

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

SECOND SECTION

CASE OF SAMET KAYA v. TÜRKİYE

(Application no. 42109/22)

JUDGMENT

Art 6 § 1 (civil) • Access to court • Lack of judicial review of premature termination of a prosecutor's judicial tenure by the Council of Judges and Prosecutors ("HSK") on health grounds • Art 6 § 1 applicable • Genuine and serious dispute over arguable right to protection against arbitrary dismissal • First condition of the *Eskeline* test satisfied • Second condition of the *Eskelinen* test not met • Absence of judicial review allowing for a determination of the factual and legal basis for the termination of the applicant's tenure not justified in the State's interest • HSK's internal mechanisms lacked requisite procedural guarantees and did not constitute an effective remedy sufficient to justify absence of judicial review • No exceptional or compelling reason capable of justifying exclusion of dispute from judicial oversight • Very essence of right of access to a court impaired

Prepared by the Registry. Does not bind the Court.

STRASBOURG

26 May 2026

FINAL

26/08/2026

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



In the case of Samet Kaya v. Türkiye,

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

Arnfinn Bårdsen*, President*,
Saadet Yüksel,
Jovan Ilievski,
Péter Paczolay,
Gediminas Sagatys,
Juha Lavapuro,
Hugh Mercer*, judges*,
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 42109/22) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Samet Kaya ("the applicant"), on 11 August 2022;

the decision to give notice to the Turkish Government ("the Government") of the complaints concerning Articles 6 and 8 of the Convention and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 5 May 2026,

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

INTRODUCTION

1. The application concerns the applicant's dismissal by the Council of Judges and Prosecutors (*Hâkimler ve Savcılar Kurulu* – "the HSK") on the basis of a medical report by the Forensic Medicine Institute ("the FMI"), which concluded that the applicant was not fit on health grounds to carry out the duties of a judge or prosecutor. The applicant complains of a violation of his rights under Articles 6 and 8 of the Convention.

THE FACTS

2. The applicant was born in 1993 and lives in Ankara.

3. The Government were represented by their Agent, Mr Abdullah Aydın, Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye.

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

I. BACKGROUND TO THE CASE AND THE APPLICANT'S JUDICIAL APPOINTMENT

5. The applicant is a graduate of a Turkish law faculty. Having passed a judicial candidate exam held on 3 June 2017 and been successful in a subsequent oral interview, the applicant was determined to meet the necessary professional criteria and on 28 July 2017 was selected as a candidate for judicial or prosecutorial office.

6. The applicant was initially appointed as a prosecutor in Karabük, where he took up his functions on 5 November 2018. While married at the time of taking office, his marriage ended by divorce shortly thereafter.

II. THE APPLICANT'S MEDICAL CONDITION AND INITIAL DIAGNOSIS

7. The applicant reported experiencing personal difficulties in the aftermath of his divorce and took sick leave. On 25 April 2019 he sought medical attention at Ankara Kahramankazan State Hospital, where he was diagnosed with depression and commenced medication.

8. Following his return to work, the applicant reported feeling unwell and experienced worsening sleep problems. On 29 April 2019, while working at the courthouse, the applicant suffered a nervous breakdown and was transported by his colleagues to Karabük University Hospital.

9. The medical records issued upon admission to Karabük University Hospital documented the acute nature of the condition and noted that the applicant was brought to the emergency department suffering from insomnia, severe uneasiness and restlessness. He exhibited disorganised behaviour and impaired judgment, including paranoid persecutory delusions and suicidal thoughts, and could not be calmed by his colleagues. The records further noted that he had attempted to leave the emergency department and had engaged in unusual behaviour, such as approaching a dog and trying to put his hand in its mouth.

10. On 30 April 2019 the applicant was diagnosed with a "schizophrenia-like acute psychotic disorder" by the psychiatric clinic of Karabük University Hospital and admitted for inpatient treatment. On 8 May 2019 he was discharged against the advice of medical staff at his request and that of his family in order to continue his treatment elsewhere.

11. On the same day the applicant sought further medical attention at Ankara University Gülhane Training and Research Hospital. On 9 May 2019 he was admitted for inpatient treatment with a diagnosis of "psychosis". By 27 May 2019 active psychopathology was no longer observed and he was discharged for continued outpatient treatment. He received a doctor's note prescribing one month of medical leave, which referred to an "anxiety

disorder", and a recommendation for psychiatric consultation once every two weeks.

12. At the end of his medical leave the applicant was appointed by the HSK as a judge rapporteur (*tetkik hakimi*) in the Court of Cassation at his request to facilitate continued treatment in Ankara. He commenced his duties in June 2019.

13. The applicant remarried on 27 December 2019. Subsequently, on 17 June 2020, he was appointed by the HSK, at his request and on family grounds, as a prosecutor in Hatay.

III. INITIATION OF PROFESSIONAL SUITABILITY PROCEEDINGS AND THE APPLICANT'S DISMISSAL ON HEALTH GROUNDS

14. On 25 June 2019 the applicant's medical reports were referred to the HSK's Professional Admission Office so that it could initiate an inquiry into whether the applicant's health precluded him from serving in the judiciary.

