KEY THEME[1]
Article 6 § 1 (civil limb)
Protection of the judiciary

(Last updated: 28/02/2023)

Introduction

Recent case-law has brought into focus judges, not as members of a court whose decision is impugned by an applicant, but as holders of Convention rights. The Court has notably commented on systems of judicial discipline, employment disputes, privileges of judges as parties to proceedings, reputation issues as well as on salary and retirement benefits. The Court has been influenced by relevant international and European material in elaborating the Convention rights and protection specific to judges.

In particular, the Court has emphasised the special role in society of the judiciary which, as the guarantor of justice, a fundamental value in a State governed by the rule of law, must enjoy public confidence if judges are to be successful in carrying out their duties. As the Convention system cannot function properly without independent judges, the States' task of ensuring judicial independence is of crucial importance and the Court must be particularly attentive to the protection of members of the judiciary against measures that can threaten their judicial independence and autonomy (*Grzęda v. Poland* [GC], 2022, §§ 302 and 324).

This key theme focuses on the procedural protection of Article 6 but extends also to the Court's examination of the rights of Judges under other Convention Articles[2].

Applicability of Article 6 § 1

- Although the judiciary is not part of the ordinary civil service, it is considered "part of typical public service". Therefore, the Court applies the *Eskelinen* criteria (*Vilho Eskelinen and Others v. Finland* [GC], 2007, § 62; *Grzęda v. Poland* [GC], 2022, §§ 262-264), as clarified in *Grzęda v. Poland* [GC], 2022, which further developed the first condition of the *Eskelinen* test (§§ 291-292)).
- For instance, Article 6 § 1 has been applied to proceedings relating to:
  - recruitment/appointment (*Juričić v. Croatia*, 2011, §§ 51-57; *Dolińska - Ficek and Ozimek v. Poland,* 2021, §§ 220-232);
  - career/promotion (*Dzhidzheva-Trendafilova v. Bulgaria* (dec.), 2012; *Tsanova-Gecheva v. Bulgaria*, 2015, §§ 85-87);
  - disciplinary proceedings (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 2018, § 120; *Di Giovanni v. Italy*, 2013, §§ 36-37; *Čivinskaitė v. Lithuania*, 2020, § 95; *Albuquerque Fernandes v. Portugal*, 2021, §§ 53-54; *Eminağaoğlu v. Turkey*, 2021, §§ 64-80);
  - transfer (*Tosti v. Italy* (dec.), 2009; *Bilgen v. Turkey*, 2021, §§ 69-81);
  - suspension (*Paluda v. Slovakia*, 2017, §§ 33-34; *Camelia Bogdan v. Romania*, 2020, § 70);
  - reprimand (*Catană v. the Republic of Moldova*, 2023, § 44);

[1] Prepared by the Registry. It does not bind the Court.
[2] The Key Theme also includes, where relevant, cases concerning Prosecutors.

- dismissal of judges (*Olujić v. Croatia*, 2009, §§ 31-43; *Oleksandr Volkov v. Ukraine*, 2013, §§ 91 and 96; *Kulykov and Others v. Ukraine*, 2017, §§ 118 and 132; *Sturua v. Georgia*, 2017, § 27; *Kamenos v. Cyprus*, 2017, §§ 82-88, *Xhoxhaj v. Albania*, 2021, §§ 236 *et seq.*; *Mnatsakanyan v. Armenia*, 2022, § 59; *Ovcharenko and Kolos v. Ukraine*, 2023, § 113);
- reduction in salary (*Cotora v. Romania*, 2023, § 30) and conviction for a serious disciplinary offence (*Harabin v. Slovakia*, 2012, §§ 118-123 – see also for payment of judges' salaries and other benefits, *Petrova and Chornobryvets v. Ukraine*, 2008, § 15);
- removal from a post (for example, President) while remaining a judge (*Baka v. Hungary* [GC], 2016, §§ 34 and 107-111; *Denisov v. Ukraine* [GC], 2018, § 54; *Broda and Bojara v. Poland*, 2021, §§ 121-123);
- judges being prevented from exercising their judicial functions after legislative reform (*Gumenyuk and Others v. Ukraine*, 2021, §§ 61 and 65-67);
- premature termination of the term of office of a member of a judicial council while remaining a judge (*Grzęda v. Poland* [GC], 2022, § 265; *Żurek v. Poland*, 2022, §§ 129-134), or of a chief prosecutor (*Kövesi v. Romania*, 2020, §§ 124-125);
- see also, *Loquifer v. Belgium*, 2021, §§ 38-40, as concerns the applicability to a "non-judicial" member of the High Judicial Council.

