

3.4. PROVIDERS' RIGHTS

Health care providers play a critical role in addressing the abuses that take place in health care settings. Accordingly, the application of the human rights framework to patient care implies that the interests of patients and health care providers are interrelated and the interests of both are to be protected. If providers are unable to fully exercise their rights, they may be deterred or made powerless to effectively prevent abuses of patients. This section highlights several relevant European regional standards as they appear in the European Convention on Human Rights (ECHR) and the European Social Charter (ESC) and how they have been interpreted in relation to three key rights for health care providers. These include the right to (i) work in decent conditions; (ii) freedom of association and assembly, including association with trade unions and the right to strike; and (iii) due process and related rights to receive a fair hearing and an effective remedy, protection of privacy and reputation, and freedom of expression and information.

The chapter is divided into three major sections. Part I of this section covers the right to work in decent conditions, including the right to work and the right to fair pay and safe working conditions. Part II discusses the right to freedom of association. Part III explores the right to due process and related rights. Each section begins with a discussion of the significance of that particular right for health care providers and is followed by relevant standards from European legal instruments and case law to exemplify potential violations. Even if there is little or sometimes no direct reference to the standards provided in this chapter, health sector personnel enjoy the same level of protection as other workers.

Right to Work in Decent Conditions

The European Committee of Social Rights (ECSR) has provided extensive interpretation of the right to work in decent conditions, which is governed by the European Social Charter (ESC). The ESC enshrines the right to work (ESC, Art. 1), the right to just conditions of work (ESC, Art. 2), the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (ESC, Art. 20), and the right to safe and healthy working conditions (ESC, Art. 3). Although not the focus of this section, relevant ECHR standards include Article 2 (the right to life) and Article 3 (the prohibition of torture and subjection to inhuman or degrading treatment or punishment), insofar as they provide safeguards against ill treatment in the workplace.

RIGHT TO WORK

The right to work requires that States “legally prohibit any discrimination, direct or indirect, in employment” and provide special protection with regard to gender, race or ethnic group.¹ This right also protects the individual from the dismissal or other retaliatory action by the employer against an employee who has lodged a complaint or taken legal action.² While not analyzed under the right to work, the ECtHR found a violation under Article 8 (right to privacy) and Article 14 (freedom from discrimination) where an employee was dismissed based on his HIV status.³ The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, as enshrined under Article 20 of the ESC, protects the individual from a) discrimination in employment; b) any practice that might interfere with a worker's right to earn a living in an

¹ Conclusions are drawn from the Digest of September 2008, by the COE; ECSR. Conclusions XVI-1, Austria, p. 25.

² COE. Conclusions: Iceland. (XVI-1).

³ ECtHR. I.B. v. Greece. App. No. 552/10. October 3, 2013.

occupation freely entered,⁴ or cause her/him to be a subject of forced or compulsory labor. Legislation should prohibit any indirect discrimination, which arises when a measure or practice that is identical for everyone, without a legitimate aim, disproportionately affects persons having a particular religion or belief, disability, age, sexual orientation, political opinion, ethnic origin, etc.⁵ Furthermore, domestic law must at least provide for the power to abrogate or amend any provision contrary to the principle of equal treatment, which appears in collective labor agreements, in employment contracts, or in firms' own regulations.⁶ Domestic law must also provide appropriate and effective remedies that are adequate and proportionate and available to victims in the event of an allegation of discrimination. In the same way, this right establishes that impositions of predefined upper limits to compensation (derived from the violation of this right) that may be awarded to the workers are not in conformity with this right.⁷

Under EU law, Directive 2000/78/EC of 27 November 2000⁸ provides member states with a "guideline framework" in order to address employment discrimination. Recognizing that "[e]mployment and occupation are key elements in guaranteeing equal opportunities for all and contribute strongly to the full participation of citizens in economic, cultural and social life and to realising their potential," the directive prohibits "any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation." The directive is clear in that the requirements set out constitute "minimum requirements" and that member states can adopt higher standards but that the requirements under the directive should not be used to "justify any regression."

