



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

FIRST SECTION

CASE OF TOIVANEN v. FINLAND

(Application no. 46131/19)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Impartial tribunal • Decision by Court of Appeal's Acting Chief Justice to transfer examination of applicant's appeal against revocation of his trial counsel licence to an extended composition of that court after hearing and deliberations by initial bench • Rule on such transfer aimed to provide a sound and broad basis for authority in respect of important rulings • Transfer did not lead to any loss of opportunity for the applicant to participate in decision making process • Existence of procedural safeguards • Supreme Court having full jurisdiction and power to quash Court of Appeal's judgment on grounds of unfairness and lack of impartiality • Supreme Court's extensive examination of the processing of the case before the Court of Appeal found to be prescribed by domestic law and not deficient • Any possible defects in appellate proceedings remedied by the Supreme Court • General law setting out criteria for transfer fully accessible to applicant • Detailed reasons for transfer provided by Acting Chief Justice thoroughly examined by the Supreme Court • No reason to doubt transfer was not objectively justified • Proceedings provided sufficient guarantees to exclude any legitimate doubt in respect of Court of Appeal's impartiality

STRASBOURG

9 November 2023

FINAL

09/02/2024

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

In the case of Toivanen v. Finland,

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

Marko Bošnjak, *President*,

Alena Poláčková,

Lətif Hüseyinov,

Péter Paczolay,

Erik Wennerström,

Raffaele Sabato, *judges*,

Juha Lavapuro, *ad hoc judge*,

and Renata Degener, *Section Registrar*,

Having regard to:

the application (no. 46131/19) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Finnish national, Mr Kari Risto Kalevi Toivanen (“the applicant”), on 26 August 2019;

the decision to give notice to the Finnish Government (“the Government”) of the application;

the decision to grant the applicant leave to represent himself;

the parties’ observations;

the decision of the President of the Section to appoint Mr Juha Lavapuro to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 (a) of the Rules of Court), Ms P. Koskelo, the judge elected in respect of Finland, having withdrawn from sitting in the case (Rule 28 § 3);

Having deliberated in private on 10 October 2023,

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

INTRODUCTION

1. The case concerns proceedings in which the applicant’s licence to plead cases before the Finnish courts was revoked. The applicant, invoking Article 6 of the Convention, complained of bias and procedural unfairness in that his case had been allegedly unlawfully transferred to the extended composition of the Court of Appeal.

THE FACTS

2. The applicant was born in 1958 and lives in Sulkava.

3. The Government were represented by their Agent, Ms Krista Oinonen, of the Ministry for Foreign Affairs.

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

5. The applicant is a lawyer who was granted a licence to act as trial counsel before the domestic courts on 30 January 2014. In 2014 and 2015, over a period of about ten months, he sent emails to several judges and

authorities criticising them and various other authorities and asking them to take measures in connection with criminal proceedings against him. Because of these emails, the Board on Trial Counsel (*oikeudenkäyntiavustajalautakunta, rättegångsbiträdesnämnden* – hereinafter “the Board”) decided of its own motion to examine whether the applicant still complied with the requirements applicable to trial counsel. On 22 October 2015 the Board unanimously decided to revoke the applicant’s licence, finding that he was manifestly unsuited to act as trial counsel.

6. Also in 2014, Judge L. at the Court of Appeal, who at that time was performing the functions of Acting Chief Justice of the Court of Appeal in the Chief Justice’s absence, had forwarded a message to the police from the applicant, dated 7 August 2014 and addressed to the Chief Justice of the Court of Appeal, as she apparently considered that it contained a threat against one of the judges working at the Court of Appeal who had been involved in criminal proceedings against the applicant.

7. By a letter dated 19 December 2015, the applicant appealed against the Board’s decision to the Helsinki Court of Appeal (*hovioikeus, hovrätten*).

8. On 29 August 2016 the Court of Appeal, sitting as a bench of three judges, examined the applicant’s case at an oral hearing and announced that it intended to deliver a decision within thirty days.

9. On 23 November 2016 Judge L., who was again performing the functions of Acting Chief Justice of the Court of Appeal in the Chief Justice’s short-term absence, decided that the case should be transferred to an extended composition of seven judges. That decision was taken by virtue of section 8c of the Act on Courts of Appeal, as in force at the material time, which left that decision to the chief justice of the relevant court of appeal (see paragraph 24 below). The Court has not been informed nor does there appear to have been any document in this respect indicating the reasons that prompted judge L. at that time to transfer the case to an extended composition of the Court of Appeal.

10. The bench of seven judges was chaired by Judge L. It conducted a hearing on 2 January 2017. The applicant had been summoned to that hearing, but did not attend, and the bench therefore heard a recording of statements which he had made during the hearing before the three-judge bench which had sat on 29 August 2016 (see paragraph 8 above).

