EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

ENG - 2014/1

Application Form

About this application form

This application form is a formal legal document and may affect your rights and obligations. Please follow the instructions given in the Notes for filling in the application form. Make sure you fill in all the fields applicable to your situation and provide all relevant documents.

Warning: If your application is incomplete, it will not be accepted (*see Rule 47 of the Rules of Court*). Please note in particular that Rule 47 § 2 (a) provides that:
"All of the information referred to in paragraph 1 (d) to (f) [*statement of facts, alleged violations and information about compliance with the admissibility criteria*] that is set out in the relevant part of the application form should be sufficient to enable the Court to determine the nature and scope of the application without recourse to any other document."

Barcode label

If you have already received a sheet of barcode labels from the European Court of Human Rights, please place one barcode label in the box below.

Reference number

If you already have a reference number from the Court in relation to these complaints, please indicate it in the box below.

24299/14

A. The applicant (Individual)

This section refers to applicants who are individual persons only. If the applicant is an organisation, please go to Section B.

1. Surname

Arnason

2. First name(s)

Ulfur

3. Date of birth

1	4	0	6	1	9	3	8
D	D	M	M	Y	Y	Y	Y

e.g. 27/09/2012

4. Nationality

Icelandic

5. Address

Skolbänksvägen 1
SE-224 67 Lund
SWEDEN

6. Telephone (including international dialling code)

+46 70 566 09 28

7. Email (if any)

ulfur.arnason@gmail.com

8. Sex

- (●) male
- ( ) female

B. The applicant (Organisation)

This section should only be filled in where the applicant is a company, NGO, association or other legal entity.

9. Name

10. Identification number (if any)

11. Date of registration or incorporation (if any)

D	D	M	M	Y	Y	Y	Y

e.g. 27/09/2012

12. Activity

13. Registered address

14. Telephone (including international dialling code)

15. Email

C. Representative(s) of the applicant

If the applicant is not represented, go to Section D.

Non-lawyer/Organisation official

Please fill in this part of the form if you are representing an applicant but *are not a lawyer*.

In the box below, explain in what capacity you are representing the applicant or state your relationship or official function where you are representing an organisation.

16. Capacity / relationship / function

17. Surname

18. First name(s)

19. Nationality

20. Address

21. Telephone (including international dialling code)

22. Fax

23. Email

Lawyer

Please fill in this part of the form if you are representing the applicant *as a lawyer*.

24. Surname: Bratt

25. First name(s): Percy

26. Nationality: Swedish

27. Address:
Advokatbyrån Bratt Feinsilber Harling AB
Box 24164
SE-104 51 Stockholm

28. Telephone (including international dialling code): +46 8 667 40 01

29. Fax: +46 08 667 40 08

30. Email: pb@bfhlaw.se

Authority

The applicant must authorise any representative to act on his or her behalf by signing the authorisation below (see the Notes for filling in the application form).

I hereby authorise the person indicated to represent me in the proceedings before the European Court of Human Rights, concerning my application lodged under Article 34 of the Convention.

31. Signature of applicant

32. Date

1	9	0	3	2	0	1	4
D	D	M	M	Y	Y	Y	Y

e.g. 27/09/2012

D. State(s) against which the application is directed

33. Tick the name(s) of the State(s) against which the application is directed

- [ ] ALB - Albania
- [ ] AND - Andorra
- [ ] ARM - Armenia
- [ ] AUT - Austria
- [ ] AZE - Azerbaijan
- [ ] BEL - Belgium
- [ ] BGR - Bulgaria
- [ ] BIH - Bosnia and Herzegovina
- [ ] CHE - Switzerland
- [ ] CYP - Cyprus
- [ ] CZE - Czech Republic
- [ ] DEU - Germany
- [ ] DNK - Denmark
- [ ] ESP - Spain
- [ ] EST - Estonia
- [ ] FIN - Finland
- [ ] FRA - France
- [ ] GBR - United Kingdom
- [ ] GEO - Georgia
- [ ] GRC - Greece
- [ ] HRV - Croatia
- [ ] HUN - Hungary
- [ ] IRL - Ireland
- [ ] ISL - Iceland
- [ ] ITA - Italy
- [ ] LIE - Liechtenstein
- [ ] LTU - Lithuania
- [ ] LUX - Luxembourg
- [ ] LVA - Latvia
- [ ] MCO - Monaco
- [ ] MDA - Republic of Moldova
- [ ] MKD - "The former Yugoslav Republic of Macedonia"
- [ ] MLT - Malta
- [ ] MNE - Montenegro
- [ ] NLD - Netherlands
- [ ] NOR - Norway
- [ ] POL - Poland
- [ ] PRT - Portugal
- [ ] ROU - Romania
- [ ] RUS - Russian Federation
- [ ] SMR - San Marino
- [ ] SRB - Serbia
- [ ] SVK - Slovak Republic
- [ ] SVN - Slovenia
- [x] SWE - Sweden
- [ ] TUR - Turkey
- [ ] UKR - Ukraine

Subject matter of the application

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the six-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E., F. and G.) (Rule 47 § 2 (a)). The applicant may supplement this information by appending further details to the application form. Such additional explanations must not exceed 20 pages (Rule 47 § 2 (b)); this page limit does not include copies of accompanying documents and decisions.