RIGHT TO FAIR PAY AND SAFE WORKING CONDITIONS

The right to just conditions of work (ESC, Art. 2) establishes limits on daily and weekly working hours, including overtime. The provisions of this right must be guaranteed through legislation, regulations, collective agreements, or any other binding means.⁹ Also, periods of "on call" duty during which the employee has not been required to perform work for the employer constitute effective working time and cannot be regarded as rest periods (within the meaning of Article 2, except in the framework of certain occupations or particular circumstances and pursuant to appropriate procedures). This right holds that the absence of effective work cannot constitute an adequate criterion for regarding such a period as a period of rest.¹⁰ Overtime work must not simply be left to the discretion of the employer or the employee—the reasons for overtime work and its duration must be subject to regulation.¹¹

The right to just conditions of work likewise requires that wages be above the poverty line in a given country to be considered fair remuneration. A wage must not fall too far short of the national average wage. In fact, the ECSR has emphasized that minimum wage must be "sufficient to give the worker a decent standard of living."¹² In the same way, this right also establishes that employees who work overtime must be paid at a higher rate than the normal wage rate.¹³ Also, this right ensures that women and men are entitled to have "equal pay for work of equal

⁴COE. Conclusions of the European Committee of Social Rights. Conclusions (II and XVI-1). Statements of interpretation of Article 1§2.

⁵David Harris et al. *Law of the European Convention on Human Rights*. Oxford: Oxford University Press, 2009. p. 607.

⁶COE. Conclusions: Iceland. (XVI-1).

⁷COE. Conclusions 2006: Albania.

⁸Official Journal of the European Union. Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services. OJ L 373 of 21.12.2004. June 25, 2009.

⁹COE. Conclusions I. Statement of Interpretation on Article 2§1.

¹⁰ECSR. Confédération Française de l'Encadrement CFE-CGC v. France. Collective Complaint No. 16/2003. October 12, 2004.

¹¹COE. Conclusions. (XIV-2). Statement of Interpretation on Article 2(1).

¹²Conclusions 2003, France, p. 120

¹³COE. Conclusions I. Statement of Interpretation on Article 4§2.

value.”¹⁴ Accordingly, domestic law must provide for appropriate and effective remedies in the event of alleged wage discrimination.¹⁵ Anyone who suffers wage discrimination on grounds of sex must be entitled to adequate compensation, sufficient to make good the damage suffered by the victim and to act as a deterrent to the offender.¹⁶

The right to safe and healthy working conditions (ESC, Art. 3) requires that occupational risk prevention be a priority and that it be incorporated into the public authorities’ activities at all levels and form part of other public policies (on employment, persons with disabilities, equal opportunities, etc.).¹⁷ Under this right, workers, all workplaces, and all sectors of activity must be covered by occupational health and safety regulations.¹⁸ In the same way, this right requires that States ensure that the policy and strategies adopted are assessed and reviewed regularly, particularly in light of changing risks. At the employer level, in addition to compliance with protective rules, there must be regular assessment of work-related risks and the adoption of preventive measures geared to the nature of risks in addition to information and training for workers. Employers are also required to provide appropriate information, training, and medical supervision for temporary workers and employees on fixed-term contracts (for example, taking account of employees’ accumulated periods of exposure to dangerous substances while working for different employers).¹⁹ The right applies to both the public and private sectors.²⁰

Relevant Provisions

ESC

Art.1(2)– The right to work: With a view to ensuring the effective exercise of the right to work, the Parties undertake:...to protect effectively the right of the worker to earn his living in an occupation freely entered upon...

Art.2(1)– The right to just conditions of work: With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:...to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit...

Art. 3 – The right to safe and healthy working conditions:With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers’ and workers’ organisations:

1. to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment;
2. to issue safety and health regulations;
3. to provide for the enforcement of such regulations by measures of supervision;
4. to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.