11. On 17 March 2017 the Court of Appeal, by five votes to two, dismissed the applicant’s appeal and upheld the Board’s decision. The two judges who formed the minority had also sat on the bench of three judges. Judge L. voted with the majority.

12. On 15 May 2017 the applicant appealed to the Supreme Court (*korkein oikeus, högsta domstolen*) against the decision of the Helsinki Court of Appeal. He argued that the Court of Appeal had committed a procedural error and that his case, after it had already been decided, had been transferred to a bench of seven judges in order to, in his view, change the positive outcome

of the case to a negative one. He submitted that the bench of three judges had, by two votes to one, decided to accept the applicant's appeal and to set aside the Board's decision, whereas the bench of seven judges had upheld the Board's decision by five votes to two. Moreover, Judge L. had been biased, since previously, in 2014, she had reported the applicant to the police after he had sent an email relating to the same matter which allegedly contained threats to the Court of Appeal (see paragraph 6 above). He also claimed that there had been no legal grounds for revoking his licence. He did not request that an oral hearing be held before the Supreme Court.

13. On 8 August 2017 the Supreme Court granted the applicant leave to appeal without any limitations (see paragraph 26 below).

14. On 28 February 2019 the Supreme Court rendered its decision. It stated that it had to decide the following issues: firstly, whether Judge L., who had transferred the case and chaired the extended composition, had been biased; secondly, whether the Court of Appeal had erred when transferring the case to the extended composition after an oral hearing had been held before the three-judge panel of that court and lastly, whether the applicant was unfit to act as a trial counsel owing to the messages he had sent (see paragraph 5 above). By three votes to two, the Supreme Court held that the transfer of the applicant's case for decision of the extended composition of the Court of Appeal was lawful. Regarding the remaining issues, the Supreme Court was unanimous.

15. With regard to the alleged bias, the Supreme Court unanimously found that Judge L. at the Court of Appeal had not been biased in deciding the applicant's case for the mere reason that she had forwarded to the police an email from him which she had perceived to contain threats (see paragraph 6 above). The email had not contained any specific threat against or criticism of her and she had not filed a report with the police but had only forwarded the email to them. This was the standard practice in all cases concerning threats to the security of personnel. Moreover, that email had not been a part of the file in the case before the Court of Appeal – it had not been relied on by that court when it upheld the decision to revoke the applicant's licence.

16. As concerned the alleged procedural error in connection with the Court of Appeal's transfer of the case before it to an extended composition, the Supreme Court's majority (three votes to two) reiterated that it fell within the powers of a chief justice at a court of appeal to do so in the circumstances set out in section 8c of the Act on Courts of Appeal, as in force at the material time (see paragraph 24 below). That provision gave chief justices a relatively wide degree of discretion in deciding when an issue was so important or far-reaching that a transfer was justified, but the discretion was also not unfettered in cases where an oral hearing had been or would be conducted; in such cases, special reasons were required.

17. Turning to the question of whether the conditions for the transfer of a case to an extended composition of the Court of Appeal had been met in the case before it, the Supreme Court noted that the legislation on trial counsel that applied in the applicant's case was quite recent and that it was not clear how it was to be interpreted; there was also no practice to rely on with regard to how it was to be applied in a case such as the applicant's. The question of whether the conduct of a person when not carrying out his or her duties in the capacity of trial counsel was relevant to the issue of whether he or she was manifestly unsuited to the duties of trial counsel was also a matter of principle and of great importance to the profession. The issue in the case therefore formed part of the wider system of counsel and the administration of justice and required a balancing of fundamental rights. Accordingly, the subject matter of the case thus met the criteria relating to far-reaching consequences and importance as a matter of principle within the meaning of the second sentence of the first paragraph of section 8c of the Act on Courts of Appeal (see paragraph 24 below). The Supreme Court also noted that, in a written statement submitted to it, Judge L. had stated that she had considered the question of transfer of the case at request of the actual Chief Justice of the Court of Appeal, in his absence and that she had transferred the case because the matter was far-reaching and was of considerable importance; that the legislation governing the matter was novel; that there was no relevant case-law on the matter and that it required balancing between different fundamental rights. As indicated in the judgment, Judge L. also stated that the three-judge panel, with divided vote, had been about to depart from the unanimous decision of the Board, which demonstrated, in her view, the importance of the issue. Furthermore, it held that the extended composition of the Court of Appeal had been formed in accordance with section 8c of the Act on Courts of Appeal (see paragraph 24 below), namely it included the three judges of the bench that had initially examined the case (see paragraph 8 above) and three other judges of that court, drawn by lot. The extended composition was chaired by Judge L. , as Acting Chief Justice of the Court of Appeal.

