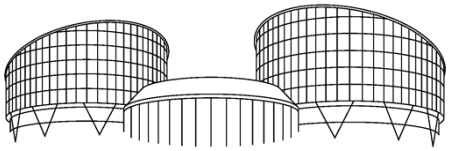

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SYTNYK v. UKRAINE

(Application no. 16497/20)

JUDGMENT

Art 6 (criminal) • Fair hearing • Impartial tribunal • Seriously flawed administrative-offence proceedings resulting in the conviction of a high-level anti-corruption official for accepting gifts (holidays) • Domestic courts' failure to address defence arguments regarding the reliability of decisive prosecution witness statements • Defence witness evidence disregarded • Burden of proof distributed in an arbitrary manner depriving the applicant of any practical opportunity to effectively challenge the charges against him • Objectively justified fears as to the trial judge's impartiality due to his possible dependence on the adverse party • Appeal court's failure to remedy the trial judge's unreasoned refusal to recuse himself
Art 8 • Private life • Publication of information, identifying the applicant with a description of the offence at issue and the penalty imposed, on the publicly accessible State "Corrupt Officials Register", for an indefinite period • Impugned measure seriously prejudiced the applicant's professional and social reputation • Art 8 applicable • Domestic authorities' failure to adduce relevant and sufficient reasons • Continued publication of the applicant's name on the Register deprived him of any means to defend himself from attacks on his moral and professional integrity • Impugned interference disproportionate
Art 18 • Art 6 • Art 8 • Restriction for unauthorised purposes • Cumulative circumstances indicating predominant ulterior purpose behind the applicant's prosecution of personally attacking his moral and professional integrity

STRASBOURG

24 April 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Sytnyk v. Ukraine,

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

Mattias Guyomar*, President*,
María Elósegui,
Gilberto Felici,
Andreas Zünd,
Diana Sârcu,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 16497/20) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Artem Sergiyovych Sytnyk ("the applicant"), on 7 April 2020;

the decision to give notice to the Ukrainian Government ("the Government") of the complaints under Articles 6 § 1 and 8, as well as Article 18 in conjunction with Articles 6 and 8, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 18 March 2025,

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

INTRODUCTION

1. The case concerns the alleged unfairness of administrative-offence proceedings against the applicant, a high-level public official in the field of anti-corruption, as a result of which he himself was found guilty of a corruption-related administrative offence, and the subsequent inclusion of his name, for an indefinite period, in a publicly accessible register of corrupt officials. The applicant raised complaints under Articles 6 § 1 and 8 of the Convention in that regard. Furthermore, relying on Article 18 taken in conjunction with Articles 6 and 8, he complained that the abovementioned proceedings and the ensuing measure had been driven by improper ulterior motives.

THE FACTS

2. The applicant, Mr Artem Sergiyovych Sytnyk, is a Ukrainian national, who was born in 1979 and lives in Brovary. He was represented before the Court by Mr N.S. Kulchytskyy and Mr M.V. Bem, lawyers practising in Kyiv.

3. The Government were represented by their Agent, Ms Marharyta Sokorenko, from the Ministry of Justice.

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

I. BACKGROUND

5. In April 2015 the applicant was appointed to the post of Director of the National Anti-Corruption Bureau of Ukraine ("the NABU"), a central executive agency competent, in particular, to investigate allegations of corruption by top-level State officials.

A. Allegedly relevant investigations and verifications by the NABU

1. In respect of the son of the Minister of the Interior

6. In March 2016 the NABU launched a criminal investigation into alleged large-scale embezzlement of public funds by a Ministry of the Interior official, which had allegedly taken place with the direct involvement of the son of the then Minister of the Interior. More specifically, the investigation concerned the procurement of thousands of allegedly overpriced poor-quality backpacks for the Ministry, the contract for which had been awarded to a company allegedly linked to the Minister's family.

7. In October 2017 the NABU arrested the son of the Minister of the Interior after searching his home.

8. The Ministry of the Interior heavily criticised the NABU for the case. It stated on its website that the investigation was "grounded in politics rather than the law".

9. Commenting on the events to the mass media, the Minister of the Interior called the individuals involved "scamps".

10. In July 2018 the Specialised Anti-Corruption Prosecutor's Office discontinued the criminal proceedings for want of evidence.

2. In respect of the Prosecutor General

11. In October 2016 the NABU announced an "analytical verification" in respect of an allegation of corruption involving the Prosecutor General's family. No further information is known in that regard.

B. Reported conflicts between the NABU and the Prosecutor General's Office

12. As known from various media reports, in August 2016 the Prosecutor General's Office ("the PGO") apprehended several NABU staff members when they were carrying out some covert investigative activities. Although denying the existence of any conflict between the two institutions, their leaders publicly exchanged accusations of unlawful actions.

13. In September 2018 the Prosecutor General stated at a press conference that preparations were under way for a criminal investigation into allegations that the applicant had breached the secrecy of a pre-trial investigation in an unrelated case.

C. Attempted legislative amendments aimed at simplifying the procedure for dismissing the NABU director

14. In December 2017 a parliamentary bill was introduced seeking to enable Parliament to dismiss the NABU director[1] without requiring negative findings from an independent audit (a prerequisite for such a dismissal under the existing legal provisions). The bill was eventually withdrawn, reportedly under pressure from international anti-corruption organisations.

D. Criminal investigation in respect of the applicant and related events

15. On 14 March 2019 the PGO launched a criminal investigation into allegations that the applicant had breached the secrecy of a pre-trial investigation. No further information is available in that regard. It is only known that the applicant's friend, N., was questioned as a witness and that his mention of having been involved in organising holidays for the applicant's family was deemed to warrant further investigation.

