



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

THIRD SECTION

CASE OF ANGERJÄRV AND GREINOMAN v. ESTONIA

(Applications nos. 16358/18 and 34964/18)

JUDGMENT

Art 6 § 1 (criminal and civil) • Impossible under domestic law for lawyers to challenge their judicial removal from civil proceedings for allegedly acting incompetently, inappropriately, irresponsibly and obstructing the proceedings • Art 6 § 1 inapplicable • Judicial removal not constituting the determination of a criminal charge against the applicants or involving the determination of their civil right to practise their profession
Art 8 • Private life • *Ratione materiae* • Negative effects of impugned removal not crossing requisite threshold of seriousness • Application of consequence-based approach

STRASBOURG

4 October 2022

FINAL

30/01/2023

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Angerjärv and Greinoman v. Estonia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Georges Ravarani, *President*,

Georgios A. Serghides,

María Elósegui,

Darian Pavli,

Peeter Roosma,

Andreas Zünd,

Frédéric Krenc, *Judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the applications (nos. 16358/18 and 34964/18) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Estonian nationals, Mr Mart Angerjärv and Mr Maksim Greinoman (“the applicants”), on 2 April and 20 July 2018 respectively;

the decision to give notice to the Estonian Government (“the Government”) of the complaints under Articles 6 and 8 of the Convention concerning the applicants’ removal from civil court proceedings and to declare the remainder of the applications inadmissible;

the parties’ observations;

Having deliberated in private on 21 September 2021, 11 January, 31 May and 30 August 2022,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The similar applications by two lawyers concern the fact that it was impossible for them to challenge decisions by which judges had removed them from court proceedings for obstructing the proceedings and for inappropriate behaviour, and the impact that their removal had on their private lives.

THE FACTS

2. The applicants were born in 1980 and 1979 and live in Viimsi and Tallinn respectively.

3. The applicants were granted leave to represent themselves (Rule 36 of the Rules of Court).

4. The Government were represented by their Agent, Ms M. Kuurberg, of the Ministry of Foreign Affairs.

5. The facts of the case may be summarised as follows.

I. THE CASE OF Mr ANGERJÄRV

6. Mr Angerjärv (“the first applicant”) has been a member of the Bar Association since 2006.

7. In a civil dispute in which he was representing a plaintiff, the Harju County Court, hearing the case in a single-judge formation, had notified the first applicant in advance of a preliminary hearing that the statement of claim had not been sufficiently clear, thus impeding the court from ascertaining the factual circumstances and making a decision regarding the request to hear a witness. The court added that at the preliminary hearing it intended to assess the relevance of the evidence submitted and reject the evidence that had no bearing on the case.

8. During a preliminary hearing on 11 May 2017 the first applicant, as the representative of the plaintiff, disagreed with the court as to the relevance of certain evidence. He subsequently submitted an oral application for the removal of the judge, noting that the judge had threatened him, had relied on irrelevant documents, had rejected relevant evidence and had unjustifiably sided with the defendant. The court, in turn, explained that it would forward the application for the judge’s removal to the President of the Harju County Court and would send a notice about the first applicant to the Bar Association.

9. By a decision of 17 May 2017 the President of the Harju County Court dismissed the first applicant’s application for the removal of the judge. He found that the fact that the judge had been carrying out her role in the context of a preliminary hearing (clarifying the factual situation, the parties’ claims and the evidence they wished to submit in relation to those claims) and had explained why she had rejected certain items of evidence did not give grounds to conclude that the judge had been biased. He also noted that the judge had the right to remove a representative from the proceedings. In such a situation the judge was legally bound to notify the Bar Association of the removal. Informing the parties of the prospect of removal could not be considered to amount to a threat to the first applicant.

10. By a decision of 18 May 2017 the Harju County Court, in the same single-judge formation, removed the first applicant from the proceedings under Article 45 § 2 of the Code of Civil Procedure (“the CCP” – *tsiviilkohtumenetluse seadustik*) (see paragraph 36 below) and notified the Bar Association of that decision. The court added that the first applicant had behaved inappropriately, incompetently, in bad faith and in a manner showing contempt of court. The court gave specific examples of what it considered to constitute such behaviour (such as the first applicant arguing with the judge about the need to clarify the statement of claim, wondering whether evidence could be admitted even if it was irrelevant and insinuating that the judge had

had contact with the defendant's representatives outside the proceedings). The decision was not amenable to appeal.

11. On 2 June 2017 the first applicant lodged an appeal against the decision to have him removed from the proceedings. In accordance with domestic law, the appeal was submitted via the Harju County Court (see paragraphs 41-43 below). The first applicant argued that the exclusion of the right to appeal violated his constitutional rights, and added that in his opinion it was possible to interpret Article 48 of the CCP to the effect that an appeal was possible. Moreover, he stated that under the CCP, decisions to impose a fine on a representative or to impose detention (*arest*) were amenable to appeal. In the event that the court should find that no appeal was possible, the first applicant asked it to declare Articles 48 and 660 of the CCP unconstitutional. He noted that he was no longer representing the plaintiff in the civil proceedings, as the latter had terminated the contract with him.

12. On 5 June 2017 the Harju County Court, composed of the same judge who had given the decision to remove the first applicant from the proceedings, rejected the appeal, noting that the CCP made no provision for such an appeal. It did not consider the relevant Articles of the CCP to be unconstitutional. That decision was amenable to appeal.

13. On 20 June 2017 the first applicant lodged an appeal with the Tallinn Court of Appeal. He repeated, *inter alia*, that the fact that it was impossible for him to appeal against the decision to remove him from the proceedings was unconstitutional, restricting his constitutional right to appeal, his right to property and his right to freedom of enterprise (*ettevõtlusvabadus*), and asked the court to institute constitutional review proceedings. He noted that as he was no longer representing the plaintiff, he could not challenge his removal from the proceedings by way of appealing against the judgment in the principal case.

14. On 27 June 2017 the Tallinn Court of Appeal dismissed the appeal and the application to institute constitutional review proceedings. As to the latter, the court explained that the restriction of the right to appeal against the removal decision had served the purpose of ensuring procedural economy and procedural efficiency (*menetlusökoonoomia ja menetluse tõhusus*) and had been proportionate. The decision of the Court of Appeal was not amenable to appeal.

15. On 12 July 2017 the first applicant lodged a further appeal with the Supreme Court against the decision of the Tallinn Court of Appeal and asked it to declare unconstitutional the provisions which excluded the right to submit the appeal in question.

16. On 14 September 2017 the Court of Honour of the Bar Association decided to terminate the proceedings against the first applicant. It did not ascertain the existence of elements constituting a disciplinary offence (*ei tuvastanud distsiplinaarsüüteo tunnuseid*).

17. On 2 October 2017 the Supreme Court refused to examine the appeal.

18. The Government noted that the first applicant had continued to represent other clients in other court proceedings. In parallel to the proceedings forming the subject matter of the present case, he had also continued to represent the plaintiff in another set of civil proceedings. The first applicant did not contest that information.

II. THE CASE OF Mr GREINOMAN

19. Mr Greinoman (“the second applicant”) has been a member of the Bar Association since 2005.

20. In a civil dispute in which he was representing a plaintiff (a company), the Harju County Court, hearing the case in a single-judge formation, noted that during the proceedings the second applicant had completely changed the initial claim. During a preliminary hearing on 10 April 2017, the second applicant, as the representative of the plaintiff company, admitted that his client had withdrawn the initial claim and stated that he would lodge an application to that effect within a week. Subsequently the Harju County Court repeatedly asked the second applicant to lodge such an application. The second applicant did not do so.

21. The second applicant lodged an application with the President of the Harju County Court for the commencement of disciplinary proceedings against the judge hearing the case (alleging that the court’s request that the claim be withdrawn had been unexpected). Shortly thereafter he also lodged an application for the removal of the judge (alleging that the judge had not been impartial when pressuring him to withdraw the claim). The judge herself also applied to the President of the court to have herself removed from the case, stating that although the accusations against her were groundless, her removal would be in the interests of the proceedings.

22. The President of the Harju County Court dismissed the plaintiff company’s and the judge’s applications for the latter’s removal, noting that the judge had merely carried out her role during the preliminary hearing in seeking to clarify the relevant claims in the face of the second applicant’s contradictory behaviour and could not be considered biased. He also dismissed the application to institute disciplinary proceedings against the judge. The second applicant’s further application to the President of the Supreme Court to have disciplinary proceedings instituted against the judge hearing the case was also dismissed. The President of the Supreme Court further observed that it had been the judge’s duty to clarify what claims the plaintiff company wished to lodge and on what grounds, and that the judge had done exactly that.

23. On 10 November 2017 the Harju County Court found that the plaintiff company had, in substance, withdrawn the initial claims, and decided to discontinue the related proceedings. The plaintiff company appealed, arguing that the decision had been made by an unlawful court composition, owing to

the fact that the judge should have been removed from the proceedings. The plaintiff company also reiterated that the judge was not impartial. The Tallinn Court of Appeal dismissed the appeal, noting that the judge could not be reproached for trying to elucidate the scope of the plaintiff company's claims as that was exactly the purpose of preliminary proceedings. The Supreme Court refused to examine a further appeal by the plaintiff company.

24. On 16 April 2018 the Harju County Court, in the same single-judge formation, decided to remove the second applicant from the proceedings. The court stated that the second applicant had been acting irresponsibly and dishonestly. Despite repeated explanations he had failed to formulate a clear statement of claim. During the proceedings for the judge's removal, the disciplinary proceedings and the appeal proceedings he had recurrently made unsubstantiated allegations that the judge had unduly pressured his client to withdraw its claims. The second applicant's behaviour had not guaranteed the protection of his client's rights and had led to the proceedings being delayed. The decision was forwarded to the Bar Association. It was not amenable to appeal.

25. On 2 May 2018 the plaintiff company lodged an appeal via the Harju County Court (see paragraphs 41-43 below) against the decision to remove its representative – that is, the second applicant – from the proceedings. It argued that the removal decision had been made without hearing the plaintiff company, had been unsubstantiated and had impinged on the plaintiff company's rights to freely choose a representative. The decision had delayed the proceedings and brought about additional costs as the plaintiff company had had to find another representative. The plaintiff company asked the court to declare Article 48 of the CCP unconstitutional in so far as it did not provide for the possibility of appealing against a decision to have a party's representative removed from the proceedings. In the plaintiff company's submission, such a restriction violated the constitutional right of access to court and the right to appeal.

26. On 7 June 2018 the Court of Honour of the Bar Association decided to terminate the disciplinary proceedings against the second applicant. It did not find that the second applicant had behaved inappropriately or had purposefully delayed the proceedings.