E. Statement of the facts

34.

A. Introduction

1. Ulfur Arnason (hereafter “the applicant”) is a renowned scholar in the field of genetics. The applicant defended his Fil. Dr. thesis in Genetics in 1974. The thesis and defence received the highest possible mark, “berömlig”, which automatically carried with it the distinction “docent”. He was conferred the internationally proclaimed chair in Evolutionary Molecular Systematics at Lund University (hereafter “the University”) in 1993 – an appointment signed by the Swedish Minister of Education. Scientists from five nationalities sought the position. The chair belonged to the subject Genetics which together with Microbiology, Plant Biology and Zoology made up the Institute of Cell and Organism Biology (COB) at the Faculty of Science (hereafter “the Faculty”) at the University. Since 1 July 2005 the applicant is professor emeritus.

2. It shall be noted that the University is a public authority.

3. The applicant’s bibliography includes approximately 125 articles in scientific journals. When the applicant left his chair his scientific index (H-index), based on the number of publications and non-self citations, was among the highest amongst scientists in biology at the University. Several of his papers are published in highly prominent journals such as Nature, Science and PNAS. The applicant's current H-index is 51.

4. The rights of prof. emeriti have a long tradition and encompass that emeriti are permitted to use the premises and scientific equipment of the institute. This practice was commonly followed within the Department of Biology as the experience of the emeriti was considered as being valuable in particular in the context of supervising doctoral students. The applicant’s position as emeritus was based, to a higher degree, upon a mutual and long-standing agreement between himself and the Faculty. As emeritus, the applicant maintained a complete laboratory including a full-time technician and from his external grants, both national and international, he continuously paid large overheads to the university. He was also entrusted with the highly demanding responsibility of supervising doctoral students and was also on several examining committees for doctoral students of other departments. The applicant was also involved in traditional lecturing. During his time as emeritus the applicant continued his supervision of doctoral students and at the time in question he was entrusted with the supervision of an additional student. The appointments were all delegated by University organs and the applicant received payments for them after the fulfilment of these duties.

5. It should be noted that the Board of COB had allocated premises – office and laboratory space – to the applicant for the period 1 July 2009 to 30 June 2010 and that the applicant had already in May 2009 started to transport his belongings and laboratory equipment into these facilities. The Board of COB was continuously kept informed on the applicant's transfer from the Genetic's house into the COB building.

6. However, as shall be developed below, the applicant was dismissed from his position as emeritus at the Faculty and thereby excluded from facilities that already had been allocated to him for his ongoing research and doctoral supervision.

B. Background

7. Relevant to the statement of facts is that there had existed problems in the economic status of the COB for some time. These problems were unrelated to the applicant. An “action plan” was awaited from the management of the institution. This plan included inter alia that COB and the Ecological Institution were to be joined. The situation had resulted in a serious psychosocial condition in the working environment of the staff of COB during 2008 and several employees had to consult psychological expertise for help. The problems were detailed in a letter dated 15 January 2009 that Prof. Einar Everitt at COB wrote to the Chief of Staff at the Faculty (Appendix 1). The letter gave an alarming picture of staff working nights and weekends, as well as from the sick-bed and stated that the situation was not sustainable with regard to the health of the staff. In his letter, Prof. Everitt further pointed out that the work that aimed to join COB and the Ecological Institution had led to a situation where almost the entire staff felt a strong discomfort and anxiety with respect to their future working situation.

8. In June 2008 the Dean of the Faculty had initiated an undertaking of improving the economy of COB by cutting

Statement of the facts (continued)

35.
down the number of employed persons. For this task he appointed a group of four persons (two microbiologists and two plant biologists) with the mission to select the scientists who were to be dismissed. It should be noted that two of the subjects of COB, Genetics and Zoology, were not represented in the group. The outcome of the work of the group was a proposal presented in the spring of 2009 according to which four scientists should be dismissed, two geneticists and two zoologists. As the dismissed scientists belonged to the only two subjects which were not represented in the task group, there was, according to the applicant, evidence of a clear conflict of interests, an understanding that was upheld by an examination of the general scientific proficiency at COB.

9. In 2008 a scientific report, RQ08, with the aim to judge and compare the quality of all research within the University, was published. The report provided the evaluations and conclusions of scientific panels of internationally acknowledged experts. The subjects Zoology and Genetics received very high marks ("outstanding/excellent") in RQ08. Therefore the exclusion of representatives of these two subjects from the Dean's task group was, in the view of the applicant, particularly inappropriate. The subjects Plant Biology and Microbiology, on the other hand, had not provided the RQ08 evaluation with any account of their activities. Hence the quality of the research in these subjects could not be judged by the RQ08-panels nor be compared with that of Zoology and Genetics in line with the RQ08 criteria. However, an evaluation of scientific proficiency based on H-indexes showed quite clearly that the dismissed persons should not have been the four scientists selected by the task group but rather members of the two other COB disciplines (Plant Biology and Microbiology).