18. The Supreme Court went on to examine whether the condition of a special reason within the meaning of section 8c had been met, as was required in cases where an oral hearing had been or would be held. By way of a general interpretation, it noted in that context that it was relevant how far-reaching or important as a matter of principle a case was. Furthermore, it was relevant that the transfer of cases entailing oral hearings to an extended composition could cause either the parties or the court itself inconvenience and could delay the proceedings. That was particularly so when a hearing had already been conducted, as a rehearing might become necessary.

19. Turning to the facts of the case before it, the Supreme Court pointed out that an oral hearing had been conducted by the three-judge bench in order to give the applicant an opportunity to give evidence directly before it. Only

he had given evidence and therefore a new hearing would not cause any particular inconvenience or cost or lead to any significant delay. The applicant had been given the opportunity to attend the second hearing in person. Emphasising that the far-reaching consequences of the case and its major importance as a matter of principle had weighed in favour of its adjudication by an extended composition and that the holding of a new oral hearing was not a factor weighing against it, the Supreme Court found that Judge L., as Acting Chief Justice of the Court of Appeal, had remained within her discretion when deciding to transfer the case to an extended composition.

20. The Supreme Court added that it was very common for a court of appeal not to decide to transfer a case to an extended composition until the ruling of the original composition was settled. That was also standard procedure in the Supreme Court when that court transferred matters to an extended chamber or to the plenary court. In any event, that would be the situation if the reason for the transfer was that the views of the bench of three judges differed from settled case-law or precedent, but in a case such as the one before it, the fact that the three-judge bench had not yet examined the matter at issue or taken a position on it had not been a condition for the transfer of the case. The purpose of the provision on the transfer of a case to an extended composition was to ensure that the position to be taken by a court of appeal in a case that was far-reaching and of major importance as a matter of principle was as well considered and authoritative as possible, regardless of the position taken by the three-judge bench, possibly after an oral hearing. According to the Supreme Court, the regulations governing the transfer of cases would largely lose their importance if the transfer were possible only on condition that the three-judge bench had not yet examined the matter. In the case before it, the far-reaching nature and considerable importance of the matter to be considered by the Court of Appeal had clearly supported the decision to transfer the case, as had the fact that the three-judge bench had ended up with a split decision in an intricate situation that required a balancing of different fundamental rights. It had, in conclusion, been substantiated that the decision to transfer the case had been based on the grounds given by Judge L. in her statement before the Supreme Court, which were objectively acceptable.

21. As for the dissenting Justices of the Supreme Court, they were of the view that the importance on principle and far-reaching consequences of the case had to have been known previously, before the bench of three judges had conducted an oral hearing in the case. Although the procedure in the Court of Appeal could not be regarded as erroneous on the basis of any particular provision of domestic law, it had been a procedure in respect of which, taken as a whole and taking into account the nature of the subject matter, the applicant, in the circumstances of the case, had had a reasoned and objective ground to question the fairness and impartiality of the Court of Appeal. The

procedure at the Court of Appeal had thus violated the right to a fair trial and its decision should therefore be quashed.

22. In addition to the examination of lawfulness of the transfer of the applicant's case to the extended composition, as noted in paragraph 14 above, the Supreme Court decided unanimously that the revocation of the applicant's licence to act as trial counsel should be upheld.

RELEVANT LEGAL FRAMEWORK

23. Section 21 § 1 of Chapter 1 of the Constitution of Finland (*Suomen perustuslaki, Finlands grundlag*; Act no. 731/1999) reads:

Section 21 - Protection under the law

“(1) Everyone shall have the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent body for the administration of justice.”

24. Section 8c of the Act on Courts of Appeal (*hovioikeuslaki; hovrättslagen*; Act no. 56/1994, as amended by Act no. 558/2015, in force until 31 December 2016) was applicable at the time of the proceedings in issue. It read:

Section 8c – Extended composition and plenary court

“(1) The president [chief justice] of a court of appeal may transfer a judicial case or the parts of it needing to be examined to the plenary court or an extended composition if, during the deliberations on the case or part of it, it appears that the composition may deviate from the previous case-law of the Supreme Court or that of the deciding court or another court of appeal. A case that has far-reaching consequences or is otherwise important as a matter of principle, or a part thereof, may also be transferred for examination by a plenary court or an extended composition. A case where an oral hearing has been held or is to be held shall not be transferred to an extended composition or to a plenary court without a particular reason.

(2) The plenary court of appeal shall comprise the president [chief justice], the permanent justices of the court of appeal and those justices of the court of appeal who have been appointed for a fixed term of more than one year. The plenary court shall be quorate when at least half of the members on active duty are present.

(3) The extended composition of a court of appeal shall comprise seven judges. An extended composition shall be chaired by the president [chief justice] and shall be composed of those judges who have previously sat in the case and are still on active duty, as well as the necessary number of additional judges drawn from among the permanent judges.”

Currently, following an amendment by way of Act no. 683/2016, the provisions on transferring a case to the extended composition of a court of appeal are contained in Article 8a of Chapter 2 of the Code of Judicial

Procedure. In respect of the questions now under consideration, the material content remains the same.