15. On 17 September 2019 the Second Chamber of the HSK reviewed the medical reports and determined that it required an expert report specifically into whether the applicant suffered from a condition that would prevent him from continuously performing his duty as a judge or prosecutor across the country. Consequently, on 3 October 2019 the Chamber requested the applicant's referral to the FMI. The applicant was examined by the Fourth Specialised Board of the FMI six times between 29 November 2019 and 26 May 2021.

16. On 11 August 2021 the FMI submitted its report to the HSK. The report noted that while the examinations of the FMI medical board had found "no significant psychopathology" and that the applicant was "still in remission" under treatment, the Board placed decisive weight on the severity of the applicant's initial diagnoses (namely, a "schizophrenia-like acute psychotic disorder" and an "anxiety disorder, pre-psychotic episode"). Citing medical information regarding the risk of a stress-related recurrence of his illness, the board unanimously concluded that the applicant could not continuously perform his duties as a judge or prosecutor across the country.

17. Following receipt of the FMI's report, the Second Chamber of the HSK decided, on 7 September 2021, to terminate the applicant's duties. The decision was based on the finding that the applicant had lost the necessary qualifications specified in subsection (g) of section 8 of the Law on Judges and Prosecutors (Law no. 2802 – see paragraph 27 below).

18. After he was informed of this decision, the applicant sought a psychiatric examination at Hatay University Hospital. The resulting medical report, dated 10 September 2021, indicated that no active psychopathology had been found that would impair the applicant's capacity or prevent him from performing his duties, and concluded that the applicant had fully recovered.

19. On 16 September 2021 the applicant submitted that medical report to the HSK and requested a review of the dismissal decision. He contended that his illness had not recurred over the approximately two and a half years that had passed since then, and that it had not had any adverse effects on his professional or private life. He requested that his case be referred to a higher board at the FMI for re-examination.

20. The Second Chamber of the HSK accepted the request for a review and decided, on 5 October 2021, to refer the applicant to the High Board of the FMI to obtain a last expert report on his fitness to perform judicial duties.

21. The applicant was subsequently re-examined by the First High Board of the FMI on 14 December 2021. The High Board's report, issued on the same date, reassessed all of the medical documents and findings contained in the case file. Although the Board observed no significant psychopathology and confirmed the applicant was still in remission, it reiterated the historical diagnosis of an acute psychotic disorder and the potential for recurrences under stressful conditions. Consequently, the High Board unanimously concluded that the applicant was not suitable to continue performing his duties as a judge or prosecutor across the country.

22. Relying on that opinion, on 28 December 2021 the Second Chamber of the HSK dismissed the applicant's request for review (see paragraph 19 above). The applicant subsequently lodged an objection with the Plenary of the HSK, submitting a second report, dated 9 March 2022, obtained from Hatay University Hospital, which reiterated the findings of the previous report (see paragraph 18 above). He further alleged a procedural flaw, contending that the HSK was required to conduct a preliminary investigation into whether his actual professional performance demonstrated an inability to perform his duties as a mandatory prerequisite for his referral to the FMI. The Plenary dismissed the objection on 6 April 2022. The applicant was notified of that final decision on 9 May 2022.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

23. A detailed description of the domestic law provisions governing the HSK's composition, duties, and powers, including the judicial appointment process and the scope of judicial review, can be found in *Eminağaoğlu v. Turkey* (no. 76521/12, §§ 37-42, 9 March 2021) and *Oktay Alkan v. Türkiye* (no. 24492/21, §§ 22-27, 20 June 2023).

24. Other relevant domestic law provisions are cited below.

A. The Constitution

25. The relevant provisions of the Constitution, as in force at the material time, provided as follows:

Article 139

"Judges and public prosecutors shall not be removed from office or compelled to retire without their consent before [they reach] the age prescribed by the Constitution; nor shall they be deprived of their salaries, allowances or other rights relating to their status – even as a result of the abolition of a court or post.

Exceptions, which shall be established in law, are reserved for those convicted of an offence warranting dismissal from the profession, those whose inability to perform their duties owing to ill-health has been definitively established, and those who are found unsuitable to remain in the profession."

Article 140

"... Judges shall discharge their duties in accordance with the principles of the independence of the courts and the security of tenure of judges.

... any ... instances of incompetence requiring the dismissal [of judges and public prosecutors] from the profession ... and other matters relating to their staff status shall be regulated by law in accordance with the principles of the independence of the courts and the security of tenure of judges.

Judges and prosecutors shall serve until they attain the age of sixty-five ..."

Article 159

"... The [HSK] shall take decisions regarding the admission to the profession of judges and public prosecutors of civil and administrative courts, appointments, transfers to other posts, the delegation of temporary powers, promotions, admission to the first grade, [and shall take decisions] concerning those who no longer fulfil the requirements of office[, namely] on the imposition of disciplinary sanctions and dismissal from office; ... it shall also exercise the other functions vested in it by the Constitution and legislation.