27. On 8 May 2018 the Harju County Court rejected the plaintiff company's appeal as it was not allowed under the relevant provisions of the CCP. The court dismissed the application to institute constitutional review proceedings, finding that the restriction on the right to appeal was in the interests of procedural economy, and was proportionate and thus constitutional. The decision was amenable to appeal.

28. The plaintiff company's subsequent appeal to the Tallinn Court of Appeal, in which it repeated its allegation that the restriction on appealing was unconstitutional (see paragraph 25 above), was dismissed on 12 October 2018. The decision was not amenable to appeal.

29. On 29 October 2018 the plaintiff company lodged a further appeal with the Supreme Court, repeating its constitutional complaint. On 7 November 2018 the Supreme Court refused to examine the appeal; however, it noted that Article 48 of the CCP was not unconstitutional.

30. The Harju County Court delivered the judgment in the plaintiff company's civil case. The plaintiff company lodged an appeal and asked its earlier representative, the second applicant, to be readmitted to the proceedings.

31. On 29 May 2019 the judge hearing the case in the Tallinn Court of Appeal informed the parties to the proceedings that the second applicant had been readmitted to the proceedings as the representative of the plaintiff company.

32. The Government submitted that the second applicant, in spite of his removal from the civil court proceedings at hand, had continued to represent other clients in other proceedings.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LEGISLATION

A. Constitution of the Republic of Estonia

33. Article 24 § 5 of the Constitution provides that everyone has the right of appeal to a higher court against a judgment rendered in his or her case, pursuant to a procedure provided for by law.

B. Code of Civil Procedure

34. Articles 45 to 48 of the CCP are to be found in Chapter 7, entitled "Ensuring civil court proceedings" (*tsiviilkohtumenetluse tagamine*). Other than the measures outlined below, this chapter includes the possibility for the court to limit the number of people present at the hearing (in case the number attending hinders the proper functioning of the hearing) or to require compulsory attendance (*sundtoomine*).

35. Article 45 § 1 provides that the court may remove from a hearing a participant in proceedings, or his or her representative or adviser, or a witness, an expert, an interpreter, a translator or another person present at the hearing who fails to comply with an instruction given to ensure order, or who acts in an improper manner in the court hearing or expresses contempt for the court or for other participants in the proceedings.

36. Article 45 § 2 provides that the court may remove from proceedings a representative or an adviser of a participant in the proceedings or may prohibit that person from making statements if he or she is not able to act in court in

accordance with the relevant requirements, including owing to inadequate proficiency in the language, or if, in the course of proceedings before the court, the person has shown himself or herself to be dishonest, incompetent or irresponsible, or has, in bad faith, obstructed the just and expeditious hearing of the matter at the lowest possible cost or has repeatedly failed to comply with the orders of the court.

37. Article 45 § 4 adds that the court has the right to impose a fine or detention for up to seven twenty-four-hour periods on a person who conducts himself or herself in the manner referred to in Article 45 § 1 or on a participant in proceedings or a representative or adviser thereof who has, in bad faith, obstructed the just and expeditious hearing of the matter at the lowest possible cost or who has repeatedly failed to comply with the orders of the court.

38. Pursuant to Article 45 § 5, the court is obliged to inform the Bar Association in the event that a lawyer (*advokaat*) is removed, in accordance with Article 45 §§ 1 and 2, from a court session or from the proceedings.

39. Articles 46 and 47 provide respectively that a fine or detention may be imposed after the person concerned has previously been warned that the court may take such measures.

40. Article 48 provides that a person on whom a fine or detention has been imposed may lodge an appeal against that decision.

41. Article 660 § 1 provides that a participant in proceedings to whom a decision of a county court pertains (*määrusega puudutatud menetlusosaline*) may lodge an appeal against that decision with a court of appeal on condition that lodging such an appeal is permitted by law.

42. Article 661 § 1 provides that an appeal against a decision should be lodged with a court of appeal via the county court whose order is being contested.

43. Article 663 concerns appeals lodged against county court decisions (*määrused*). It provides that an appeal is to be submitted to a county court. The latter verifies whether lodging such an appeal is permitted by law, whether it has been lodged in time and whether it meets the requirements set by law. The county court may decide itself that the appeal should be granted. In the event that the county court considers that the appeal ought to be dismissed, it forwards it immediately to the court of appeal for examination. The county court's refusal to examine the appeal is itself amenable to appeal.

C. Bar Association Act

44. Section 16(5) of the Bar Association Act (*advokatuuriseadus*) provides that proceedings in the Court of Honour are commenced when, *inter alia*, a court has imposed a fine on a lawyer, has forbidden a lawyer to make statements in the proceedings (*keelanud advokaadil teha menetluses avaldusi*) or has removed a lawyer from the proceedings or from being entitled to legal aid.

45. Section 17(2) provides that a lawyer who is subject to proceedings in the Court of Honour has the right to: examine the case file; provide statements and raise objections concerning any issues which arise in the course of the proceedings; submit applications for the removal of a member of the Court of Honour or the person taking minutes if there are reasons to doubt their impartiality; submit evidence and applications and participate in the examination of evidence; put questions to individuals invited to hearings; and receive a copy of the decisions of the Court of Honour. Section 17(4) provides that the Court of Honour must establish all the relevant facts of the matter before it and, if necessary, collect evidence to that effect on its own initiative. The Court of Honour may apply for assistance from an administrative court in order to collect or secure evidence. Pursuant to section 17(5), the Court of Honour must give a reasoned decision regardless of whether a disciplinary offence is established.

46. Section 18 provides that an interested person may lodge an appeal with an administrative court against a decision of the Court of Honour.

47. Section 19 lists various disciplinary punishments that the Court of Honour may impose. These include: a reprimand, a fine, suspension of legal practice for up to one year, disbarment, revocation of the right to act as a bankruptcy trustee for up to five years and revocation of the right to act as a patent attorney for up to five years.

D. Bar Association's proposal for the amendment of the Code of Civil Procedure

48. On 22 August 2017 the Bar Association sent a proposal to the Minister of Justice for the amendment of the regulations concerning the removal of lawyers from court proceedings. It noted that the law, as it stood, did not allow any appeals against a decision to remove a lawyer from court proceedings. It noted that such a removal had an impact on the lawyer's professional activities and could interfere with the parties' right to a fair trial. Thus, either a client or a lawyer should have the right to appeal against such a decision.

49. The Minister of Justice replied on 3 October 2017 noting that the Ministry did not envisage any changes to the impugned regulations. The removal of a lawyer was considered to be a decision at the court's discretion. When taking such a decision, the court had to take into account the adversarial nature of the proceedings. The fact that an appeal against such a decision was impossible was justified by the freedom to choose one's lawyer, as well as by the absence of a statutory obligation to be represented by a lawyer in civil court proceedings. The purpose of civil court proceedings was to adjudicate on claims correctly and swiftly and at the lowest possible cost. The possibility of appealing against the removal of a lawyer would create a parallel dispute alongside the main proceedings that would not, in itself, help with the adjudication of the main case but would deal with the issues of whether and

to what extent the lawyer had been dishonest, incompetent or irresponsible. If the client considered the removal of a judge to constitute a serious procedural violation, he or she could raise the matter in the appeal against the judgment in the main case.

II. RELEVANT DOMESTIC CASE-LAW

A. Concerning the removal of a representative from court proceedings

50. The Supreme Court's judgment of 27 May 2004 in case no. 3-3-1-16-04 concerned a first-instance court's decision in the context of administrative court proceedings to remove a respondent's representative following a request submitted by the applicant in that case. In those proceedings it was the respondent (and not the representative concerned) who appealed against the removal decision. The Supreme Court explained that the removal of a representative was a procedural decision that could have a significant impact on the ability of the participant in the proceedings to defend his or her position. As the law – in this case the Code of Administrative Court Procedure – did not provide for the possibility of challenging such a removal by way of appeal, it was important that the removal decision should carefully consider the statutory purpose of removing a representative from the proceedings, as well as all the factual circumstances, and that the decision should be taken in proceedings that secured the participants an adequate opportunity to make use of their procedural rights. In this case the Supreme Court found that the court that had to rule on a request by one of the participants for the removal of another participant's representative had to grant that other participant the right to be heard and to comment on the possible removal before the decision was taken.

51. The Tallinn Court of Appeal considered in its judgment of 25 February 2013 in case no. 2-11-26347/59 that the defendants' representative had lacked basic legal knowledge relevant to the case and had been clearly incompetent to represent his clients. The court explained that although the right to remove a representative laid down in Article 45 § 2 of the CCP had been established as a right and not a duty of the court, it should nevertheless be understood that the court had the duty to remove a representative if grounds for the removal were clearly present. Civil proceedings entailed the principle that participants in proceedings bore the risk arising from the choice of their representative. In other words, a participant in proceedings was responsible if the representative failed to perform a procedural step in time or failed to provide legal assistance with the necessary diligence or the required level of professional skills. However, if the incompetence and irresponsibility of a representative were manifest, participants in proceedings had to be protected from that representative, even if they had freely chosen him or her.

52. In its judgment of 12 October 2016 in case no. 3-2-1-94-16 the Supreme Court explained that the removal of a representative was a right and not a duty of the court. When removing a representative, the court had to take into account the adversarial nature of the proceedings and the fact that the parties were equal before the law and the court. When a representative was removed from the proceedings, the court could continue adjudicating the case as though the representative had left the proceedings voluntarily. This meant that the participant in the proceedings whose representative had been removed maintained the right to present his or her position in the proceedings. Possible errors by the representative could serve as a basis for possible claims by the client against the representative, but the incompetence of the representative could not, as such, bring about the quashing of the first-instance judgment.

B. Concerning restrictions on the right to appeal and their constitutionality

53. In its judgment of 12 April 2011 in case no. 3-2-1-62-10 the Supreme Court explained the meaning of Article 24 § 5 of the Constitution, noting that it enshrined the right of appeal subject to a simple statutory reservation (that is to say, the right could be restricted by law for any reason compatible with the Constitution). The provision permitted the legislature to impose on the right of appeal, by law, both procedural restrictions, such as the obligation to pay the State fee, procedural time-limits and the procedure for lodging an appeal, and substantive restrictions that excluded appeals against certain types of decisions (in particular, procedural decisions) for reasons compatible with the Constitution. Article 24 § 5 of the Constitution did not give rise to a right to contest all court decisions without any exceptions, and the legislature was competent to make distinctions with regard to the right of appeal depending on the nature of the court decision and relying on reasonable justification.

54. The Supreme Court has on several occasions reviewed the restrictions of the right to appeal in terms of their compatibility with the Constitution.