10. The proposed cut-backs were harshly criticized, inter alia through a letter dated 23 March 2009 to the Rector signed by three professors, Bengt Olle Bengtsson (Genetics), Martin Kanje (Zoological Cell Biology, now deceased) and Dan-E. Nilsson (Integrative Zoology) (Appendix 2). The signatories expressed a deep concern regarding the mode in which the cut-backs had been planned and executed and that this constituted a threat to several of the quality goals that the University had set up in its strategic plan. Without replying to the letter the Rector sent it on to the Dean. The matter was discussed between the Dean and the three signatories, but this discussion proved unfruitful.

C. The events related to the applicant

11. On 1 June 2009 the applicant sent a letter with an attachment to the Rector of the University (Appendix 3) in which he brought to the Rector's notice the disregard of the professional merits of the four scientists who were at risk of losing their employment and the conflict of interests that was related to this. The applicant pointed out that this disregard would severely damage the entire domain of biology at the University with respect both to research and teaching. His criticism was inter alia based on the scientific report referred to above and examination of the scientific proficiency (H-indexes) of COB-members.

12. When the applicant after two weeks – on 15 June 2009 – had yet to hear anything regarding his letter to the Rector, he made an inquiry at the University office. It then appeared that the letter had not been noted or registered, a negligence which was amended during the same afternoon. The following day the applicant was notified by telephone that he was to be expelled from his facilities as a consequence of his letter. The applicant requested a written statement which he received by e-mail later the same day, 16 June 2009 (Appendix 5). The relevant parts of the decision read as follows;

"Professor emeritus Ulfur Arnason is with immediate effect deprived of his place of work and other resources at the Faculty of Science, LU. Ulfur Arnason may however, until 30 June 2009, use his office at the Genetics building.
The reasons for this decision are that Ulfur Arnason has become a burden for the psychosocial working environment at an already strained place of work due to the mode that he, in a letter dated 1 June 2009, formulated his accusations against personnel. Furthermore, and for this reason, the management of the faculty no longer put their trust in Ulfur Arnason to the extent demanded for involvement in the activities of the faculty."

13. As a result of the Faculty's decision the applicant was deprived of the facilities that, as described above, already had been allocated to him, as well as the ability to supervise his doctoral student within the premises of the Faculty. Hence the supervision had to take place in other premises. The applicant was furthermore forced to terminate his ongoing research activities at the Faculty. This disruption also caused the loss of irreplaceable research materials such as numerous cell cultures and clones of marine mammals.

14. The actions against the applicant gave rise to protests from, inter alia, other academics. Prof. emeritus Gunnar Bramstång wrote a letter dated 21 June and complemented 22 June 2009, stating the legal implications of the University's actions (Appendix 7). Prof. Bengt Olle Bengtsson (Genetics) wrote a detailed letter to the Rector,

Statement of the facts (continued)

36.
providing him with a comprehensive consideration of the case (Appendix 11). The letter remained unanswered. Also Prof. Sven-Axel Bengtson (Systematic Zoology) and the journalist Stefan Olofson at Skånska Dagbladet contacted the Rector for discussion. According to both Prof. Bengtson and Mr. Olofson the Rector showed limited interest in the discussion, maintaining that he had full confidence in the Dean and his actions, but that he himself was unfamiliar with the case. The reporter of Nature, Mr. Rex Dalton, received a similar answer.
15. The Rector gave a formal answer to the applicant's letter on 24 August 2009 (Appendix 10) in which he declared that the question of economic cut-backs and staff notices at the Faculty pertained to the Dean's responsibility. The Rector informed that he had found no reason to question the Dean's work at the Faculty of Science. Hence, neither the Rector of the University nor the faculty management did at any stage discuss or refer to the factual contents of the applicant's letter, i.e. the decision regarding which scientists were to be given notice and the clear conflict of interests that was related to the composition of the task group.
16. It shall further be mentioned that an examination of the working environment at Lund University was undertaken in 2012. The main results of the study were presented in the Scanian newspaper Sydsvenskan on 7 June and 11 October 2012 (Appendix 27). The enquiry form was sent to 6 800 employees. More than 40 % of the about 3 500 persons who answered stated that they did not dare to openly express their opinion due to fear that this would have harmful consequences for them.