Art. 4 – The right to a fair remuneration:With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

¹⁴COE. Conclusions: Slovak Republic. (XV-2, addendum).

¹⁵COE.Conclusions I. Statement of Interpretation on Article 4§3.

¹⁶COE.Conclusions.(XIII -5).Statement of Interpretation on Article 1 of the Additional Protocol.

¹⁷COE. Conclusions 2005: Lithuania.

¹⁸COE. Conclusions 2005: Estonia.

¹⁹COE. Conclusions 2003: Bulgaria.p. 31.

²⁰COE.Conclusions II.Statement of Interpretation on Article 3.

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;
2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. to recognise the right of men and women workers to equal pay for work of equal value;
4. to recognise the right of all workers to a reasonable period of notice for termination of employment;
5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards. The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

Art. 22 – The right to take part in the determination and improvement of the working conditions and working environment: With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

- a. to the determination and the improvement of the working conditions, work organization and working environment;
- b. to the protection of health and safety within the undertaking;
- c. to the organization of social and socio-cultural services and facilities within the undertaking;
- d. to the supervision of the observance of regulations on these matters.

Provisions related to women

ESC, Art. 20 – The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex: With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

- a) access to employment, protection against dismissal and occupational reintegration;
- b) vocational guidance, training, retraining and rehabilitation;
- c) terms of employment and working conditions, including remuneration;
- d) career development, including promotion.

Provisions related to persons with disabilities

ESC, Art. 15(2) – The right of persons with disabilities to independence, social integration and participation in the life of the community: With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:...to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services...

CASES RELATING TO THE RIGHT TO WORK IN DECENT CONDITIONS

Confédération Française de l'Encadrement CFE-CGC v. France (ECSR)(2004). The petitioners claimed that the Act of 17 January 2003 passed by the government allowed "on-call time" (*périodes d'astreinte*) to be considered rest time under the law. The Committee found that "on-call time" during which the employee has not been required to perform work for the employer, although they do not constitute effective working time, cannot be regarded as a rest period. The Committee therefore held that equating "on-call time" to rest periods constitutes a violation of the right to reasonable working time.²¹

Marangopoulos Foundation for Human Rights (MFHR) v. Greece (ECSR)(2006). The ECSR found that the lack of legislation to ensure the security and safety of persons working in lignite mines as well as reduced working hours or additional holidays constituted a violation of Article 3 of the ESC, which works to ensure the right to safe and healthy working standards of the highest possible level. The ECSR emphasized that this article requires the government "to issue health and safety regulations providing for preventive and protective measures against most of the risks recognised by the scientific community and laid down in Community and international regulations and standards."²²

Syndicat national des Professions du Tourisme v. France.(ECSR)(2000). The ECSR found a violation of the right to non-discrimination in employment where entities offering guided tours (within the remit of the government) afforded differential treatment between lecturer guides hired by them and interpreter guides and national lecturers holding a state diploma. The ECSR concluded that that difference in treatment had no reasonable and objective justification and constituted de facto discrimination in employment to the detriment of interpreter guides and national lecturers with a state diploma.²³

Right to Freedom of Association and Assembly

The right to freedom of association and assembly is enshrined under Article 5 (right to organize) of the ESC and Article 11 (freedom of assembly and association) of the ECHR. The right to freedom of association and assembly establishes that "association" is an autonomous concept that is not dependent on the classification adopted under domestic law. This factor is relevant but not decisive.²⁴ It also includes the freedom not to join an association or trade union.²⁵

Additionally, it applies to private law bodies only, as public law bodies (i.e., those established under legislation) are not considered to be "associations." However, this right allows for "lawful restrictions" to be placed on certain

²¹ECSR. Confédération Française de l'Encadrement CFE-CGC v. France. Collective Complaint No.16/2003. October 12, 2004.