55. For example, in its judgment of 25 March 2004 in case no 3-4-1-1-04, the Supreme Court declared unconstitutional Article 191 (10) of the Code of Misdemeanour Procedure (in the version valid from 1 September 2002 until 31 December 2003) in so far as that provision had ruled out lodging an appeal against a decision by a first-instance court to refuse to examine a complaint. The Supreme Court explained that since the outcome of misdemeanour proceedings constituted a serious interference with the rights of a person, the possibility of review of final rulings – both judgments and decisions – reached in misdemeanour cases had to be seen as necessary. The court found, therefore, that procedural economy and ensuring the speedy resolution of a case, which were the presumed reasons for excluding the right of appeal, did

not outweigh the damage to the legal order that could result from an incorrect decision in a misdemeanour case.

56. By a judgment of 30 April 2013 in case no. 3-1-1-5-13 the Supreme Court *en banc* declared unconstitutional and repealed Article 385 (26) of the Code of Criminal Procedure to the extent that it did not allow an appeal to be lodged against a decision of a county court judge in charge of execution of court judgments by which a sentence of imprisonment was to be imposed as a replacement for community service. The Supreme Court reasoned that in view of the impact that the decision to impose imprisonment had on fundamental rights (notably on the right to liberty of a convicted person), and taking into account the broad discretion enjoyed by a judge in charge of execution of court judgments, a higher court had to have the opportunity to review the correctness of the decision in question.

57. In a judgment of 30 March 2016 in case no. 3-1-1-24-16 the Supreme Court reached the opinion that the restriction whereby it was not possible to appeal against a court decision by which an accused had been removed from a court hearing was in accordance with the Constitution. The Supreme Court held that the right to participate in the hearing of one's case could be restricted in cases and on grounds laid down by law, primarily in a case where the accused himself or herself either did not wish to participate or had caused a situation where he or she could not participate in the hearing of the case (absconding from the proceedings or violating order at a court hearing). The person's right of appeal was not restricted disproportionately since in the subsequent proceedings the accused could rely on an arguable violation of procedural law in appeal or cassation proceedings. The legitimate aim of the restriction was the need to ensure the normal functioning of court proceedings in order to ensure the hearing of the case within a reasonable time.

THE LAW

I. JOINDER OF THE APPLICATIONS

58. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

59. The applicants complained that it had been impossible for them to challenge the decisions by which they had been removed from court proceedings in which they had been representing their clients. The first applicant contended that he had been left without the "right to proceedings" (*õigus menethusele*) and that he had been removed from the proceedings by means of an unreasoned decision which had been based on false claims. The

first applicant also complained that his removal entailed clearly punitive features and that his removal followed his own application to have the judge removed from the proceedings. He also raised certain concerns as to the impartiality of the first-instance court in carrying out the preliminary assessment of the appeal lodged against his removal, as well as in relation to the judicial clerk (*kohtujurist*) involved in the removal proceedings. The second applicant complained additionally that he had not been given an opportunity to be heard before his removal from the proceedings by submitting his comments before the removal decision be taken. He also complained that the matter was adjudicated by a judge, who essentially prosecuted the applicant for what she perceived as a libel against her person, thus being simultaneously a victim and a referee. As he further complained, the minimum threshold of procedural safeguards had not been met and the applicant was illegally prevented from exercising his right to conduct his profession as a lawyer. The first applicant initially relied on Article 6 § 1 and Article 13 of the Convention, whereas the second applicant relied on Articles 8 and 13 of the Convention.

60. The Court reiterates that it is master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 123-26, 20 March 2018, and *Molla Sali v. Greece* [GC], no. 20452/14, § 85, 19 December 2018). Having notified the parties accordingly, it considers that the applicants' complaints about the impossibility of challenging the removal decisions, about not having been heard and about the alleged partiality of the court fall to be examined under Article 6 § 1 of the Convention, the relevant parts of which read as follows:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility of the complaints under Article 6 § 1 of the Convention

1. The parties' submissions

(a) The Government

61. The Government contested the applicability of Article 6 § 1 to the circumstances of the present case. According to the Government, the matter in issue – the right of a lawyer to continue representing a client in an ongoing civil case – was not a civil right requiring protection in the framework of proceedings that related rather to the rights of the clients. The representatives were not parties to such proceedings, nor did they have independent rights in those proceedings. In such proceedings the courts had to proceed from the rights and interests of the persons being represented and to ensure that the civil disputes were solved justly, within a reasonable period of time and at the lowest possible cost. Removing a representative from the proceedings was

one of the measures that the domestic courts could take in order to fulfil that role. As the removal of lawyers from the proceedings served the interests of the parties, the protection of the lawyers' personal interests could not fall within the scope of protection of Article 6 § 1 of the Convention, even if their removal had financial consequences for them as lawyers. Conversely, lawyers could rely on Article 6 § 1 in the framework of disciplinary proceedings against them before the Court of Honour of the Bar Association (following their removal from the proceedings), and in such cases the right to appeal was guaranteed under domestic law.

62. The Government stressed the difference between disciplinary proceedings concerning the right to continue practising a profession and the circumstances of the present case. They noted that in the applicants' respective cases, the effect of the removal decisions had been limited to the specific court proceedings that were ongoing or, in the case of the second applicant, to only one level of jurisdiction. A participant in proceedings whose representative had been removed could request that he or she be readmitted or complain about the removal when appealing against the judgment in the principal case. This had been done in the case of the second applicant, but not in the case of the first applicant.

63. As concerns the first applicant, the Government asserted that – depending on the approach taken by the Court in respect of the second applicant's obligation to exhaust domestic remedies (see paragraph 64 below) – his application could be considered to have been lodged out of time.

64. With regard to the second applicant, the Government argued that, unlike the first applicant, he had not challenged the constitutionality of the provisions which had not allowed him to contest his removal from the proceedings, and thus had not exhausted domestic remedies. It was only the plaintiff company that had lodged an appeal against the removal decision, alleging a violation of its own rights. The Government contended that the fact that the domestic courts had found the relevant provisions of the CCP to be constitutional in the series of appeals lodged by the first applicant was irrelevant. The second applicant could not have been aware, at the relevant time, of the decisions given in respect of the appeals lodged by the first applicant as they had not been made publicly accessible.

65. In addition, the Government averred that the complaints submitted by both applicants under Article 6 § 1 were manifestly ill-founded or, alternatively, that they had not suffered a significant disadvantage. The removal from the proceedings, which in the case of the second applicant had been limited to the proceedings before the first-instance court, had not damaged the lawyer-client relationship and had not restricted the applicants' other professional activities.

(b) The first applicant

66. The first applicant argued that Article 6 § 1 was applicable and submitted that there were no other grounds of inadmissibility. The first applicant agreed with the Government that the right to represent a client was not a civil right that a lawyer should be able to protect in the framework of the main civil proceedings (which did not concern the rights of the lawyer but those of the client). However, he objected to the fact that despite having suffered serious material consequences due to his removal, there had been no possibility of separate proceedings in which his rights could be protected. The rights of lawyers should also be subject to a fair hearing, just like the rights of their clients. He stated that his removal had resembled a criminal punishment.

67. The removal decision had not been open to a challenge in any other manner except by means of instituting constitutional review proceedings. The six-month deadline for lodging the application with the Court had started running from when the Supreme Court had given its decision and the application had thus been lodged in time. The fact that the second applicant had been readmitted to the proceedings was irrelevant as such a possibility was not provided for in domestic law – the removal had been for the entirety of the proceedings at all levels of jurisdiction.

(c) The second applicant

68. The second applicant argued that Article 6 § 1 of the Convention was applicable under its civil limb. Not only had he suffered loss of income for the work he had been unable to continue with, but he had also had to draft free of charge the plaintiff company's appeals against the removal order. Moreover, his removal had undermined his reputation in the eyes of his client, his colleagues and the opposing party, as well as among judges. Therefore, even a one-off decision to remove him from the proceedings, followed by disciplinary proceedings, had had a significant negative impact on his ability to continue his work as a lawyer. He asserted that lawyers had a subjective right, which was also recognised in Estonia, to perform their professional functions without undue interference.

69. The second applicant also stated that he had not had any accessible and effective domestic remedies against the removal decision that he could have pursued for exhaustion purposes. He noted that the first applicant's appeals against the decision by which he had been removed from the proceedings had been dismissed by the domestic courts and that the courts had found the limitation of the right to appeal to have been constitutional. Moreover, the appeals of his client, the plaintiff company, against the removal decision had not been successful. There was no reason to believe that had he lodged an appeal, it would have been successful.

2. *The Court's assessment*

70. The Government raised a number of preliminary objections to the admissibility of the applicants' complaints, including an objection that they are incompatible *ratione materiae* with the provisions of the Convention.

71. In addition, the Government raised preliminary objections concerning the question of exhaustion of domestic remedies and compliance with the six-month time-limit. Finally, they asserted that the applicants had not suffered a significant disadvantage and that their complaints were manifestly ill-founded.

(a) *Compatibility ratione materiae*

72. As concerns the applicability of Article 6 § 1, the Government argued that Article 6 § 1 was inapplicable to the proceedings in question, considering that they did not concern a "civil right". By contrast, the first applicant considered that his removal from the proceedings amounted to a criminal punishment and the second applicant considered Article 6 § 1 to be applicable under its civil limb.

73. The Court reiterates that, as the question of applicability of a particular provision of the Convention or its Protocols is an issue of the Court's jurisdiction *ratione materiae*, the general rule of dealing with applications should be respected and the relevant analysis should be carried out at the admissibility stage unless there is a particular reason to join this question to the merits (see *Savickis and Others v. Latvia* [GC], no. 49270/11, § 119, 9 June 2022).

74. In the specific circumstances of the case at hand, the Court considers that the applicability of Article 6 § 1 raises complex questions of law which are not susceptible of being resolved at the admissibility stage (see *Ferrazzini v. Italy* [GC], no. 44759/98, § 18, ECHR 2001-VI). It is therefore necessary to join the question of applicability of Article 6 § 1 to the merits of the case.

(b) *Exhaustion of domestic remedies and compliance with the six-month time-limit*

75. The Government argued that – depending on the line that the Court adopted in respect of the applicants' approach to arguing that the impossibility of challenging their removal from the proceedings was unconstitutional – either the first applicant's application could have been submitted out of time or the second applicant could have failed to exhaust the relevant domestic remedies.

76. The Court notes that in the case at hand there is no disagreement that, under the domestic law, the court decision to remove the applicants from the proceedings was not open to any type of challenge, including an appeal to a higher court. Yet it was this exact statutory limitation that was at the heart of the applicants' concern under Article 6 of the Convention.