The [HSK shall carry out] supervision of judges and public prosecutors with regard to (i) their performance of their duties in accordance with the laws, regulations, by-laws and circulars, (ii) investigations into whether they have committed offences in connection with or in the course of their duties, (iii) whether their behaviour and conduct are in conformity with the requirements of their status and duties. [I]f necessary, enquiries and investigations concerning them shall be carried out by the [HSK]'s inspectors, upon the proposal of the relevant chambers and with the permission of the president of the [HSK]. ...

The decisions of the [HSK], other than those relating to dismissal from the profession [on the ground of misconduct], shall not be subject to judicial review. ..."

B. Law on the Council of Judges and Prosecutors (Law no. 6087)

26. The relevant provisions of Law no. 6087 on the HSK, adopted on 11 December 2010 and published in the Official Gazette on 18 December 2010, as in force at the material time, provided as follows:

Section 4 – Duties of the [HSK]

"(1) The duties of the [HSK] are as follows: ...

b) to conduct the following procedures with respect to judges and prosecutors: ...

6 decisions concerning those who have been found unsuitable to continue in the profession ...

ç) to issue circulars pertaining exclusively to matters involving judicial and administrative judges and prosecutors, including their admission to the profession, ... , giving decisions concerning those deemed unsuitable to remain in the profession, ..., and the carrying out of supervision, investigations, inquiries, and prosecutions of said judges and prosecutors.

(2) All personnel matters pertaining to judges and prosecutors shall be administered by the [HSK], save those expressly entrusted by law to the Ministry."

Section 8 – Composition of the Chambers, Election of Presidents, and their Duties and Powers

"(1) The Chambers of the [HSK] shall be composed of six members each, as follows:

a) the First Chamber comprises the under-secretary of the Ministry of Justice, one member elected from among the members of the Court of Cassation, two members elected from among judicial judges and prosecutors, one member elected from among administrative judges and prosecutors, and one member elected from among faculty members or lawyers;

b) the Second Chamber comprises two members elected from among the members of the Court of Cassation, one member elected from among the members of the Supreme Administrative Court, one member elected from among judicial judges and prosecutors, and two members elected from among faculty members or lawyers ..."

Section 9 – Duties of the Chamber

"...

(2) The duties of the Second Chamber shall be as follows:

a) Concerning judges and prosecutors: ...

4. to give decisions regarding those considered unsuitable to remain in the profession ...

ç) to give decisions regarding ... dismissals from service ..."

Section 33 – Re-examination, Objection and Judicial Recourse

"...

(2) ... the persons concerned may apply for the review of a decision handed down by a chamber, within ten days from the notification of the [said] decision.

(3) ... the persons concerned may, within ten days following notification, file an objection to the Plenary Assembly [of the HSK] against decisions taken by chambers after review. Decisions of the Plenary Assembly on appeal shall be final. ...

(5) No appeal may be lodged with judicial authorities against decisions of the Plenary Assembly or of the chambers except for dismissals [on the ground of misconduct]. ..."

C. Law on Judges and Prosecutors (Law no. 2802)

27. The relevant provisions of Law no. 2802, as in force at the time, provided as follows:

Section 6 – Inspection, Inquiry, Investigation and Prosecution

"The inspection, inquiry, investigation, and prosecution of judges and public prosecutors shall be governed by the provisions of this Law."

Section 8 – Requirements for Candidacy

"Candidates must fulfil the following requirements:

...

(g) not have a physical or mental illness or disability which could hinder the continuous discharge of the duties of judges or prosecutors in any part of the country; ..."

Section 44 – Judicial and Prosecutorial Tenure

"Judges and prosecutors shall not be removed from office. They shall not be deprived of their salaries, allowances or other personnel rights, even owing to the abolition of a court or a staff position, nor shall they be made to retire before the age of sixty-five unless they request it themselves. The exceptions stipulated in law are reserved for those who have been convicted of an offence requiring their removal from the profession, those whose inability to perform their duties for to health reasons has been definitively established, and those who are found unsuitable to remain in the profession."

Section 53 – Dismissals of Judges and Prosecutors

"A judge or prosecutor shall be dismissed upon:

...

(c) their loss of any of the qualifications stipulated in subparagraphs (a), (d), and (g) of Article 8 while in office ..."

Section 57 – Reinstatement upon recovery

"Where a person has been certified as recovered from a mental or psychiatric illness, and following their return to duty it is determined by investigation that their conduct or

behaviour in the performance of their professional duties indicates an inability to fulfil the requirements of the office, the Ministry of Justice shall refer the said person to the Forensic Medicine Institute for a final medical assessment, and proceedings shall be conducted in accordance with the findings of the subsequent report."

Section 82 – Investigations

"The initiation of an inquiry (*inceleme*) or an investigation (*soruşturma*) in respect of judges and prosecutors for offences committed in connection with or in the course of their official duties, or for conduct and behaviour incompatible with the requirements of their office and status, shall be subject to the authorisation of the Ministry of Justice. The Minister of Justice may direct that such an inquiry or investigation be conducted by judicial inspectors, or by a judge or prosecutor of superior rank to the individual under investigation. ..."

D. Presidential Decree on the Organisation of institutions and entities affiliated with, related to, or associated with ministries and other institutions and entities ("Presidential Decree no. 4")

28. The relevant provisions of Presidential Decree no. 4, as in force at the relevant time, provided as follows:

Section 2 – Establishment

"(1) The FMI is established under the Ministry of Justice to perform expert witness services in judicial matters ..."

