she had played an active role in a party that pursued anti-constitutional aims. It ordered that she be dismissed as a disciplinary penalty. Ms Vogt appealed against that judgment to the Lower Saxony Disciplinary Court. The appeal was dismissed, subsequently she lodged a complaint with the Federal Constitutional Court. A panel of three judges declined to accept her complaint for adjudication as it did not offer sufficient prospects of success. With effect from 1 February 1991 the applicant was re-employed as a teacher in the school education service of the Land of Lower Saxony. Prior to this the Land Government had repealed the decree on the employment of extremists in the civil service. Mrs Vogt maintained that her dismissal from the civil service on account of her political activities in the DKP had infringed her right to freedom of expression secured under Article 10 ECHR.
The Court reiterated that as a general rule the guarantees of the Convention extended to civil servants. The applicant's dismissal as a disciplinary penalty for having failed to comply with her duty of political loyalty constituted an interference with the exercise of the right to freedom of expression. It therefore remained to establish whether the dismissal in issue satisfied the requirements of paragraph 2 of Article 10, in other words whether it had been 'prescribed by law', whether it had pursued one or more legitimate aim or aims as defined in that paragraph and whether it had been 'necessary in a democratic society' to attain such aim or aims. The Court noted that the Federal Constitutional Court and the Federal Administrative Court had clearly defined the duty of

[21]ECHR, *Vogt v.Germany*, no. 17851/91

political loyalty imposed on all civil servants by the relevant provisions of the Federal legislation and the legislation of the Lander, including section 61(2) of the Lower Saxony Civil Service Act. The Court observed that a number of the Contracting States imposed a duty of discretion on their civil servants. In Germany the duty of political loyalty had a special importance because of the experience of the Weimar Republic, which led to the desire to set up a *'democracy capable of defending itself'* in 1949. The applicant's dismissal therefore pursued a legitimate aim for the purposes of Article 10(2). It fell to the Court to determine whether a fair balance had been struck between the individual's fundamental right to freedom of expression and the legitimate interest of a democratic State in ensuring that its civil service properly furthered the purposes enumerated in Article 10(2). As far as the freedom of expression of civil servants was concerned, the *'duties and responsibilities'* referred to in Article 10(2) assumed special significance, which justified leaving to the national authorities a certain margin of appreciation in determining whether the impugned interference was proportionate to the above aim. The Court proceeded on the basis that a democratic State was entitled to require civil servants to be loyal towards the Constitution. In that connection, it took into account Germany's experience under the Weimar Republic and its position in the political context of the time. The Court pointed out that there were several reasons for considering dismissal of a teacher to be a very severe sanction: the effect on the reputation of the person concerned, the loss of livelihood and the virtual impossibility in Germany of finding an equivalent post. Moreover the sole risk inherent in the post held by Ms. Vogt lay in the possibility that she might indoctrinate her pupils. Yet no criticism had been levelled at her on this point. On the contrary, her work at school had met with unanimous approval; moreover the length of the disciplinary proceedings showed that the authorities did not regard as very pressing the need to remove pupils from her influence. In addition, the applicant had never made anti-constitutional statements or adopted an anti-constitutional attitude outside school. Finally, the fact that the DKP had not been banned meant that the applicant's activities within that party had been perfectly lawful. In conclusion, the reasons put forward by the Government were not sufficient to establish convincingly that it had been necessary to dismiss Ms Vogt. Her dismissal had been disproportionate to the legitimate aim pursued. There had accordingly been a violation of Article 10.

The applicant also complained of a breach of her right to the freedom of association secured under Article 11 ECHR. The Court recalled that the protection of personal opinions was one of the objectives of the freedoms of assembly and association as enshrined in Article 11. The applicant's dismissal as a disciplinary sanction for having refused to dissociate herself from the DKP amounted to an interference with the exercise of the freedom of association. The Court considered that *'administration of the State'* within the meaning of Article 11(2) should be interpreted narrowly, in the light of the post held by the official concerned. Even if teachers were to be regarded as falling within that category - a question that the Court did not consider it necessary to determine in this instance -, Mrs Vogt's dismissal had been disproportionate to the legitimate aim pursued. There had accordingly also been a violation of Article 11.

Wille v. Liechtenstein[22]

In 1992 a controversy arose between His Serene Highness Prince Hans-Adam II of Liechtenstein (hereafter "the Prince") and the Liechtenstein Government on political competences in connection with the plebiscite on the question of Liechtenstein's accession to the European Economic Area. At the relevant time, the applicant was a member of the Liechtenstein Government. Following an argument between the Prince and members of the Government at a meeting on 28 October 1992, the matter was settled on the basis of a common declaration by the Prince, the Diet and the Government. In May 1993 the applicant did not stand for election of the new Diet. In December 1993 he was appointed President of the Liechtenstein Administrative Court for a fixed term of office. On 16 February 1995, in the context of a series of lectures on questions of constitutional jurisdiction and fundamental rights, the applicant gave a public lecture at the Liechtenstein-Institut, a research institute, on the "Nature and Functions of the Liechtenstein Constitutional Court". In the course of the lecture, the applicant expressed the view that the Constitutional Court was competent to decide on the "interpretation of the Constitution in case of disagreement between the Prince (Government) And the Diet". This lecture was reported in the local press.