- As the same standards concerning the applicability of Article 6 to employment disputes of civil servants are relevant to the proceedings concerning judges, the applicant must have a "right" which could arguably be said to be recognised under national law and that right must be a "civil" one (*Grzęda v. Poland* [GC], 2022, §§ 257-328). Furthermore, the employment relationship of judges with the State must be understood in the light of the specific guarantees essential for judicial independence (*ibid.*, § 264).
- The Court does not consider it justified to exclude members of the judiciary from the protection of Article 6 in matters concerning the conditions of their employment on the basis of the special bond of loyalty and trust to the State (*Bilgen v. Turkey*, 2021, § 79; *Eminağaoğlu v. Turkey*, 2021, § 80; see also concerning judicial competition, *Gloveli v. Georgia*, 2022, §§ 50-51).
- In a case where the applicant's position as an elected judicial member of the National Council of the Judiciary – the body with constitutional responsibility for safeguarding judicial independence – was prematurely terminated by operation of law in the absence of any judicial oversight of the legality of this measure, the Court concluded that the second condition of the *Eskelinen* test, namely that the applicant's exclusion from access to a court be justified on objective grounds in the State's interest, had not been met (*Grzęda v. Poland* [GC], 2022, § 326).

Principles drawn from the current case-law

Right of access to court:

- Judges may enjoy a privilege which exempts them from pursuit and such an exemption limits an individual's access to court. The Court does not consider this exemption of itself incompatible with Article 6 § 1 if it pursues a legitimate aim, namely the proper administration of justice (*Ernst and Others v. Belgium*, 2003, § 50) and observes the principle of proportionality in the sense that the applicants have reasonable alternative means to protect effectively their rights under the Convention (*Ernst and Others v. Belgium,* 2003, § 53-55).
- In a number of cases, the Court assessed the compatibility of a restriction of a judge's right of access to a court with Article 6 (for the general principles, *Grzęda v. Poland* [GC], 2022, §§ 342-343). In this regard, it takes into account the growing importance, in international

and Council of Europe instruments, the case-law of international courts and in the practice of other international bodies, of procedural fairness in cases involving the removal or dismissal of judges, including the intervention of an authority independent of the executive and legislative powers in respect of every decision affecting the termination of office of a judge (*Baka v. Hungary* [GC], 2016, § 121). The Court also considers that similar procedural safeguards should likewise be available where a judicial member of the National Council of the Judiciary was removed from his position (*Grzęda v. Poland* [GC], 2022, §§ 300-303, 327 and 344-350).

- The legal basis for any exclusion from judicial review, of decisions concerning judges or of limitations to the judges' access to court, should exist prior to the restriction and stem from an instrument of general application (*Baka v. Hungary* [GC], 2016, §§ 116-117; *Paluda v. Slovakia*, 2017, § 43).
- In order for national legislation excluding access to a court to have any effect under Article 6 § 1 in a particular case, it should be compatible with the rule of law (*Grzęda v. Poland* [GC], 2022, § 299). In assessing any justification for excluding access to a court with regard to membership of judicial governance bodies, it is necessary to take into account the strong public interest in upholding the independence of the judiciary and the rule of law (*ibid.*, § 346).
- In matters concerning a judge's career, such as a unilateral transfer or dismissal, "there should be weighty reasons exceptionally justifying the absence of judicial review" (*Bilgen v. Turkey*, 2021, § 96 ; *Broda and Bojara v. Poland*, 2021, § 148; *Mnatsakanyan v. Armenia*, 2022, § 65).
- Allegations of intervention by the State, through the legislature, in order to influence the outcome of a court case (*J.B. and Others v. Hungary* (dec.), 2018, see notably § 92).

Adversarial - public hearing:

- Opinions/information obtained in proceedings before the Constitutional Court should be notified to the judge prior to the delivery of the decision, allowing thereby the judge to comment on them *(Juričić v. Croatia*, 2011, § 76).
- As regards disciplinary proceedings against a judge, equality of arms implies that the judge whose office is at stake must be afforded a reasonable opportunity to present his or her case – including his or her evidence – under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* the authorities bringing those proceedings against a judge. It is left to the national authorities to ensure in each individual case that the requirements of a fair hearing are met (*Olujić v. Croatia*, 2009, § 78).
- When the Constitutional Court makes an assessment, not of points of fact but of points of law, and deals with the same legal issue as the first instance court, Article 6 § 1 does not require a hearing to be held before the higher court if the applicant judge had already waived that right before the first instance court (*Juričić v. Croatia,* 2011, § 91).
- Lack of a hearing at the stage of the disciplinary proceedings and at the judicial review stage (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 2018, § 210): in the context of disciplinary proceedings against a judge, dispensing with an oral hearing should be an exceptional measure and should be duly justified in the light of the Convention institutions' case-law.