Section 3 – Mandate and Duties

(1) The duties of the FMI shall be as follows:

(a) To provide scientific and technical opinions on forensic medical matters referred to it by courts, judges, and public prosecution offices, as well as by public institutions and organisations in areas deemed appropriate by the Institute. ..."

II. INTERNATIONAL LAW AND PRACTICE

29. A description of international law and practice regarding judicial independence and the principle of irremovability of judges may be found, in so far as relevant, in *Baka v. Hungary* ([GC], no. 20261/12, §§ 72-87, 23 June 2016) and, more recently, in *Grzęda v. Polan* ([GC], no. 43572/18, §§ 120-44, 15 March 2022), *Bilgen v. Turkey* (no. 1571/07, §§ 32-39, 9 March 2021) and *Eminağaoğlu* (cited above, §§ 45-46).

A. Council of Europe materials

1. The European Charter on the Statute for Judges

30. The relevant extracts from the European Charter on the Statute for Judges (Department of Legal Affairs of the Council of Europe, 8-10 July 1998, DAJ/DOC (98)23) read:

1. General Principles

"...

1.3. In respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary.

1.4. The statute gives to every judge who considers that his or her rights under the statute, or more generally his or her independence, or that of the legal process, are threatened or ignored in any way whatsoever, the possibility of making a reference to such an independent authority, with effective means available to it of remedying or proposing a remedy.

..."

7. Termination of Office

"...

7.1. A judge permanently ceases to exercise office through resignation, medical certification of physical unfitness, reaching the age limit, the expiry of a fixed legal term, or dismissal ...

7.2. The occur[r]ence of one of the causes envisaged at paragraph 7.1 hereof, other than reaching the age limit or the expiry of a fixed term of office, must be verified by the authority referred to at paragraph 1.3 hereof.

..."

2. Committee of Ministers

31. The relevant parts of Recommendation CM/Rec(2010)12 of the Council of Europe's Committee of Ministers to member States on judges: independence, efficiency and responsibilities (adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies) read as follows:

Tenure and irremovability

" ...

49. Security of tenure and irremovability are key elements of the independence of judges. Accordingly, judges should have guaranteed tenure until a mandatory retirement age, where such exists.

50. The terms of office of judges should be established by law. A permanent appointment should only be terminated in cases of serious breaches of disciplinary or criminal provisions established by law, or where the judge can no longer perform judicial functions. Early retirement should be possible only at the request of the judge concerned or on medical grounds.

..."

3. Venice Commission

32. The European Commission for Democracy through Law (the Venice Commission), in its opinion on the Composition of the HSK and the Procedure for the Election of its Members in Türkiye, which it adopted at its 141st Plenary Session (Venice, 6-7 December 2024, CDL-AD(2024)041), observed, in so far as relevant, as follows (footnotes omitted):

Judicial review of [HSK] decisions

"...

84. Article 159 (10) of the Constitution provides that decisions of the [HSK], other than dismissal from the profession [on the ground of misconduct], shall not be subject to judicial review. Along the same lines, Article 33 (5) of the Law on the [HSK] declares: 'Final decisions on dismissal from profession [on the ground of misconduct] taken by the Plenary or Chambers may be challenged before the court; however, other decisions shall not be subject to judicial review. The [Supreme Administrative Court] shall review cases against dismissals from profession [on the ground of misconduct] as the first instance court. Such cases shall be deemed urgent matters.' All other decisions can be re-examined by the original decision maker or in the case of the Chambers, by the Plenary. Re-examination decisions are final.

85. During the visit to Ankara, the national authorities have repeatedly emphasized the administrative nature of the [HSK], and this was used as an argument to justify this provision.

86. According to European standards, the decisions of a judicial council should be subject to judicial review, allowing an independent body to assess the fairness and legality of the Council's decisions; this is true for disciplinary decisions as well as for all matters concerning the career of a judge and prosecutor, including their recruitment/appointment. In a previous opinion on Türkiye, the Commission found that 'the need for provisions that introduce an appeal to a court of law should not be limited to disciplinary sanctions but should also cover other acts that have negative effects on the status or the activities of judges, for instance: denial of a promotion, adding (negative) comments to files, class allocation, changes of location etc. [CDL-AD(2011)004, *op. cit.*, para. 76.].' The Venice Commission therefore recommends introducing judicial review against all decisions of the [HSK]. In their comments of 21 November 2024, the Turkish authorities stated that a two-tier system of objection was introduced against the decisions of the [HSK] (re-examination by the Plenary) and contended that 'since the other personnel affairs of judges and prosecutors [other than dismissals on the ground of misconduct] are decided on by two chambers, the majority of which are composed of members of the judiciary, according to the procedures stipulated by the legislation, no separate judicial review is envisaged.'

..."

4. Consultative Council of European Judges

33. In Opinion no. 28 (2025) of 14 November 2025 on the on the importance of judicial well-being for the delivery of justice, the Consultative Council of European Judges made the following relevant observations:

"...