25. Section 6 of Chapter 1 of the Courts Act (*tuomioistuinlaki*; *domstolslagen*; Act no. 673/2016) reads:

Section 6 – Position and independence of a judge

“(1) A judge shall be independent in the administration of justice.

(2) Provisions on the right of a judge to remain in office as a guarantee of independence are provided in section 103 of the Constitution Act and, in more detail, in Chapter 16 of the present Act.”

26. Sections 6 and 7 of Chapter 13 and Sections 1, 3, 6, 20 and 21a of Chapter 30 of the Code of Judicial Procedure (*Oikeudenkäymiskaari*; *Rättegångs Balk*; Act no. 4/1734, as amended by Acts no. 104/1979, 104/1998, 441/2001 and 666/2005) read:

Chapter 13

Section 6

“(1) A judge shall be disqualified if:

(1) a party to the case opposes the judge or his or her close relation referred to in Article 3 § 1 (1) in other judicial proceedings or in a case pending before an authority; ...”

Section 7

“ ...

(2) A judge shall be disqualified from rehearing a case or a part thereof in the same court if there is justifiable reason to believe that he or she is prejudiced in the case on the basis of his or her earlier decision in the case or for another special reason.

(3) In addition, a judge shall be disqualified if another circumstance, comparable to the circumstances referred to in this Chapter, gives rise to a justifiable doubt as to the impartiality of the judge in the case.”

Chapter 30

Section 1

“A review of a judgment or decision of a Court of Appeal can be requested, by appeal, to be carried out by the Supreme Court.”

Section 3

“Leave to appeal can be granted only if considered important that the matter be decided by the Supreme Court with regard to the application of the law in other similar cases or in order to ensure uniformity of judicial practice or if there is a special reason, such as a procedural or other error due to which the decision should be reversed or annulled or if there are other serious grounds for granting leave to appeal.

Leave to appeal may be granted in part. In this case, leave to appeal may be limited to:

- 1) part of the decision of the court of appeal, or to
- 2) an issue, the deciding of which is necessary in order to guide legal practice or otherwise with regard to the grounds of the leave to appeal.

...”

Section 6

“The request for leave to appeal shall state the grounds, as referred to in section 3, as well as the reasons why the applicant considers that such grounds exist. In addition, the decision of the Court of Appeal in respect to which the applicant requests the review shall be indicated.

The following shall be indicated in the appeal:

- 1) what respects a review of the decision of the court of appeal is requested;
- 2) what changes are requested to be made in the decision of the court of appeal; and
- 3) the grounds for the changes requested.

...”

Section 20

“Where necessary, the Supreme Court shall hold an oral hearing at which the parties, witnesses and expert witnesses can be heard and other clarification admitted. The oral hearing may be restricted to part of the matter subject to the request for a review.

...”

Section 21a

“The matter shall be decided on the basis of the written trial material unless an oral hearing is held in the matter. If an oral hearing is held, also the material presented in it is taken into consideration.”

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

27. The applicant complained that there had been a violation of Article 6 of the Convention on the grounds that the Court of Appeal, in particular Judge L., had been biased and that his case had been unlawfully transferred to the extended composition of that court. Article 6 § 1 reads, in so far as relevant, as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

A. Admissibility

28. The Court notes that the applicability of the civil limb of the Convention is a matter which the Court has to examine on its own motion and regardless of the parties’ submissions (see *Grosam v. the Czech Republic* [GC], no. 19750/13, § 107, 1 June 2023). In the present case, the Court notes that the Government agreed that the proceedings in issue had concerned the determination of the applicant’s “civil rights and obligations” within the meaning of Article 6 § 1 of the Convention and that that provision was thus applicable *ratione materiae*. In the circumstances of the case, the Court does not find any reason to call that matter into question (see *Angerjäv and Greinoman v. Estonia*, nos. 16358/18 and 34964/18, § 98, 4 October 2022). Furthermore, the Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35. It must therefore be declared admissible.

B. Merits

1. The parties’ submissions

29. The applicant maintained that the Court of Appeal had first dealt with his case in a completely lawful manner and had decided not to revoke his licence. His right to a fair trial had then been violated because the Court of Appeal had re-examined his case without any explanation or valid legal reason. Moreover, Judge L., in her capacity as Acting Chief Justice of the Court of Appeal, had been biased, since she had already had a misconceived idea of the applicant’s case owing to her having contacted the police because of the allegedly threatening email. The applicant pointed out that he had sent letters to over 300 recipients and that Judge L. had been the only one who had perceived that one of his messages had contained a threat to anyone. It was also incorrect to consider that the email that had been forwarded to the police had not formed part of the basis on which his licence to plead before domestic courts had been revoked, since all of his letters had concerned the same matter, namely criminal proceedings in which the applicant had been involved.