77. The Court refers to the subsidiary nature of the machinery of protection established by the Convention (see, for general principles about the exhaustion of domestic remedies, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014), as well as to its findings about the operation of the constitutional review mechanism in Estonia (see *Fizgejer v. Estonia* (dec.), no. 43480/17, §§ 70-77, 2 June 2020). In this connection it considers that the first applicant's decision to appeal against the removal decision – while at the same time arguing that the statutory limitation on lodging such an appeal, as well as the lack of any other procedure to challenge the removal decision, was unconstitutional – could not be seen as an unreasonable step in attempting to put right the alleged violation at the domestic level. Indeed, it is to be noted that the domestic courts, particularly the Tallinn Court of Appeal, analysed the substance of the first applicant's complaint that the impossibility of obtaining a judicial review of the removal decision was unconstitutional.

78. The domestic proceedings ended on 2 October 2017, when the Supreme Court refused to examine the first applicant's appeal. As he lodged his application with the Court on 2 April 2018, he has complied with the six-month time-limit.

79. The Court notes that the second applicant did not personally try to challenge his removal from the proceedings. Instead, an appeal to that effect was – albeit unsuccessfully – brought by his client, which argued, *inter alia*, that the impossibility of challenging the lawyer's removal was not in accordance with the Constitution.

80. The Court further observes that by the time the second applicant was removed from the proceedings on 16 April 2018, the challenge proceedings brought by the first applicant had already ended and his complaint had been dismissed (see paragraph 17 above). By that time the Bar Association had also made a proposal to the Minister of Justice to amend Article 45 § 2 of the CCP, proceeding from the presumption that under the law in force, no appeals lay against a decision to remove a lawyer from court proceedings, and the Minister had responded that no amendments were envisaged (see paragraphs 48-49 above).

81. Therefore, by the time the second applicant was removed from the proceedings, not only had the first applicant been unsuccessful in bringing his appeal, but also the Bar Association – of which the second applicant was a member – had spoken out against the impugned restriction. However, the Court does not find it necessary to establish whether the second applicant could have learned about the unsuccessful appeals lodged by the first applicant by some means other than a publicly accessible database. Given the specific circumstances and timeline referred to above and noting that the exhaustion rule needs to be applied with some degree of flexibility and without excessive formalism, the Court understands that the second applicant

could have legitimately considered that an attempt to challenge the constitutionality of the impugned restriction would be futile.

82. Proceeding from the above reasoning, the Court concludes that in the particular circumstances of his case the second applicant was not obliged to avail himself of the remedy in question. The Court accordingly dismisses the Government's preliminary objection concerning the second applicant's failure to exhaust domestic remedies.

83. The Court further notes that the second applicant lodged his application with the Court on 20 July 2018, that is to say, within six months from his removal from the proceedings. Accordingly, he has complied with the six-month time-limit.

(c) Other objections to the admissibility and conclusion as to admissibility

84. As to whether the applicants have suffered a significant disadvantage with reference to their Article 6 rights, the Court considers that the issue of being able to challenge what they considered to be their unwarranted removal from the proceedings touched upon their position as lawyers in the exercise of their professional activities and was a matter of principle for them. The Court, therefore, does not share the Government's view that the applicants have not suffered a significant disadvantage.

85. It further notes that the complaints under Article 6 § 1 are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Applicability of Article 6 § 1

86. The Court will now examine whether Article 6 § 1 could be considered applicable to the facts of the present case either under its criminal limb or its civil limb.

(a) Applicability of the criminal limb of Article 6

87. The Court will first examine whether the removal of the applicants from the proceedings constituted the determination of a criminal charge against them. The Court's established case-law sets out three criteria, commonly known as the "Engel criteria" (see *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22), to be considered in determining whether or not there was a "criminal charge". The first criterion is the legal classification of the offence under national law; the second, the very nature of the offence; and the third, the degree of severity of the penalty that the person concerned risks incurring. In respect of the last-mentioned criterion, the Court has also considered the nature of the penalty (see *Gestur Jónsson and Ragnar Halldór Hall v. Iceland* [GC], nos. 68273/14 and 68271/14, § 75, 22 December 2020, with further references). The second and third criteria are alternative and not necessarily cumulative. This, however,

does not exclude a cumulative approach where a separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a criminal charge (*ibid.*, § 78; see also *Sergey Zolotukhin v. Russia* [GC], no. 14939/03, § 53, ECHR 2009).

88. The Court considers that the behaviour for which the applicants were removed from the court proceedings – allegedly acting incompetently, inappropriately and irresponsibly and obstructing the proceedings – did not, by its nature, amount to a criminal offence and was not treated as such under domestic law.

89. The removal of the applicants from the proceedings was based on Article 45 § 2 of the CCP. This Article is to be found in Chapter 7 of the CCP, which does not make provision for criminal punishment but lays down various measures intended to ensure the progress of proceedings (see paragraph 34 above).

90. The Court reiterates that rules enabling a court to react to disorderly conduct in proceedings before it are a common feature of legal systems of the Contracting States. Such rules derive from the indispensable power of a court to ensure the proper and orderly functioning of its own proceedings (see *Gestur Jónsson and Ragnar Halldór Hall*, cited above, §§ 81 and 89; compare *Žugić v. Croatia*, no. 3699/08, § 66, 31 May 2011). In the present case, the removal of the applicants from the respective court proceedings served the precise aim of ensuring the proper and expeditious administration of justice. The Court notes, moreover, that Article 45 § 2 of the CCP, under which the applicants were removed from the proceedings, concerns representatives or advisers of a participant in the proceedings, that is to say, a specific category of people possessing a particular status, and not a population as a whole (see *Gestur Jónsson and Ragnar Halldór Hall*, cited above, §§ 86-87; compare and contrast *Zaicevs v. Latvia*, no. 65022/01, § 33, 31 July 2007).

91. Lastly, given that the removal of the lawyers concerned only the specific proceedings in issue (and in practice was limited to only the first level of jurisdiction in the case of the second applicant), the measure cannot be said to have been particularly severe.

92. The Court observes that both of the other measures provided for in Articles 45-47 of Chapter 7 of the CCP, namely a fine and detention, can be imposed only after a prior warning, and decisions to impose either of those measures are subject to appeal (see paragraphs 37, 39 and 40 above).

93. In view of the above considerations, the Court finds that the removal of the applicants from the court proceedings did not constitute the determination of a criminal charge against them.

94. Accordingly, the Court finds that the criminal limb of Article 6 § 1 is not applicable to the circumstances of the present case.

(b) Applicability of the civil limb of Article 6

95. The next question to consider is whether the removal of the applicants from the proceedings could be considered to amount to the determination of any of their civil rights or obligations.

96. The general principles for the applicability of the civil limb of Article 6 § 1 were reiterated in *Denisov v. Ukraine* [GC] (no. 76639/11, §§ 44-45, 25 September 2018).

97. The Court acknowledges that the right of the applicants – members of the Bar Association – to practise as lawyers is a “civil right” within the meaning of Article 6 § 1 of the Convention (see *Hurter v. Switzerland* (dec.), no. 53146/99, 8 July 2004). The Court further observes that it is by means of private contractual relationships with their clients that lawyers can avail themselves of the right to practise their profession. That right entails advising and representing or defending clients both within and outside court proceedings. The parties have not disputed that such a right is, as such, recognised under domestic law.

98. The Court has also previously found that disciplinary proceedings in which the right to continue to practise a profession is at stake give rise to disputes (“*contestations*”) over civil rights within the meaning of Article 6 § 1 of the Convention. Article 6 § 1 has been found to be applicable even in cases where only a temporary suspension of the right to exercise the profession was in issue (see *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, § 49, Series A no. 43, where the complete suspension of the right to exercise the medical profession lasted between fifteen days and three months) or where – by way of interim measure – the right to act as a representative before certain courts was withdrawn in the context of disciplinary proceedings (see *Helmut Blum v. Austria*, no. 33060/10, §§ 63-67, 5 April 2016, where the measure stayed in force for nearly four years). Indeed, the Court has explained that in the disputes (“*contestations*”) contemplated by Article 6 § 1 the actual existence of a “civil” right may be at stake, but so may the scope of such a right or the manner in which the beneficiary may avail himself or herself thereof (see *Le Compte, Van Leuven and De Meyere*, cited above, § 49).

99. Turning to the facts of the present case, the Court observes that the removal of the applicants from the proceedings was not a sanction imposed in the context of disciplinary proceedings under domestic law. Rather, it was a procedural measure that a judge could take in the course of ongoing court proceedings and it served the aim of ensuring the proper administration of justice (see paragraph 34 above; see also the domestic courts’ reasoning in paragraphs 10 and 24 above). The disciplinary proceedings conducted by the Court of Honour of the Bar Association – which could result in the imposition of more general and/or far-reaching disciplinary sanctions (see paragraphs 44 and 47 above) – would only follow the application of the impugned procedural measure. The Court of Honour proceedings would afford

appropriate procedural guarantees and the possibility of an appeal against an unfavourable decision (see paragraphs 45-46 above). In any event, as in fact happened in the applicants' cases, the removal of lawyers from specific court proceedings for any of the reasons listed in Article 45 § 2 of the CCP does not predetermine the outcome of the disciplinary proceedings in the Court of Honour.

100. Overall, the Court considers that what matters is not necessarily whether the impugned measure was applied formally within the context of disciplinary proceedings or some other type of proceedings, but rather the impact of the measure on the right to practise the profession of lawyer. In that regard, the Court cannot overlook that in the present case, the impugned measure did not entail a general ban on representing (any) clients before (all or certain) courts, but rather the removal of the applicants from ongoing court proceedings in which they were representing specific clients. The applicants remained free to advise those particular clients outside court hearings (that is to say, the removal decision did not automatically terminate their client contracts), and to provide their services to any other potential clients and could therefore continue practising their profession.

101. In such circumstances, and taking into account considerations expressed in paragraph 90 above, the Court is of the view that the impugned measure cannot be considered to have involved the determination of their "civil right" to practise their profession.

102. Accordingly, the Court finds that the civil limb of Article 6 § 1 is not applicable to the circumstances of the present complaints.

(c) Conclusion as to the applicability of Article 6 § 1

103. In the light of the reasoning above, the Court concludes that Article 6 § 1 of the Convention does not apply to the facts which form the basis of the applicants' complaints.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

104. The applicants also complained that the decisions to remove them from the proceedings had prevented them from carrying out their professional activity. They referred to the substantial pecuniary damage they had sustained in the form of lost earnings, as well as to the damage caused to their good name and (professional) reputation. The first applicant relied on Article 1 of Protocol No. 1. The second applicant relied on Article 8 of the Convention.

105. Being the master of the characterisation to be given in law to the facts of the case, the Court considers that both applicants' complaints, in so far as they concern the professional, social and financial impact of their removal from the proceedings, are to be examined under Article 8 of the Convention.