II. Defining judicial well-being

9. For the purposes of this opinion, judicial well-being is defined as a continuous process enabling judges to thrive across all aspects of their professional lives, and at the very least to maintain the physical and psychological health required to fulfil their judicial duties effectively and efficiently, with independence, impartiality and integrity. Judicial well-being is multidimensional, comprising positive facets such as work engagement, motivation, and work satisfaction, as well as negative facets including psychological strain, anxiety, depression, burnout, and work-induced trauma.

...

IV. Initiatives to protect judicial well-being

...

(E) Return to judicial duties

58. Where judges have sustained physical or psychological illness or injury that may have resulted in a period of absence from judicial duties, measures should be taken to support their safe return to work. Such measures may include access to psychological services, reasonable accommodations, counselling and therapy. Reasonable accommodations may include giving the judge flexibility to return to office, such as part-time hours or a phased re-entry to work, and regular support meetings with a supervisor to discuss how the court can meet their needs.

..."

B. United Nations

34. The relevant extracts of the United Nations Principles for the protection of persons with mental illness and the improvement of mental health care (17 December 1991, A/RES/46/119) read as follows:

Principle 4 - Determination of mental illness

"...

4. A background of past treatment or hospitalization as a patient shall not of itself justify any present or future determination of mental illness.

..."

35. The relevant non-binding principles of the Nauru Declaration on Judicial Well-being, which promote action to support the mental, physical, and emotional health of judges and judicial officers worldwide, adopted on 25 July 2024 by the Regional Judicial Conference on Integrity and Judicial

Well-being (as endorsed by the United Nations General Assembly Resolution A/RES/79/266 of 4 March 2025) read as follows:

> "...
>
> Recognizing that the judiciary is made of human beings – individual and independent persons appointed to judicial office; therefore, the judiciary is fundamentally a human system, dependent upon the collective human capacities and faculties of individual judges; ...
>
> **2. Judicial stress is not a weakness and must not be stigmatised.**
>
> ... The historical stigmatisation of stress in legal and judicial culture compounds inherent work challenges with isolation and shame, and is a major barrier to help-seeking and recovery. Judicial leaders have a particular role in promoting healthy cultural messages about judicial stress and well-being.
>
> **3. Judicial well-being is a responsibility of individual judges and judicial institutions.**
>
> Judicial well-being is a shared responsibility, requiring action on the part of both individual judges and the judicial institutions. Individual judges must take active steps to maintain their well-being. Courts, including the judicial leadership and court management, must create working conditions conducive to judicial well-being.
>
> ..."

THE LAW

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

36. The applicant complained that he had had no access to a court to challenge the decision of the HSK of 6 April 2022 rejecting his objection against the decision to dismiss him (see paragraph 22 above). He relied on Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. The parties' submissions

1. The Government

37. The Government considered that the complaint was incompatible *ratione materiae* with the provisions of the Convention. They contended that the subject matter of the dispute – the dismissal of the applicant on the ground of medical unfitness – did not concern a "civil right" within the meaning of Article 6 § 1 of the Convention. They argued that the security of tenure guaranteed by the Constitution did not equate to an unconditional right to continued employment until the mandatory retirement age. Furthermore, since the finding that the applicant was medically unfit had been conclusively established by expert scientific findings, the dismissal had fallen under one

of the defined statutory exceptions to the security of judicial tenure. They reiterated that a person who failed to meet the legal prerequisites of Law no. 2802 (see paragraph 27 above) no longer possessed an arguable right to exercise the profession of judge or prosecutor.

38. As regards the civil nature of the right claimed by the applicant, the Government contended that both conditions of the two-pronged test established in the case of *Vilho Eskelinen and Others v. Finland* ([GC], no. 63235/00, ECHR 2007-II) had been satisfied, meaning that the dispute did not fall under the scope of Article 6 § 1.

39. The Government submitted that the first condition of the *Eskelinen* test was met because domestic law, specifically Article 159 of the Constitution and Section 33 of Law no. 6087, expressly excluded the HSK's decisions – save for dismissal from office on the ground of misconduct – from judicial review (see paragraphs 25 and 26 above). That exclusion, they noted, had been confirmed by the Court's previous finding in the case *Bilgen v. Turkey* (no. 1571/07, § 75, 9 March 2021).

40. Concerning the second condition – namely, that the exclusion from access to a court must be justified on objective grounds in the State's interest for the category of staff in question – the Government drew a distinction between the present case and that of *Bilgen*. They argued that *Bilgen* had concerned guarantees of individual independence and impartiality against arbitrary decisions, whereas in the present case the dismissal had resulted from the applicant's failure, after his appointment, to meet the mandatory health requirements for the job. The Government contended that the HSK's authority to terminate an employment relationship on the ground of a loss of the required state of health constituted a non-discretionary exception to the security of judicial tenure, as provided for by the Constitution and Law no. 2802. Consequently, the applicant's dismissal had been the mandatory result of established medical facts, placing the measure outside the scope of any possible arbitrary interference. Relying on the Court's approach in the case of *Nazsiz v. Turkey* (dec.) (no. 22412/05, § 2, 26 May 2009), the Government maintained that the exclusion from judicial review was justified by the special bond of trust and loyalty required of judicial officers, which necessitates that the health of such officers allows them to execute judicial power across the country. They concluded that the determination of objective health standards fell within the wide margin of appreciation accorded to States to safeguard the integrity of the judiciary, and that such a determination, unlike arbitrary disciplinary or transfer decisions, did not compromise the applicant's individual independence or impartiality. The Government thus concluded that the second condition of the *Eskelinen* test was also met.