30. The Government submitted that the transfer of the applicant’s case to an extended composition of the Court of Appeal had been in compliance with domestic law. The Supreme Court had assessed the matter and considered that the questions that had arisen in the applicant’s case were far-reaching and of major importance as a matter of principle, which had made it justifiable to transfer the case to an extended composition, even though a hearing had already been conducted. This possibility was provided for in domestic law

and a large number of rulings were delivered every year by such extended compositions; there was nothing exceptional about it. The applicant had not adduced anything that would indicate any bias on the part of Judge L. at the Court of Appeal, either from an objective or a subjective viewpoint, and accordingly, there was no indication of an unfair trial either. In any event, should the Court consider that the proceedings before the Court of Appeal had violated any of the applicant's rights under Article 6 of the Convention, that matter had been corrected by way of the proceedings before the Supreme Court.

2. *The Court's assessment*

(a) **Classification of the complaint and general principles**

31. The Court notes that the application contains a complaint under Article 6 of the Convention based on two grounds: (i) alleged bias, particularly relating to Judge L., who had also been Acting Chief Justice, and (ii) an unfair trial owing to the decision to transfer the examination of the applicant's case to an extended composition of the Court of Appeal. At the same time, those two grounds are intrinsically linked in so far as the applicant effectively argued that the decision to transfer his case to the extended composition in the circumstances had both demonstrated bias on the part of Judge L. – who had taken that decision as Acting Chief Justice – and had made the trial unfair. The Court is mindful that issues regarding the allocation of a case to a particular court, formation or judge are usually examined under the “established by law” aspect of Article 6 (see, for example, *Miracle Europe Kft v. Hungary*, no. 57774/13, §§ 62-67, 12 January 2016; *DMD GROUP, a.s., v. Slovakia*, no. 19334/03, § 65 et seq, 5 October 2010; *Pasquini v. San Marino*, no. 50956/16, §§ 106-13, 2 May 2019; and contrast, *Tempel v. the Czech Republic*, no. 44151/12, § 65 and § 71, 25 June 2020). However, it notes that the applicant's complaint, in addition to the allegations of personal bias and unfairness, entails an allegation that the proceedings fell foul of the objective impartiality test, and that it must accordingly include an examination of that allegation in its judgment. It observes that the Supreme Court, similarly, in essence examined the case from the angle of whether the decision to transfer the case to the extended composition, which had not in and of itself entailed a procedural error (see paragraphs 16-19 above), had led to the proceedings in Court of Appeal falling foul of the objective impartiality test by way of its examination of whether the decision to transfer the case had in the specific circumstances been based on objectively acceptable grounds (see paragraph 20 above). In this connection it reiterates that the “established by law” aspect of Article 6 § 1 is closely related to the guarantees of independence and impartiality under the same Article (see *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, §§ 231-32, 1 December 2020).

32. As to the general principles relevant to the assessment of the alleged partiality, the Court reiterates that impartiality normally denotes the absence of prejudice or bias and its existence or otherwise can be tested in various ways. According to the Court's consistent case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined according to a subjective test where regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case; and also according to an objective test, that is to say, by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see, for example, *Micallef v. Malta* [GC], no. 17056/06, § 93, ECHR 2009 and *Morice v. France* [GC], no. 29369/10, §§ 73-78, ECHR 2015).

(b) Application of the general principles to the facts of the case

(i) The applicant's complaint regarding the transfer of his case to the extended composition of the Court of Appeal

33. Starting with the question of whether the transfer of the case to an extended composition of the Court of Appeal (see paragraph 9 above) resulted in shortcomings meaning that the proceedings as a whole were not conducted in line with the requirements of a fair hearing within the meaning of Article 6 of the Convention, the Court firstly notes that the Supreme Court carried out a detailed examination of that issue and held that the decision to transfer the case had in itself been fully in accordance with domestic procedural law (see paragraphs 16-21 and 24 above).

34. The Court observes that the criteria for transferring the case to an extended composition were clearly set out in the Act on Courts of Appeal (see paragraph 24 above). While domestic law on that point gave discretion to the chief justice of a court of appeal, whose functions, in so far as concerned the relevant point in the applicant's case, were carried out by Judge L. as the Acting Chief Justice of the Court of Appeal in the Chief Justice's absence, it also limited that discretion in cases where oral hearings had been or would be held. In those situations, special reasons were required (see paragraphs 16 and 24 above).

35. With regard to the fact that a decision to transfer a case was made after the three-judge bench had deliberated, although it had not delivered any public decision, the Court observes that the Supreme Court found that there had been special reasons for that transfer, as required by the domestic law. In this connection it referred to the reasons that Judge L. had provided in her written statement, namely the far-reaching nature and considerable importance of the matter for which there was no case-law, as well as the potential quashing by the three-judge panel of the Court of Appeal of the unanimous decision of the Board (see paragraph 17 above). The Court is

ready to follow the Supreme Court's reasoning that the purpose of the rule on such transfer is to provide a sound and broad basis for authority in respect of important rulings regardless whether the three-judge bench had or had not yet deliberated on the case (see paragraph 20 above). In this connection the Court reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, which are in principle best placed, to resolve problems of interpretation of domestic legislation. The Court is not a court of appeal from the national courts and it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 186, 6 November 2018, and the references cited therein).