16. As a result, on 23 April 2019 N. was questioned on that particular issue. He replied in the positive to the investigator's question whether he maintained his earlier statements[2]. N. said that he had spoken to the applicant about a fishing and hunting reserve, P.S., as an attractive holiday destination, and about having a relative, K., who was on friendly terms with the management of that reserve. The applicant had allegedly asked N. to help him organise holidays there for his family and friends, to which N. had agreed. According to N., it was his relative K. who had taken care of the payment for the accommodation and N. had reimbursed him subsequently. N. said that he had not felt comfortable asking the applicant to reimburse him. The investigator noted that, as N. had previously stated, the applicant had taken holidays in the reserve on five occasions from 2017 to 2019, and every time N. had paid about 100,000 Ukrainian hryvnias (UAH)[3] from his own pocket to cover all the expenses. N. claimed that, in addition to paying for the accommodation, he had also purchased various foodstuffs, drinks, children's toys and other items for the applicant and the rest of the group. He further asserted that, although, as a general rule, the applicant and his friends had cooked their meals themselves, the applicant had sometimes asked N. to

[1] As well as the leaders of the Specialised Anti-Corruption Prosecutor's Office and the State Bureau of Investigation.
[2] No information or documents are available in respect of those statements or their contents.
[3] Equivalent to about 3,300 euros (EUR) at the material time.

arrange for catering by the staff of the reserve, which N. had done at his own expense, through his relative. N. was not able to specify the expenses he had allegedly borne but estimated them at about UAH 100,000 each time the applicant stayed in the reserve.

17. The report on the witness questioning summarised above was leaked to the mass media by "a source in law-enforcement authorities". It received widespread media coverage, which mainly emphasised the amounts allegedly spent by N. on the applicant's "luxurious" holidays.

II. ADMINISTRATIVE-OFFENCE PROCEEDINGS AGAINST THE APPLICANT

18. On 10 May 2019 the PGO forwarded the materials relating to N.'s questioning (see paragraphs 15-16 above) to the National Police of Ukraine, with a note that the circumstances of the case might disclose an administrative offence[4] under Article 172-5 of the Code of Administrative Offences (that is, a breach of legal restrictions on accepting gifts by certain categories of State officials – see paragraph 45 below).

19. On the same date the Prosecutor General made a statement to the mass media that, as it appeared, the applicant had "forgotten to pay quite considerable bills for the holidays of his family and friends".

20. On 17 May 2019 N. was questioned by the investigator of the Anti-Corruption Unit of the National Police Economic Protection Department. He stated that the applicant, along with his family and friends, had been on holiday in the reserve during the following two periods: from 29 December 2018 to 2 January 2019 (four days) and from 8 March to 10 March 2019 (two days). N. reiterated his earlier statements to the effect that his relative, K., had organised and had paid for the accommodation, and N. had subsequently reimbursed him. However, N. claimed not to remember the exact amounts he had allegedly reimbursed to K. In this round of questioning N. did not refer to any expenses other than the accommodation. He answered in the positive to the investigator's question whether he had paid UAH 3,000 and UAH 4,500[5] to rent a holiday house for the applicant and the applicant's family and friends during the above-mentioned two periods. N. did not mention this time that the applicant had stayed in the reserve on any other occasions.

21. Also on 17 May 2019 the investigator questioned K., who stated that he had indeed organised to rent a holiday house in the reserve during the two periods at N.'s request. According to K., the amounts paid and eventually reimbursed to him by N. had been based on a 70% discount, which K. had obtained owing to his friendly relations with the reserve's director.

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[4] Under the Ukrainian law, administrative offences are minor offences not entailing criminal liability.

[5] Equivalent to about EUR 100 and EUR 150, respectively.

22. The reserve's director and two of its staff members, who were also questioned on the same day, generally confirmed K.'s account of the events.

23. On 5 July 2019 the applicant gave written explanations to the investigator. He asserted that, having found out from his friend, N., about the possibility of relatively inexpensive accommodation in a holiday house in the P.S. reserve, he had indeed asked N. for such accommodation, for himself and several friends and their families, on two occasions. Each time the applicant and his friends had brought food with them and had cooked their meals themselves. The applicant emphasised that he had reimbursed the full cost of the accommodation to N., as it had been verbally agreed between them. He stated that the other people with whom he had shared the rented house could confirm that.

24. On 12 July 2019 the investigator drew up two administrative-offence reports, in which he concluded that the applicant had accepted gifts from N. in breach of the Code of Administrative Offences on two occasions. The investigator considered that it had been established that N. had paid for accommodation in a holiday house in the P.S. reserve, which the applicant had used twice at no cost. Relying on the general accommodation price list for the P.S. reserve, the investigator established the cost of the accommodation ("the gift value"), at UAH 25,000[6]. While it was not disputed that the actual total cost of the accommodation had been UAH 7,500[7] – regard being had to the 70% discount, – the investigator noted that that discount was not publicly available and was not applicable to the applicant. In the absence of any documentary evidence to the contrary, the investigator found that the applicant had never reimbursed N. for the accommodation.

25. The case was referred to the Sarny Town Court ("the Sarny Court") for examination by a single-judge formation. It was assigned to Judge R.

26. The PGO assigned one of its prosecutors for participation in the judicial proceedings in question.

27. During the initial two hearings, Judge R. and his assistant referred to the applicant as "the offender" until the applicant made a remark that it was inappropriate.

28. The applicant requested Judge R. to withdraw from the examination of the case, claiming that there were reasons to question his impartiality. The applicant argued, in particular, that Judge R. was involved as a witness in ongoing criminal proceedings against a former prosecutor, who was suspected of having taken a bribe allegedly with the aim of sharing it with

[6] Equivalent to about EUR 840.
[7] Equivalent to about EUR 240.

Judge R.[8] The applicant claimed that, since the prosecution authorities could change the judge's procedural status in that case from a witness to a suspect at any moment, they could be regarded as having leverage over him in the applicant's case. In the applicant's view, the Prosecutor General had already expressed a preconceived idea about the applicant's guilt in his statement to the mass media on 10 May 2019 (see paragraph 19 above).

29. Judge R. rejected the above withdrawal request as unsubstantiated, without any further reasoning.

30. In his pleadings to the Sarny Court the applicant reiterated his account of the events previously given to the investigator (see paragraph 23 above). He contended that N. had made false statements to the prosecution authorities and the police. In the applicant's view, N. might have done so under pressure. The applicant pointed out, in particular, that on 13 March 2019 (that is, shortly after the second holiday) N. had applied to the authorities to have a criminal conviction of his from 2005 removed from the official records. The applicant advanced that such request was likely to have rendered N. vulnerable to pressure from the prosecution authorities. The applicant emphasised that, apart from N.'s allegations, there was no indication, let alone any evidence, that he had expected or had accepted any gifts or any tangible or intangible benefits amounting to gifts. The applicant put forward that the administrative-offence proceedings against him, accompanied by the constant dissemination of false and distorted information on that subject in the mass media, were nothing more than attempts to discredit him in revenge for the NABU investigations affecting the Prosecutor General and the Minister of the Interior.