41. As to the merits of the complaint, the Government submitted that no violation of the applicant's right of access to a court had occurred. They maintained that the absence of judicial review had a clear legal basis in

domestic law (see paragraph 25 above) and pursued the legitimate aim of ensuring the proper exercise of judicial power by strictly upholding mandatory professional qualifications. They argued that subjecting all HSK decisions to judicial review would create an unsustainable burden on the judicial system. The Government further contended that the measure was proportionate, given that the HSK was an independent authority primarily composed of judges and prosecutors, and that the applicant had benefitted from effective internal administrative safeguards, specifically the two-tier review process involving the request for a re-examination and the objection lodged with the Plenary (see paragraphs 19-22 above). In that connection, the Government emphasised that those administrative remedies were effective in practice, as evidenced by numerous instances where requests had been granted by the HSK following a re-examination or objection. They concluded that the dismissal was specific to the applicant's profession as a judge or prosecutor and did not preclude him from pursuing other legal careers.

2. The applicant

42. The applicant asserted that, in practical terms, his dismissal on health grounds had resulted in the same definitive loss of tenure as a dismissal from the profession on the ground of misconduct; yet, unlike the latter type, the former type of dismissal was excluded from judicial review under domestic law. The applicant further maintained that the HSK could not be considered an independent and impartial body complying with the principle of a fair hearing guaranteed by Article 6, thereby rendering the internal administrative remedies ineffective.

B. The Court's Assessment

1. Admissibility

(a) General Principles

43. The Court reiterates that, for Article 6 § 1 in its civil limb to be applicable, there must be a "dispute" ("*contestation*" in French) regarding a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether it 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 (see *Denisov v. Ukraine* [GC], no. 76639/11, § 44, 25 September 2018, and *Grzęda v. Poland* [GC], no. 43572/18, § 257, 15 March 2022, both with further references). Lastly, the right must be a "civil" right (see *Grzęda*, cited above, § 257).

44. The Court further reiterates that civil servants can only be excluded from the protection embodied in Article 6 if two cumulative conditions are met, in line with the criteria established in the case of *Vilho Eskelinen and Others* (cited above). First, the State must have excluded access to a court in its domestic law for the category of staff in question; and second, this exclusion must be justified on objective grounds in the State's interest. In order for the exclusion to be justified, it is not sufficient for the respondent State merely to establish that the civil servant in question participated in the exercise of public power or that a special bond of trust and loyalty existed between the civil servant and the State, as employer. It is also incumbent upon the respondent State to demonstrate that the subject matter of the dispute was related to the exercise of State power or that it called into question the special bond. Consequently, there can in principle be no justification for the exclusion from the Article 6 guarantees of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of the relationship between the particular civil servant and the State in question. There is, in practice, a presumption that Article 6 applies. The burden rests on the respondent State to demonstrate, first, that the applicant did not have a right of access to a court under national law and, secondly, that the exclusion of the Article 6 rights was justified in the case of that civil servant (see *Grzęda*, cited above, § 261, with further references). Lastly, for domestic legislation excluding access to a court to have effect under Article 6 § 1 in a particular case, it must be compatible with the rule of law (ibid., § 299, with further references).

45. While the Court initially stated that its reasoning in *Vilho Eskelinen and Others* (cited above, § 61) was limited to the category of civil servants, it subsequently extended the application of these criteria to disputes concerning members of the judiciary. The Court has noted in this connection that although the judiciary is not part of the ordinary civil service, it is considered part of the typical public service (see *Baka v. Hungary* [GC], no. 20261/12, § 104, 23 June 2016). Accordingly, the Court has applied the *Vilho Eskelinen* criteria to all types of disputes concerning judges and prosecutors (see *Oktay Alkan v. Türkiye*, no. 24492/21, § 47, 20 June 2023, and the case-law cited therein).

(b) Application of those principles to the present case

(i) Existence of a right

46. The Court observes that, at the material time, the applicant was a member of the judiciary, having been appointed by the HSK as a prosecutor in Hatay following his initial entry into the profession and subsequent assignments in other cities (see paragraph 13 above). He was dismissed from the judiciary with final effect by the HSK Plenary on 6 April 2022 (see paragraph 22 above).

47. The Court notes at the outset that, under the Turkish constitutional and legislative framework, judges and prosecutors enjoy security of tenure until retirement and are protected against removal or compulsory retirement absent their express consent. Their term of office may be prematurely terminated only in the exceptional circumstances set out in the Constitution and Law no. 2802 (see paragraphs 25-27 above). These exceptions include, among other things, being definitively found unable to perform the duties of the office owing to ill-health. In the present case, the Court observes that the applicant, who was around 28 years old at the material time, had an entitlement under the Constitution to serve as a judge or prosecutor until the age of 65 and could arguably claim all of the constitutional and statutory guarantees available to judges and prosecutors whose appointment had been confirmed in accordance with the domestic legal framework, including the right to serve his term of office in full until retirement (see paragraphs 25 and 27 above; and compare, *Kamenos v. Cyprus*, no. 147/07, §§ 64-71, 31 October 2017).