106. Article 8 of the Convention reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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

A. The parties’ submissions

1. The Government

107. The Government argued that the first applicant’s complaint under Article 8 was inadmissible as he had not raised it either before the domestic courts or before the Court. The Government noted that in his domestic appeals, the first applicant had not referred to the violation of his honour and good name, but rather had relied on the protection of property (referring to loss of earnings) and on freedom of enterprise. He had not availed himself of any other domestic remedies to protect his honour. He had thus either failed to exhaust the domestic remedies, or alternatively – if no effective domestic remedies were found to have existed – had not complied with the time-limit for lodging his complaint with the Court (which in that event should have been done within six months of the occurrence of the alleged violation).

108. The second applicant had himself not contested the constitutionality of his removal from the proceedings and had thus not exhausted domestic remedies.

109. In any event, the Government argued, in respect of both applications, that Article 8 was not applicable in the circumstances of the case at hand. The complaints should therefore be declared inadmissible *ratione materiae*.

110. Referring to the reason-based approach used in the Court’s case-law, the Government submitted that the removal of the applicants from the court proceedings had not been connected to their personal or private sphere but had clearly resulted from their behaviour as professionals during the proceedings.

111. Referring to the consequence-based approach, the Government argued that the applicants’ removal from the court proceedings (which, in the case of the second applicant, had been limited to the first-instance court) had had limited impact over time and had not affected the applicants’ professional and social reputation to a sufficient degree to warrant the application of Article 8. The removal of the applicants from the proceedings had not been publicised to a wider audience and thus could not have harmed their honour and good name. In particular, the removal decisions were not publicly available; the decisions of the Court of Honour of the Bar Association had not been made public; and the first applicant’s name had been replaced by his initials in the decision of 5 June 2017 by which the Harju County Court had

dismissed his appeal. The Government asserted that although the applicants might have lost part of their fees for the legal services they had provided, this had not been a serious material consequence. Removal from hearings did not mean that the applicants could not either prepare documents for their specific clients or instruct their colleagues to do so. Moreover, it appeared that the applicants had not lost the respective client-lawyer relationships: the first applicant had continued to represent the same client in another set of civil proceedings and the second applicant had continued to represent the same client at the appellate and cassation levels in the same set of civil proceedings. In any event, the removal decisions had not constituted a ban on acting as a lawyer.

112. Lastly, the Government averred that the applicants' complaints under Article 8 were in any event manifestly ill-founded and that neither of them had suffered a significant disadvantage.

2. The first applicant

113. The first applicant's arguments as to the exhaustion of domestic remedies and compliance with the six-month time-limit are outlined above (see paragraph 67 above). He added that he had relied before the domestic courts on the provisions of the Estonian Constitution that accorded with the relevant provisions of the Convention.

114. In his initial application lodged with the Court, the first applicant pointed out that the removal decision had caused him substantial pecuniary damage in the form of lost earnings. In his observations sent to the Court during the proceedings, he also submitted that the removal had harmed his good name and reputation. He asserted in addition that interference with a person's good name and reputation did not need to take place publicly or before a wide audience or involve a wide range of people.

115. The first applicant disagreed with the Government's argument that he could have availed himself of another effective remedy to protect his honour.

3. The second applicant

116. The second applicant's arguments as to the exhaustion of domestic remedies are outlined above (see paragraph 69 above).

117. In his initial application lodged with the Court, the second applicant submitted that the removal decision had prevented him from practising his profession. In his observations sent to the Court during the proceedings, the second applicant also referred to his loss of income due to the removal decision and to damage to his professional reputation in the eyes of his client, his colleagues and judges.

B. The Court's assessment

118. Taking note of the Government's preliminary objections to the admissibility of the complaints submitted under Article 8 of the Convention, the Court considers that it first has to examine whether Article 8 is applicable to the present case, and accordingly whether it has jurisdiction *ratione materiae* to examine the relevant complaint on the merits.

119. In this connection, the Court notes that while the case at hand does not involve an employment-related dispute in the strict sense, it nonetheless concerns unfavourable measures employed in the context of a person's professional life (see *Denisov*, cited above, § 115, where, alongside dismissal, demotion and non-admission to a profession, a reference was made to "other similarly unfavourable measures"). Therefore, the Court considers that the general principles concerning the applicability of Article 8 of the Convention laid down in *Denisov* are also relevant to the present case (see *Bagirov v. Azerbaijan*, nos. 81024/12 and 28198/15, § 87, 25 June 2020, where the same general principles were applied in circumstances involving the suspension from practice and subsequent disbarment of a lawyer, and see also, *mutatis mutandis*, *Polyakh and Others v. Ukraine*, nos. 58812/15 and 4 others, §§ 207-11, 17 October 2019; *Convertito and Others v. Romania*, nos. 30547/14 and 4 others, § 29, 3 March 2020; and *Platini v. Switzerland* (dec.), no. 526/18, § 56, 11 February 2020).

120. The Court reiterates that the notion of "private life" within the meaning of Article 8 of the Convention is a broad term not susceptible to exhaustive definition. It can embrace multiple aspects of the person's physical and social identity. Article 8 protects in addition a right to personal development and the right to form and develop relationships with other human beings and the outside world, including relationships of a professional or business nature. It is, after all, in the course of their working lives that the majority of people have a significant opportunity to develop relationships with the outside world (see *Denisov*, cited above, §§ 95-96, 100-09 and 115-17; see also *Bagirov*, cited above, § 87).

121. As regards the applicability of Article 8 of the Convention, the Court is first required to examine the way in which private-life issues could arise in the present case.

122. In that connection the Court observes that the removal of the applicants from the respective court proceedings was based on their conduct in the exercise of their professional function. In other words, the applicants were removed in response to their actions as representatives of their clients in civil proceedings. The applicants have not claimed that the impugned measures were based on reasons or factors relating to their private life.

123. In such circumstances, the Court considers it appropriate to follow a consequence-based approach and to examine whether the impugned measures had sufficiently serious negative consequences for the applicants' private life,

in particular as regards their “inner circle”, their opportunities to establish and develop relationships with others, and their reputation. In that connection the Court emphasises that in cases where it employs the consequence-based approach, an analysis of the seriousness of the effects of the impugned measures occupies an important place. It is thus an intrinsic feature of the consequence-based approach under Article 8 that convincing evidence showing that the threshold of severity was attained has to be submitted by the applicant (see *Denisov*, cited above, §§ 110 and 114).

124. Turning to the facts of the present case, the Court observes that both applicants argued that they had been prevented from carrying out their professional activity as a result of the removal decision. They further stated that their removal had harmed their good name and professional reputation and had had serious material consequences for them.

125. As to the applicants’ argument that they had been prevented from carrying out their professional activity, the Court notes that they were not disbarred, nor were their professional activities suspended (compare and contrast *Bagirov*, cited above). Although they were removed from the specific court proceedings in issue, they could carry on their professional activities, including representing clients in other court proceedings. The Government have submitted that the applicants did in fact continue to represent clients (including the same client, in the case of the first applicant) in other cases, despite having been removed from the civil proceedings in issue (see paragraphs 18 and 32 above). The applicants have not contested that information. Moreover, the second applicant was readmitted to the proceedings at the second level of jurisdiction (see paragraph 31 above). Against that background, although it is not inconceivable that the applicants may have suffered some financial loss as a result of being removed from the proceedings (or from a particular stage of the proceedings, in the case of the second applicant), the applicants have not put forward any evidence to suggest that any such repercussions were so significant as to constitute an interference with their rights guaranteed by Article 8 of the Convention.

126. The Court notes in addition that the applicants did not raise any allegations about the impact of the removal decisions on their good name and professional reputation at the domestic level (see *Denisov*, cited above, § 114).

127. On the basis of the above reasoning, and in so far as the applicants identified and raised the private-life repercussions of the removal decisions at the domestic level (concerning impediments to their professional activities and related financial loss), the Court finds that the negative effects which the impugned measures had on the applicants’ private life (in particular as regards their “inner circle” and their opportunities to establish and develop relationships with others) did not cross the threshold of seriousness for an issue to be raised under Article 8 of the Convention.

128. It follows that this Article is not applicable and that the applicants' complaints must be dismissed as incompatible *ratione materiae* with the provisions of the Convention pursuant to Article 35 §§ 3 (a) and 4.

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to join the applications;
2. *Joins*, unanimously, to the merits the Government's preliminary objection concerning the applicability of Article 6 § 1 of the Convention and *declares* admissible the complaints based on that provision;
3. *Declares*, by a majority, the complaint concerning Article 8 of the Convention inadmissible;
4. *Holds*, by four votes to three, that Article 6 § 1 does not apply in the present case.

Done in English, and notified in writing on 4 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Georges Ravarani
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) Dissenting opinion of Judge Serghides;
- (b) Dissenting opinion of Judge Krenc joined by Judge Zünd.

G.R.
M.B.

DISSENTING OPINION OF JUDGE SERGHIDES

I. INTRODUCTION

1. The present judgment and, of course, this opinion concern two applications which, because of their similar subject matter, the Court found appropriate to examine jointly in a single judgment. The two applications concerned civil cases where the applicants were lawyers representing their clients. Though each of the applicants asked for the removal of the judge from the proceedings, the judge eventually removed them from being lawyers in the proceedings, with the result that both applicants complained before the Court that their right to a fair hearing under Article 6 of the Convention and their right to respect for their private life under Article 8 of the Convention had been infringed.

2. In particular, as is stated in paragraph 59 of the judgment, the first applicant contended that he had been left without the “right to proceedings” and that he had been removed from the proceedings by means of an unreasoned decision which had been based on false claims. The same applicant also complained that his removal entailed clearly punitive features and that it had followed his own application to have the judge removed from the proceedings. He also raised certain concerns as to the impartiality of the first-instance court in carrying out the preliminary assessment of the appeal lodged against his removal, as well as in relation to the judicial clerk involved in the removal proceedings. The second applicant complained additionally that he had not been given an opportunity to be heard before his removal from proceedings by submitting his comments before the removal decision was taken. He also complained that the matter had been adjudicated by a judge who had essentially prosecuted the applicant for what she perceived as a libel against her person, thus being a simultaneously a victim and a referee. As he further complained, the minimum threshold of procedural safeguards had not been met and the applicant had been illegally prevented from exercising his right to conduct his profession as a lawyer. Finally, both applicants complained that it had been impossible for them to challenge the decisions by which they had been removed from court proceedings in which they had been representing their clients.

3. It is clear from the above that both applicants questioned and raised in essence the impartiality of the judge who removed them from the case.

4. I respectfully disagree with point 4 of the operative part of the judgment that Article 6 § 1 does not apply in the present case. This opinion argues that not only is Article 6 § 1 applicable in the present case but that also there has been a violation of that provision. The opinion is focused only on the Article 6 complaint and not also on the Article 8 complaint, which was found

inadmissible by the majority of the Court (see paragraph 128 of the judgment and point 3 of its operative part).