31. The applicant's friends, P. and S., who, with their families, had shared the holiday house in the reserve with the applicant[9], also made statements before the Sarny Court. They confirmed having witnessed the verbal agreement between the applicant and N. to the effect that the former would reimburse the latter the accommodation. P. and S. also testified that, as had been agreed, after the holidays they had paid the applicant for their share of the expenses, and that the applicant had eventually reimbursed the full cost of the accommodation to N.

32. N. and his relative K. were also questioned during the court hearing. Neither of them remembered the cost of the accommodation for the applicant's holidays in the reserve. While K. submitted that it had been N. who had carried out the payments, N. stated that it had been K., whom he had then reimbursed (without being able to specify the exact amounts). N. replied

[8] According to the information provided by the Government, those proceedings ended with the delivery, on 29 September 2022, of a verdict finding the former prosecutor in question guilty of fraud. It was established that, although the former prosecutor had received money which was allegedly to be transferred to Judge R. as a bribe, he had actually intended to keep it for himself.

[9] P during both periods in question and S. during the second period only.

in the negative to the question whether he had been aware of the accommodation prices in the reserve. He also stated, in reply to a question from the applicant, that he had no financial claims towards the latter.

33. On 6 September 2019 the Sarny Court found the applicant guilty as charged. It imposed on him the maximum penalty: a fine in the amount of UAH 3,400[10] and confiscation of the gift (its value was estimated at UAH 25,000). The judge held that the applicant had not provided any evidence proving that he had reimbursed N. for the accommodation. The related statements by P. and S. (see paragraph 31 above) were considered to be of little evidential value, since they had not eye-witnessed the final settlement between the applicant and N. Furthermore, the judge noted that P. and S. were the applicant's friends. In relation to the applicant's argument that the holiday house had been rented by several families, who had shared all the expenses, the Sarny Court noted as follows:

> "... no other persons, apart from [the applicant], had been customers of the services in question; they had been there at [the applicant's] invitation."

34. The applicant lodged an appeal. He submitted at the outset that there were reasons to question the impartiality of Judge R. The applicant reiterated in that connection the arguments, which he had advanced when seeking that judge's withdrawal (see paragraph 28 above), and complained that those arguments had never been duly examined. The applicant also pointed out that Judge R. had referred to him as "the offender" during the early stages of the proceedings. The applicant further complained in his appeal that the first-instance court had failed to explain why it had decided to attach more importance to N.'s vague and inconsistent statements, which were not supported by any evidence, than to his own version of the events, which had been corroborated by witnesses. The applicant also argued that the courts' approach to the calculation of the "gift value" was arbitrary. He observed, in particular, that it had never been disputed that he had shared the rented holiday house with friends. Accordingly, he found it incomprehensible that the Sarny Court had presumed that he alone was to bear all the expenses. Furthermore, the applicant asserted that the *de facto* discount applied to the accommodation price had wrongly been disregarded. Lastly, he submitted, relying on his earlier arguments (see paragraph 30 above), that the prosecution authorities had had ample opportunity to put pressure on the key witness, N. The applicant reiterated his view that the proceedings in question were aimed at discrediting him in revenge for the investigations affecting the Prosecutor General and the Minister of the Interior.

35. On 13 December 2019 the Rivne Regional Court of Appeal upheld the decision of the Sarny Court and endorsed its reasoning. The appellate court did not comment on the applicant's misgivings as to the impartiality of Judge R.

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[10] Equivalent to about EUR 120.

36. Shortly thereafter the following information concerning the applicant was published in the publicly accessible online Unified state register of persons who have committed corruption or corruption-related offences ("the Corrupt Officials Register"): his surname, name and patronymic; his place of work and post at the time of the commission of the offence; and a brief description of the constituent elements of the offence and the penalty[11].

III. OTHER RELEVANT FACTS

A. Reactions to the inclusion of the applicant's name in the Corrupt Officials Register

37. The outcome of the administrative-offence proceedings against the applicant and the subsequent inclusion of his name in the Corrupt Officials Register received extensive media coverage in Ukraine. People affected by NABU investigations often publicly questioned the legitimacy of those investigations and their findings by referring to the fact the NABU Director was on the Corrupt Officials Register himself. Mass media reports on the subsequent developments in the applicant's career (see paragraphs 40-43 below) also often mentioned that fact.

38. Once the administrative-offence proceedings against the applicant were completed, the Minister of the Interior posted the following message on Twitter:

> "The NABU Director, a registered corrupt official, is trying to justify drinking without picking up the bill, blaming everybody else except himself. I've got used to pardoning fools. That's the way to avoid their dirt..."

39. In the Parliament, unsuccessful attempts were made to initiate legislative amendments with a view to including convictions in administrative-offence proceedings on the list of possible grounds for dismissal of the NABU director.

B. Subsequent developments in the applicant's career

40. The applicant held the post of the NABU Director until his term of office expired in April 2022.

41. On 12 May 2022 he was appointed to the post of Deputy Head of the National Agency on Corruption Prevention ("the NACP").

42. On 3 June 2024 the applicant resigned from that post.

43. On 22 June 2024 he was appointed Deputy Director of the Defence Procurement Agency.

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[11] The register was inaccessible to the public from 24 February 2022 to 4 September 2023. Thereafter the information about the place of work and post at the time of the commission of the offence was no longer disclosed (see paragraph 52 below).

RELEVANT LEGAL FRAMEWORK

I. CODE OF ADMINISTRATIVE OFFENCES

44. Article 9 defines an administrative offence as illegal and culpable action or inactivity infringing public order, citizens' property, rights or freedoms, or established administrative procedures, and entailing administrative liability. It further stipulates that offences set out in this Code entail administrative liability if their nature does not warrant any criminal liability.

45. Paragraph 1 of Article 172-5 provides for a fine in the amount of 100 to 200 times the non-taxable minimum income[12], along with confiscation of the gift concerned, as the penalty for a breach of the legal restrictions on accepting gifts applicable to the persons listed in points 1 and 2 of section 3 § 1 of the Corruption Prevention Act.

46. Article 39 of the Code provides that persons convicted of an administrative offence are considered to have no convictions, provided that they commit no administrative offences in the year following the imposition of the penalty for the initial offence.