²²ECSR.Marangopoulos Foundation for Human Rights (MFHR) v. Greece.Collective Complaint No. 30/2005. December 6, 2006. §224 .

²³ECSR.Syndicat national des Professions du Tourisme v. France.Collective Complaint No. 6/1999. October 10, 2000. para. 32.

²⁴ECtHR.Chassagnou and Ors v. France.App. No. 25088/94; 28331/95; and 28443/95. April 29, 1999. (hunters' associations in France are held to be "associations" for purposes of Article 11 even though government argued that they were public law institutions).

²⁵ECtHR.Young and Ors v.The United Kingdom.App. No. 3455/05. February 19, 2009. ("closed shop," compulsory membership of the rail trade union breached Article 11); see also ECtHR. Sigurjonsson v. Iceland. App. No. 16130/90. June 30, 1993.

public officials (for example, the armed forces and the police) and on members of the "administration of the state."²⁶

The ECtHR has confirmed that the right includes the freedom to abstain from joining an association. In addition, the ECtHR has determined that official regulatory body members do not fall within the scope of the guarantee. This finding is particularly important for medical professionals as these bodies are established by law and have the authority to discipline their members.²⁷

This section covers two aspects of freedom of association: the freedom of association and assembly (ECHR, Art. 11) and the right to form trade unions and to strike (ESC, Arts. 5, 6, 21, and 22).

RELEVANT PROVISIONS

ECHR, Art. 11 :(1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. (2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

CASE RELATING TO THE RIGHT TO FREEDOM OF ASSOCIATION AND ASSEMBLY

***Albert and Le Compte v. Belgium* (ECtHR) (1983)**. The applicant claimed that the obligation to join in a specific organ (the Ordre des médecins) had the effect of eliminating freedom of association. The Court held that Ordre des médecins cannot be regarded as an association within the meaning of Article 11; that the existence of the Ordre des médecins and the resultant obligation on practitioners to be entered on its register and to be subject to the authority of its organs clearly have neither the object nor the effect of limiting, even less suppressing, the freedom of association.²⁸

TRADE UNIONS AND THE RIGHT TO STRIKE

The right to form trade unions and the right to strike establish that workers must be free to join and free not to join a trade union.²⁹ Under this right, any form of compulsory trade union membership imposed by law is incompatible with the provisions of this right.³⁰ The right to form trade unions and the right to strike also establish that domestic law must clearly prohibit all pre-entry or post-entry "closed shop" clauses and all union security

²⁶ This approach has been endorsed by ECSR experts but not by the ILO Freedom of Association Committee, although Article 9(1) of ILO Convention No. 87 limiting public servants' rights does not refer to "administration of the state".

²⁷ See also International Centre for the Protection of Legal Rights. INTERIGHTS Manual for Lawyers. Article 11 of the European Convention of Human Rights: Freedom of Assembly and Association. Provides information on how the ECtHR has interpreted Article 11 of the ECHR.

²⁸ ECtHR. *Albert and Le Compte v. Belgium*. App. No. 7299/75; 7496/76. February 10, 1983.

²⁹ COE. Conclusions I. Statement of Interpretation on Article 5.

³⁰ COE. Conclusions III. Statement of Interpretation on Article 5.

clauses (automatic deductions from wages).³¹ Consequently, clauses in collective agreements or legally-authorized arrangements whereby jobs are reserved in practice for members of a specific trade union are a breach to the cited right.³²

The right to form trade unions and the right to strike protect trade union members from any harmful consequence that their trade union membership or activities may have on their employment, particularly any form of reprisal or discrimination in the areas of recruitment, dismissal, or promotion. Where such discrimination occurs, domestic law must make provision for compensation that is adequate and proportionate to the harm suffered by the victim.³³ Under this right, trade unions and employers' organizations must be independent from excessive State interference in relation to their infrastructure or effective functioning.³⁴