5. This opinion is written in accordance with the practice followed in *Ferrazzini v Italy* ([GC], no. 44759/98, ECHR 2001-VII). The Court in that case held that Article 6 § 1 did not apply, instead of holding that it was inadmissible, thus opening the door for separate opinions to be written, as happened in the present case.

6. The purpose of this opinion is to argue that Article 6 is applicable in the present case and that there has been a violation of that provision based on the lack of the impartiality guarantee provided under Article 6 § 1 of the Convention, which rendered the trial unfair as a whole.

II. ON THE APPLICABILITY OF THE CIVIL LIMB OF ARTICLE 6

7. I respectfully disagree with the judgment that the impugned measure cannot be considered to have involved the determination of the applicants' "civil right" to practise their profession (see paragraph 101 of the judgment).

8. In my submission, what matters is not necessarily whether the impugned measure was applied formally within the context of disciplinary proceedings or some other type of proceedings, but rather the impact of the measure on the right to practise the profession of lawyer (compare and contrast *Žugić v. Croatia*, no. 3699/08, § 63, 31 May 2011, which concerned a fine imposed on a lawyer for contempt of court).

9. In the present case, the dispute concerned the right of the applicants to continue representing their clients in the specific civil court proceedings, and the outcome of the dispute, namely the removal of the applicants from the court proceedings, was therefore decisive for this aspect of their right to practise their profession.

10. Of course, the applicants, after their removal from the ongoing court proceedings, remained free to advise their clients outside court hearings and to provide their services to any other potential clients. They could also continue practising their profession. However, in my opinion, the fact that the applicants' removal from the proceedings arguably had only a limited impact on their overall professional life is not decisive in itself for the issue of the applicability of Article 6 to the present case, since for the civil limb of Article 6 to be applicable, it suffices that the dispute concerned the scope of a civil right or the manner in which the beneficiary could avail himself or herself thereof.

11. The principle of effectiveness or of the effective protection of human rights, which underlies all Convention provisions guaranteeing human rights, applies not only with regard to the merits stage of a case, but also with regard to its admissibility or applicability stage. Not applying the principle of effectiveness in the present case at the admissibility stage would render void the right to a fair trial at the root of its protection. Any restrictive

interpretation of a right at either of the above stages would militate against the principle of effectiveness. In this connection, the Court held in *Delcourt v. Belgium* (17 January 1970, § 25, Series A no. 11):

“In a democratic society within the meaning of the Convention, the right to a fair administration of justice holds such a prominent place that a restrictive interpretation of Article 6 para. 1 would not correspond to the aim and the purpose of that provision.”

12. Furthermore, one cannot lose sight of the serious impact of the impugned removal decisions on the applicants’ specific role as lawyers. Lawyers are assigned a fundamental role in a democratic society, that of representing and defending litigants (see *Michaud v. France*, no. 12323/11, § 118, ECHR 2012) and are directly involved in the functioning of the justice system and in the defence of a party (see *Morice v. France* [GC], no 29369/10, § 148, ECHR 2015).

13. In this connection, the decisions to remove the applicants had a significant effect on their right to represent their clients independently in the proceedings concerned, and there is no doubt that representing litigants before the courts is one of the most important functions of a lawyer.

14. In replying to one of the arguments of the Government, it should be clarified that the proceedings in the Court of Honour of the Bar Association do not entail the possibility of readmitting the lawyer concerned to the main proceedings from which he or she has been removed. The possibility of conducting such proceedings subsequently is not relevant in determining the applicability of Article 6 of the Convention to the proceedings in which the applicants were removed from the civil court proceedings.

15. In view of the above, I conclude that the civil limb of Article 6 § 1 is applicable to the circumstances of the present case.

III. ON THE MERITS OF ARTICLE 6 § 1

A. Whether there was a lack of the impartiality guarantee

16. The removal decisions, which had very serious effects on the applicants’ function as lawyers in the proceedings and on their relations with their clients, were taken after both applicants had requested that the judges in question be removed from the proceedings and after the second applicant had asked for disciplinary proceedings to be initiated against the judge in his case.

17. Hence, I consider that the circumstances of the case are sufficient to raise a reasonable doubt in the eyes of an objective external observer as to the judge’s impartiality (see, *mutatis mutandis*, *Kyprianou v. Cyprus* [GC], no. 73797/01, §§ 118-21, ECHR 2005-XIII).

18. Common sense, the principles of natural justice (including, of course, the notions of justice and fairness), and a “moral reading”, to use Dworkin’s

term,¹ of the Article 6 guarantee of an impartial tribunal can be aids, in my view, to assisting any objective observer who looks at the particular circumstances of a case to consider whether a reasonable doubt as to a tribunal’s impartiality is raised, without overlooking, at the same time, that courts have the power to ensure the proper and orderly functioning of their proceedings.

19. It should be emphasised in this connection that even appearances may be of a certain importance or, in other words, “justice must not only be done, it must also be seen to be done”.² This maxim has been adopted by the Court when dealing with objective impartiality (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 149, 6 November 2018; *De Cubber v. Belgium*, 26 October 1984, § 26, Series A no. 86; and *Delcourt*, cited above, § 31). As the Court held in *De Cubber* (cited above, § 26):

“[I]t is not possible for the Court to confine itself to a purely subjective test; account must also be taken of considerations relating to the functions exercised and to internal organisation (the objective approach). In this regard, even appearances may be important ...”

On this point, Harris, O’Boyle and White have also observed:

“The *objective* test is comparable to the English doctrine that ‘justice must not only be done: it must also be seen to be done.’ In this context, the Court emphasizes the importance of ‘appearances’.”

And, as the Court stated in *Piersack v. Belgium* (1 October 1982, § 30, Series A no. 53), in an impartiality case:

“What is at stake is the confidence which the courts must inspire in the public in a democratic society.”³

20. Referring to a relevant passage from *Kyprianou* (cited above, § 119) that explains the necessity and importance of the guarantee of the requirement of objective impartiality, Paul Lemmens rightly observes that “by adopting an objective approach in addition to a subjective approach, the Court has intentionally given a wide interpretation to the guarantee of impartiality”,⁴ and such a broad interpretation of that guarantee is, in my view, mandated by the principle of effectiveness. In this connection, Paul Lemmens also argues that an important element that regularly recurs when the Court adopts a wide

¹ See Ronald Dworkin, “Law’s Ambitions for Itself” (1985), 71(2) *Virginia Law Review* 173, at pp. 176, 178, 181-82 and 185; Ronald Dworkin, *Law’s Empire* (Bloomsbury, 1986, Hart Publishing, 2021), p. 411; and Ronald Dworkin, *Freedom of Law: The Moral Reading of the American Constitution* (Harvard University Press, 1997).

² This dictum was laid down by Lord Hewart, the then Lord Chief Justice of England, in the case of *Rex v. Sussex Justices*, [1924] 1 KB 256.

³ See Harris, O’Boyle and White, *Law of the European Convention on Human Rights*, 4th edition (Oxford University Press, 2018), p. 452.

⁴ See Paul Lemmens, “The Right to Fair Trial and its Multiple Manifestations – Article 6(1) ECHR”, in Eva Brems and Janneke Gerards (eds), *Shaping Rights in the ECHR* (Cambridge University Press, 2013), p. 305.

interpretation of Article 6 § 1 of the Convention is the need to avoid the guarantees of Article 6 § 1 becoming merely theoretical or illusory and to ensure that they are practical and effective⁵ – which is one of the formulations of the principle of effectiveness.

21. Consequently, considering the circumstances of the case and the case-law of the Court on objective impartiality, I come to the conclusion that there has been a lack of the Article 6 guarantee concerning the objective impartiality of a tribunal in the present case.

B. Consequences of the lack of the impartiality guarantee for the overall fairness of the trial – Hierarchy of Article 6 guarantees

22. A lack of the impartiality guarantee infects the whole procedure and undermines the fairness of the trial as a whole.

23. According to the Court’s prevailing practice,⁶ a tribunal’s lack of independence and impartiality cannot guarantee a fair trial under Article 6 of the Convention, and in that event it is “unnecessary” or “there is no cause” for other Article 6 complaints to be examined (see *Çıraklar v. Turkey*, 28 October 1998, §§ 40-41, *Reports of Judgments and Decisions* 1998-VII, and *Ergin v. Turkey* (no. 6), no. 47533/99, §§ 55-56, 4 May 2006). This is the approach which I propose should have been followed in the present case: that in view of the finding that the impartiality guarantee was not observed, there is no need to examine the other complaint raised by the applicants under Article 6, namely that they were removed from acting as lawyers without having the opportunity to be heard. However, as will be explained below (see paragraph 29 below), since the latter complaint is intrinsically connected with the one concerning impartiality, I will not avoid dealing with it completely, but I will deal with it as an ancillary complaint to the impartiality issue.

24. As regards the prevailing approach outlined above, the same approach was adopted by the Court in *Guðmundur Andri Ástráðsson v. Iceland* ([GC], no. 26374/18, § 295 and point 2 of the operative part, 1 December 2020), where, after finding that there had been no “tribunal established by law” – a guarantee provided in Article 6 – it decided by a majority that there was “no need to examine the remaining complaints under Article 6 § 1”, that is, the complaints alleging the lack of independence and impartiality of a tribunal.

⁵ Ibid., p. 314.

⁶ See, in support of this prevailing practice, Ryan Goss, *Criminal Fair Trial Rights – Article 6 of the European Convention on Human Rights*, Hart Publishing, 2016, pp. 160-62. Compare, however, the prevailing practice with the practice followed in two cases, namely *Öcalan v. Turkey* ([GC], no. 46221/99, §§ 118 and 131-35, ECHR 2005-IV) and *Güveç v. Turkey* (no. 70337/01, §§ 122 and 132-33, ECHR 2009), where the Court, despite the lack of independence and impartiality of the domestic tribunal, proceeded to examine the complaints concerning other guarantees of Article 6. The approach of the Court in these two cases was severely criticised by Goss (*op. cit.*, pp. 128-29).

