Nella sentenza 18 ottobre 2011(Graziani-Weiss contro Austria), la Corte europea dei diritti dell'uomo **sulla violazione dell'art. 14 della Convenzione in combinato disposto con l'art. 4, dunque,** ha avuto modo di ribadire che si è di fronte ad un trattamento discriminatorio quando determinate categorie di soggetti vengono trattate in maniera differente senza una oggettiva e ragionevole giustificazione.

Ora, con riguardo al diverso caso dei "vecchi avvocati part time" la questione sta nel capire se tra questa categoria di soggetti che è incappata nella reintroduzione dell'incompetibilità (2 volte: con l. 339/03 e con l. 247/12, art. 18, lettera d) e le altre che si continano a ritenere ammesse ("compatibili") a svolgere l'attività di avvocato, sussistano situazioni significativamente dissimili. tali da renedere ragionevole che per i "vecchi avvocati part time"si abbia incompatibilità e per tanti alti soggetti no.

Si legge nella sentenza:

"*3. The Court's assessment*

54. As the Court has consistently held, Article 14 complements the other substantive provisions of the Convention and its Protocols. As it has no independent existence, Article 14 has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts in issue fall within the ambit of one or more of the latter (see, among many other authorities, Van Raalte v. the Netherlands, 21 February 1997, § 33, Reports of Judgments and Decisions 1997-I, and Petrovic v. Austria

,
27 March 1998, § 22,
Reports
1998-II).

55. It has not been disputed in the present case that Article 14 taken together with Article 4 of the Convention applies. In the light of its case law, the Court sees no reason to reach a different conclusion (see, in particular, Van der Mussele , cited above, § 43, and also Karlheinz Schmidt , cited above, § 22, and Zarb Adami , cited above, §§ 44-49).

56. According to the Court's case-law, discrimination means treating persons in relevantly similar situations differently without an objective and reasonable justification (see Willis v. the United Kingdom , no. 36042/97 , § 48, ECHR 2002-IV). A difference in treatment is discriminatory within the meaning of Article 14 if it has no objective and reasonable justification. Furthermore, a difference in treatment must not only pursue a legitimate aim, but there must be a "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see Petrovic , cited above, § 30).

57. The Contracting State enjoys a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The scope of this margin will vary according to the circumstances, the subject matter and the background (see Gaygusuz v. Austria, 16 September 1996, § 42, Reports 1996-IV, and Stec and Others v. the United Kingdom [GC], no. 65731/01, §§ 51 and 52, ECHR 2006 VI).

58. Thus, while the Court has found that the duty to act as a guardian does not constitute forced or compulsory labour within the meaning of Article 4 § 2, it will now examine whether limiting this duty to public notaries and practising lawyers and their associates amounts to discriminatory treatment.

59. The Court reiterates that the duties of practising lawyers and public notaries and their associates to act as guardians become applicable only if the case at hand requires legal knowledge, or if relatives or members of the guardians' association cannot act as guardians (see "Relevant domestic law and practice", paragraph 16 above).

60. The Court accepts that the practice of appointing lawyers and public notaries as guardians, but not other persons who are also legally trained, amounts to a difference in treatment. In line with the principles cited above, it is now for the Court to decide whether these professional groups and the other group, consisting of persons who also have legal training, are in relevantly similar situations. "

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LEGGI DI SEGUITO, IN ITALIANO, LA SENTENZA DELLA CORTE EUROPEA DEI DIRITTI DELL'UOMO ...**

In italiano

In sintesi:

Tipo di documento: Sentenza (Merito ed Equa Soddisfazione)
Organo giudicante: Camera
Stato convenuto: Austria
Numero ricorso: 31950/06
Data della sentenza: 18.10.2011
Articoli: 4; 4-2; 14; 14+4
Opinioni separate: No
Non costituisce violazione dell'art. 4 § 2 (Proibizione del lavoro forzato) l'obbligo imposto a notai ed avvocati di svolgere attività nell'interesse di soggetti incapaci. In particolare, la nomina coattiva a tutore o curatore imposta a tali categorie professionali, costituisce espressione di un rilevante valore sociale attribuito dall'ordinamento alla professione forense. Tale imposizione pertanto, non viola i diritti fondamentali di avvocati e notai, neanche nel caso in cui sia prevista a titolo gratuito.

Fatto:
L'avvocato Wolfgang Graziani – Weiss venne informato, nel luglio del 2005, di una decisione della Corte distrettuale di Linz, che aveva intenzione di nominarlo tutore legale di un sofferente psichico, in quanto non erano state trovate altre persone idonee a svolgere tale ruolo, sia perché non si conoscevano partenti che potessero assumere un simile impegno, sia perché l'associazione dei tutori (Sachwalterschaft) aveva informato la Corte che mancava personale che potesse assumerne la tutela legale del soggetto bisognoso.