II. CORRUPTION PREVENTION ACT

47. As stipulated in section 1, a corruption-related offence entails criminal, administrative, disciplinary or civil liability.

48. Points 1 and 2 of section 3 § 1 contain an extensive list of persons to whom the Act is applicable. It includes various categories of elected and appointed State officials, officials without civil-servant status holding posts in public-law legal entities or providing public services, certain categories of military officers and students, representatives of public unions or educational establishments, and members of tender or disciplinary commissions.

49. Section 23, in so far as relevant, read at the material time:

Restrictions on accepting gifts

"1. The persons listed in points 1 and 2 of section 3 § 1 of this Act shall be prohibited from claiming, requesting or accepting gifts, either directly or through other persons, for themselves or for their next of kin from legal entities or individuals:

1) in connection with their performance of activities relating to the fulfilment of functions of the State or local self-government;

2) if the person offering the gift is their subordinate.

[12] As stipulated in the Tax Code, the non-taxable minimum income – where that is a figure used to calculate fines – is (and was at the material time) UAH 17 (equivalent to about EUR 0.60 as at September 2019).

2. The persons listed in points 1 and 2 of section 3 § 1 of this Act may accept gifts in compliance with the generally accepted notion of hospitality, except in the cases listed in § 1 of this section, if the cost of a single such gift does not exceed the minimum subsistence rate for an abled-bodied person applicable at the date of receipt of the gift or if the total cost of several such gifts accepted within a one-year period from the same person (or group of persons) does not exceed twice the minimum subsistence rate for an abled-bodied person at 1 January of the year [in question].

The above-mentioned restrictions on the value of gifts shall not extend to gifts which are:

1) made by a next of kin;

2) received in the form of publicly accessible discounts on goods or services, or publicly accessible prizes, gains or bonuses. ...”

50. As stipulated in section 56, candidates for posts “entailing a high or particularly high level of responsibility” and posts with a high risk of corruption shall be subject to a special vetting process, which includes a check by the NACP as to whether the candidate’s name is in the Corrupt Officials Register. It appears that the subsequent assessment of the findings of the special vetting process is at the relevant authority’s discretion. The posts of NABU director and deputies, as well as NACP director and deputies, are listed among those “implying high or particularly high responsibilities”.

51. Section 59 provides that for persons found to be criminally, administratively, disciplinarily or civilly liable in respect of corruption or corruption-related offences, the following information is to be published in the Corrupt Officials Register: surname, name and patronymic; place of work and post at the time of the commission of the offence; constituent elements of the offence; and the penalty. That information is publicly accessible round the clock and at no cost. The NACP is the authority in charge of regulating the procedures for creating and maintaining the Corrupt Officials Register.

52. Following the Russian Federation’s armed attack on Ukraine on 24 February 2022, the NACP restricted access to the register. Subsequently, on 4 September 2023 public access to the register was restored, except in respect of the information about the place of work and post at the time of the commission of the offence.

III. PUBLIC SERVICE ACT

53. Section 19 § 2 (5) prohibits the employment in the public service of any person convicted of a corruption-related administrative offence in the three years after the related judicial decision takes effect.

IV. NABU ACT

54. Section 6 § 4 contains an exhaustive list of grounds for dismissal of the NABU director. While the final guilty verdict in criminal proceedings is

among those grounds, no reference is made to a judicial decision finding the director guilty of an administrative offence.

V. 2019 STATE BUDGET ACT

55. As regards the reference amounts used for assessing gifts' value under section 23 § 2 of the Corruption Prevention Act (see paragraph 49 above), section 7 of the 2019 State Budget Act set the minimum subsistence rate for an abled-bodied person in 2019 as follows: UAH 1,921 from 1 January 2019, UAH 2,007 from 1 July 2019, and UAH 2,102 from 1 December 2019.

VI. NACP REGULATIONS ON THE CORRUPT OFFICIALS REGISTER

56. Among the purposes of the register, section 3 of Chapter I ("General provisions") indicates the following:

> "2) ensuring the implementation, according to the established procedure, of the special vetting process in respect of candidates for posts entailing a high or particularly high level of responsibility, as well as posts involving a considerable risk of corruption;"

57. Paragraph 8 of Chapter II ("Register creation and maintenance") provides for the following grounds for the removal of information from the Corrupt Officials Register:

1) a judicial ruling setting aside a [guilty] verdict;
2) an acquittal;
3) renewal of an expired time-limit for lodging an appeal;
4) a decision setting aside the conviction for an administrative offence;
5) a decision setting aside the finding of disciplinary liability; and
6) the direct involvement by the person concerned in the measures for the defence of Ukraine, starting from 24 February 2022 and throughout the martial law period, in connection with the military aggression of the Russian Federation against Ukraine.

VII. NATIONAL POLICE ACT

58. The relevant part of section 1 reads as follows:

> "2. The activities of the [National Police of Ukraine] shall be directed and coordinated by the Cabinet of Ministers ... through the Minister of the Interior ... in accordance with the law."

THE LAW

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

59. The applicant complained under Article 6 § 1 of the Convention that the administrative-offence proceedings against him had been unfair and that the trial court had not been impartial. The relevant part of Article 6 § 1 reads:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

A. Admissibility

60. The Government conceded that Article 6 § 1 under its criminal limb was applicable in the present case. They submitted, however, that the administrative-offence proceedings in question had had very little impact on the applicant's professional or private life. The Government referred in that connection to the applicant's successful continuation of his career in the field of anti-corruption even after being found guilty of a corruption-related administrative offence in the disputed proceedings. The Government therefore argued that the applicant had not suffered any significant disadvantage and that his complaint under Article 6 § 1 of the Convention should be declared inadmissible under Article 35 §§ 3 (b) and 4.

61. The applicant disagreed with the above objection.

62. Regard being had to the substance of the Government's arguments, the Court considers that their objection should be interpreted as actually being directed against the applicability of Article 8 of the Convention and will consequently be examined under that head (see paragraphs 102-109 below; and, for the case-law to compare, see *Wałęsa v. Poland*, no. 50849/21, § 132, 23 November 2023).

63. While the Government did not dispute the applicability of the criminal limb of Article 6 of the Convention in the present case, this question must be examined by the Court of its own motion, given that the applicability *ratione materiae* of the Convention defines the scope of the Court's jurisdiction (see, among many other authorities, *Vegotex International S.A. v. Belgium* [GC], no. 49812/09, § 59, 3 November 2022).