25. However, in my partly dissenting opinion in *Guðmundur Andri Ástráðsson*, I disagreed with the majority that there was no need to examine the remaining complaints and I proposed something different. Since in the present case I propose that the finding that the tribunal was not objectively impartial makes it unnecessary to examine the remaining complaints, I have to explain why my approach was different in *Guðmundur Andri Ástráðsson* (cited above). First, I must start by noting that the relevant issue in that case was the lack of a tribunal established by law, while in the present case the issue is the lack of an objectively impartial tribunal. What I proposed in *Guðmundur Andri Ástráðsson* was that, after the finding that there was no tribunal established by law, the alleged “remaining complaints”, namely those concerning the guarantees of an independent and impartial tribunal, became immediately and automatically devoid of object and existence *ex tunc* and, therefore, they should have been rejected as inadmissible *ratione materiae*, by virtue of Article 35 §§ 3 (a) and 4 of the Convention.⁷ I also argued⁸ that when there is no “tribunal”, as was the finding of the Court in that case, because of the absence of a tribunal established by law, there is no noun and thus no object to which the adjectives “independent” and “impartial” can correspond, with the result that these adjectives become devoid of object and existence. All requirements of the right to a fair trial specified by Article 6 § 1 are indispensable, and without them that right cannot be secured. Nevertheless, the only free-standing requirement of Article 6 § 1 is that there must be a lawful tribunal. This requirement is a *central* feature of a fair trial as it refers to the *very essence* of the relevant right. All other requirements of Article 6 § 1 presuppose the fulfilment of this central demand, the establishment of a tribunal by law. In other words, the “independence” and “impartiality” requirements/guarantees are intrinsic and inseparable qualities related to the very existence of “a tribunal established by law”. It is impossible to examine the qualities of a tribunal that does not exist, just as it is impossible to examine the qualities of a non-existent person or building. Therefore, any hope that a tribunal is independent and impartial will hinge on the fact that it is a tribunal established by law in the first place. The former qualities are dependent on the latter and cannot be left in a vacuum.

26. Having clarified the above, I distinguish the present case from *Guðmundur Andri Ástráðsson*, where the issue was different, and I cannot propose that since the guarantee of Article 6 requiring an impartial tribunal was not satisfied, the remaining complaint became immediately and automatically devoid of object and existence and therefore should have been rejected as inadmissible *ratione materiae*. Instead, I propose that it is unnecessary to examine the remaining complaint independently and

⁷ See paragraph 4 of the opinion.

⁸ Ibid., at paragraph 5.

separately. Unlike the “tribunal established by law”, the “impartiality of a tribunal”, as a guarantee of Article 6, by its very nature and function, is not so drastic that a lack of it would render any remaining complaints inadmissible *ratione materiae*, though, of course, it may render such complaints unnecessary to be examined, which is again a serious result.

27. The question under discussion may even be more relevant if there is a hierarchy of Article 6 guarantees. As Ryan Goss rightly observes, “if the Court wishes to establish a hierarchy of Article 6 rights, in which violations of some guarantees are more serious than others, or are treated differently from others, then it ought to explain and justify that hierarchy or differentiation. It has not done so.”⁹ Trying to respond to this question as to whether there should be a hierarchy of Article 6 guarantees, which I believe should be answered in the affirmative, I must begin by stating that all guarantees under Article 6 form a single whole in which one can say that they consist of its elements or components, and all of them are important in one way or another in safeguarding the right to a fair trial under Article 6 of the Convention.

Since there is no hierarchy of Convention rights and Article 6 guarantees could be considered sub-rights of the right to a fair trial, one may argue that there should also be no hierarchy of guarantees. However, one must distinguish rights from guarantees, since the former are autonomous (apart from Article 14), while the latter are components of the former. I believe that the *best* explanation or justification of any hierarchy of Article 6 guarantees can be founded on the effects or consequences of the lack of the guarantees in question on the overall fairness of the trial. Hence, the hierarchy of Article 6 guarantees must be related to their importance in safeguarding the right to a fair trial and the *best* way to consider this is, as has already been said, by examining the effects or repercussions on the right in question if those guarantees are not fulfilled.

28. So, on the basis of the above, I would place “the tribunal established by law” guarantee at the apex of the hierarchy of Article 6 guarantees, and the “independent tribunal” and “impartial tribunal” guarantees together one level below. These two last guarantees have a particular characteristic that other guarantees (apart from, of course, the “tribunal established by law”) do not have which can allow them to be placed on the second level of the hierarchy of guarantees, since they are *sine qua non* prerequisites for any other guarantee. Though, in my view, all Article 6 guarantees relate to the core of the right, these three guarantees which relate to the tribunal (its existence, independence and impartiality) and are placed on the first and second levels of the hierarchy of guarantees, respectively, can, like absolute rights, be considered absolute guarantees: they are subject to no exceptions

⁹ See Ryan Goss, *op. cit.*, pp. 162.

or qualifications, and the absence of any one of them leads *per se* to the overall unfairness of the trial.

29. The remaining complaint in the present case, namely that the applicants had not been given an opportunity to be heard before their removal from proceedings,¹⁰ cannot be placed, in my view, at the second highest level of the hierarchy of Article 6 complaints together with the guarantees as to the independence and impartiality of the tribunal, but at a lower level, as it does not directly concern the procedural guarantee of Article 6 relating to the tribunal, on which all the rest of the guarantees are dependent. It would be purely theoretical to embark on defining the other levels of the hierarchy of the Article 6 guarantees in this opinion and to try to place this remaining complaint among them.

In the present case, however, the remaining complaint may be taken into consideration, not as a self-standing or independent complaint, but as an ancillary argument supporting the impartiality complaint. This is because the two complaints are intrinsically and inseparably connected between themselves. Regrettably, it should be noted that in the present case there was also a lack of judicial review that would have given the applicants an opportunity to raise their arguments in relation to their two complaints, the one concerning impartiality and the other concerning the refusal to hear them. And this rendered these issues even more problematic for the applicants. However, their complaint of a lack of judicial review does not relate to any Article 6 guarantees, since this Article does not provide for a right of appeal (see *Durisotto v. Italy* (dec.), no. 62804/13, § 54, 6 May 2014, and *Castellino v. Belgium* (dec.), no. 504/08, § 22, 22 May 2012).

It should nevertheless be stressed that the lack of objective impartiality of the tribunal in the present case is apparent on the face of the facts of the case (see paragraphs 16-21 of this opinion), even without taking into account the ancillary argument, which is examined *ex abundanti cautela* and in any event is considered in terms of the “appearances” of a lack of objective impartiality. This is because the refusal to allow the applicants to be heard may be regarded as an indication or consequence, and thus an appearance, of the fact that the court was not impartial in the first place.

30. According to the principle of effectiveness,¹¹ to which reference was made above, the Convention “is intended to guarantee not rights that are

¹⁰ Fortunately, Rules 36 and 44D of the Rules of Court, as amended, which make provision for prohibiting a lawyer from acting as a representative before the Court, are compatible with Article 6 of the Convention. This is because they give lawyers the opportunity to submit comments before the adoption of a decision on their removal.

¹¹ See proposed Article 72 on the “effective interpretation of the terms (*ut res magis valeat quam pereat*)” by Sir Humphrey Waldock, special rapporteur on the first draft of what eventually became the Vienna Convention on the Law of Treaties, 1969; John G. Merrills, *The Development of International Law by the European Court of Human Rights*, 2nd ed. (Manchester University Press, Manchester, 1993), p. 106; and G.A. Serghides, *The Principle of Effectiveness and its Overarching Role in the Interpretation and Application of the ECHR*:

theoretical or illusory but rights that are practical and effective”. This formulation of the principle of effectiveness was first articulated in the Article 6 civil context by the Court in *Airey v. Ireland* (9 October 1979, § 24, Series A no. 32) and has been repeated in many other cases. Furthermore, according to the principle of effectiveness, the provisions of the Convention and the rights secured therein, including, of course, the Article 6 right to a fair trial, must be interpreted so as to be given their fullest weight and effect consistent with their text and object. The principle of effectiveness may, in my view, be reflected in the Greek term *εντελέχεια* (*entelekheia*), a term created by Aristotle¹² from basically two words “εντελής” (“in” and “end”) and “ἔχειν” (“having”), meaning an action which has the “end” (the purpose) within itself, and consequently an action the function of which is fully and completely realised or actualised according to its aim.

31. Since the guarantees of the right to a fair trial under Article 6 are components of this right, the principle of effectiveness, as explained above, in order to fulfil its aim, must assist in giving these guarantees – in the present case the guarantee of objective impartiality – their fullest weight and effect and their corresponding full consequences, according to their aim and the norm of effectiveness. Consequently, the interconnection and interrelationship between the principle of effectiveness and the overall fairness of the proceedings are apparent, because the greater the weight given to a guarantee, depending on its nature and function, the more important its impact will be in finding that the trial was overall unfair. Hence, by giving the impartiality guarantee of Article 6 its fullest weight, the trial can be considered *per se* and unavoidably unfair overall, without the need to examine any other complaints under Article 6, save, however, where a complaint, as happened in the present case, is examined as ancillary to that of impartiality (see paragraph 29 above).

IV. CONCLUSION

32. In the light of the above, I conclude that there has been a violation of Article 6 § 1 of the Convention.

The Norm of all Norms and the Method of All Methods (Strasbourg, 2022), *in passim*, esp. pp. 57 and 97-98.

¹² See Georgios Babiniotis, *Dictionary of Modern Greek*, 5th edition (Lexicology Centre, Athens, 2019), p. 719, and even more clearly, *ibid.*, 2nd edition (Lexicology Centre, Athens, 2002), p. 605, under the entry “εντελέχεια”.

**DISSENTING OPINION OF JUDGE KRENC
JOINED BY JUDGE ZÜND**

1. With regret, I must disagree with the majority’s finding that Article 6 § 1 of the Convention under its civil limb is inapplicable in the present case.

2. According to the present judgment, a judge may remove a lawyer from proceedings without the lawyer enjoying the fundamental guarantees of Article 6 § 1. I find this very concerning. In my view, Article 6 § 1 is applicable (I) and has also been violated (II).

I. Applicability of Article 6 § 1

3. It is well established in the Court’s case-law that

“[f]or Article 6 § 1 in its ‘civil’ limb to be applicable, there must be a dispute over a ‘right’ which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether that right is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play ... Lastly, the right must be a ‘civil’ right” (see, as a recent authority, *Grzęda v. Poland* [GC], no. 43572/18, § 257, 15 March 2022).

4. In the present case, the majority acknowledge that the right of the applicants to practise as lawyers is a “civil right” within the meaning of Article 6 § 1 and that this right entails representing clients before courts. It is undisputed that this right is recognised under domestic law (see paragraph 97 of the judgment). However, in concluding that Article 6 § 1 is inapplicable, the majority rule that the removal decisions cannot be considered to have involved the determination of the applicants’ “civil right” (see paragraph 101).

5. In support of this conclusion, the majority observe first that the impugned measures were not imposed in the context of disciplinary proceedings (see paragraph 99). In my view, this fact is irrelevant as the applicability of Article 6 § 1 is based on an autonomous assessment which does not depend on classification under domestic law (see *König v. Germany*, 28 June 1978, § 88, Series A no. 27). Therefore, a sanction may fall within the scope of Article 6 § 1 even if it was adopted outside disciplinary proceedings under domestic law (see, for instance, *Baka v. Hungary* [GC], no. 20261/12, 23 June 2016).