D. Domestic proceedings
a. Chancellor of Justice – 2009
17. After having been informed of the applicant's matter through the media, a private individual decided to make a petition to the Chancellor of Justice on 21 June 2009 (Appendix 6). The individual raised critical questions regarding the University's actions against the applicant and asked the Chancellor to reverse the decision of the University with regard to the applicant.
18. The Chancellor answered the individual in a letter dated 24 July 2009 (Appendix 9), wherein the representative held that the Chancellor neither has mandate to intervene in the proceedings of authorities nor to reverse authorities' decisions. Therefore, it was held that the Chancellor would not take any measures with regard to the individual's petition.
b. The Swedish National Agency for Higher Education
19. On 4 June 2009, the applicant sent a copy of the letter of 1 June 2009 to the Swedish National Agency for Higher Education (hereafter "the Agency") (Appendix 4), which at the time was a public authority with the mission to supervise universities and colleges and to ensure the quality of the higher education in Sweden. Through his communication, the applicant wished to inform the Agency on the questionable approach applied in the selection of the four scientists who were at risk to lose their employments. At the end of June, the applicant was asked if he wished to complement his previous communication to the Agency. Following this he requested the Agency to (1) make an investigation regarding the potential conflict of interests in the process of the presented notices and to (2) investigate the legality regarding the depravation of his workplace at the University (Appendix 8).
20. On 21 January 2010 the Agency requested the University to give a statement regarding the alleged violation of the applicant's right to freedom of expression (Appendix 12). The Agency's letter contained a number of references to relevant parts of Swedish legislation, including the Swedish Constitution, that were related to the rights to freedom of expression and communication, and the protection of these rights, including the ban on reprisals against the users of these rights.
21. The University delivered its statement through a decision dated 25 February 2010 (Appendix 13) in which it held that there are no regulations regarding professor emeritus' right to a workplace or university facilities and also gave an account of the events leading up to the decision. Regarding the alleged violation of the applicant's right to freedom of expression the University merely stated the following:
"[The University] appreciates that the relationship between the obvious rights of expression and communication and the responsibility of the employer to keep the working environment free from harassment and mobbing becomes clarified yet once more."

The Statement of Facts is continued on attached document "Statement of Facts - continued from application form"

Statement of Facts – continued from application form

22. Regarding the reason for the University's decision to deprive the applicant of his workplace, the University alleged that the applicant's intention with the letter of 1 June 2009 was to hurt and degrade the persons mentioned therein. The University thus continued to refer to the "psychosocial working environment" as well as "mobbing and harassment" as a ground for the expulsion of the applicant.

23. In the statement, the University expressively declared the particular aim of the actions against the applicant:

> *"The aim of the decision was to improve the psychosocial working environment by counteracting that a culture of personal attacks and mobbing would develop and to reduce the acute discomfort and fear that Ulfur Arnason's impending entrance into the Biological building had given rise to."*

24. The Agency was also provided with statements from, among others, Prof. Bengt Olle Bengtsson (Appendix 14) and Prof. emeritus Gunnar Bramstång (Appendix 15), questioning the actions of the University.

25. The Agency reached its decision on 20 April 2010 (Appendix 16) in which it agreed with the University on all points. At the end of the decision the Agency addressed the right to freedom of expression. The discussion was without any reference to the European Convention on Human Rights (hereafter "the Convention") or the case-law of the European Court of Human Rights (hereafter "the Court").

c. The Administrative Courts

26. On 10 May 2010 the applicant appealed the decision of the Agency to the Administrative Court in Malmö. He complemented his appeal through two communications dated 12 and 30 June 2010 (Appendix 17). The Administrative Court found that the appealed decision was a regulatory matter (*tillsynsärende*) which, according to domestic practice, could not be appealed. The court further found that, because the matter did not concern an employment situation, article 6 was not applicable. The court thereby dismissed the applicant's appeal through a decision dated 19 January 2011 (Appendix 18).

27. The applicant appealed the Administrative Court's decision to the Administrative Court of Appeal in Göteborg on 10 February 2011. He further complemented his appeal in two

communication dated 18 April 2011 and 16 August 2011 respectively (Appendix 19). The court failed to give the applicant leave to appeal through a decision dated 22 August 2011 (Appendix 20).

28. On 14 October 2011 the applicant appealed to the Supreme Administrative Court (Appendix 21), which on 4 April 2012 did not give the applicant leave to appeal (Appendix 22).

29. On 10 May 2012 the applicant made a petition for a new trial (*resning*) to the Supreme Administrative Court (Appendix 23). This petition was, however, rejected on 16 January 2013 (Appendix 24).

d. Chancellor of Justice – 2013

30. On 20 August 2013, the applicant complained to the Chancellor of Justice and claimed damages on the ground that his rights according to the Convention – *inter alia* Article 10 – had been violated (Appendix 25**)**.

31. The decision of the Chancellor of Justice is dated 26 September 2013 (Appendix 26). The Chancellor maintained that the decisions of the University and the Agency respectively could not give rise to damages through domestic regulations on tort liability. Thereby the applicant could only be entitled to damages if the actions of the University were found to have amounted to a violation of his rights according to the Convention.

32. Regarding the applicant's complaint with respect to Article 10 the Chancellor held that, the mode by which the critique that had been directed to individuals in the letter of 1 June 2009 was not of a kind that it could have constituted a reason for dismissal if the applicant had been an employee at the University. In that case, it would have constituted a disproportionate interference with the applicant's right to freedom of expression. However, as the applicant was not employed and the possibility for him to use the University's facilities was entirely reliant on that the University's voluntary offer remained, the decision of the University to deprive the applicant of his workplace and assignments on the ground that he had become a burden for the psychosocial working environment was not – according to the Chancellor – a disproportionate interference in the applicant's freedom of expression. Therefore, the Chancellor did not find a violation of article 10 of the Convention.