36. Moreover, the Court notes that the transfer of the case to the extended composition did not lead to any loss of opportunity for the applicant to participate in the decision-making process. He was summoned and could attend (see paragraph 10 above) the new hearing in person, but decided not to do so, and nothing has been adduced to indicate that he was not given every opportunity to plead his case before the extended composition, as he had been before the three-judge bench.

37. The Court also notes that other procedural safeguards were in place. Firstly, the Act on Courts of Appeal contained clear provision as to the composition of the extended panel which, as found by the Supreme Court, was complied with in the present case (see paragraphs 17 and 24 above). Secondly, the judge competent to decide on the transfer of a case, that is to say, Judge L. who carried out the function assigned to the chief justice of a court of appeal under section 8c of the Act on Courts of Appeal (see paragraph 24 above), neither formed part of the initial composition of that court nor did she participate in any prior deliberations; conversely, all the judges of the composition previously called to decide the case were members of the extended composition, as section 8c of the Act on Courts of Appeal clearly prescribes. Thirdly, the Supreme Court solicited Judge L. on the reasons that prompted her to order the impugned transfer of the applicant's case (see paragraphs 17 and 20 above). It is true that neither party in the present case has informed the Court of whether a decision to transfer a case to an extended composition was amenable to appeal, and no views of the parties on the issue of transfer appear to have been obtained before the decision was taken in the present case. However, it is apparent from the domestic proceedings that a decision to transfer a case could be relied on as a procedural error in an appeal to the Supreme Court against the final decision taken by a court of appeal, which is what the applicant did (see paragraph 12 above). The Supreme Court thereupon granted the applicant's request for leave to appeal and carried out an extensive examination of the processing of the case before the Court of Appeal (see paragraphs 14-22 above). As stated

above, the Court has no basis for rejecting the Supreme Court's finding and accordingly proceeds on the grounds that the processing of the case before the Court of Appeal was in keeping with what had been prescribed by the legislature by means of the relevant provision of the Act on Courts of Appeal as applicable at the time.

38. Lastly, the Court wishes to highlight that the Supreme Court had full jurisdiction to examine the merits of the issue of revocation of the applicant's licence as it had granted the applicant leave to appeal without any limitations (see paragraphs 13 and 26 above). That the Supreme Court re-examined the matter only on the basis on the existing documents (with the only addition of the statement of Judge L.) was merely owed to the procedural choices of the applicant, who himself decided to restrict the Supreme Court's scope of review by having failed to seek that an oral hearing be convened or to request a remittal to a lower court in order to collect new evidence or otherwise assess the merits (see paragraphs 12 and 26 above). In this respect the applicant had in his appeal before the Supreme Court claimed that there had been no legal grounds for revocation of his licence. Furthermore, he did not claim that that court did not provide the guarantees of Article 6 § 1 of the Convention. The Supreme Court endorsed the reasons given by the extended composition of the Court of Appeal and decided unanimously that the revocation of the applicant's licence to act as trial counsel should be upheld (see paragraph 22 above). The Court reiterates that a higher or the highest court might, in some circumstances, make reparation for defects that took place in the previous instances of the proceedings. In the circumstances of the case, the Supreme Court, which had the power to quash the Court of Appeal's judgment on the ground that it had not been impartial and that the proceedings had not been fair, as well as to make a fresh examination of the merits itself, or by way of remittal to a lower court, was undisputedly composed of judges whose impartiality was not challenged, nor were the proceedings at any stage criticised as being unfair. Consequently, even assuming that there were defects in the appellate proceedings, the Supreme Court did remedy the defects in question, being irrelevant that it rejected the arguments of the applicant in that regard (see *Ramos Nunes de Carvalho e Sá*, cited above, § 132; contrast *Meng v. Germany*, no. 1128/17, § 64, 16 February 2021).

39. Thus far, the Court is satisfied that the transfer of the case from the three-judge bench to the extended composition was in compliance with the relevant criteria under its established case-law (see *Iwańczuk v. Poland* (dec.), no. 39279/05, 17 November 2009 and *DMD GROUP, a.s.*, cited above, § 66) and it did not in and of itself lead to the applicant's trial becoming unfair within the meaning of Article 6 of the Convention.