L'avvocato individuato dal Tribunale si oppose a tale nomina ritenendo che questo tipo di attività avrebbe potuto stravolgere la sua vita familiare e professionale; affermò inoltre di non essere abituato a gestire dei rapporti con persone che soffrissero di disturbi psichici e di non essere neanche interessato ad acquisire le competenze necessarie. Il ricorrente, infine sostenne che la sua assicurazione professionale non copriva i rischi legati all'attività di tutore legale, per cui si rendeva necessaria, ai fini dell'assunzione di tale impegno, la stipula di un contratto assicurativo separato. I costi di tale operazione sarebbero dovuti ricadere sul sofferente psichico, che, secondo le informazioni ricevute dal Tribunale, non aveva la disponibilità economica per garantire la copertura assicurativa.

Con una decisione della Corte distrettuale di Linz del 15 settembre 2005, l'avvocato Graziani – Weiss venne comunque nominato tutore legale, con il compito di gestire il patrimonio del sofferente psichico e di rappresentarlo davanti ai tribunali ed ad altre autorità. Il Tribunale ritenne che nessun parente fosse idoneo ad assumere tale ruolo e che l'associazione dei tutori, per giunta, non avesse più disponibilità per occuparsi di altre persone. L'avvocato Graziani – Weiss era, quindi, il primo disponibile che poteva essere nominato tutore legale, in base alla graduatoria tenuta dalla Corte distrettuale di Linz, che contiene i nomi di tutti gli avvocati e notai del distretto. La Corte ritenne che i motivi per i quali il sig. Weiss si oppose alla nomina non

erano sufficienti a giustificare il rifiuto, essendo le sue attività extra lavorative perfettamente compatibili con l'assunzione di tale ruolo. La Corte ritenne, inoltre, che l'obbligo per gli avvocati di agire come tutori legali non potesse risolversi in un'ipotesi di lavoro forzato, costituendo semmai adempimento di un normale dovere civico verso persone socialmente più deboli. In particolar modo gli avvocati sono tenuti ad offrire assistenza legale a tali soggetti, rientrando quest'attività nei loro obblighi professionali, compatibili dunque con il concetto di normale obbligazione civile, espresso dall'art. 4 della Convenzione.

La decisione resa dalla Corte distrettuale di Linz venne impugnata dal sig. Weiss, davanti alla Corte regionale, in quanto egli ritenne che la circostanza che l'obbligo in questione fosse posto soltanto in capo agli avvocati e ad i notai potesse dar luogo ad una disparità di trattamento rispetto ad altri esperti del settore legale, come i funzionari pubblici laureati in giurisprudenza, che non erano inseriti nella graduatoria tenuta dalla Corte distrettuale. A sostegno di ciò aggiunse che i compiti che gli erano stati assegnati non richiedevano delle conoscenze giuridiche tali da rendere necessaria la figura di un esperto in materia legale.

Il 15 dicembre 2005 il Tribunale regionale di Linz, confermò la decisone del Tribunale distrettuale, rilevando che il compito che avrebbe dovuto svolgere il ricorrente non dava luogo ad un impegno eccessivo. Avverso la sentenza della Corte regionale l'avv. Weiss propose ricorso straordinario in Cassazione, lamentando il contrasto della normativa austriaca con gli articoli 4 e 14 della Convenzione Europea dei diritti dell'Uomo e ribadendo, al tempo stesso, il contenuto discriminatorio di tali disposizioni, che imponevano l'inserimento obbligatorio nell'elenco dei tutori legali soltanto per gli avvocati ed i notai, escludendo, così, una vasta categoria di esperti nel settore legale come i giudici ed altri dipendenti pubblici, laureati in giurisprudenza. Lamentava inoltre che gli avvocati avessero il diritto a percepire un compenso per i servizi prestati solo nella misura in cui non fosse stato messo a repentaglio il soddisfacimento dei bisogni fondamentali della persona posta sotto tutela. Con decisione del 7 marzo 2006, la Corte Suprema decise di non trattare la questione, osservando che il ricorrente non aveva sollevato un vizio rilevante di legittimità.

Esauriti pertanto tutti i rimedi interni, il sig. Graziani-Weiss decise di rivolgersi alla Corte Europea dei Diritti dell'Uomo.

Diritto:
Sulla violazione dell'art. 4 della Convenzione – Proibizione della schiavitù e del lavoro forzato.