64. The Court reiterates that the assessment of the applicability of Article 6 under its criminal limb is based on three criteria, commonly known as the "Engel criteria" (see *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22). The first of these criteria is the legal classification of the offence under national law, the second is the very nature of the offence, and the third is the degree of severity of the penalty that the person concerned risks incurring. The second and third criteria are alternative, and not necessarily cumulative. This, however, does not exclude a cumulative approach where separate analysis of each criterion does not make it possible

to reach a clear conclusion as to the existence of a criminal charge (see, among other authorities, *Gestur Jónsson and Ragnar Halldór Hall v. Iceland* [GC], nos. 68273/14 and 68271/14, §§ 75-78, 22 December 2020). The Court has also pointed out on numerous occasions that the relative lack of seriousness of the penalty at stake cannot deprive an offence of its inherently criminal character (see *Grosam v. the Czech Republic* [GC], no. 19750/13, § 113, 1 June 2023, and the case-law references therein).

65. Turning to the present case, the Court observes that the offence, of which the applicant was found guilty, was not classified as criminal under the national law. This however is not decisive. The Court notes that the relevant provisions of the Code of Administrative Offences and the Corruption Prevention Act, which were applied to the applicant, although not being addressed to the general public, concerned a vast range of professional groups and were aimed at sanctioning corruption-related wrongdoings too trivial to entail criminal liability (see paragraphs 44, 45 and 47-49 above). The Court also considers that the fine, which was imposed on the applicant in addition to the "gift confiscation" measure, was both deterrent and punitive. These considerations are sufficient for the Court to conclude that the proceedings at issue were criminal for the purposes of Article 6 of the Convention and that it therefore has jurisdiction *ratione materiae* to examine the applicant's related complaint.

66. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

67. The applicant submitted that the domestic courts had placed the burden of proof on him instead of on the prosecution and had failed to address the specific and pertinent arguments in his defence. He argued that no analysis had been performed of his detailed and consistent statements, which were corroborated by witness evidence, whereas the domestic courts had taken at face value the vague and inconsistent statements by N. Furthermore, the applicant contended that the vulnerability of N. to possible pressure from the prosecution authorities had never been addressed.

68. The applicant also considered the courts' approach to the calculation of the "gift value" arbitrary in two aspects. Firstly, he observed that it had never been disputed that he had shared the rented holiday house with friends. Accordingly, he found it incomprehensible that the courts had presumed that he alone was to bear all the expenses. Secondly, the applicant complained that disregarding the *de facto* discount had the potential to set a dangerous

precedent, given that failure to disclose the existence of a discount to a recipient of goods or services might put that person in danger of facing an administrative-offence charge without even being aware of that.

69. The applicant also complained that Judge R. could not be regarded as impartial, given the real possibility for the prosecution authorities to put pressure on him within a parallel criminal investigation. The applicant noted that, from the very outset of the proceedings, the judge had manifested his bias against him by calling him "the offender".

(b) The Government

70. The Government argued that the applicant had had a fair trial in compliance with the Article 6 § 1 safeguards. They summarised the findings and reasoning given by the domestic courts and submitted that both parties had been duly heard and that extensive witness and other evidence had been examined.

71. As regards the applicant's allegation of the lack of impartiality of judge R., the Government submitted that it was unsubstantiated. They pointed out that, in any event, the findings reached by that judge had been verified and endorsed by the appellate court.

2. The Court's assessment

(a) Alleged unfairness of the trial

(i) General case-law principles

72. It is not the Court's function to deal with alleged errors of law or fact committed by the national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention, for instance where they can be said to amount to "unfairness" in breach of Article 6 of the Convention. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way in which evidence should be assessed, these being primarily matters for regulation by national law and the national courts. In principle, issues such as the weight attached by the national courts to particular items of evidence or to findings or assessments submitted to them for consideration are not for the Court to review. The Court should not act as a fourth-instance body and will therefore not question under Article 6 § 1 the national courts' assessment, unless their findings or the manner in which they distributed the burden of proof can be regarded as arbitrary or manifestly unreasonable (see, for example, *De Tommaso v. Italy* [GC], no. 43395/09, § 170, 23 February 2017, with further case-law references, and *Grosam*, cited above, § 132).

73. According to the Court's established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the

nature of the decision and must be determined in the light of the circumstances of the case (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). Without requiring a detailed answer to every argument advanced by the complainant, this obligation presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments which are decisive for the outcome of those proceedings (see, among other authorities, *Ruiz Torija v. Spain*, 9 December 1994, §§ 29-30, Series A no. 303-A). It must be clear from the decision that the essential issues of the case have been addressed (see *Taxquet v. Belgium* [GC], no. 926/05, § 91, ECHR 2010). In view of the principle that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective, the right to a fair trial cannot be seen as effective unless the requests and observations of the parties are truly "heard", that is to say, properly examined by the tribunal (see *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, § 305 *in fine*, 26 September 2023, with further references).

74. In determining whether the proceedings as a whole were fair, regard must also be had to whether the rights of the defence were respected. It must be examined in particular whether the applicant was given the opportunity to challenge the authenticity of the evidence and to oppose its use. In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy (see *Bykov v. Russia* [GC], no. 4378/02, § 90, 10 March 2009).

75. The Court has also held, in cases concerning various issues under Article 6 of the Convention in connection with criminal proceedings, that the burden of proof is on the prosecution and that any doubt should benefit the accused (see *Ajdarić v. Croatia*, no. 20883/09, § 35, 13 December 2011, with further references).

76. Furthermore, the Court has held that inconsistencies between a witness's own statements given at various times, as well as serious inconsistencies between different types of evidence produced by the prosecution, give rise to serious grounds for challenging the credibility of the witness and the probative value of his or her testimony; as such, this type of challenge constitutes an objection capable of influencing the assessment of the factual circumstances of the case based on that evidence and, ultimately, the outcome of the trial (see *Huseyn and Others v. Azerbaijan*, nos. 35485/05 and 3 others, § 206, 26 July 2011).