Independence and impartiality:

- Judges can uphold the rule of law and give effect to the Convention only if domestic law does not deprive them of the guarantees required under the Convention with respect to matters directly touching upon their individual independence and impartiality. In this

regard, judicial independence should be understood in an inclusive manner. This means that independence applies not only to a judge in his or her adjudicating role, but also to other official functions that a judge may be called upon to perform that are closely connected with the judicial system (*Grzęda v. Poland* [GC], 2022, §§ 302- 303, as concerns a serving judge's mandate as member of the National Council of the Judiciary).

- There exists a clear link between the integrity of the judicial appointment process and the requirement of judicial independence in Article 6 § 1 (*Grzęda v. Poland* [GC], 2022, §§ 308-309; *Gloveli v. Georgia*, 2022, §§ 49-50).
- The Court underlined that a very close interrelationship existed between the guarantees of an "independent and impartial" tribunal and the right to a "tribunal established by law" under Article 6 § 1 (*Guðmundur Andri Ástráðsson v. Iceland* [GC], 2020, §§ 231-234; *Xhoxhaj v. Albania*, 2021, § 290; *Dolińska-Ficek and Ozimek v. Poland*, 2021, § 276). The *Guðmundur Andri Ástráðsson v. Iceland* [GC], 2020, judgment defines a three-step procedure to assess whether irregularities in a particular judicial appointment procedure were of such gravity as to entail a violation of the right to a "tribunal established by law" (§§ 243-252; see for example, *Juszczyszyn v. Poland*, 2022, §§ 193-210; *Besnik Cani v. Albania*, 2022, §§ 83-93).
- Observance of the Article 6 § 1 guarantees is particularly important in disciplinary proceedings against a judge in his capacity as President of a Supreme Court, since the confidence of the public in the functioning of the judiciary at the highest level is at stake (*Harabin v. Slovakia*, 2012, § 133 – see also, *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 2018, §§ 153-156, and, as regards the Supreme Court itself, §§ 162-165).
- There needs to be a substantial representation of judges on the relevant disciplinary body (*Oleksandr Volkov v. Ukraine*, 2013, § 109; *Denisov v. Ukraine* [GC], 2018, §§ 68-70; *Catană v. the Republic of Moldova*, 2023, §§ 68 and 70). The manner in which judges are appointed to disciplinary bodies is also relevant in terms of judicial self‑governance (*Oleksandr Volkov v. Ukraine*, 2013, § 112; *Denisov v. Ukraine* [GC], 2018, §§ 68-70) as is whether they work fulltime for the disciplinary body or not (*Denisov v. Ukraine* [GC], 2018, § 68).
- The presence of the Prosecutor General on a body concerned with the appointment, disciplining and removal of judges creates a risk that judges will not act impartially in such cases or that the Prosecutor General will not act impartially towards judges the decisions of whom he disapproves (*Oleksandr Volkov v. Ukraine*, 2013, § 114; *Denisov v. Ukraine* [GC], 2018, §§ 68-70; *Catană v. the Republic of Moldova*, 2023, § 76).
- The presence, even in a merely passive role, of a member of the government within a body empowered to impose disciplinary sanctions on judges is in itself highly problematic in terms of the requirements of Article 6, and particularly the requirement for the disciplinary body to be independent (*Catană v. the Republic of Moldova*, 2023, § 75 concerning the presence of the Minister of Justice as an *ex officio* member of the National Judicial Service Commission (CSM); see also the process for selecting the professors of law elected by Parliament for appointment to the CSM, §§ 79-82).
- The intervention of Parliament into disciplinary proceedings may contribute to the politicisation of the procedure and "aggravate its inconsistency with the principle of the separation of powers" (*Oleksandr Volkov v. Ukraine*, 2013, § 118).
- The impartiality and independence of the judiciary may be brought into question when judges who review the decisions of a disciplinary body are under the jurisdiction of the same body and can be subject to disciplinary proceedings (compare and contrast *Oleksandr Volkov v. Ukraine*, 2013, § 130; *Denisov v. Ukraine* [GC], 2018, § 79 with *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 2018, §§ 157-164).