33. The Chancellor further dismissed the residual claims of the applicant according to the Convention and did not grant the applicant any damages. With the Chancellor's decision dated 26 September 2013, the applicant has exhausted all domestic remedies in the case at hand.

F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments

37. Article invoked	Explanation
Article 10	A. Alleged violation a. Starting points 1. The applicant claims that the decision of the University to deprive the applicant of his workplace and assignments as described in the Statement of Facts, constituted a disproportionate interference with the applicant's right to freedom of expression according to Article 10 of the Convention. 2. As asserted by the Court in the case of Handyside v. the United Kingdom, freedom of expression constitutes one of the essential foundations of a democratic society and is one of the basic conditions for its progress and for the development of every man (appl. no. 5493/72, 7 December 1976, § 49). In the case at hand, the importance of this cardinal right is further accentuated by the connection to the principle of academic freedom. 3. The Parliamentary Assembly of the Council of Europe has in several recommendations affirmed and reaffirmed that academic freedom and university autonomy is a fundamental requirement of any democratic society and that they are essential to the overarching values and goals of the Council of Europe – democracy, human rights and the rule of law (see inter alia Recommendation 1762 (2006) and Recommendation CM/Rec (2012) 7). 4. This has been reiterated by the Court inter alia in its judgment in the case of Sorguç v. Turkey (appl. no. 17089/03, 23 June 2009, §§ 21 and 35) through a reference to Recommendation 1762 (2006) of the Parliamentary Assembly which reads; "4. In accordance with Magna Charta Universitatum, the Assembly reaffirms the right to academic freedom and university autonomy which comprises the following principles: 4.1. academic freedom in research and in training should guarantee freedom of expression and of action, freedom to disseminate information and freedom to conduct research and distribute knowledge and truth without restriction; […] 4.3. history has proven that violations of academic freedom and university autonomy have always resulted in intellectual relapse, and consequently in social and economic stagnation." 5. A fundamental aspect of academics' right to freedom of expression is an open discussion of the conditions for a continuous scientific progress. This is especially relevant when the management of a faculty of a university is faced with demands to cut-back economically and has to appropriately weight priorities. For such a discussion to be fruitful, it is necessary that different apprehensions and opinions are voiced regarding which academics and scientists are most important to retain at the faculty in question. 6. The applicant has, with regard to his scientific merits and extensive experience, an exceptional overview of the scientific development in his area. His views regarding the conditions for a continued dynamic scientific development at the Faculty therefore have to be considered particularly relevant. An open discussion where different aspects are presented and held against other views is crucial for rational and well-founded decisions. With regard to this, the applicant has been of the opinion that it was not only his right, but also his responsibility, to inform the University management on his view in these important questions. The Statement of Alleged Violations is continued on attached document "Statement of Alleged Violations - continued from application form"

Statement of Alleged Violations – continued from application form

7. It is, in light of the above, of vital importance from both an academic and a freedom of expression perspective, that a debate of this kind is not impeded by drastic sanctions directed at academics who voice their stand-point. If a senior and renowned academic can be punished by a university, for the sole reason of voicing his or her opinion, this will obviously have a grave chilling effect in the academic environment. This, in turn, risks leading to a standstill in the development of science and research in various fields and, ultimately, to a potential loss of scientific discoveries of importance for society at large.

b. Interference

8. As the scope of the protection under Article 10 is to be broadly interpreted, there can be no doubt that the applicant's statement regarding the management and future research development of the University falls within the ambit of this article. This is particularly relevant in the light of the whistle-blowing aim of the letter and the applicant's genuine intention to bring the management's attention to the conflict of interest behind the decision to dismiss the academics in question combined with the threat of the decision with respect to the scientific status of the domain of biology at the University.

9. As a consequence of his statement, the applicant was, as described above, imposed a sanction which entailed a deprivation of the premises which had already been allocated to him. He was furthermore deprived of his doctoral supervision within the premises of the Faculty and forced to terminate his ongoing research activities, which in turn caused the loss of irreplaceable research materials such as cell cultures and clones of marine mammals. The facilities and assignments of which he was deprived constituted part of an agreement between himself and the University. This must also be seen in the light of the damage which resulted to the applicant's professional reputation. Thus, the action of the University constituted a grave interference with the applicant's rights under Article 10.

10. In this context it shall also be noted that it is the applicant's view that he, due to the alleged interference, has suffered a significant disadvantage in the meaning of Article 35.3(b) of the Convention. This provision of the Convention must further be interpreted in the light of the serious detrimental effect that the actions of the University potentially has on the freedom of expression with respect to society at large.

11. In order to consider whether or not there has been an interference with an individual's freedom of expression, it must further be affirmed that the sanction in question was imposed by the state as a result of the individual's expression. For example in the cases of *Glasenapp* and *Kosiek*, both *v. Germany* (appl. no. 9228/80 and 9704/82 respectively, both 28 August 1986), it was found that a refusal to grant the applicants access to the civil service was based essentially on the fact that the applicants did not have the necessary qualification for access, and not, as had been alleged, on their political views (§§ 50 and 36 respectively). In the Grand Chamber case of *Vogt v. Germany*, on the other hand, the Court found that the dismissal of an employed permanent civil servant was based on her association with certain political views. Therefore, it was considered that the case constituted of an interference with the applicant's freedom of expression (appl. no. 17851/91, 26 September 1995, § 44).

