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Item reference: Updated action report (24/11/2016)

Communication from Germany concerning the case of Heinisch against Germany (Application No. 28274/08)

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Réunion : 1280 réunion (7-9 mars 2017) (DH)

Référence du point : Bilan d'action mis à jour

Communication de l'Allemagne concernant l'affaire Heinisch contre Allemagne (Requête n° 28274/08)
(anglais uniquement)

Bundesministerium
der Justiz und
für Verbraucherschutz

Berlin, 23 November 2016

Application H. v. Germany (No. 28274/08)

Report on the execution of the judgment of the European Court of Human Rights delivered on 21 July 2011, final 21 October 2011

Final Action Report

A. Background of the case

Violation of the right of freedom of expression of the applicant, a geriatric nurse, due to her dismissal without notice in 2005 after having brought a criminal complaint against her employer, a state-owned company, alleging deficiencies in the care provided (so-called "whistle blowing") (Article 10). The Court held that the domestic courts had failed to strike a fair balance between the need to protect the employer's reputation and rights on the one hand and the need to protect the applicant's right to freedom of expression on the other.

B. Individual measures

Payment of just satisfaction

The compensation awarded by the Court, totalling €15,000, was received on 19 January 2012 by the Applicant's legal representative, who had submitted a power of attorney authorising him to receive the compensation sum awarded. Please find attached a photocopy of the relevant accounting entry.

C. General measures

a) Publication and dissemination of the judgment

Notification has been effected in respect of the courts that were involved in the court proceedings which formed the basis of the Application. Furthermore, a German translation of the judgment has been sent to all the ministries of justice of the *Länder* for notification within their remit.

In addition to this, a German translation of the judgment has been published on the website of the Federal Ministry of Justice and Consumer Protection in the Ministry's case-law database (www.bmjv.de/egmr). Furthermore, the translation was sent to several important publishing houses that bring out legal periodicals. Subsequently the judgment has been published in Arbeit und Recht 2011, page 355; Europäische Grundrechte Zeitschrift 2011, page 555; Neue Juristische Wochenschrift 2011, page 3501; Neue Zeitschrift für Arbeitsrecht 2011, page 1269.

Moreover, the judgment has been included in the report drawn up in the Federal Ministry of Justice and Consumer Protection, entitled *Bericht über die Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte und die Umsetzung seiner Urteile in Verfahren gegen die Bundesrepublik Deutschland im Jahr 2011* ("Report on the Case Law of the European Court of Human Rights and on the Execution of its Judgments in Cases against the Federal Republic of Germany in 2011"). This report has been widely disseminated and published on the Federal Ministry of Justice website: www.bmjv.de.

b) Decision in one specific case

The Convention violation was caused by an inappropriate adjudication by the labour courts in one specific case. In a decision of 2 July 2001 (file No. 1 BvR 2049/00) the Federal Constitutional Court dealt with a case where an employee, at the request of the public prosecutor, had given evidence and handed over documents in preliminary criminal investigations that had been instituted *ex officio* against his employer.The Federal Constitutional Court held that in accordance with the rule of law the discharge of a citizen's duty to give evidence in criminal investigations could not in itself entail disadvantages under civil law. The Court further pointed out in an obiter dictum that even in the event that an employee reported the employer to the public prosecution authorities on his or her own initiative, the rule of law required that such exercise of a citizen's right could, as a rule, not justify a dismissal without notice from an employment relationship, unless the employee had knowingly or frivolously reported incorrect information.

After the judgment of the ECHR, national courts implemented its findings by explicitly making reference to the judgment (e. g. Bundesarbeitsgericht, judgment of 7 July 2014, Az. 2 AZR 505/13, published i. a. in NZA 2015, 245 - 251; Landesarbeitsgericht Düsseldorf, decision of 4 March 2016, Az. 10 TaBV 102/15, published i. a. in PflegeRecht 2016, 512 – 520).

Against this background it is not necessary to take further general measures, especially legislative measures, in order to implement the judgment.

Given the direct effect of the European Convention in Germany, publication and dissemination should be sufficient to guarantee that the requirements of the Convention and the case-law of the European Court will be taken into account in the future, in order to prevent new, similar violations.

D. Conclusion

The government considers that no further individual measures are required, that the general measures adopted will prevent similar violations and that Germany has thus complied with its obligations under Article 46, paragraph 1 of the Convention.