6. The majority put forward a second element to which they attach much greater importance. They stress that the impugned removals had only a limited impact on the applicants’ right to practise their profession (see paragraph 100 of the judgment). With all due respect, I am wholly unable to subscribe to this view.

7. The fact highlighted by the majority that the applicants “could ... continue practising their profession” (see paragraph 100) is not decisive as regards the applicability of Article 6 § 1. The Court has repeatedly said that the disputes contemplated by Article 6 § 1 may relate to the actual existence of a “civil right” but also to its scope and the manner of its exercise (see *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, § 49, Series A no. 43). Accordingly, Article 6 § 1 has been found applicable under its civil limb in a case concerning a lawyer who was temporarily prohibited from acting as a representative before certain (not all) courts (see *Helmut Blum v. Austria*, no. 33060/10, §§ 63-67, 5 April 2016). Moreover, Article 6 § 1 has been declared applicable to sanctions that did not prevent or affect the exercise of the profession (see *Gautrin and Others v. France*, 20 May 1998, § 33, *Reports of Judgments and Decisions* 1998-III, where doctors were issued with a reprimand or a mere warning; see also *Lorenzetti v. Italy* (dec.), no. 24876/07, § 39, 7 July 2015, concerning a reprimand imposed on a judge; *di Giovanni v. Italy*, no. 51160/06, § 36, 9 July 2013, relating to a warning issued to a judge; and see more specifically, concerning lawyers, *A v. Finland* (dec.), no. 44998/98, 8 January 2004, where the applicant was issued with a mere warning; *Hurter v. Switzerland* (dec.), no. 53146/99, 8 July 2004, where the applicant was fined; and *Dyluś v. Poland*, no. 12210/14, 23 September 2021, concerning a reprimand)¹.

One might have tremendous difficulties in comprehending why a doctor, a judge or even a lawyer who received a mere warning may enjoy the guarantees enshrined by Article 6 § 1, while a lawyer who is removed from proceedings is deprived of all these guarantees.

8. In my opinion, the majority underestimate the gravity of the impugned measures. A lawyer’s removal from proceedings is not a routine internal measure taken by a court. Rather, it is a serious sanction which directly and significantly affects the practice of the profession of lawyer. The majority here lose sight of the crucial role of lawyers in the justice system and, more broadly, in a democratic society as a whole (see *Bagirov v. Azerbaijan*, nos. 81024/12 and 28198/15, § 99, 25 June 2020). As the Court has emphasised, “lawyers are assigned a fundamental role in a democratic society, that of defending litigants” (see *Michaud v. France*, no. 12323/11, § 118, ECHR 2012). They “are protagonists in the justice system, directly involved in its functioning and in the defence of a party” (see *Morice v. France* [GC], no. 29369/10, § 148, ECHR 2015).

¹ It is true that all these measures were disciplinary sanctions. However, this is of no relevance (see paragraph 5 above). What matters is the content and the impact of the sanction for the person concerned, regardless of its classification under domestic law. I note incidentally that the Harju County Court, which removed the applicants from the proceedings, forwarded the impugned decisions to the Bar Association, which could launch disciplinary actions. Thus, when the removal decisions were adopted, disciplinary sanctions could be imposed additionally on the applicants.

9. Representing clients before courts is one of a lawyer’s most important roles. In *Morice* (ibid., § 132), the Court emphasised this role as follows:

“The specific status of lawyers gives them a central position in the administration of justice as intermediaries between the public and the courts. They therefore play a key role in ensuring that the courts, whose mission is fundamental in a State based on the rule of law, enjoy public confidence (see *Schöpfer v. Switzerland*, 20 May 1998, §§ 29-30, *Reports* 1998-III; *Nikula v. Finland*, no. 31611/96, § 45, ECHR 2002-II; *Amihalachioaie v. Moldova*, no. 60115/00, § 27, ECHR 2004-III; *Kyprianou*, cited above, § 173; *André and Another v. France*, no. 18603/03, § 42, 24 July 2008; and *Mor*, cited above, § 42). However, for members of the public to have confidence in the administration of justice they must have confidence in the ability of the legal profession to provide effective representation (see *Kyprianou*, cited above, § 175).”

10. Hence, contrary to the majority, I cannot consider that the impugned removals had a limited impact on the applicants’ profession and did not really affect their civil rights. The decisions to remove the applicants from proceedings directly and significantly affected their right to practise as lawyers and to represent their clients independently in the proceedings concerned. This right is derived from a contract between the applicants and their clients², and it is also one of the core prerogatives of a lawyer.

11. In my view, the present judgment represents a very dangerous precedent as it leads in practice to the exclusion from the scope of Article 6 of the Convention of the removal of lawyers from proceedings. The inapplicability of Article 6 § 1 leaves the door open to disproportionate or arbitrary sanctions without any procedural guarantees being afforded to the removed lawyer, of which the most important are the independence and the impartiality of the judge deciding on the removal, and the right to have a duly reasoned decision.

12. The possibility for the clients to challenge the removal of their lawyers cannot be considered sufficient to ensure that lawyers’ rights are protected. The lawyer who has been removed no longer has any procedural role and a possible appeal would depend solely on the willingness of the client, who, moreover, could bring the appeal only from the perspective of his or her own rights having been violated. Moreover, in a lot of cases, clients are unable to act for themselves and may be in a particularly vulnerable situation. In any event, lawyers must have a direct opportunity to challenge for themselves any interference with their rights, independently of the attitude of their clients. They must be able to challenge sanctions taken against them, just like any other person or maybe more than any other person considering their “special role” (see *Morice*, cited above, § 133).

13. This “special role” certainly does not imply that they have no rights that they may claim personally. Whilst they are subject to certain obligations,

² I note that the applicants alleged that they had suffered serious material consequences due to their removal (see paragraphs 66 and 68 of the judgment). These financial consequences have not been examined by the majority. That, however, is not the most important issue.

they also enjoy rights and privileges (*ibid.*). Thus, it is clearly established in the Court’s case-law that lawyers’ speeches in courts enjoy extensive protection under the Convention and that lawyers are entitled to complain under Article 10 of the Convention about sanctions taken against them in the exercise of their role of representation (see, among other authorities, *Kyprianou v. Cyprus* [GC], no. 73797/01, ECHR 2005-XIII; *Čeferin v. Slovenia*, no. 40975/08, 16 January 2018; *Bagirov*, cited above; and *Simić v. Bosnia and Herzegovina*, no. 39764/20, 17 May 2022). It follows that lawyers may invoke their own fundamental rights in contesting such sanctions, although they are defending their clients’ interests.

II. Merits

14. After having considered that Article 6 § 1 is applicable *ratione materiae*, I am of the view that this provision has been violated in the present case. However, I would like to specify at the outset that the issue under Article 6 of the Convention does not concern the question of whether the removal of the applicants from the proceedings was justified. It is not for me to give an opinion on this point. My comments focus exclusively on the procedural guarantees granted to the applicants. What strikes me in this regard is the lack of any guarantees afforded to them. I would like to briefly highlight the three following points.

15. First, the applicants were not granted an opportunity to voice their arguments against the removal decision before it was taken. In relation with this, it is noteworthy to observe the evolution of the Rules of our Court. Rules 36 and 44D of the Rules of Court, concerning the prohibition of a lawyer from acting as representative before the Court, have recently been changed in order to give lawyers the opportunity to submit comments prior to the adoption of such a decision.

16. Secondly, the removal of the applicants was decided after both applicants had requested that the judges in question be removed from the proceedings and after the second applicant had asked for disciplinary proceedings to be initiated against the judge in his case. Such circumstances may raise a reasonable doubt in the eyes of an objective external observer as to the judge’s impartiality (see, *mutatis mutandis*, *Kyprianou*, cited above, §§ 118-28, where the fact that the same judges of the court towards whom the applicant had committed contempt then tried, convicted and sentenced him raised objectively justified doubts as to the impartiality of that court).

17. Thirdly, and more importantly, the applicants were deprived of any judicial review of the removal decisions in question. It is well established that Article 6 § 1 of the Convention does not guarantee a right of appeal (see *Durisotto v. Italy* (dec.), no. 62804/13, § 54, 6 May 2014, and *Castellino v. Belgium* (dec.), no. 504/08, § 22, 22 May 2012). However, “Article 6 § 1 secures to everyone the right to have a claim relating to his or her civil rights

and obligations brought before a court” (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 84, 29 November 2016, with further references). “For the right of access to be effective, an individual must have a clear, practical opportunity to challenge an act that is an interference with his or her rights” (ibid., § 86).

18. In the present case, the lack of judicial review is all the more problematic as the applicants were not given an opportunity to voice their arguments on their removal (see paragraph 15 above) and objectively justified doubts may exist as to the impartiality of the judges who took the impugned decisions (see paragraph 16 above).

19. Moreover, one cannot but be struck by the fact that Article 45 § 2 of the Code of Civil Procedure, which lists the possible grounds for a removal, is drafted in very broad terms (see paragraph 36 of the judgment). In this context, a judicial review provides an even more essential guarantee against disproportionate or arbitrary decisions.

III. Conclusion

20. To be clear, it is not my purpose to call into question the power of the courts to ensure the proper and orderly functioning of their proceedings and to take decisions and – if necessary – impose sanctions to that effect (see, *mutatis mutandis*, *Gestur Jónsson and Ragnar Halldór Hall v. Iceland* [GC], nos. 68273/14 and 68271/14, § 89, 22 December 2020, which concerns the criminal limb of Article 6 of the Convention). This power of the courts is absolutely necessary. The special role of lawyers entails several duties, particularly with regard to their conduct before courts (see *Morice*, cited above, § 133). It is legitimate to expect them to contribute to the proper administration of justice (see *Kyprianou*, cited above, § 173).

21. However, the removal of lawyers from proceedings calls for the utmost vigilance and must be subject to very careful scrutiny. While judicial independence is a core pillar of a democratic society governed by the rule of law, protecting lawyers’ independence is also vital for the functioning of the justice system. Without lawyers’ independence, there cannot be an independent judicial system. I do not think that granting minimal procedural guarantees to lawyers undermines the authority of judges and compromises the proper administration of justice. Quite the contrary.

APPENDIX

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality
1.	16358/18	Angerjäär v. Estonia	02/04/2018	Mart ANGERJÄRV 1980 Viimsi Estonian
2.	34964/18	Greinoman v. Estonia	20/07/2018	Maksim GREINOMAN 1979 Tallinn Estonian