48. The HSK determined, based on the FMI reports (see paragraphs 16 and 21 above), that the applicant had ceased to meet the mandatory health requirements needed to retain judicial office and dismissed him on health grounds with final effect (see paragraphs 17 and 22 above). The Government argued that the applicant's dismissal constituted an exception to the security of judicial tenure, falling outside the scope of an arbitrary interference, given that the HSK had been bound by the FMI's medical conclusions and had had no discretion in its decision-making (see paragraph 40 above). However, the ultimate question before the HSK was whether the applicant met the statutory criteria to retain his office, a question directly impacting his right to security of judicial tenure and all other employment rights and benefits associated with it. The Court is therefore not satisfied that the Government's arguments, which frame the applicant's dismissal as a purely objective, non-discretionary application of the law, are sufficient to justify the conclusion that the applicant did not possess an arguable right to protection against arbitrary dismissal.

49. It is clear from the above that the outcome of the proceedings before the HSK – which resulted in the premature termination of the applicant's judicial tenure – was directly decisive for the determination of his civil rights and obligations within the meaning of Article 6 § 1 of the Convention. Accordingly, the Court considers that in the present case there was a genuine and serious dispute over a "right" which the applicant could claim on arguable grounds under domestic law, thereby satisfying the first stage of the Article 6 applicability assessment.

(ii) Civil nature of the right in question: the Eskelinen test

50. The Court will next determine whether the right claimed by the applicant, that is, his right not to have his judicial tenure terminated

prematurely and arbitrarily, was "civil" within the autonomous meaning of Article 6 § 1.

51. As regards the first condition of the *Eskelinen* test (see paragraph 44 above), the Court first notes that Article 159 of the Constitution and section 33 of Law no. 6087 expressly excluded the HSK's decisions concerning judges and prosecutors, save for dismissals from the profession on the ground of misconduct, from judicial review (see paragraphs 25 and 26 above; see also *Bilgen*, cited above, § 75). The Court has recently reconfirmed that the HSK cannot be considered a "tribunal" for the purposes of Article 6 in the light of its inherent procedural shortcomings, including the absence of a formal code of procedure, of public hearings and of an adversarial decision-making process (see *Oktay Alkan*, cited above, §§ 51-52). Accordingly, the first condition of the *Eskelinen* test, concerning the exclusion of access to a court under domestic law, is satisfied. Having also regard to the fact that the exclusion from access to a court is explicit, it is not necessary for the Court to further examine whether this exclusion stemmed from the systemic interpretation of the applicable legal framework (see *Grzęda*, cited above, § 292).

52. The Court must next assess the second condition of the *Eskelinen* test: whether the exclusion from access to a court was justified on objective grounds in the State's interest (see the case-law quoted in paragraph 44 above). It has previously established that excluding members of the judiciary from the protection of Article 6 in employment-related disputes cannot be justified solely on the basis of the special bond of trust and loyalty to the State (see *Bilgen*, cited above, §§ 76-81). In the present case, the decision to terminate the applicant's judicial tenure on the ground of ill-health was founded upon medical opinions issued by the FMI, an administrative body organically tied to the executive (see section 2 of Presidential Decree no. 4, quoted in paragraph 28 above), and the final decision was taken by the HSK, an authority previously deemed non-judicial and to be lacking the requisite procedural guarantees under Article 6 (see the case-law cited under paragraph 51 above). The Court notes in this connection the findings of the Venice Commission, which has emphasised that the administrative nature of a judicial council cannot in itself justify the absence of judicial review; on the contrary, European standards require that an independent body be empowered to assess the fairness and legality of all decisions affecting the status or activities of judges and prosecutors (see paragraph 32 above). The Court thus finds that, in the light of the constitutional guarantees safeguarding the irremovability of members of the judiciary, the absence of any subsequent judicial review allowing for a determination of the factual and legal basis for the termination of the applicant's tenure cannot be deemed justified in the State's interest. Members of the judiciary should enjoy – like other citizens – protection from arbitrariness from the executive power and only oversight by an independent judicial body of the legality of such a removal decision is able

to render such a right effective (compare *Kövesi v. Romania*, no. 3594/19, §§ 124-25, 5 May 2020).

(c) Conclusion on admissibility

53. In view of the foregoing, the Court concludes that Article 6 § 1 of the Convention is applicable under its "civil" limb and that the Government's objection of incompatibility *ratione materiae* should be dismissed. The Court further notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

(a) General principles

54. The Court reiterates that the right of access to a court was established as an aspect of the right to a fair hearing guaranteed by Article 6 § 1 of the Convention in the case of *Golder v. the United Kingdom* (21 February 1975, §§ 28-36, Series A no. 18). In that case, the Court found that the right of access to a court constituted an inherent aspect of the safeguards enshrined in Article 6, referring to the principles of the rule of law and the avoidance of arbitrary exercise of power that underlie the Convention. Thus, Article 6 § 1 secures to everyone the right to have a claim relating to their civil rights and obligations brought before a court (see *Zubac v. Croatia* [GC], no. 40160/12, § 76, 5 April 2018, with further references, and *Grzęda*, cited above, § 342).