12. In the case at hand it must be considered undisputed that the sanctions imposed on the applicant were a direct and causal consequence of his expression, *i.e.* the letter of 1 June 2009. This is explicitly expressed by the University in its statement to the Agency.

13. Furthermore, it is clear from the decision of the Chancellor of Justice that the applicant's claim was dismissed not on the ground that the Chancellor did not find an interference, but explicitly on the ground that the interference was not disproportionate. This must be interpreted so as it is undisputed between the parties that the University's actions have constituted an interference with the applicant's rights according to Article 10.

c. Not necessary in a democratic society

14. The test of "necessity in a democratic society" requires a determination whether the alleged interference corresponded with a "pressing social need" (*Karsai v. Hungary*, appl. no. 5380/07, 1 December 2009, § 25; *Ungvary and Irodalom Kft v. Hungary*, appl. no. 64520/10, 3 December 2013 § 37; *Lewandowska-Malec v. Poland*, appl. no. 39660/07, 18 September 2012; § 57, *Sorguç v. Turkey*, § 28). As described above and in the Statement of Facts, the University has explicitly held that the motive behind the sanctions directed towards the applicant was that he allegedly was a threat to the psychosocial working environment at the Faculty. The applicant does not question that this could be a legitimate aim but such a sanction must of course be seen in the light of the cardinal Convention right to freedom of expression as well as the paramount importance of academic freedom. As shall be elaborated below, considerable regard must also be

taken to the chilling effect that the fear of sanctions has on the exercise of freedom of expression in the University realm. The interference of the applicant's freedom of expression in this case did not correspond to a pressing social need.

15. Well aware that the freedom of expression carries with it duties and responsibilities, the applicant had verified that the information given by him in the letter was accurate and reliable (see, *mutatis mutandis*, *Bladet Tromsø and Stensaas v. Norway* [GC], appl. no. 21980/93, 20 May 1999, § 65). His critique against the task group's selection of scientists to be given notice was, as described in the Statement of Facts, based on a scientific report as well as on commonly recognised ratings of academics, such as H-index. That the outcome of the efforts of the task group, in an objective perspective, was not in line with scientific ratings, etc., had further been accentuated by the fact that three Professors from different fields had, prior to the applicant, sought to make the management aware of the inappropriateness of the outcome of the undertaking of the task group. Moreover, the applicant's aim with the criticism was to draw the management's attention to what he considered was a serious inadequacy, and not, as claimed by the University in its statement to the Agency, a personal antagonism *vis-á-vis* the persons involved in the selection of the four scientists who were to be given notice. The applicant's criticism of the composition of the task group and its outcome thus had a factual basis, was well-founded and voiced in good faith (see, *mutatis mutandis*, *Sorguç v. Turkey*, § 33).

16. The severity and nature of the sanction must also be taken into account when assessing the proportionality of the interference (see *inter alia, Karsai v. Hungary*, § 36). While the applicant was not subjected to any criminal sanctions, he was forced to leave his renowned position as professor emeritus at the University with the far-reaching negative effects as described above. In this context, the University's common academic practice regarding the position of prof. emeriti must be taken into account. More importantly, while the applicant was not an employee in a formal and legal manner, his activities at the Faculty were based on an agreement with the Faculty and the University. This mutual assignment carried with it responsibilities and rights for both parties and thus, the applicant was *de facto* still affiliated to the University through his research and supervision of doctoral students. As the applicant, at the time in question, had been emeritus for four years, there was a long-standing and mutual trust behind the agreement. That the sanctions in question were an explicit and direct breach of this long-standing agreement and mutual understanding is not in the least emphasised by the fact

that the applicant had already been allocated premises that he was deprived of from one day to the next.

17. With regard to the above, the sanctions in this case must be considered particularly serious. This must also be seen in a wider perspective, as a great number of academics continue to, through agreements with their respective universities, produce important works in their positions as emeriti. This having been said, even if the sanction in question had been of a relatively lenient nature, the Court has held that the reprisal could still be capable of discouraging other people from making critical statements (*Lombardo and Others v. Malta*, appl. no. 7333/06, 24 April 2007, § 61).

18. In its case-law, the Court has continuously affirmed the chilling effect that the fear of sanctions has on the exercise of freedom of expression (*Wille v. Lichtenstein* [GC], appl. no. 28396/95, 28 October 1999, § 50; *Nikula v. Finland*, appl. no. 31611/96, 21 March 2002 § 54; *Elçi and Others v. Turkey*, appl. nos. 23145/93 and 25091/94, 13 November 2011, § 714; *Cihan Öztürk v. Turkey*, appl. no. 17095/03, 9 June 2009, § 33) and that such a chilling effect works to the detriment of society as a whole (*Lombardo and Others v. Malta*, § 61). The Court has particularly pointed to the potential chilling effect in the academic context when a measure imposed on an academic affects his or her professional credibility (*Karsai v. Hungary*, § 36; *Ungvary and Irodalom Kft v. Hungary*, § 68).