Sulle doglianze avanzate dal ricorrente, che si sostanziavano nel fatto che questi avrebbe dovuto assumere la tutela legale di un soggetto contro la sua volontà e senza la possibilità di ottenere un'adeguata remunerazione, considerate le scarse capacità economiche del soggetto posto sotto tutela, la Corte Europea, in prima battuta, ricorda che la Convenzione non contiene una definizione precisa del termine "lavoro forzato o obbligatorio" e che tale concetto è stato mutuato dalla "Convenzione sul lavoro forzato ed obbligatorio" dell'Organizzazione Internazionale del Lavoro (Convenzione n. 29 del 1930). Nel significato attribuito da tale Convenzione, il lavoro forzato o obbligatorio sussiste ogniqualvolta una persona viene sottoposta ad un lavoro sotto la minaccia di una punizione e senza che questa si sia offerta volontariamente per il suo svolgimento. La Corte rileva, sempre in linea di principio, che il terzo paragrafo dell'art. 4 elenca una serie di attività che non possono costituire lavoro forzato, in quanto sono attività che si svolgono nell'interesse generale dei consociati e che sono ispirate al più ampio principio di solidarietà sociale. L'ultimo comma, ovvero il comma (d), in particolare, esclude dalla concezione di lavoro forzato "qualsiasi lavoro o servizio facente parte dei normali doveri civili".

Nel caso concreto, la Corte assume come parametro di riferimento quanto già affermato nella sentenza Van der Mussele (Van der Mussele c. Belgio, 23 novembre 1983, § 32, Serie A no. 70) che aveva ad oggetto l'obbligo di un praticante avvocato di garantire il gratuito patrocinio, senza percepire alcuna retribuzione. In tale occasione la Corte ha sviluppato gli standard minimi per valutare quello che può essere considerato "normale" nell'ambito dei doveri civici incombenti su soggetti appartenenti ad un determinato ordine professionale. Questi standard tengono in considerazione se, ed in che modo, le attività prestate rientrino nell'ambito delle normali attività professionali, se per lo svolgimento delle stesse sia prevista una retribuzione o altro fattore di compensazione, e se, infine, tale obbligo sia fondato su una qualche concezione di solidarietà sociale o se possa, invece, considerarsi sproporzionato.

Rapportandosi al caso di specie, la Corte constata che il rifiuto all'assunzione di tale incarico avrebbe comportato una sanzione disciplinare, tale da far sussistere la "minaccia di una pena" qualora non fosse stata garantita l'attività di tutore legale. La Corte passa poi a verificare se la circostanza di non essersi offerto volontariamente per lo svolgimento di tali prestazioni possa costituire una violazione dell'art. 4§2. A tal riguardo si sottolinea in sentenza che, quando il sig. Graziani – Weiss decise di diventare avvocato, era pienamente consapevole del fatto che avrebbe potuto assumere, in futuro, l'incarico di tutore legale. Questa consapevolezza, secondo il ragionamento della Corte, è idonea ad escludere che i doveri posti in capo al ricorrente nella sua qualità di tutore legale possano costituire lavoro forzato o obbligatorio ai sensi della citata norma della Convenzione. Nello specifico, la Corte ritiene che la rappresentanza di una persona dinanzi ai tribunali e ad altre autorità e la gestione del patrimonio di questi, non siano prestazioni esorbitanti dalle normali attività di un avvocato. La Corte riconosce inoltre che i tutori legali hanno normalmente diritto a ricevere una remunerazione; questa viene sospesa solo in circostanze particolari, ovvero quando l'interessato non disponga di particolari mezzi finanziari. E tale condizione non può certo compromettere il soddisfacimento delle sue esigenze di tutela.

La Corte rileva inoltre che il ricorrente non ha sufficientemente dimostrato che l'incarico cui è stato designato comportasse un particolare dispendio di tempo o fosse particolarmente complesso, tale da far apparire sproporzionato l'obbligo posto in capo al ricorrente di agire come tutore legale.

Delineando così la fattispecie, la Corte ha concluso per la non violazione dell'art. 4§2, senza ritenere di dover esaminare se le mansioni in questione possano essere considerate come "normali doveri civici", individuati nella lettera d del terzo paragrafo dell'art. 4.

Sulla violazione dell'art. 4 della Convenzione in combinato disposto con l'art. 14.

Il ricorrente argomenta le sue ragioni sostenendo che altre categorie professionali – oltre quindi ad avvocati e notai -, pur in possesso di competenze giuridiche, non sono obbligati ad assumere le funzioni di tutore legale, non essendo inseriti nella apposita graduatoria tenuta dalla Corte distrettuale. A titolo esemplificativo il ricorrente menziona i giudici, i pubblici ministeri ed avvocati dipendenti di società private.

Il Governo, d'altro canto, sostiene che tale diversità di trattamento non costituisca una violazione del principio di non discriminazione, in quanto avvocati e notai si palesano agli occhi dell'interprete come le categorie professionali più idonee a rappresentare determinate categorie di persone davanti agli uffici, alle corti ed altre pubbliche autorità. A detta del Governo austriaco, gli avvocati ed i notai godono anche di particolari privilegi e diritti in materia di rappresentanza delle persone dinanzi ai tribunali e alle autorità: una persona deve essere rappresentata da un avvocato dinanzi ai giudici distrettuali se il valore della controversia supera un determinato ammontare e la rappresentanza di un avvocato è obbligatoria davanti alle Corti superiori. Inoltre gli avvocati ed i notai sono soggetti alla legge disciplinare.