- Preliminary involvement of a member of the disciplinary body in the preliminary inquiry against a judge may cast objective doubt on his impartiality when he subsequently takes part in the decision on the merits of the case (*Denisov v. Ukraine* [GC], 2018, § 71 and references therein).
- The Court underlined the importance of the appearance of impartiality of lustration proceedings against the President of the Constitutional Court owing to remarks made by the Prime Minister while proceedings were pending (*Ivanovski v. the former Yugoslav Republic of Macedonia*, 2014, §§ 145-150).
- In the context of disciplinary cases, the theoretical risk that judges hearing cases are themselves still subject to a set of disciplinary rules, is not in itself a sufficient basis for finding a breach of the requirements of impartiality (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 2018, § 163).
- The Court has recalled that the method of allocating cases within a court falls, in principle, within the State's margin of appreciation. Thus, the failure to appoint all the members of judicial formations through a randomised system was not sufficient to conclude that disciplinary proceedings against the applicant failed to satisfy the requirements of independence and impartiality required by Article 6 (*Miroslava Todorova v. Bulgaria*, 2021, § 120).

Procedural requirements:

- In view of the important role that judges play in securing Convention rights, it is imperative that there exist procedural safeguards in order to ensure that their judicial autonomy is not jeopardised by undue external or internal influences. What is also at stake is public trust in the functioning of the judiciary (*Bilgen v. Turkey*, 2021, § 96).
- Members of the judiciary should enjoy – as do other citizens – protection from arbitrariness on the part of the legislative and executive powers, and only oversight by an independent judicial body of the legality of a measure such as removal from office is able to render such protection effective (*Grzęda v. Poland* [GC], 2022, § 327 and § 347, see also § 264) .
- While the Court does not find it appropriate to indicate how long the limitation period for imposing disciplinary penalties should be, it considers that the absence of any time bars on proceedings for dismissal of a judge for "breach of oath" poses a serious threat to the principle of legal certainty (*Oleksandr Volkov v. Ukraine*, 2013, § 139).
- It is not the Court's task to express a view on the appropriateness of the choice made by the authority specifically mandated for the purpose of appointing or promoting judges – or the criteria that should be taken into account – as long as the selection procedure contained sufficient procedural safeguards (*Tsanova-Gecheva v. Bulgaria*, 2015, §§ 100-104, regarding appointment to court presidency by Supreme Judicial Council; see also see *Gloveli v. Georgia*, 2022, § 59). The procedure for appointing judges may infringe the right to a "tribunal established by law" (*Juszczyszyn v. Poland*, 2022, §§ 193-210 and 279; *Besnik Cani v. Albania,* 2022, §§ 83-93 and 113). In particular, eligibility requirements for the appointment of judges are considered fundamental rules whose breach undermines the purpose and effect of the "established by law" requirement (§ 99). The Court has further observed that the right of a member of the judiciary to protection against an arbitrary transfer or appointment is supported by international norms as a corollary of judicial independence (*Bilgen v. Turkey*, 2021, § 63).
- The review of a decision imposing a disciplinary penalty differs from that of an administrative decision that does not entail such a punitive element. As a result, the judicial review carried out must be appropriate to the disciplinary nature of the decision in question. This consideration applies with even greater force to disciplinary proceedings

against judges, who must enjoy the respect that is necessary for the performance of their duties. When a member State initiates such disciplinary proceedings, public confidence in the functioning and independence of the judiciary is at stake; in a democratic State, this confidence guarantees the very existence of the rule of law (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 2018, §§ 196, 200, 203 and 214; *Cotora v. Romania*, 2023, §§ 46-56, and concerning the scope of review of the sanction itself, § 55).