On 27 February 1995 the Prince addressed a letter to the applicant concerning the above lecture. The Prince disagreed with the applicant's statement on the competence of the Constitutional Court and also noted an earlier

[22]ECHR, *Wille v. Liechtenstein*, no. 28396/95

political controversy. He continued that he had reason to believe that the applicant did not feel bound by the Constitution and expressed opinions which clearly infringed the Constitution. The applicant was, therefore, disqualified from holding a public office. The Prince wished to inform him in good time that he would not appoint him to public office, should he be proposed by the Diet or any other body. In his reply of 20 March 1995, the applicant explained his legal opinion and complained that the Prince's announcement interfered with his right to freedom of expression and to freedom to express academic opinions. In a further letter to the applicant dated 4 April 1995, the Prince replied that he had attempted to avoid a public discussion in informing the applicant, in a personal letter, about his decision as early as possible. In April 1997 the applicant was proposed by the Liechtenstein Diet for a further term of office as President of the Administrative Court. However, the Prince did not appoint him.The applicant complains that the Prince's letter of 27 February 1995 informing him that he would not appoint him to public office, should he be proposed by the Diet or any other body, violated his right to freedom of expression, as guaranteed by Article 10 of the Convention. He further complains under Articles 6 and 13 of the Convention that he had no remedy to defend his reputation and to seek protection of his personal rights. The Court found that the disputed measure, the Prince's letter of 27 February 1995, amounted to an interference with the applicant's exercise of his right to freedom of expression. It considered that recruitment to the civil service, a right not secured in the Convention, did not lie at the heart of the issue submitted to the Court. Even though the Prince raised the matter of a possible re-appointment of the applicant as President of the Administrative Court in the future, his communications to the applicant essentially consisted in a reprimand to the applicant for the opinions he previously had expressed. In this respect the Court noted that the measure complained of occurred in the middle of the applicant's term of office as President of the Administrative Court and that it was unconnected with any concrete recruitment procedures involving an appraisal of personal qualifications. From the terms of the letter of 27 February 1995 it appeared that the Prince had come to a decision regarding his future conduct towards the applicant, and one which was connected to the exercise of one of his sovereign powers, i.e. his power to appoint State officials. Moreover, the said letter was expressly addressed to the applicant as the President of the Administrative Court, though sent to his home address. The Court did not accept the Government's argument that the letters of the Prince were private correspondence not constituting an act of state.

The Court recalled that such an interference gives rise to a breach of Article 10 unless it can be shown that it was "*prescribed by law*", pursued one or more legitimate aim or aims as defined by paragraph 2 and was "*necessary in a democratic society*" to attain them. Starting from the assumption that the interference was prescribed by law and pursued a legitimate aim, i.e. to maintain public order and promote civil stability, and to preserve judicial independence and impartiality, as claimed by the Government, the Court considered that it was, however, not "*necessary in a democratic society*". In assessing whether the measure taken by the Prince as a reaction to the statement made by the applicant corresponded to a "*pressing social need*" and was "*proportionate to the legitimate aim pursued*", the Court considered the impugned statement in the light of the case as a whole and attached particular importance to the office held by the applicant, the applicant's statement as well as the context in which it was made and the reaction thereto.The Court observed that at the time of the events the applicant was a high-ranking judge. It considered that, whenever the right of freedom of expression of persons in such a position was at issue, the "duties and responsibilities" referred to in Article 10 § 2 assume a special significance since it can be expected of public officials serving in the judiciary that they should show restraint in exercising their freedom of expression in all cases where the authority and impartiality of judiciary are likely to be called in question. Nevertheless the Court also found that an interference with the freedom of expression of a judge in a position such as the applicant's called for close scrutiny on the part of the Court. The Court observed that the applicant's lecture on 16 February 1995 formed part of a series of academic lectures on questions of constitutional jurisdiction and fundamental rights. The applicant's lecture, since it dealt with matters of constitutional law and more specifically with the issue of whether one of the sovereigns of the State was subject to the jurisdiction of a constitutional court, inevitably had political implications. However, in the Court's view, this element alone should not have prevented the applicant from making any statement on this matter.

The opinion expressed by the applicant could not be regarded as an untenable proposition since it was shared by a considerable number of persons in Liechtenstein. Moreover, there was no evidence to conclude that the applicant's lecture contained any remarks on pending cases, severe criticism of persons or public institutions or insults to high officials or the Prince. No reference was made to any incident suggesting that the applicant's

view, as expressed at the lecture in question, had a bearing on his performance as President of the Administrative Court or on any other pending or imminent proceedings. The Court concluded that the interference complained of was not "*necessary in a democratic society*" and held that there had been a violation of Article 10 of the Convention. The applicant, relying on Article 13 of the Convention, also complained that he did not have an effective judicial or other remedy enabling him to challenge the action taken by the Prince with regard to the opinion expressed on the occasion of his lecture. The Court found that Government had failed to show that there exists any precedent in the Constitutional Court's case-law, since its establishment in 1925, that that court has ever accepted for adjudication a complaint brought against the Prince. The Government have therefore failed to show that such a remedy would have been effective. It followed that the applicant had also been the victim of a violation of Article 13.