La Corte Europea, anche nel presente caso, ha avuto modo di ribadire che si è di fronte ad un trattamento discriminatorio quando determinate categorie di soggetti vengono trattate in maniera differente senza una oggettiva e ragionevole giustificazione. Ora la questione sta nel capire se tra queste categorie professionali ed altri soggetti che, a vario titolo, hanno studiato giurisprudenza, si trovino in una situazione significativamente simile.

Gli avvocati svolgono come loro attività principale la rappresentanza dei loro assistiti dinanzi ai tribunali ed altre autorità e per tale abilitazione sono tenuti a sostenere uno specifico esame; tra l'altro sono soggetti anche ad un organo disciplinare e sono tenuti a stipulare un contratto assicurativo per tutelarsi dai rischi legati all'attività professionale. Altre categorie di soggetti pur avendo studiato giurisprudenza, non hanno le stesse competenze legali degli avvocati e dei notai, in quanto non sono abilitate ad assumere la rappresentanza davanti ai tribunali o ad altre autorità.

La Corte nota quindi che sussiste una differenza significativa tra i diversi gruppi professionali, che sono, peraltro, soggetti a diverse leggi ed hanno ricevuto una diversa formazione professionale, tale da giustificare una diversità di trattamento che porta alla dichiarazione di non violazione dell'art. 14 in combinato disposto con l'art. 4 della Convenzione.

In inglese

CASE OF GRAZIANI-WEISS v. AUSTRIA
(Application no. 31950/06)
JUDGMENT
STRASBOURG
18 October 2011
This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.
In the case of Graziani-Weiss v. Austria,
The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, President,
Elisabeth Steiner,
David Thór Björgvinsson,
Dragoljub Popović,
Giorgio Malinverni,
András Sajó,
Guido Raimondi, judges,
and Françoise Elens-Passos, Deputy Section Registrar,

Having deliberated in private on 27 September 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 31950/06) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Austrian national, Mr Wolfgang Graziani-Weiss (“the applicant”), on 31 July 2006.

2. The Austrian Government (“the Government”) were represented by their Agent, Ambassador H. Tichy, Head of the International Law Department at the Federal Ministry for European and International Affairs.

3. The applicant alleged that his appointment as a guardian for a mentally ill person amounted to forced labour and thus violated his rights under Article 4 of the Convention and Article 14 in conjunction with Article 4.

4. On 7 January 2009 the President of the First Section decided to give notice of the application to the Government. On 1 February 2011 the Court changed the composition of its Sections. The case was assigned to the newly composed Second Section (Rule 25 § 1 and Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963 and lives in Linz.

6. The applicant is a practising lawyer. In July 2005 the applicant was informed by the Linz District Court that it planned to appoint him as legal guardian (Sachwalter) for K, who was suffering from a mental illness, and asked him to comment on the proposal. According to the document supplied by the court, there were no known relatives of K who could become guardians, and the association of guardians (Verein für Sachwalterschaft) had informed the court that it lacked the capacity to take over guardianship.

7. The applicant submitted comments, stating that his wife objected to the proposal, since K might call the applicant at weekends and disturb their family life. His professional and spare-time activities would also not allow him to take on another duty. He added that he was not trained to deal with persons with a mental illness such as K and was not interested in acquiring the necessary training either. Furthermore, he argued that his professional insurance would not cover the risks associated with being a legal guardian; therefore, he would have to enter into a separate insurance agreement. The costs would have to be borne by K, who – according to the court file which the applicant had received – did not appear to have the money to cover them.

8. By a decision of the Linz District Court of 15 September 2005 the applicant was appointed as legal guardian for K in matters of management of income and representation before the courts and other authorities. The court found that no other person, such as a relative, was suitable to be K's legal guardian. The association of guardians did not have the capacity to appoint a legal guardian for K. The applicant was the next person on the list of possible legal guardians. This list, which is kept by the Linz District Court, contains the names of all lawyers and public notaries in the district. The court also found that the reasons submitted by the applicant were not sufficient to justify his refusal; it held that neither having two children, nor leading a church choir, nor being member of a supervisory board constituted a valid reason as to why he should be declared unsuitable for the task. The court also held that the duty for lawyers to act as legal guardians did not constitute forced labour, as helping weaker members of society was a civic duty and for practising lawyers, rendering help in legal matters was part of their core professional duties and was comparable to a normal civic obligation within the meaning of Article 4 § 2 of the Convention.