(ii) *The applicant's allegation of bias*

40. Turning to the applicant's allegation of personal bias, the Court notes that Judge L. at the Court of Appeal forwarded an email to the police in 2014

(see paragraph 6 above). The email, which was addressed to the Chief Justice of the Court of Appeal, was not directed against Judge L. specifically. According to the Supreme Court's judgment, it was a matter of standard practice that emails perceived to contain threats against staff were forwarded to the police (see paragraph 15 above), and the Court understands that it was Judge L. who forwarded it, as she was performing the functions of Acting Chief Justice at the time. The Court does not find that the foregoing in and of itself may be considered proof of any personal bias on the part of Judge L. (see, for example, *Morice*, cited above, § 74, for the type of proof required in respect of personal bias). Furthermore, as concerns the fact that Judge L. herself made the impugned decision to transfer the case to the extended composition, the Court finds no grounds for considering that making such a procedural decision as Acting Chief Justice, which was found to be in line with procedural law, could in and of itself be taken as proof of her personal bias, regardless of whether she did so during a short-term replacement of the Chief Justice of the Court of Appeal (see paragraph 9 above).

41. In connection with the question of whether the proceedings nonetheless fell foul of the objective impartiality test (see paragraphs 31-32 above), the Court observes that the case did have some particular features. Specifically, (i) it concerned a lawyer whose licence to plead before the courts was being examined owing to, at least in part, the many emails or letters he had sent in which he had expressed distrust in various authorities, including the courts themselves (see paragraph 5 above); (ii) it appears that had Judge L., as the Acting Chief Justice, not transferred the case, a split decision in the applicant's favour would have been delivered, and that this became apparent to the applicant when he received the decision of the extended composition, since the two judges forming the minority had also sat as part of the initial three-judge bench; and (iii) Judge L., on another occasion in 2014 while she had been Acting Chief Justice, had forwarded to the police an email from the applicant addressed to the Chief Justice of the Court of Appeal, as she had perceived that it contained a threat to a judge of the Court of Appeal who had been involved in criminal proceedings against the applicant (see paragraph 6 above).

42. The Court considers that those features were relevant and could have affected the applicant's perception of the fairness of the proceedings. It finds it important, however, that the transfer of the case to the extended composition took place in accordance with an express provision of the Act on Courts of Appeal (see paragraph 24 above). On the basis of the detailed explanation by the Supreme Court as to how the criteria in that provision were to be interpreted and how they had been met in the applicant's case (see paragraphs 16-19 above), the Court does not find any grounds for doubting that the conditions for a transfer had objectively been met and that a plausible explanation of the procedures followed was provided (see, *mutatis mutandis*,

Academy Trading Ltd and Others v. Greece, no. 30342/96, § 46, 4 April 2000).

43. Moreover, in the event that no formally reasoned decision was delivered and no other explanations were given to the applicant when the transfer to the extended composition was decided, as he contended, the Court does not rule out that, in the circumstances, this might have led him to perceive that the proceedings were not being conducted in an ordinary manner. It is nonetheless the case that the general law setting out the criteria for such a transfer was fully accessible to the applicant, who was himself a lawyer. Furthermore, in her statement to the Supreme Court Judge L. provided detailed reasons as to why she had, as Acting Chief Justice, decided to transfer the case, and the reasons that she provided were thoroughly examined by the Supreme Court. This took place following the applicant's appeal against the Court of Appeal's judgment (see paragraphs 12 and 16-20 above). As stated in paragraphs 35-39 above, it cannot be considered that the decisions taken in the applicant's case were based on unascertainable reasons or were not circumscribed by any procedural safeguards (contrast, for example, *Sutyagin v. Russia*, no. 30024/02, § 192, 3 May 2011, concerning criminal proceedings).

44. The fact nonetheless remains that Judge L., as Acting Chief Justice of the Court of Appeal replacing the Chief Justice in his absence, took a decision which, as it later transpired, had the consequence that a decision of the three-judge bench that would have gone in the applicant's favour was not given; instead, a decision unfavourable to the applicant was given by the extended composition, chaired by Judge L., who voted with the majority. While the Court has found no grounds for considering that there was personal bias on the part of Judge L. on account of the email forwarded by her in 2014, or that her decision to transfer the case in her capacity as Acting Chief Justice was in and of itself proof of such bias (see paragraph 40 above), it cannot rule out that the applicant might have suspected that she had taken the opportunity provided by her replacing the Chief Justice in the latter's absence to use a procedural tool whose purpose was to give authority to important decisions, in order to obtain a result to the applicant's detriment, which she might have wished for on the basis of other reasons, and that the applicant viewed that in the light of her handling of the email in 2014 (see paragraph 6 above).