19. It is evident from the University's statement to the Agency that the reprisals against the applicant were executed as a measure to silence critique against the management. The report from 2012 which shows that more than 40 % of the University staff did not dare to reveal their opinions for fear of reprisals (see the Statement of Facts, p. 16), strongly indicates that the circumstances in this case is a concrete manifestation of a more general threat to the right of freedom of expression and information at the universities. It thus demonstrates most clearly the dignity of the freedom of expression aspects that are raised in this case.

20. The chilling effect in the case at hand is further accentuated by the fact that the applicant acted as a whistle-blower. The growing need to protect individuals who report threats or harm to the public interest has been declared both through the case-law of the Court (see, *inter alia*, *Heinisch v. Germany*, appl. no. 28274/08, 21 July 2011) as well as the Council of Europe's draft recommendation approved by the Committee on Legal Co-

operation at its 88th plenary meeting in Strasbourg, 16-18 December 2013 and with possible adoption in April 2014. In the draft recommendation it is recognised that whistle-blowers can contribute to strengthening transparency and democratic accountability. It is further noted that there is a need to encourage the adoption of national frameworks in the member States for the protection of whistle-blowers based on a set of common principles. The personal scope of the national framework, according to the recommendation, should encompass all individuals working in either the public or private sectors, irrespective of the nature of their working relationship and whether they are paid or not (Appendix to draft recommendation, II. 3.). While not yet formally adopted by the Committee of Ministers, the recommendation clearly marks the joint European standpoint in this issue.

21. As held above, the applicant considered that there was an imminent risk that the choice of dismissed researches would be of detriment to the University with regard to its scientific status and reputation as well as the future scientific progress at the University. The applicant thus, in good faith, voiced what must be considered a matter of public interest.

22. The applicant's status as a whistle-blower is furthermore not undermined by the fact that he was not employed at the University in a formal and legal sense. As described above, the applicant was as emeritus an active academic at the University through ongoing research and continuing supervision of doctoral candidates. It shall also be noted that the applicant was paid by the University for the commitments that he carried out.

23. The paramount importance of academic freedom was underlined in the case of *Sorguç v. Turkey* (§ 35). This freedom comprises the academics' freedom to express freely their opinion on the institution or system in which they work and the freedom to distribute knowledge and truth without restriction. On these grounds the chilling effects of actions which discourage or hinder academics from making critical statements for fear that they will lose their position, must be considered particularly serious with respect to the Convention and Article 10.

24. In light of the above, the claimed opposing interest of the University to deal with psychosocial problems at the Faculty cannot be considered as weighing heavier than the public interest of academic freedom and the right for academics and scientists to voice opinions about the conditions for a continued scientific development. As the defining of

"psychosocial problems" carries with it considerable difficulties, it is of utmost importance that a terminology of this kind is not arbitrarily used as an excuse by university authorities to get rid of academics expressing opinion regarding the management of a faculty or institution.

25. Furthermore and most notably, in this particular case, the problems at the institution with regard to the working environment of the staff had existed for at least a year before the applicant wrote his letter on 1 June 2009. The staff at the COB had expressed concern and discomfort regarding both the merging with another institution as well as the coming cut-backs already in 2008, as shown in the letter written by Prof. Everitt (see appendix 1). The applicant's letter of 1 June 2009 could therefore not have been the catalyst of the situation at the Faculty. Thus, it must be questioned whether the sanction imposed on the applicant was relevant to the aim allegedly pursued, *i.e.* to come to terms with the psychosocial situation.

26. As the interference in the applicant's right to freedom of expression was neither relevant nor proportionate to the aim pursued, it did not fulfil a pressing social need in the meaning of the case-law of the Court. Thus, the applicant's right to freedom of expression according to Article 10 in the Convention has been violated.

B. Damages

27. The sanctions directed against the applicant induced on him a great deal of both stress and anxiety, not in the least regarding his ongoing research activities which he was forced to disrupt. Furthermore, the detrimental effect of the sanctions on the applicant's professional reputation must be taken into account. In light of these circumstances, the finding of a violation is not a sufficient redress in the case of the applicant.

28. The applicant therefore claims non-pecuniary damages according to Article 41 of the Convention to a sum of 10,000 EUR.

C. Costs and expenses

29. The applicant further claims compensation for costs and expenses incurred before the Court and the national courts to an amount which will be specified at a later date.

G. For each complaint, please confirm that you have used the available effective remedies in the country concerned, including appeals, and also indicate the date when the final decision at domestic level was delivered and received, to show that you have complied with the six-month time-limit.