(ii) Application of the above principles to the present case

77. The Court notes that the applicant was found guilty of accepting a gift from N. primarily on the basis of the latter's statements to the effect that he had borne expenses related to the applicant's holidays. It is noteworthy that those statements were imprecise and lacked consistency. Although in his

earliest deposition N. referred to five episodes of the applicant's holidays in the P.S. reserve and alleged that he had spent about UAH 100,000 each time (see paragraph 16 above), he subsequently stated that the applicant had had brief holidays in that reserve only twice; he was also unable to specify his alleged related expenses (see paragraph 20 above). N. only replied in the positive to the investigator's question whether he had paid UAH 3,000 and UAH 4,500 to rent a holiday house for the applicant and the applicant's family and friends. N. alleged that he had never been reimbursed for those expenses (ibid.).

78. The inconsistencies between N.'s own statements made at various times gave rise to serious grounds for challenging the credibility of that witness and the probative value of his testimony (see paragraph 76 above). That was even more so, regard being had to the fact that they also contradicted, to some extent, the witness evidence by K. (see paragraph 32 above). Given the decisive role of N.'s evidence for the outcome of the administrative-offence proceedings against the applicant, the applicant could reasonably have expected to receive a specific and explicit reply to his arguments regarding the quality of that evidence. However, neither the trial court nor the appellate court gave any assessment to the applicant's related arguments (see paragraphs 30 and 33-35 above). Nor did the courts take into account the witness evidence from the defence (see paragraphs 31, 33 and 35 above).

79. The Court also notes that the applicant referred to certain circumstances implying that undue pressure might have been put on N. and therefore capable of casting doubts on the reliability of his evidence. Specifically, he argued that N. might have been vulnerable to pressure from the prosecution authorities, given his recent application to have a past criminal conviction removed from the official records. The Sarny Court and the appellate court were silent on that point too (see paragraphs 30 and 33-35 above).

80. Having regard to the above, the Court considers that the domestic courts' approach in accepting N.'s statements as decisive evidence to convict the applicant, without addressing any of the latter's serious arguments putting in doubt its reliability, was manifestly unreasonable (compare *Ilgar Mammadov v. Azerbaijan (no. 2)*, no. 919/15, § 221, 16 November 2017).

81. The calculation of the value of the supposed gift was also important for the outcome of the proceedings, given that the applicable legal provisions did allow, subject to certain conditions, gifts of limited value to be accepted (see paragraphs 49 and 55 above). Although it was undisputed that the applicant had shared a holiday house with one other family in December 2018 – January 2019 and with two other families in March 2019, the Sarny Court decided that the applicant was to bear all the expenses alone. The related objections by the defence were dismissed on the grounds that the applicant

had been the only "customer of the services in question" and that the others had been there at his invitation (see paragraphs 30, 31 and 33 above). It remains unclear what led the Sarny Court to reaching such a conclusion, especially given that the applicant's friends, with whom he had shared the rented holiday house, had consistently stated that they had shared all the expenses among themselves (see paragraph 31 above). No assessment was given to those statements of the defence witnesses (see paragraph 33 above).

82. Regard being had to its considerations above, the Court holds that, by having dismissed, without any assessment, the key arguments of the defence and by having disregarded the defence witness evidence, the domestic courts distributed the burden of proof in an arbitrary manner and deprived the applicant of any practical opportunity to effectively challenge the charges against him.

(b) Alleged lack of impartiality of the trial court

(i) General case-law principles

83. The Court has held 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 settled 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, *Morice v. France* [GC], no. 29369/10, § 73, ECHR 2015).

84. For the purposes of the objective test, it must be determined whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to his or her impartiality. This implies that, in deciding whether in a given case there is a legitimate reason to fear that a particular judge or a body sitting as a bench lacks impartiality, the standpoint of the person concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (see *Micallef v. Malta* [GC], no. 17056/06, § 96, ECHR 2009). According to the Court's case-law, the appearance of partiality under the objective test is to be measured by the standard of an objective observer (see, for example, *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, no. 16812/17, § 332, 18 July 2019, with further references).

85. The objective test mostly concerns hierarchical or other links between the judge and other protagonists in the proceedings. It must therefore be decided in each individual case whether the relationship in question is of such

a nature and degree as to indicate a lack of impartiality on the part of the tribunal (see *Morice*, cited above, § 77, and the cases cited therein).

86. In this connection even appearances may be of a certain importance or, in other words, "justice must not only be done, it must also be seen to be done". What is at stake is the confidence which the courts in a democratic society must inspire in the public. Thus, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw (see, among many other authorities, *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 149, 6 November 2018, with further references).

87. It is incumbent on the national judicial authorities to check whether, as required by Article 6 § 1 of the Convention, the trial court was "an impartial tribunal" within the meaning of that provision, where this is disputed on grounds that do not immediately appear to be manifestly devoid of merit. In performing the check, they have a duty to use all the means in their power to dispel any doubts as to the reality and nature of the applicant's allegations (see, for example, *Danilov v. Russia*, no. 88/05, § 96, 1 December 2020).

(ii) Application of the above principles to the present case

88. In the present case the applicant's misgivings about the impartiality of Judge R. stemmed from the following facts. That judge, who examined the applicant's case as a court of first instance in a single-judge formation, was also involved as a witness in a parallel criminal investigation into allegations that a former prosecutor had taken a bribe, supposedly with the aim of sharing it with Judge R. Referring to the realistic possibility for the prosecution authorities to change judge R.'s procedural status from a witness to a suspect at any moment, the applicant argued that the judge could not be regarded as being objectively impartial and requested his withdrawal on those grounds (see paragraph 28 above).

89. Although the applicant additionally pointed out that Judge R. had called him "the offender" in the beginning of the trial (see paragraphs 27 and 69 above), the crux of his grievance falls to be examined under the objective test of impartiality.

90. Having regard to all the circumstances of the applicant's case, the Court considers that his fears about Judge R.'s possible dependence on the adverse party in the administrative-offence proceedings at issue and hence the lack of objective impartiality of that judge could not be regarded as "immediately appearing to be manifestly devoid of merit" and were therefore to be duly addressed and dispelled (see paragraph 87 above). That was even more so, given that Judge R. was sitting in a single-judge formation and was the sole decision-maker in the administrative-offence proceedings against the applicant.

91. However, it was Judge R. himself who dismissed the applicant's challenge to his impartiality without any reasoning (see paragraph 29 above).