9. The applicant appealed against the decision to the Linz Regional Court, arguing that if the duty were to constitute a normal civic obligation, it was discriminatory to put only lawyers and public notaries on the list, as other persons also had knowledge of law, such as judges, public servants who had studied law or lawyers working in companies. He also alleged that the tasks he had been ordered to perform did not require special legal knowledge as any adult person could manage their income; he further claimed that no court proceedings in which K was a party were pending, and thus it was not necessary to appoint a practising lawyer as his guardian.

10. On 15 December 2005 the Linz Regional Court upheld the decision of the Linz District Court, holding that there was at least one trial involving K pending, and that any other tasks the applicant would have to perform in the present case were limited and did not place an excessive burden on him.

11. The applicant lodged an extraordinary appeal on points of law to the Supreme Court, alleging a violation of Article 14 in conjunction with Article 4 of the Convention, as only lawyers and their associates (Rechtsanwaltsanwärter) and public notaries and their associates (Notariatskandidaten), but no other persons who had studied law, were placed on the list of possible guardians. He also complained that lawyers were in principle entitled to remuneration for their services, but this applied only in so far as this would not endanger the fulfilment of the basic needs of the person placed under guardianship. By a decision of 7 March 2006 the Supreme Court refused to deal with the matter, finding that it did not raise an important question of law.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. The rules on guardianship are contained in the Civil Code (Allgemeines Bürgerliches Gesetzbuch), the relevant part of which was recently amended, and the Non-Contentious Proceedings Act (Außerstreitgesetz).

13. The law in force at the relevant time provided that adult persons of unsound mind who could not handle all or some of their own affairs without the risk of disadvantages for them should be placed under guardianship (section 273 of the Civil Code).

14. There were varying degrees of guardianship, ranging from a duty to carry out one specific transaction or enforce or contest a specific claim, to the carrying out of certain types of duties, such as management of a person’s entire assets or parts thereof, or taking care of all the affairs of the person concerned (section 272 of the Civil Code).

15. Placement under guardianship was not permissible if and in so far as the person concerned could take care of his or her affairs to a sufficient degree with assistance, especially from the family or from institutions for people with disabilities (section 273 § 2 of the Civil Code).

16. Section 281 of the Civil Code provided that guardians should be persons close to the persons placed under guardianship, unless the well-being of the person concerned required otherwise (§ 1); if this was beneficial to the well-being of a person under guardianship, a person from a guardians' association should be nominated as a guardian, where possible (§ 2). If taking care of the affairs of the person concerned required considerable knowledge of law, a practising lawyer (or lawyer's associate) or public notary (or notary's associate) was to be appointed as guardian (§ 3).

17. Section 282 § 2 of the Civil Code provided that the guardian should be in contact with the person under guardianship and should try to ensure that medical and social assistance was given to the person concerned.

18. A person whom the court planned to appoint as a guardian had to notify the court of any circumstances that might prevent him or her from carrying out the task. A particularly suitable person – according to the case-law, a person belonging to the groups mentioned in section 281 § 3 of the Civil Code (see paragraph 16 above) – could refuse to carry out the task only if it was unacceptable to him or her (section 189 §§ 1 and 2 of the Civil Code).

19. The guardian was entitled to remuneration, fees and reimbursement of expenses. If the guardian used his special professional knowledge and skills for tasks for which the services of another person would otherwise have to be engaged, the guardian was entitled to adequate remuneration for these tasks. Remuneration could only be granted in so far as the basic needs of the person under guardianship could still be satisfied from the person's income (sections 266 and 267 of the Civil Code).

20. Section 130 of the Non-Contentious Proceedings Act (Außerstreitgesetz) provided that a guardian had to report to the court about contacts with the person concerned, the life the person led and the person's physical and mental state. The reports had to be drawn up at reasonable intervals, at least once every three years. The court could also require the guardian to draw up a report. Further duties listed in the Non-Contentious Proceedings Act concerned the keeping of accounts for the assets and income of the person under guardianship; the statements of account were subject to the court's approval.

21. Rule 86 § 2 of the Rules of Procedure of Courts of First and Second Instance

(Geschäftsordnung für die Gerichte I. und II. Instanz) provides that each court has to have a list of lawyers and public notaries acting in the appropriate district; courts have to ensure that there is a reasonable alternation in the persons appointed as guardians.

22. The Lawyers Act (Rechtsanwaltsordnung) contains the following provisions on the rights and duties of practising lawyers in Austria:

Section 8

“(1) The right of a lawyer to represent parties shall extend to all courts and authorities of the Republic of Austria and shall include the authority to represent parties in a professional capacity in all judicial and extrajudicial and in all public and private matters. ...

(2) The authority to provide comprehensive professional representation to parties within the meaning of subsection (1) above shall be reserved for lawyers. This is without prejudice to the professional powers deriving from the Austrian regulations governing the professions of notaries, patent agents, chartered accountants and civil engineers.”