38. Complaint	Information about remedies used and the date of the final decision
Article 10	As held in the Statement of Facts, the applicant complained of the University's decision to the Swedish National Agency for Higher Education and thereafter appealed the Agency's decision to the Administrative Courts. The Supreme Administrative Court decided to not give the applicant leave of appeal on 4 April 2012 and rejected the applicant's petition for a new trial on 16 January 2013. The applicant made a petition to the Chancellor of Justice, claiming that his rights according to the Convention had been violated. This petition was rejected through a decision by the Chancellor on 26 September 2013.

39. Is or was there an appeal or remedy available to you which you have not used?

- (●) Yes
- ( ) No

40. If you answered Yes above, please state which appeal or remedy you have not used and explain why not.

The only remaining available domestic remedy which Arnason has not exhausted is to bring a civil action against the State before a district court. However, the Court has considered that a Swedish applicant may choose to make its claims either to the Chancellor of Justice or the domestic courts (Marinkovic v. Sweden [dec.], appl. no. 43570/10, 10 December 2013, § 40). As Arnason has made a petition before the Chancellor of Justice, Arnason has exhausted the domestic remedies according to article 35 as required by the Court.

H. Information concerning other international proceedings (if any)

41. Have you raised any of these complaints in another procedure of international investigation or settlement?

- ( ) Yes
- (●) No

42. If you answered Yes above, please give a concise summary of the procedure (complaints submitted, name of the international body and date and nature of any decisions given).

43. Do you (the applicant) currently have, or have you previously had, any other applications before the Court?

- ( ) Yes
- (●) No

44. If you answered Yes above, please write the relevant application number(s) in the box below.

I. List of accompanying documents

You should enclose full and legible *copies* of all documents.

No documents will be returned to you. It is thus in your interests to submit copies, not originals.

You MUST:

- arrange the documents in order by date and by procedure;

- number the pages consecutively;

- NOT staple, bind or tape the documents.

45. In the box below, please list the documents in chronological order with a concise description.

1. Letter from Prof. Everitt to the Chief of Staff at the Faculty of Science, 15 January 2009
2. Letter to the Rector of the University signed by three professors, 23 March 2009
3. Letter from the applicant to the Rector of the University, 1 June 2009
4. Communication from the applicant to the Agency, 4 June 2009
5. Letter from the Dean to the applicant, dnr. N 2009/428, 16 June 2009
6. Petition to the Chancellor of Justice by C-J Söderquist, 21 June 2009
7. Letter to the University from Prof. emeritus Gunnar Bramstång, 21 June 2009 complemented 22 June 2009
8. E-mail from the Agency to the applicant and the applicant's reply, 24 June 2009
9. Reply from the Chancellor of Justice to C-J Söderquist, dnr. 4186-09-21, 24 July 2009
10. The Rector's formal answer to the applicant's letter, dnr. LS 2009/543, 24 August 2009
11. Letter from Prof. Bengtsson to the Rector, 29 August 2009
12. The Agency's request to the University, reg.nr. 31-3434-09, 21 January 2010
13. Statement from the University to the Agency, dnr. LS 2009/543, 25 February 2010
14. Letter from Prof. Bengtsson to the Agency, 16 March 2010
15. Letter from Prof. emeritus Bramstång to the Agency, 31 March 2010
16. The Agency's decision, reg.nr. 31-3434-09, 20 April 2010
17. The applicant's appeal to the Administrative Court in Malmö, 10 May 2010, and two complementary communications, 12 and 30 June 2010
18. The Administrative Court's decision to dismiss the applicant's appeal, mål nr 8724-10 E, 19 January 2011
19. The applicant's appeal to the Administrative Court of Appeal in Göteborg, 10 February 2011, and two complementary communications, 18 April and 16 August 2011
20. The Administrative Court of Appeal's decision to refuse leave of appeal, mål nr 1287-11, 22 August 2011
21. The applicant's appeal to the Supreme Administrative Court, 14 October 2011
22. The Supreme Administrative Court's decision to refuse leave of appeal, mål nr 5947-11, 4 April 2012
23. The applicant's petition for a new trial to the Supreme Administrative Court, 10 May 2012, and complementary communication, 28 August 2012
24. The Supreme Administrative Court's decision to reject the petition for a new trial, mål nr 2757-12, 16 January 2013
25. The list of accompanying documents is continued in the attached document named "List of accompanying documents - continued from application form"

Any other comments

Do you have any other comments about your application?

46. Comments

Declaration and signature

I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct.

47. Date

0	8	0	4	2	0	1	4
D	D	M	M	Y	Y	Y	Y

e.g. 27/09/2012

The applicant(s) or the applicant's representative(s) must sign in the box below.

48. Signature(s) ○ Applicant(s) ◉ Representative(s) - tick as appropriate

Confirmation of correspondent

If there is more than one applicant or more than one representative, please give the name and address of the one person with whom the Court will correspond.

49. Name and address of ○ Applicant ◉ Representative - tick as appropriate

Advokat Percy Bratt
Advokatbyrån Bratt Feinsilber Harling AB
Box 24164
SE-104 51 Stockholm

The completed application form should be signed and sent by post to:

The Registrar
European Court of Human Rights
Council of Europe
67075 STRASBOURG CEDEX
FRANCE