This right also establishes that trade unions and employer organizations must be free to organize without prior authorization, and initial formalities, such as declaration and registration, must be simple and easy to apply. If fees are charged for the registration or establishment of an organization, they must be reasonable and designed only to cover strictly necessary administrative costs.³⁵ However, the "right to strike" may be restricted; prohibiting strikes in sectors that are essential to the community is deemed to serve a legitimate purpose, as strikes in these sectors could pose a threat to public interest, national security, and/or public health. Simply banning strikes, however, even in essential sectors—particularly when they are extensively defined, for example, as "energy" or "health"—is not deemed proportionate to the specific requirements of each sector. At most, the introduction of a minimum service requirement in these sectors might be considered in conformity with the ESC.³⁶ The most comprehensive analysis of the right to strike has been made under the ESC. The ECtHR has engaged in a more limited exploration of trade unions, which includes upholding workers' right to strike.

Relevant Provisions

ESC

Art. 5 – The right to organize: With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organizations for the protection of their economic and social interests and to join those organizations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

Art. 6 – The right to bargain collectively: With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1. to promote joint consultation between workers and employers;
2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

³¹COE. Conclusions VIII .Statement of Interpretation on Article 5.

³²COE. Conclusions: Denmark. (XV-1).

³³COE. Conclusions 2004: Bulgaria.

³⁴COE. Conclusions: Germany. (XII -2).

³⁵COE. Conclusions: United Kingdom. (XV-1).

³⁶COE. Conclusions I. Statement of Interpretation on Article 6§4; ECSR. Confederation of Independent Trade Unions in Bulgaria, Confederation of Labour "Podkrepa" and European Trade Union Confederation v. Bulgaria. Collective Complaint No. 32/2005. October 16, 2006.

3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labor disputes; and recognise:
4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

Art. 19(4)(b) – The right of migrant workers and their families to protection and assistance:With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:...4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:

- a. remuneration and other employment and working conditions;
- b. membership of trade unions and enjoyment of the benefits of collective bargaining...

Art. 22– The right to take part in the determination and improvement of the working conditions and working environment:With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

- a. to the determination and the improvement of the working conditions, work organization and working environment; ...
- c. to the organization of social and socio-cultural services and facilities within the undertaking;
- d. to the supervision of the observance of regulations on these matters.

Charter of Fundamental Rights of the European Union,³⁷ Art. 28:Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Case Relating to Trade Unions and the Right to Strike

European Trade Union Confederation (ETUC)/CentraleGénérale des Syndicats Libéraux de Belgique (CGSLB)/Confédération des Syndicats Chrétiens de Belgique (CSC)/Fédération Générale du Travail de Belgique (FGTB) v. Belgium (ECSR)(2011). The ECSR held in favour of the complainant trade unions, finding that although Belgium’s Constitution and statutes did not enshrine a right to strike, this right (as understood under Article 6(4) of the ESC) was guaranteed in “established and undisputed” domestic case law. The Court also concluded that the restrictions on activities of strike pickets, under Belgian law, were incompatible with Article G of the ESC and constituted a violation of the right to strike under Article 6(4).³⁸

EnerjiYapi-Yol Sen v. Turkey(EctHR)(2008).Where a circular was issued by the government banning all civil servants from taking strike action, the Court held that the right to strike was not absolute and subject to

³⁷Official Journal of the European Communities.Charter of Fundamental Rights of the European Union.OJ C 364/01. December 7, 2000.