Section 21a

“(1) Before being admitted to practise, all lawyers shall be required to furnish proof to the Executive Committee of the Bar Association that they have taken out civil liability insurance with an insurance company authorised to carry on business in Austria to cover any claims for damages that may be brought against them as a result of their professional activities. They shall maintain the insurance cover throughout the duration of their professional activities and shall furnish proof thereof to the Bar Association on request.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 4 OF THE CONVENTION

23. The applicant complained that the duty to act as a legal guardian breached the prohibition of forced and compulsory labour as provided in Article 4 of the Convention. Article 4, in so far as relevant, reads as follows:

“1. ...

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this article the term ‘forced or compulsory labour’ shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of [the] Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations.”

24. The Government contested that argument.

A. Admissibility

25. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The applicant's arguments

26. The applicant complained that he had been appointed as a legal guardian against his will. He submitted that the appointment was unacceptable as he had other professional and family duties, but that he was obliged to carry out the duty because of disciplinary law. Furthermore, he would not obtain remuneration for the task, as the person for whom he had been appointed as legal guardian did not have much money.

27. The applicant pointed out that acting as a legal guardian could not be seen as a normal civic obligation. Courts only appointed practising lawyers and public notaries in cases where the person placed under guardianship required representation before the courts and authorities, yet persons who had studied law but were not practising lawyers or public notaries were not appointed in such cases.

28. Furthermore, the applicant argued that his activities as a guardian would not be covered by his professional liability insurance, and that he would have to obtain further insurance, the costs for which he would have to bear himself.

2. The Government's arguments

29. The Government argued that the duty to act as a legal guardian resulted from a freely chosen profession and formed part of the applicant's professional activities. Persons choosing to become a practising lawyer usually knew that they might be required to act as a legal guardian. These professional groups also enjoyed a certain monopoly status for providing legal advice and representing clients before courts and other authorities.

30. Whilst anyone could in principle expect to be appointed as a guardian, the Supreme Court's case-law established that "particularly suitable persons" were obliged to act as legal guardians. Such particularly suitable persons were persons with special expert knowledge or facilities to carry out a certain task who were subject to special legal obligations in connection with their profession.

31. The Government also argued that the appointment of lawyers as guardians was of relatively minor significance compared with other professional activities. Lawyers were rarely appointed as legal guardians under the present system, and the Rules of Procedure of Courts of First and Second Instance ensured an equal distribution between the lawyers and public notaries appointed. Furthermore, the Austrian legal system did not provide for the concept of specialist practising lawyers, as every lawyer underwent comprehensive training and was able to cover all areas of law. Therefore, the time and effort needed to become acquainted with matters of guardianship were relatively minor.

32. Turning to the present case, the Government pointed out that the tasks with which the applicant was entrusted in the present case, namely dealing with income and property matters, were not of such a scale as to amount to an unacceptable burden, especially since the person concerned did not have much income or property. Furthermore, at the time of the applicant's appointment as a guardian, court proceedings had in fact been pending against the person to be placed under guardianship.

33. The Government submitted that guardians were normally remunerated for their work, unless such payment would endanger the fulfilment of the basic needs of the person placed under guardianship. If a lawyer acted as a guardian and used his or her special knowledge to carry out the task, the guardian was in principle also entitled to remuneration. If the person under guardianship was a party to proceedings where representation by counsel was mandatory, the lawyer, as guardian, had to apply for legal aid.

34. Lastly, the Government pointed out that a lawyer's acts as a guardian were normally covered by the general professional liability insurance for lawyers. In the event that this kind of risk had been excluded in the insurance policy, the cost of obtaining coverage for such kinds of risks would be reimbursed as expenses.

35. Turning to the present case, the Government argued that only a few matters were to be managed by the applicant; therefore, the cash expenses seemed to be relatively low.

3. The Court's assessment

36. The Court reiterates that the Convention does not contain a definition of the term "forced or compulsory labour". In the case of Van der Mussele v. Belgium (23 November 1983, § 32, Series A no. 70; see also Siliadin v. France, no. 73316/01, §§ 115-116, ECHR 2005 VII and, as a recent authority, Stummer v. Austria [GC], no. 37452/02, §§ 117-118, 7 July 2011) the Court had recourse to ILO Convention No. 29 concerning forced or compulsory labour. For the purposes of that Convention the term "forced or compulsory labour" means "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". The Court has taken that definition as a starting point for its interpretation of Article 4 § 2 of the Convention.

37. The Court has further noted the specific structure of Article 4. Article 4 § 3 of the Convention lists activities which do not constitute "forced or compulsory labour" within the meaning of Article 4 § 2. Thus, paragraph 3 serves as an aid for the interpretation of paragraph 2. The four subparagraphs of paragraph 3, notwithstanding their diversity, are grounded on the governing ideas of the general interest, social solidarity and what is normal in the ordinary course of affairs (see Van der Mussele, cited above, § 38; Karlheinz Schmidt v. Germany, 18 July 1994, § 22, Series A no. 291 B; Zarb Adami v. Malta, no. 17209/02, § 44, ECHR 2006 VIII and Stummer, cited above, § 120). The final sub-paragraph, namely sub paragraph (d), which excludes "any work or service which forms part of normal civil obligations" from the scope of forced or compulsory labour, is of special significance in the context of the present case (see Van der Mussele, cited above, § 38).