55. In respect of matters that fall within the ambit of the Convention, the Court's case-law shows that where there is no access to an independent and impartial court, the question of compliance with the rule of law will always arise (see *Golder*, cited above, § 34). However, the Court has also acknowledged that the right of access to the courts is not absolute and may be subject to limitations that do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see the above-cited cases of *Zubac*, § 78, and *Grzęda*, § 343).

(b) Application of these principles to the circumstances of the present case

56. The Court observes that its finding regarding the applicability of Article 6 § 1 (see paragraph 53 above) was without prejudice to its consideration of the question of compliance with the provision. A breach of the right of access to a court does not automatically follow from the finding that the second condition of the *Eskelinen* test has not been met. In similar disputes before it, the Court has had regard to whether any weighty reasons

justifying absence of judicial review has been adduced by the Government (see *Oktay Alkan*, cited above, § 67, with further references).

57. In the present case the parties concur that the HSK is not a "tribunal" (see also paragraph 51 above) and that its final decision of 6 April 2022, which resulted in the termination of the applicant's judicial tenure (see paragraph 22 above), was neither subject to review nor open to challenge before an ordinary court or other body exercising judicial powers. While the Government argued that the HSK is an independent and impartial body established by the Constitution and that the applicant benefited from an internal two-tier review process (see paragraph 41 above) – namely, the request for a re-examination by the Second Chamber and the subsequent objection lodged with the Plenary – the Court reaffirms its established position. The HSK's internal mechanisms, which demonstrably lack the requisite procedural guarantees inherent in proceedings before a court of general jurisdiction, do not constitute an effective remedy sufficient to justify the absolute absence of judicial review of the factual and legal basis for the dismissal (see *Oktay Alkan*, cited above, § 69, and the findings in paragraph 51 above). Furthermore, despite claiming that those procedures were effective in practice regarding dismissals on health grounds (see paragraph 41 above), the Government failed to substantiate their assertion with specific examples of individuals who had successfully challenged their dismissals via such mechanisms. Given the severity of the consequences for the applicant of his dismissal, which in practical terms were tantamount to those of a dismissal from the profession on the ground of misconduct – for which judicial review is available under domestic law (see paragraph 42 above) – the Court finds no exceptional or compelling reason capable of justifying the exclusion of the dispute from subsequent judicial oversight. The very essence of the applicant's right of access to a court was thus impaired.

58. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

59. The applicant complained under Article 8 of the Convention that his dismissal was arbitrary as he had already recovered from the health issue which was considered by the FMI as an impediment to his carrying out his functions, further submitting that the loss of employment caused severe financial and moral hardship for him and his family.

60. The Court reiterates that it remains open to it not to examine complaints which fully, or to some extent, overlap with complaints which it has already examined because they relate to the same facts, and concern issues which are part of – and are thus absorbed by – the broader issues already examined (see, for general principles, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156,

ECHR 2014, and *Tsaava and Others v. Georgia* [GC], nos. 13186/20 and 4 others, §§ 221-29, 11 December 2025).

61. The Court notes that, in the instant case, the issues raised under Article 6 § 1 of the Convention (see paragraphs 46-52 and 56-57 above) constitute the essence of the complaint under Article 8. In view of its findings regarding Article 6 (see paragraph 58 above), and noting that the applicant's inability to obtain judicial oversight – due to the absolute exclusion of the dispute from review – lay at the heart of his allegations, the Court considers it unnecessary to examine the admissibility and the merits of the complaint raised under Article 8 (see, for a comparable approach, *Bianchi v. Switzerland*, no. 7548/04, §§ 114-15, 22 June 2006; see also, *mutatis mutandis*, *Sylvester v. Austria*, nos. 36812/97 and 40104/98, §§ 73-77, 24 April 2003).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

63. The applicant claimed 500,000 euros (EUR) in respect of pecuniary damage, representing his loss of earnings resulting from his dismissal on health grounds. He further claimed EUR 100,000 in respect of non-pecuniary damage which he had sustained owing to the distress that he had allegedly suffered as a result of the decision taken against him.

64. The Government contested those claims. They considered that the sums claimed were speculative and that there was no causal link between the applicant's dismissal and the damage alleged. Lastly, they argued that the applicant's claim in respect of non-pecuniary damage was unsubstantiated and excessive, and did not correspond to the amounts awarded by the Court in other similar cases.

65. The Court observes that the applicant has not substantiated his claim for loss of income. The claim under this head must therefore be rejected. However, in view of the violation found in respect of the applicant's complaint under Article 6 of the Convention, and ruling on an equitable basis, the Court awards the applicant EUR 9,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

66. The applicant did not claim any costs and expenses. Accordingly, the Court is not called upon to make any award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* admissible the complaint under Article 6 § 1 of the Convention;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 8 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 May 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Registrar	Arnfinn Bårdsen President