³⁸ECSR. European Trade Union Confederation (ETUC)/CentraleGénérale des SyndicatsLibéraux de Belgique (CGSLB)/Confédération des SyndicatsChrétiens de Belgique (CSC)/FédérationGénérale du Travail de Belgique (FGTB) v. Belgium Collective Complaint 59/2009. September 13, 2011.

restrictions. Moreover, the Court concluded that a ban on strike action could be imposed on civil servants, but it could not deprive all civil servants of the right to strike.³⁹

Unison v. The United Kingdom (ECtHR)(2002). A trade union for public service employees, including healthcare providers in hospitals, challenged a decision preventing it from organizing strikes. The Committee held that the right to form trade union does not implicitly create a right to strike and declared the application inadmissible.⁴⁰

RIGHT TO DUE PROCESS AND RELATED RIGHTS

This section discusses four aspects of the right to due process and related rights: the interpretation of the right to a fair hearing; the guarantee of effective remedy; the protection of privacy and reputation; and the protection of freedom of expression and information. With respect to health care providers, these rights come into play when legal challenges concerning their conduct are lodged against them. The ECtHR has provided extensive interpretation of the right to a fair hearing, which is protected in Article 6 of the ECHR. This right encompasses matters such as licensing and medical negligence.

RIGHT TO A FAIR HEARING

The right to a fair hearing, as protected by Article 6 of the ECHR, entitles every individual to “a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.” This right applies to the process of determining the individual’s civil rights or criminal charges brought against her/him. It also applies to all related proceedings between the State and the individual or between private parties—the result of which is “decisive” for civil rights and obligations.⁴¹ Administrative proceedings do not necessarily need to comply with Article 6, provided that, at some point, there is an opportunity to appeal to a judicial process that does adhere to Article 6 standards. Similarly, legal proceedings do not need to meet fair trial standards at each stage of the process. Rather, courts will assess whether the proceedings, taken together as a whole, constitute a fair trial.

In civil proceedings, a litigant has the rights to real and effective access to a court, notice of the time and place of the proceedings, a real opportunity to present her/his case, and a reasoned decision. There is no express requirement for legal aid in civil cases. In order to give effect to the right of access and the need for fairness, however, some assistance may be required in certain cases.⁴²

Additionally, under this right, the principle of the “equality of arms” (both parties have equal procedural access to the court) does apply and can be violated by mere procedural inequality.⁴³ This right establishes that both parties have a right to be informed of the other’s submissions and other written material and have a right to reply.⁴⁴

Relevant Provisions

³⁹ECtHR. *EnerjiYapi-Yol Sen v. Turkey*. App. No. 68959/01. April 21, 2009.

⁴⁰ECtHR. *Unison v. The United Kingdom*. App. No. 53574/99. January 10, 2002.

⁴¹ECtHR. *Ringeisen v. Austria*. App. No. 2614/65. July 16, 1971.

⁴²ECtHR. *Airey v. Ireland*. App. No. 6289/73. October 9, 1979; ECtHR. *P and Ors v. The United Kingdom*, App. No. 11209/84; 1234/84; 11266/84; 11386/85. November 29, 1988.

⁴³ECtHR. *Fischer v. Austria*. App. No. 33382/96. January 17, 2002.

⁴⁴ECtHR. *DomboBeheer BV v. The Netherlands*. App. No. 14448/88. October 27, 1993.

ECHR, Art. 6: In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

Case Relating to the Right to a Fair Hearing

Konig v. Germany (ECtHR)(1978). As the result of disciplinary proceedings, a doctor was found to be unfit for practice. He then complained about the length of the proceedings. The Court found the right to practice medicine to be a civil right and that the length of the proceedings exceeded the 'reasonable time' required under Article 6 (more than 10 years of appeals process).⁴⁵

RIGHT TO AN EFFECTIVE REMEDY

The right to an effective remedy establishes that the availability of a remedy must include the determination of the claim and the possibility of redress.⁴⁶ Under this right, all procedures, including judicial and no judicial, will be examined.⁴⁷ This right also establishes that the nature of the remedy required to satisfy the obligation under the cited right depends upon the nature of the alleged violation. In most cases, compensation will suffice. In all cases, the remedy must be "effective" in both practice and law, meaning that there must not be undue interference by State authorities.⁴⁸ This right requires that the authority with the ability to provide the remedy must be independent of the body alleged to have committed the breach.⁴⁹

Relevant provisions

ECHR, Art. 13 Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Case Relating to the Right to an Effective Remedy

Aksoy v. Turkey (ECtHR)(2011). Where an individual claimed that he has been tortured by agents of the State, the Court held that the right to an effective remedy consists of "a thorough and effective investigation capable of

⁴⁵ECtHR.Konig v. Germany.App. No. 6232/73. June 28, 1978.