45. In that connection, the Court takes note of the point made by the Supreme Court that the fact that the proceedings before the three-judge bench were about to end with a split decision on a complex matter that required a balancing of competing fundamental rights formed in itself an argument in favour of having the case examined by an extended composition, since the purpose of a transfer would be to create a decision that had the desired authority (see paragraph 20 above). In the light of that consideration, the general timing of the decision to transfer in the applicant's case appears justifiable. It was during her short-time replacement of the Chief Justice that

the Acting Chief Justice was called upon both to take the decision to transfer the case to an extended composition and to sit in that composition, an arrangement that followed from the general procedural arrangements laid down in section 8c(3) of the Act on Courts of Appeal (as in force at the material time – see paragraph 24 above). The Supreme Court had concluded that there had not been any reason to doubt that the transfer was not objectively justified. The Court has no reason to re-assess this conclusion. In the absence of any other matters raised by the applicant giving any concrete impression of possible bias, the Court does not, however, find that that fact in itself could have deprived the proceedings of their of fairness. In this connection the Court reiterates that the Supreme Court had full jurisdiction and re-examined all relevant matters and found no deficiencies in the appellate proceedings (see paragraphs 34-39 above).

46. In summary, viewing the case overall and, in that connection, giving particular importance to its particular features as mentioned above (see paragraph 41 above), which the Court understands did raise questions in the applicant's mind (see, for a similar approach, *Academy Trading Ltd and Others*, cited above, § 46), the Court is nonetheless satisfied that the proceedings provided sufficient guarantees to exclude any legitimate doubt in respect of the impartiality of the Court of Appeal.

(iii) Conclusion

47. The Court has assessed above whether there were shortcomings in the domestic proceedings owing to bias and has in that context examined the circumstances relating to the fact that in 2014 Judge L. forwarded an email to the police on the basis that she perceived it to contain a threat against another judge at the Court of Appeal (see paragraphs 6 and 40 above) and the circumstances relating to Judge L.'s decision – taken on 23 November 2016 while she was performing the functions of Acting Chief Justice as a short-term replacement – to transfer the case to an extended composition (see paragraphs 9 and 40-45 above). It has also examined whether, because of the transfer at issue, in the circumstances of the applicant's case the proceedings in and of themselves became unfair (see paragraphs 34-39 above). It has, lastly, carried out an overall assessment of how the proceedings appeared to the applicant, taking into account all of the matters that he maintained, before the Court, had demonstrated bias and an unfair trial (see paragraph 46 above).

48. It follows from the reasons given above that there has been no violation of Article 6 of the Convention.

FOR THESE REASONS, THE COURT,

1. *Declares*, unanimously, the application admissible;

2. *Holds*, by six votes to one, that there has been no violation of Article 6 of the Convention.

Done in English, and notified in writing on 9 November 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Registrar

Marko Bošnjak
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Paczolay is annexed to this judgment.

M.B.
R.D.

DISSENTING OPINION OF JUDGE PACZOLAY

In this case the majority of the Chamber, despite the particular features of the case, was satisfied that the proceedings gave sufficient guarantees to exclude any doubt in respect of the impartiality of the Court of Appeal. I understand the arguments of the judgment, however I cannot overlook the serious errors made by the Court of Appeal at the beginning of the procedure.

On 29 August 2016 the Court of Appeal, sitting as a bench of three judges, held an oral hearing in the presence of the applicant, and announced that it intended to deliver a decision within thirty days (see paragraph 8 of the judgment). In fact, not only the decision was not delivered in thirty days but not even in almost three months. In my view this is already in itself a serious violation of the fairness of the trial.

Instead of delivering the decision what happened was that Judge L., who was Acting Chief Justice replacing the President of the Court of Appeal for four-day term between 21 and 24 November, on 23 November decided that the case should be transferred to an extended composition of seven judges. The judgment itself acknowledges that there was no document explaining to the Court what prompted Judge L. at that time to transfer the case to an extended composition (paragraph 9 of the judgment). The actual and not the acting President of the Court of Appeal could have decided during almost a year to transfer the case.

The detailed explanations of the majority of the divided Supreme Court are sophisticated but do not justify neither the delay nor the reasons of the transfer, and especially its strange circumstances. Even the Government admits that the provision making possible the transfer to an enlarged chamber is regarded in the legal literature as ‘highly discretionary’ (paragraph 50 of the Government’s observations).

I agree with the reasoning of the majority that our Court is not a fourth instance court. Nevertheless, as emphasized by our Court, the power of appreciation is not unlimited. The domestic margin of appreciation thus goes hand in hand with a European supervision. Our Court under Article 6 is very severe in protecting the independence of judges. On the other hand, we should apply the same severity when adjudicating the fairness and impartiality of judges. We cannot ignore and overlook situations that might undermine the credibility of the judiciary.

One of the criteria applied by the Court is that not enough to be impartial, it also necessary to appear impartial. For me the behaviour of the Court of Appeal does not appear as impartial. In my evaluation the initial omission to deliver the decision, and the suspicious circumstances of the transfer to an extended chamber create such an original error that cannot be absolved by the Supreme Court. Therefore, with all my respect to the argumentation of the majority I could not conclude and vote for no violation.