38. In the case of Van der Mussele, which concerned a pupil advocate's duty to provide services under the legal-aid scheme without remuneration, the Court developed standards for evaluating what could be considered normal in respect of duties incumbent on members of a particular profession (ibid., § 39). These standards take into account whether the services rendered fall outside the ambit of the normal professional activities of the person concerned; whether the services are remunerated or not or whether the service includes another compensatory factor; whether the obligation is founded on a conception of social solidarity; and whether the burden imposed is disproportionate (see also Steindel v. Germany (dec.), no. 29878/07, 14 September 2010, concerning a medical practitioner's duty to participate in an emergency service).

39. In the present case, it has not been disputed that the refusal to act as a guardian can give rise to disciplinary sanctions for practising lawyers and public notaries. Therefore, there is an element of the “menace of [a] penalty”.

40. The Court will therefore examine whether the applicant has “offered himself voluntarily” for the work in question. It observes that, when the applicant decided to become a practising lawyer, he must have been aware of the fact that he might be obliged to act as a guardian. As he chose to become a practising lawyer nonetheless, the Court finds that there is an element of prior consent to such tasks. However, this element alone is not sufficient to conclude that the duties incumbent on the applicant in his capacity as K’s legal guardian did not constitute compulsory labour for the purpose of Article 4 § 2 (see, mutatis mutandis, Van der Mussele, cited above, § 36).

41. In the context of the present case, the Court considers that representation of a person before courts and authorities and managing a person’s property are not services outside the ambit of the normal activities of a practising lawyer. The Court also accepts that guardians are entitled to receive remuneration, and only in circumstances where the person concerned does not have sufficient means will guardians not receive remuneration for their services. However, in such cases it should be noted that the professional groups of practising lawyers and public notaries have certain privileges vis-à-vis other professional groups, such as the right to represent parties in certain kinds of court proceedings. The Court also notes that the applicant has not alleged that there were a significant number of cases in which he had to act as a guardian or that acting as K’s guardian was particularly time-consuming or complex. Thus, the burden placed on the applicant does not appear disproportionate.

42. The aforementioned considerations enable the Court to conclude that the services the applicant was required to perform did not constitute forced or compulsory labour. Consequently, there has been no violation of Article 4 § 2 of the Convention.

43. It is therefore not necessary to examine whether the duties at issue, which are imposed on a specific category of citizens, namely practising lawyers and public notaries, can be regarded as “normal civic obligations”, which are excluded from the notion of “forced or compulsory labour” by the specific provision of Article 4 § 3 (d) of the Convention (see Van der Mussele, cited above, § 41).

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 4

44. The applicant complained that the duty of practising lawyers and notaries to act as guardians violated Article 14 of the Convention taken in connection with Article 4 § 2.

45. Article 14 of the Convention reads as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

46. The Government contested that argument.

A. Admissibility

47. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The applicant’s arguments

48. The applicant argued that persons who had studied law but who worked in professions other than as a practising lawyer or public notary were not obliged to act as guardians, even though they had the same legal knowledge as a result of their studies. By way of example, the

applicant mentioned judges, public prosecutors, civil servants and lawyers who worked for private companies.

49. The applicant further argued that even if legal representation before the courts were necessary on behalf of a person under guardianship, the guardian in question could always apply for a legal-aid lawyer to represent the person. In the applicant's opinion, the fact that practising lawyers were appointed as guardians mainly to perform out-of-court duties also constituted discrimination.

2. The Government's arguments

50. The Government contested that argument, pointing out that only different treatment without a factual and reasonable justification led to a violation of the Convention. Furthermore, the Convention granted States a certain margin of appreciation in determining which situations justified different treatment.

51. The Government conceded that practising lawyers and public notaries were appointed as guardians more often than other legally trained persons. It was also provided for by law that such professional groups should be appointed as guardians if the affairs managed by the guardian mostly required legal knowledge.

52. However, the preference given to these professional groups was not arbitrary and thus discriminatory, but was rooted in the fact that these professional groups were particularly suited to represent persons before offices, courts and other public authorities. Practising lawyers and public notaries were specially trained and experienced in dealing with courts and authorities. The professional groups of practising lawyers and public notaries also enjoyed special privileges and rights regarding representation of persons before courts and authorities: a person must be represented by counsel before district courts if the value of the claims in dispute exceeded a certain amount (at the time of the facts, the threshold was 4,000 euros (EUR)), and representation by counsel was also mandatory before the higher courts. Other legally trained professionals did not enjoy such privileges. Furthermore, practising lawyers and public notaries were subject to disciplinary law.