- Given the prominent place among State organs that judges and prosecutors hold in a democratic society, together with the growing importance attached to the separation of powers and to the necessity of safeguarding the independence of the justice system, the Court must pay particular attention to the protection of judges when it is called upon to review disciplinary proceedings against them in the light of the Convention provisions (*Eminağaoğlu v. Turkey*, 2021, § 76; for an example of Convention compliant disciplinary proceedings, see *Cotora v. Romania*, 2023).
- Procedural safeguards, similar to those that should be available in cases of dismissal or removal of judges, should likewise be available where a judge was removed from their position as a member of a judicial council (*Grzęda v. Poland* [GC], 2022, § 345). Where a judicial council is established, the State's authorities should be under an obligation to ensure its independence from the executive and legislative powers in order to, *inter alia*, safeguard the integrity of the judicial appointment process (*ibid*., §§ 307 and 346; *Juszczyszyn v. Poland*, 2022, § 205).
- The imposition of disciplinary liability in connection with the giving of a judicial decision must be seen as an exceptional measure and be subject to restrictive interpretation, having regard to the principle of judicial independence (*Juszczyszyn v. Poland*, 2022, § 276). See also *mutatis mutandis*, *Ovcharenko and Kolos v. Ukraine*, 2023, regarding Constitutional Court judges and the importance of a clear and foreseeable legal framework concerning judicial immunity and judicial accountability for the purposes of ensuring judicial independence (§§ 104-108).
- In the context of vetting proceedings for judges, a greater degree of flexibility should be granted to the respondent States for the application of statutory limitations as, unlike ordinary disciplinary proceedings, they manifest certain specificities. This is consistent with the objective of restoring and strengthening public trust in the justice system and ensuring a high level of integrity of members of the judiciary (*Xhoxhaj v. Albania*, 2021, § 349). With respect to the burden of proof, the Court finds it "not *per se* arbitrary" that the burden of proof shifted onto a defendant judge in vetting proceedings after a disciplinary body has made the preliminary findings of the investigation available and has given access to the evidence in the case file (§ 352). See also *Sevdari v. Albania*, 2022, § 130.

Noteworthy examples

- *Baka v. Hungary* [GC], 2016, §§ 121-122: inability of the President of the Supreme Court to contest the premature termination of his mandate;
- *Denisov v. Ukraine* [GC], 2018, §§ 66-82: inability of the applicant to receive an independent and impartial examination of his dismissal from his post as President of a court;
- *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 2018, §§ 151-165 and 193-215: lack of public hearing and limited extent of review by the Supreme Court over disciplinary decisions of the High Council of the Judiciary – alleged lack of independence and impartiality of the Supreme Court owing to the dual role of its President and the careers of its judges, linked to the High Council of the Judiciary;
- *Grzęda v. Poland* [GC], 2022, §§ 344-350: premature termination of a serving judge's mandate as member of the National Council of the Judiciary and the lack of judicial review;

- *G. v. Finland*, 2009, § 34: first case where the Court applied the *Eskelinen* criteria in an employment dispute concerning a judge;
- *Olujić v. Croatia*, 2009, §§ 31-43: first case where the Court applied the *Eskelinen* criteria as regards disciplinary proceedings brought against a judge (see also *Harabin v. Slovakia*, 2012, §§ 118-123). Both cases: impartial and independent tribunal and the role of the Constitutional Court;
- *Oleksandr Volkov v. Ukraine,* 2013: structural defects of the system of judicial discipline (§ 117); absence of a limitation period for imposing a disciplinary penalty on judges (§ 139); and abuse of the electronic vote system in Parliament when adopting a decision on a judge's dismissal (§ 145); composition of the chamber examining the applicant's case defined by a judge whose term of office as the court's President had expired (§§ 154-156);
- *Di Giovanni v. Italy*, 2013, § 58: disciplinary warning against a judge for having failed in her duty of respect and discretion (composition of the disciplinary board of the National Council of the Judiciary found in conformity with Article 6 § 1);
- *Poposki v. the former Yugoslav Republic of Macedonia*, 2016, §§ 48-49: impartiality of a disciplinary body when only one of its fifteen members has carried out the preliminary inquiries and subsequently took part in the decisions to remove the applicants from office;
- *Sturua v. Georgia*, 2017, § 35: disciplinary proceedings – half of the bench hearing the case on appeal, including its President, had been previously involved in examining the case at first instance which had ordered the removal from judicial office of the applicant, president of a district court;
- *Kamenos v. Cyprus*, 2017, §§ 107-108: specific situation of disciplinary proceedings brought and heard by same body/confusion between the functions of bringing charges and those of determining the issues in the case (see also §§ 106-109); the aim of preventing an atmosphere of hostility and confrontation cannot preclude objective doubts as to the impartiality of the disciplinary body;
- *Kövesi v. Romania*, 2020, §§ 152-158: inability of chief prosecutor to effectively challenge premature termination of mandate;
- *Camelia Bogdan v. Romania*, 2020, §§ 70-79: inability of a judge to challenge her automatic suspension from duty, with stoppage of salary, pending consideration of her appeal against removal from judicial office (see also *Paluda v. Slovakia*, 2017, §§ 41-55);
- *Xhoxhaj v. Albania*, 2021, §§ 280-353: dismissal of a judge following a vetting process in light of an extraordinary and *sui generis* judicial reform undertaken in Albania;
- *Bilgen v. Turkey*, 2021, § 97: inability of a judge to have recourse to judicial review of a decision transferring him to a lower ranking judicial district;
- *Eminağaoğlu v. Turkey*, 2021, §§ 95-105: disciplinary sanction against a judicial officer for breach of professional duty not reviewed by another body exercising judicial functions or by an ordinary court;
- *Donev v. Bulgaria*, 2021, §§ 87-105: proceedings leading to the dismissal of a judge accused of disciplinary offences;
- *Dolińska-Ficek and Ozimek v. Poland*, 2021, §§ 272 *et seq.*: manifest breaches in appointment of judges to newly established Supreme Court's Chamber of Extraordinary Review and Public Affair, which examined the applicant judges' appeals (application of the *Guðmundur* principles on a "tribunal established by law");
- *Gloveli v. Georgia*, 2022, §§ 43-53 and 58-60: inability of a judicial candidate to seek judicial review of decision refusing to appoint her to a judicial post;