Ahmed and others v. The United Kingdom[23]

The Secretary of State for the Environment made Regulations to restrict the political activities of local government officers in *'politically restricted posts'*. The applicants all held politically restricted posts and had to abandon their political activities when the Regulations came into force. The applicants complained that the Regulations constituted an unjustified interference with their right to freedom of expression given that they prevented them from pursuing normal political activities. The Court noted, firstly, that it was common ground that the impugned measures did interfere with the applicants' rights under Article 10 and, secondly, that it was not disputed that the applicants, even though public servants, could invoke the protection guaranteed by that provision. The Court considered that the interferences which resulted from the application of the Regulations to the applicants pursued the legitimate aim of protecting the rights of others, council members and the electorate alike, to effective political democracy at the local level. For the Court, the notion of effective political democracy, which is essential to the protection and further realisation of human rights, is just as applicable to the local level as it is to the national level. The Court noted that the Regulations had been adopted in response to the identification of a pressing social need for action in this area. In the Court's view, the adoption of the Regulations can be considered a valid response by the legislature to addressing that need and one which was within the respondent State's margin of appreciation in this area. As to whether the aim of the Regulations was achieved with minimum impairment of the applicants' rights under Article 10, the Court noted that the restrictions only applied to carefully defined categories of senior officers distinguished by the nature of the activities which they performed and in respect of which political impartiality was a paramount consideration. Furthermore, the Regulations were not intended to silence all comment on political matters, whether controversial or not. There was no restriction on the applicants' rights to join political parties.

In assessing the necessity of the restrictions, the Court also found it significant that the current Government since coming to office have conducted a review of the Regulations which were introduced when they were in opposition and that review showed that the maintenance in force of the restrictions continued to be justified. In view of the need which the Regulations sought to address and to the margin of appreciation which the respondent State enjoys in this area, the Court concluded that the restrictions could not be said to be a disproportionate interference with the applicants' rights under Article 10. The Court found accordingly that there had been no violation of Article 10 by reason of the existence of the legislation and its impact on the applicants' rights under that article in the circumstances of this case. The applicants maintained that, since the Regulations prevented them from holding office and from being active in an organisational and administrative capacity in political parties of which they were members, they constituted an unjustified interference with their right to freedom of association guaranteed under Article 11. The Court did not accept this argument.

The Court considered that the reasons which led it to conclude that the interference with the applicants' rights under Article 10 ECHR was justified served also to justify the interference with the exercise of their rights under Article 11. Having regard to the fact that the Regulations were intended to secure the political impartiality of senior officers such as the applicants who occupied politically restricted posts, the respondent State could, and bearing in mind the legitimacy of the aim pursued by the Regulations, properly preclude them from contesting seats at elections. It also noted, *inter alia*, that the restrictions did not limit the very essence of the applicants' rights under Article 3 since they only applied for as long as the applicants held politically restricted posts.

[23] ECHR, Ahmed and others v. United Kingdom, no.22954/93

CONCLUSIONS

Freedom of expression is a fundamental human right, particularly because of its role in the achievement of an ideal democracy. Along with the right to information, they constitute two of the most important elements in the exercising of fundamental rights of the individual. Repeatedly, European Court of Human Rights has stated that: "*Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man*"[24].

Regarding restrictions on freedom of expression of civil servants, besides restrictions provided by the law which regulates their status,[25] Article 3 of the Law "*On the rules of ethics in public administration*"[26] , provides that during the performance of his functions, public administration employees should respect the following principles: "*...h)to maintain the confidentiality of information at its disposal, without prejudice to the obligations deriving from Law no. 8503 , dated 30.6.1999 , " On the Right of Access to Official Documents.*"

Thus, the legislator restricts freedom of expression for that category of persons that in a given moment are working in public administration, to perform public services, in terms of information at their disposal because of duty. Indeed, this limitation is provided in general, but the limit is determined not to be extended beyond the provisions of the law on access to information for official documents[27].

Freedom of expression and right to information are generally enshrined in the Constitution for everyone. However, depending on certain subjects, such as civil servants, because of the special status they hold, restrictions may be imposed, as long as they are in conformity with Article 17 of the Constitution, and it is the law that explicitly provides for the possibility of this restriction, determining also its extent.

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[24]ECHR, Handyside v. United Kingdom, App. no. 5493/72, paragraph 49.
[25]Law no. 8549, dated 11.11.1999, "On the status of the civil servant".
[26]Law no. 9131, dated 08.09.2003 "On the rules of ethics in public administration".
[27]Law no. 8503, dated 30.06.1999 "On the right of information on official documents".

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