53. The Government pointed out that Rule 86 § 2 of the Rules of Procedure of Courts of First

and Second Instance stated that there must be a reasonable alternation among the persons appointed as guardians as far as lawyers and public notaries were concerned. Furthermore, under Section 189 § 2 of the Civil Code, a practising lawyer or notary who was to be appointed as a guardian could refuse the appointment if he or she could not reasonably be expected to act in that capacity.

3. The Court's assessment

54. As the Court has consistently held, Article 14 complements the other substantive provisions of the Convention and its Protocols. As it has no independent existence, Article 14 has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts in issue fall within the ambit of one or more of the latter (see, among many other authorities, Van Raalte v. the Netherlands, 21 February 1997, § 33, Reports of Judgments and Decisions 1997-I, and Petrovic v. Austria, 27 March 1998, § 22, Reports 1998-II).

55. It has not been disputed in the present case that Article 14 taken together with Article 4 of the Convention applies. In the light of its case□ law, the Court sees no reason to reach a different conclusion (see, in particular, Van der Mussele, cited above, § 43, and also Karlheinz Schmidt, cited above, § 22, and Zarb Adami, cited above, §§ 44-49).

56. According to the Court's case-law, discrimination means treating persons in relevantly similar situations differently without an objective and reasonable justification (see Willis v. the United Kingdom, no. 36042/97, § 48, ECHR 2002-IV). A difference in treatment is discriminatory within the meaning of Article 14 if it has no objective and reasonable justification. Furthermore, a difference in treatment must not only pursue a legitimate aim, but there must be a "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see Petrovic, cited above, § 30).

57. The Contracting State enjoys a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The scope of this margin will vary according to the circumstances, the subject matter and the background (see Gaygusuz v. Austria, 16 September 1996, § 42, Reports 1996-IV, and Stec and Others v. the United Kingdom [GC], no. 65731/01, §§ 51 and 52, ECHR 2006□ VI).

58. Thus, while the Court has found that the duty to act as a guardian does not constitute forced or compulsory labour within the meaning of Article 4 § 2, it will now examine whether limiting this duty to public notaries and practising lawyers and their associates amounts to discriminatory treatment.

59. The Court reiterates that the duties of practising lawyers and public notaries and their associates to act as guardians become applicable only if the case at hand requires legal knowledge, or if relatives or members of the guardians' association cannot act as guardians (see "Relevant domestic law and practice", paragraph 16 above).

60. The Court accepts that the practice of appointing lawyers and public notaries as guardians, but not other persons who are also legally trained, amounts to a difference in treatment. In line with the principles cited above, it is now for the Court to decide whether these professional groups and the other group, consisting of persons who also have legal training, are in relevantly similar situations.

61. The Court reiterates that in the case of Van der Mussele (cited above, § 46) it held:

"... between the Bar and the various professions cited by the applicant, including even the judicial and parajudicial professions, there exist fundamental differences to which the Government and the majority of the Commission rightly drew attention, namely differences as to legal status, conditions for entry to the profession, the nature of the functions involved, the manner of exercise of those functions, etc. The evidence before the Court does not disclose any similarity between the disparate situations in question: each one is characterised by a corpus of rights and obligations of which it would be artificial to isolate one specific aspect."

62. Practising lawyers have as their main activity the representation of their clients before courts and various authorities. They are specially trained for these tasks and have to pass an examination before they can practise their profession. In discharging their professional duties, practising lawyers and public notaries are subject to disciplinary law. Practising lawyers have to take out insurance against damages claims incurred during their professional activities.

63. Only practising lawyers, public notaries, judges and officials of the Auditor-General's Department who have passed the bar exam for practising lawyers are exempt from the duty to be represented by counsel before courts in cases where representation is mandatory.

64. Other persons who have studied law, and possibly received professional legal training, but who are not working as practising lawyers, are not allowed to represent parties before the courts in cases where representation is mandatory. Furthermore, it is possible that despite having obtained legal education and training, such persons do not work in a law‐related field.

65. The Court thus notes that there is a significant difference between the professional groups of practising lawyers, whose rights and duties are governed by specific laws and regulations, and the group of other persons who might have studied law, and even received professional legal training, but are not working as practising lawyers. The foregoing considerations are sufficient to enable the Court to conclude that for the purposes of appointment as a guardian in cases where legal representation is necessary, the professional groups of lawyers and public notaries on the one hand, and other legally trained persons on the other hand, are not in relevantly similar situations.

66. There has accordingly been no violation of Article 4 in connection with Article 14 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Declares the application admissible;

2. Holds that there has been no violation of Article 4 of the Convention;

3. Holds that there has been no violation of Article 14 of the Convention taken in conjunction with Article 4.

Françoise Elens-Passos President	Françoise Tulkens	Deputy Registrar