- *Besnik Cani v. Albania*, 2022, §§ 115-116: manifest breach of domestic law adversely affecting appointment of a judge sitting on panel which vetted and dismissed prosecutor, without effective domestic court review and redress;
- *Juszczyszyn v. Poland*, 2022, §§ 193-210: judge suspended from duties for verifying another judge's independence ("tribunal established by law");
- *Mnatsakanyan v. Armenia*, 2022, § 65: a judge's premature dismissal from office following disciplinary proceedings against him;
- *Ovcharenko and Kolos v. Ukraine*, 2023, §§ 123-126: inadequate judicial review of Parliament's decision to dismiss Constitutional Court judges for "breach of oath" without a clear interpretation of that offence and the scope of their functional immunity;
- *Cotora v. Romania*, 2023, §§ 37-43 and 56: disciplinary proceedings against a judge, which resulted in a disciplinary sanction in the form of a salary reduction. Judicial Disciplinary Board of the National Council of Judges and Prosecutors considered a "judicial body with full jurisdiction" for the purposes of Article 6; proceedings of the Judicial Disciplinary Board satisfying the requirements of independence, impartiality and fair hearing; Subsequent review performed by the High Court of Cassation and Justice sufficient.
- *Catană v. the Republic of Moldova*, 2023, §§ 75-83: composition of the National Judicial Service Commission (with the presence of *ex officio* members – the Minister of Justice, the Prosecutor General – and of professors of law) not satisfying the Convention requirements of independence and impartiality.

Protection of judges under other Articles of the Convention

Article 5:

- *Alparslan Altan v. Turkey*, 2019: pre-trial detention of a judge without a prior lifting of immunity, on the basis of an unreasonable extension of the concept of *in flagrante delicto* (§§ 102, 104-115, violation of Article 5 § 1; see also *Baş v. Turkey*, 2020, §§ 148-162, 176-201 and 215-231, violation of Article 5 §§ 1 and 4; *Turan and Others v. Turkey*, 2021, §§ 79-96, violation of Article 5 § 1 and *Tercan v. Turkey*, 2021, §§ 118-143, and 171-188, violation of Article 5 §§ 1 and 3 and Article 8 for search of a judge's home after attempted coup).

Article 8:

- *Özpınar v. Turkey*, 2010: removal of a judge from office for reasons partly related to her private life and putting her reputation at stake (applicability, § 48, and procedural requirements, §§ 76-78, violation of Article 8);
- *Oleksandr Volkov v. Ukraine*, 2013: dismissal for "breach of oath" (violation: interference not in accordance with the law (§§ 160-187, violation of Article 8) (see also *Kulykov and Others v. Ukraine*, 2017, § 138);
- *Ivanovski v. the former Yugoslav Republic of Macedonia*, 2014: removal of the President of the Constitutional Court from public office as a result of lustration proceedings (§§ 176-188, violation of Article 8);
- *Denisov v. Ukraine* [GC], 2018: dismissal of the applicant from his post as President of court (§§ 127-134, inadmissible *ratione materiae*: the negative effects of his dismissal on his private life did not meet the threshold of severity for Article 8 to apply). Extensive review of the case-law and new principles on the scope of Article 8 in employment-related disputes concerning judges notably (§§ 113-117);