⁴⁶ECtHR.Klass v. Germany.App. No. 5029/71. September 6, 1978.

⁴⁷ECtHR.Silver v.The United Kingdom, App No. 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75. March 25, 1983.

⁴⁸ECtHR.Aksoy v. Turkey. App. No. 219987/93. December 18, 1996.

⁴⁹ECtHR.Khan v. The United Kingdom, App. No. 35394/97. October 4, 2000; ECtHR.Taylor-Sabori v. The United Kingdom, App. No. 47114/99. January 22, 2003.

leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure”—in addition to payment of compensation where appropriate.⁵⁰

RIGHT TO PROTECTION OF PRIVACY AND REPUTATION

The right to protection of privacy and reputation protects the private life of the individual. For example, it provides protection against the unlawful bugging of telephone calls.⁵¹ Under this right, protection can extend to certain behavior and activity that takes place in public, depending on whether the individual had a "reasonable expectation of privacy" and whether that expectation was voluntary waived.⁵² This right also requires that, in addition to refraining from arbitrarily interfering, the State take measures necessary for ensuring the respect of this right, such as protecting it from third party abuse.⁵³

Relevant Provisions

ECHR

Art. 8:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Art. 10:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Art. 13: Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

RIGHT TO FREEDOM OF EXPRESSION AND INFORMATION

The right to freedom of expression and information protects the individual from the restriction by the government to receive information that others may wish to impart. However, under this right, the State has no positive

⁵⁰ECtHR.Aksoy v. Turkey. App. No. 26211/06. January 12, 2011. para. 98.

⁵¹ECtHR.Halford v.The United Kingdom. App. No. 20605/92. June 25, 1997. (concluding that bugging of private telephone calls made to an office telephone could constitute a breach of Article 8).

⁵²ECtHR.Von Hannover v. Germany. App. No. 40660/08; 60641/08. February 7, 2012.

⁵³ECtHR.Von Hannover v. Germany. App. No. 40660/08; 60641/08. February 7, 2012. paras. 98-99.

obligation to collect and disseminate information on its own motion.⁵⁴This right establishes that civil servants, insofar as they should enjoy public confidence, can be protected from "offensive and abusive verbal attacks." Even in such cases, however, civil servants have a duty to exercise their powers by reference to professional considerations only, without being unduly influenced by personal feelings.⁵⁵

While rights to impart and receive information are not each enshrined under an article, they have been interpreted as part of the right to freedom of expression, which is protected by Article 10 of the ECHR. Moreover, freedom of expression can be restricted legitimately, through application of Article 8, to protect the rights and reputation of others. For example, the media does not have an absolute right to publish unwarranted attacks on public officials.

Relevant Provisions

ECHR, Art. 10 (1): Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

Case Relating to the Right to Freedom of Expression and Information

***Sosinowska v. Poland*(ECtHR)(2011)**. A physician was sanctioned by the medical board for criticizing another physician's decisions on diagnosis and treatment of the ward's patients. The Court found that the medical board's interference constituted a violation of Article 10, holding that the sanction "was not proportionate to the legitimate aim pursued and, accordingly, was not 'necessary in a democratic society.'"⁵⁶

⁵⁴ECtHR. *Guerra and Ors v. Italy*. App. No. 14967/89. February 19, 1998.

⁵⁵ECtHR. *Yankov v. Bulgaria*. App. No. 39084/97. March 11, 2004.

⁵⁶ECtHR. *Sosinowska v. Poland*. App. No. 10247/09. October 18, 2011.