- *J.B. and Others v. Hungary* (dec.), 2018: dismissal of judges and prosecutors following the lowering of the compulsory retirement age (inadmissible *ratione materiae*, applying *Denisov* [GC]);
- *Tasev v. North Macedonia*, 2019: refusal to register a change in a candidate's self-declared ethnicity in a period of election of judges, with no foreseeable legal basis (§§ 37-41, violation of Article 8);
- *Camelia Bogdan v. Romania*, 2020: suspension of functions as judge, with stoppage of salary (§§ 83-92, application of the *Denisov* [GC] consequence-based approach – level of threshold not reached, inadmissible *ratione materiae*);
- *De Carvalho Basso v. Portugal* (dec.), 2021: defamation and criminal complaints lodged against judges claiming that the reasoned judgment had contained words that amounted to personal insult (§§ 58-61, inadmissible *ratione materiae*);
- *Xhoxhaj v. Albania*, 2021: dismissal of a judge following a vetting process in light of an extraordinary and *sui generis* judicial reform undertaken in Albania (§§ 402-414, no violation of Article 8);
- *Eminağaoğlu v. Turkey*, 2021: the use in disciplinary investigation of recordings of the applicant's telephone conversations, which had been intercepted during the criminal investigation against him (§§ 160-161, violation of Article 8);
- *Samsin v. Ukraine*, 2021: dismissal and application of legislative lustration measures to former Supreme Court judge (applicability, §§ 39-44 and 50-58, violation of Article 8);
- *Gumenyuk and Others v. Ukraine*, 2021: unlawful prevention of former Supreme Court judges from exercising judicial functions after legislative reform (applicability, §§ 88 and 100, violation of Article 8);
- *Donev v. Bulgaria*, 2021: dismissal of the applicant for infringement of several rules and obligations relating to the duties as a judge and court president (§§ 116-122, inadmissible, manifestly ill-founded);
- *M.D. and Others v. Spain*, 2022: police report on judges who signed a manifesto on the Catalan people's "right to decide" and insufficient inquiry into data leak to press (§§ 61-71, violations of Article 8);
- *Juszczyszyn v. Poland*, 2022: unforeseeable suspension of judge, in connection with the giving of a judicial decision, based on manifestly unreasonable application of law (applicability, §§ 237 and 279-280, violation of Article 8); judge's suspension predominantly aiming to sanction and dissuade him from verifying lawfulness of appointment of judges on recommendation of reformed National Council of the Judiciary (§§ 337-338, violation of Article 18 taken in conjunction with Article 8);
- *Sevdari v. Albania*, 2022: vetting proceedings resulting in the applicant's dismissal from the post of prosecutor due to an isolated professional error and her spouse's failure to pay tax on a small part of his income (applicability, §§ 60-61, 78, 84, 86 and 95, violation of Article 8);
- *Nikëhasani v. Albania*, 2022: dismissal of prosecutor and lifetime ban from re-entering justice system due to serious doubts as to her financial propriety based on findings of vetting process (§§ 114 and 117-126, no violation of Article 8);
- *Ovcharenko and Kolos v. Ukraine*, 2023: dismissal by Parliament of Constitutional Court judges, sanctioned for a judicial opinion on a complex legal issue, without clear interpretation of the imputed "breach of oath" and the scope of their functional immunity; judges' liability for their judicial opinions and the substance of their judicial activity; (applicability, §§ 86 and 91-109, violation of Article 8: requirements of lawfulness and foreseeability; §§ 131-136, inadmissible under Article 18 taken in conjunction with Article 8, manifestly ill-founded).

Article 10[3]:

- *Wille v. Liechtenstein* [GC], 1999: a letter sent to the applicant (the President of the Liechtenstein Administrative Court) by the Prince of Liechtenstein announcing his intention not to reappoint him to a public post constituted a "reprimand for the previous exercise by the applicant of his right to freedom of expression" (§ 50, violation of Article 10);
- *Baka v. Hungary* [GC], 2016: premature termination of the mandate of the President of the Supreme Court following his public statements criticising legislative reforms affecting the judiciary (§§ 140 and 172-174, violation of Article 10 – see also the procedural aspect of Article 10);
- *Pitkevich v. Russia* (dec.), 2001: judge dismissed for allegedly having abused her office to proselytise (inadmissible, manifestly ill-founded);
- *Albayrak v. Turkey*, 2008: disciplinary sanction of a judge for following PKK-related media (§§ 45-46, violation of Article 10);
- *Kayasu v. Turkey*, 2008: criminal conviction and removal from office of a public prosecutor for abuse of authority and insulting the armed forces (§ 107, violation of Article 10);
- *Kudeshkina v. Russia*, 2009: removal from judicial office for making critical statements about the judiciary (§§ 95-98, violation of Article 10);
- *Tosti v. Italy* (dec.), 2009: transfer of a judge following an interview (inadmissible, manifestly ill-founded);
- *Harabin v. Slovakia*, 2012: the President of the Supreme Court found guilty of a disciplinary offence due to his failure to comply with auditing requirements, a disciplinary offence unrelated to his statements or views expressed in the context of a public debate or in the media (§§ 151-152, inadmissible, manifestly ill-founded);
- *Di Giovanni v. Italy*, 2013: disciplinary warning of a judge for having failed in her duty of respect and discretion following her statements in a newspaper interview (§ 58, no violation of Article 10 – see references therein);
- *Brisc v. Romania*, 2018: disciplinary sanction and removal from position as chief prosecutor for imparting to the press information about pending criminal investigations. The applicant had made the impugned statements to the press in the context of discharging his duties as the staff member designated to provide information to the press about investigations that attracted media attention (§§ 124-125, violation of Article 10);
- *Kövesi v. Romania*, 2020: premature termination of chief prosecutor's mandate following public criticism of legislative reforms (§§ 196-199 and 204-212, violation of Article 10: the interference did not pursue a "legitimate aim", and was also not "necessary in a democratic society" on account of, among others, the particular importance of the office held by the applicant and the principle of the independence of prosecutors; see also § 210, for the link between Article 6 and the procedural aspect of Article 10);
- *Goryaynova v. Ukraine*, 2020: disciplinary sanctions and dismissal of prosecutor after publishing on the Internet an open letter to the Prosecutor General of Ukraine in which she had criticised the prosecution authorities with regard to alleged corruption (§§ 54-67, violation of Article 10);
- *Panioglu v. Romania*, 2020: the imposition of a code-of-conduct penalty on judge for publishing unsubstantiated allegations calling into question moral and professional integrity of a fellow judge (§§ 111-126, no violation of Article 10);

[3] This concerns only the situations where a judge was disciplined/sanctioned for statements while in office.

- *Eminağaoğlu v. Turkey*, 2021: disciplinary sanction imposed on the applicant on account of statements and criticisms that he had made to the media about certain high-profile court cases (§§ 121-153, violation of Article 10);
- *Miroslava Todorova v. Bulgaria*, 2021: disciplinary proceedings and sanctions against judge and President of the judges' association in retaliation against her criticism of the Supreme Judicial Council and the executive (§§ 157-164 and 173-181, violation of Article 10; see also §§ 203-214 for a violation of Article 18 taken in conjunction with Article 10);
- *Kozan v. Turkey*, 2022: disciplinary sanction on a serving judge for having shared on a private Facebook group, closed to the general public, a press Article which criticised certain decisions of the High Council of Judges and Prosecutors, without posting any comment himself (§§ 52-70, violation of Article 10);
- *Żurek v. Poland*, 2022: a number of measures taken against a serving judge, member of a judicial council and its spokesperson, following critical views expressed publicly in his professional capacity about legislative reforms affecting the judiciary and the functioning of the judicial system (§§ 205-213 and 220-229, violation of Article 10 – application of the principles laid out in *Baka v. Hungary*);
- *M.D. and Others v. Spain*, 2022: disciplinary proceedings were opened against twenty serving judges for signing a manifesto in favour of the Catalan people's "right to decide", as a result of a complaint lodged by a trade union, but no sanctions were imposed (§§ 83-91, inadmissible, manifestly ill-founded);
- *Mnatsakanyan v. Armenia*, 2022: removal from the office of a judge solely based on the applicant's exercise of his judicial functions (§§ 71-74, incompatible *ratione materiae*).

Article 11:

- *Maestri v. Italy* [GC], 2004: imposition of a disciplinary sanction on a judge on account of his membership of the Freemasons (§§ 30-42, violation of Article 11).

Article 1 of Protocol No. 1:

- *Denisov v. Ukraine* [GC], 2018: dismissal and pecuniary rights (§ 137, inadmissible *ratione materiae*);
- *Anželika Šimaitienė v. Lithuania*, 2020: refusal to compensate judge for unpaid salary for the period of suspension from judicial office (§§ 110-116, violation of Article 1 of Protocol No. 1);
- *Juszczyszyn v. Poland*, 2022: reduction of applicant's salary by 40% for the duration of his suspension (§§ 344-345, inadmissible *ratione materiae*).

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- Report on Judicial Appointments (2007)
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- UN Human Rights Committee, General Comment no. 32: Article 14: Right to Equality before Courts and Tribunals and to Fair Trial, §§ 17 *et seq.*

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