92. As to the appellate court, it disregarded the applicant's related argument altogether, without even mentioning it in its ruling (see paragraphs 34 and 35 above). In other words, the defect in question – an unreasoned refusal of a recusal request despite arguments that were not frivolous or groundless – was not remedied at the appellate level (see, for example, *Kyprianou v. Cyprus* [GC], no. 73797/01, § 134, ECHR 2005-XIII).

(c) Conclusion

93. The above considerations are sufficient for the Court to conclude that the applicant did not have a fair trial by an impartial tribunal.

94. There has therefore been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

95. The applicant complained that he had been unjustly labelled "corrupt", in breach of his right to respect for his private life as provided for in Article 8 of the Convention, the relevant part of which reads:

> "1. Everyone has the right to respect for his private ... life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. The parties' submissions

(a) The Government

96. The Government submitted that there had been no interference with the applicant's "private life". They pointed out that the reasons for the impugned interference had not been related to the applicant's private life and that it had not triggered any negative effects for him (see also paragraphs 60 and 62 above).

97. The Government argued that, in any event, the applicant could not rely on Article 8 of the Convention in alleging any such negative effects, where they were limited to the consequences of the unlawful conduct which had been foreseeable to him. They noted that, regard being had to the applicant's high-ranking post in the field of anti-corruption, he ought to have been well aware of the applicable rules, obligations and restrictions in respect of accepting gifts or benefits amounting to gifts, as well as the penalty in the event of non-compliance.

98. In sum, the Government argued that there had been no interference with the applicant's "private life" within the meaning of Article 8 of the Convention and that his complaint under that Article was therefore incompatible *ratione materiae* with the provisions of the Convention.

99. Alternatively, the Government argued that the applicant had not suffered any significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention.

(b) The applicant

100. From the outset, the applicant denied having breached the law. He therefore contested the Government's argument that he was merely facing the consequences of his own unlawful conduct and that, accordingly, he could not rely on Article 8 of the Convention.

101. The applicant emphasised that not only had he been found guilty of an offence which he had not committed, in unfair and arbitrary proceedings, but that he would also remain unjustly stigmatised as a "corrupt official" for life. He pointed out that the very aim of the register in question was to stigmatise the people listed therein, both in the eyes of the public and in terms of any career prospects. Referring to the many years of his professional life dedicated to combating corruption, the applicant argued that the inclusion of his name in the Corrupt Officials Register was particularly humiliating for him and had caused him significant distress. Accordingly, he maintained that the attack on his reputation had reached the requisite level of seriousness and had caused prejudice to the enjoyment of his right to respect for his private life, thus rendering Article 8 applicable. In the applicant's view, the fact that he had been able to continue his career was immaterial.

2. The Court's assessment

(a) General case-law principles

102. As the question of the applicability of Article 8 of the Convention is an issue of the Court's jurisdiction *ratione materiae*, the general rule of dealing with applications should be respected and the relevant analysis should be carried out at the admissibility stage unless there is a particular reason to join this question to the merits. No such particular reason exists in the present case and the Court therefore has to examine whether Article 8 of the Convention is applicable, and accordingly whether it has jurisdiction *ratione materiae* to examine the relevant complaint on the merits (see *Denisov v. Ukraine* [GC], no. 76639/11, §§ 93-94, 25 September 2018).

103. The Court reiterates that the concept of "private life" is a broad term not susceptible to exhaustive definition (see *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 66, ECHR 2008). The Court has also consistently held that the protection of an individual's moral and

psychological integrity is an important aspect of Article 8 of the Convention (ibid., and *Gillberg v. Sweden* [GC], no. 41723/06, § 68, 3 April 2012).

104. The right to respect for one's reputation forms part of an applicant's personal identity and psychological integrity and therefore falls within the scope of his or her "private life" (see *Denisov*, cited above, § 97). The Court has stressed, however, that Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one's own actions, such as, for example, the commission of a criminal offence or any other misconduct entailing a measure of legal responsibility (see *Gillberg*, § 68, and *Denisov*, § 98, both cited above).

105. Even where the *Gillberg* exclusionary principle outlined above is not applicable, in order for Article 8 to come into play an attack on a person's reputation must attain a certain level of seriousness and be made in a manner causing prejudice to personal enjoyment of the right to respect for private life. This requirement pertains to both social and professional reputation (see, *inter alia*, *Hurbain v. Belgium* [GC], no. 57292/16, § 189, 4 July 2023).

(b) Application of the above principles to the present case

106. The Court notes that the applicant contested the very existence of any misconduct on his part. Having regard to its finding under Article 6 § 1 of the Convention (see paragraphs 93-94 above), the Court observes that, indeed, the alleged misconduct on the applicant's part has not been established within fair judicial proceedings. There are therefore no grounds for applying the *Gillberg* exclusionary principle as suggested by the Government (see paragraphs 97 and 104 above, and compare *Tuleya v. Poland*, nos. 21181/19 and 51751/20, § 376, 6 July 2023).

107. It remains to be seen, however, whether there has been sufficiently serious prejudice to the applicant's enjoyment of his right to respect for his private life.

108. It is undisputed that, as a result of the applicant's conviction within the administrative-offence proceedings, he had his surname, name and patronymic published, for an indefinite period of time, in the publicly accessible Corrupt Officials Register, with a brief description of the offence in question and the penalty applied (see paragraphs 36 and 51-52 above). The applicant was easily identifiable by that information. Regard being had to his professional function of combatting corruption, the measure in question related to the core of his professional reputation (see, *a contrario*, *Gražulevičiūtė v. Lithuania*, no. 53176/17, § 106, 14 December 2021). The Court considers that the fact of being labelled "corrupt" must have seriously affected the applicant's esteem among others, especially regard being had to his long-standing career in the field of anti-corruption and his high-level post in that field. It did not only cast shadow on his good name, but also undermined the credibility of all his professional efforts or achievements. Furthermore, the criticism inherent in the inclusion of the applicant's name

in the Corrupt Officials Register can also be said to affect wider ethical aspects of his personality and character, since it called in question his moral values. It follows that the impugned measure prejudiced the applicant's both professional and social reputation.

109. Regard being had to the nature of the information about the applicant published in the Corrupt Officials Register, the inherently stigmatising label, the permanent public accessibility of the register in question and the lack of any limitation in time for the inclusion of the applicant's name therein, the Court considers that the applicant suffered a serious prejudice to the enjoyment of his right to respect for his private life, regardless of the subsequent developments in his career. Article 8 of the Convention is therefore applicable, and the applicant's complaint cannot be dismissed for the lack of any significant disadvantage, as suggested by the Government. Accordingly, their objections in this regard must be dismissed.

110. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. Accordingly, it must be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

111. The applicant submitted that the inclusion of his name in the Corrupt Officials Register could not be regarded as complying with the Article 8 requirements for the sole reason that it had been the result of his unjust conviction within the proceedings carried out in breach of the basic procedural-fairness safeguards.

112. In the alternative, the applicant argued that the impugned interference had not been proportionate. He observed that the applicable legal provisions provided for the publication of a person's name in the Corrupt Officials Register regardless of the seriousness of the offence committed. Moreover, the retention of data in that register was not limited in time and there was no provision for its re-evaluation with the passage of time and the eventual removal of a person's name.

113. The applicant emphasised that he had spent many years of his professional life specifically combatting corruption. It was therefore even more humiliating and stigmatising for him to be labelled "corrupt" without any basis.

(b) The Government

114. The Government submitted that the publication of the applicant's name in the Corrupt Officials Register was based on section 59 of the Corruption Prevention Act and was therefore "in accordance with the law".

115. The Government further submitted that the impugned measure had pursued the legitimate aim of preventing corruption in the public service.

116. They next observed that the disclosed information about the applicant was rather general and did not include any intimate details. Furthermore, the Government reiterated their view that the publication of the applicant's name in the Corrupt Officials Register had not entailed any negative consequences for him. The Government therefore considered that a fair balance had been struck between the interests of society and the applicant's right to respect for his private life.

2. The Court's assessment

117. As it has been already established, there has been an interference with the applicant's right to respect for his private life (see paragraph 109 above). Such interference will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of that Article as being "in accordance with the law", pursuing one or more of the legitimate aims listed therein, and being "necessary in a democratic society" in order to achieve the aim or aims concerned.

118. In the present case the publication of the applicant's name in the Corrupt Officials Register was based on section 59 of the Corruption Prevention Act, which provided for automatic application of that measure in all cases where a person was found to be criminally, administratively, disciplinarily or civilly liable in respect of a corruption or a corruption-related offence (see paragraph 51 above). Thus, this publication was, as such, "in accordance with the law".

119. The Court also accepts the Government's argument that the impugned measure can be regarded as aimed at preventing corruption in the public service (see paragraph 115 above). It therefore pursued a legitimate aim.

120. An interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are "relevant and sufficient".

121. The Court cannot satisfactorily assess whether the reasons adduced by national authorities to justify their decisions were "sufficient" for the purposes of Article 8 § 2 without at the same time determining whether the decision-making process, seen as a whole, provided the applicant with the requisite protection of his interests (see *Fernández Martínez v. Spain* [GC], no. 56030/07, § 147, ECHR 2014 (extracts), and the cases cited therein).

122. The Court has already established, in the context of its analysis under Article 6 § 1 of the Convention, that the decision-making process leading to the applicant's being found guilty of a corruption-related administrative offence was seriously flawed (see paragraphs 82 and 90-94 above). That

being so, the Court finds that the national authorities failed to adduce "relevant and sufficient" reasons for the interference with the applicant's right to respect for his private life.

123. In so far as the proportionality of the impugned measure is concerned, the Court notes that, under the currently existing legal regulations in Ukraine pertaining to the Corrupt Officials Register, once a person has his or her name published on that register, it will remain there indefinitely, unless in case of some narrowly construed exceptions (see paragraph 57 above). Although it is stipulated in Article 39 of the Code of Administrative Offences that, provided that a person convicted of an administrative offence does not re-offend within a year, he or she is considered to have no convictions (see paragraph 46 above), it remains unclear how that provision can be meaningfully implemented if the person's information continues to be included in the Corrupt Officials Register even thereafter, and there is no possibility of having it removed.

124. In the applicant's case, more than five years have elapsed since the date of the final judicial decision finding him guilty of an administrative offence. During most of that time[13] his full name has remained published on the Corrupt Officials Register depriving the applicant of any means to defend himself from attacks on his moral and professional integrity. Moreover, unless the applicable regulations change, that situation is to continue indefinitely. The Court considers that, in such circumstances and regardless of any other arguments advanced by the applicant, the proportionality requirement has not been complied with.

125. In sum, the interference with the applicant's right to respect for his private life was not based on relevant and sufficient reasons and was not proportionate to the pursuit of the declared legitimate aim.

126. It follows that there has been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 18 IN CONJUNCTION WITH ARTICLES 6 AND 8 OF THE CONVENTION

127. The applicant alleged that the administrative-offence proceedings against him and the ensuing inclusion of his name in the Corrupt Officials Register had been aimed at achieving an ulterior purpose, in breach of Article 18 in conjunction with Articles 6 and 8 of the Convention.

Article 18 of the Convention provides as follows:

> "The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

[13] With the exception of the period when the Corrupt Officials Register was not accessible to the public (see footnote 11 above).

A. Admissibility

128. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

129. The applicant argued that the real impetus behind the initiation of the administrative-offence proceedings against him, their conduct in disregard of the basic fairness safeguards and the subsequent inclusion of his name in the Corrupt Officials Register had been the efforts of the Minister of the Interior and the Prosecutor General to discredit him and to take revenge for the NABU's investigations or other activities negatively affecting those officials.

130. In support of that allegation, the applicant referred to what he considered to be public manifestations of utter hostility towards him by the then Minister of the Interior. The applicant drew the Court's attention to that Minister's highest hierarchical position in respect of the National Police whose officials had been dealing with his case. In the applicant's view, the Minister had had every opportunity to influence the investigations in question. Furthermore, the applicant argued that the then Prosecutor General had also been seeking to take revenge on him and to discredite him. The applicant pointed out that the prosecution authorities had had substantial leverage over both the key witness and the trial court in his case.

131. The applicant further submitted that the procedural defects in the administrative-offence proceedings against him had been significant enough to cast serious doubt regarding their true aim.

132. Lastly, the applicant drew the Court's attention to the unsuccessful attempts to initiate legislative amendments with a view to facilitating the procedure for dismissing him from the post of NABU director and extending the grounds for such dismissal to a conviction within administrative-offence proceedings. That indicated, in the applicant's opinion, that he had been personally targeted.

(b) The Government

133. The Government argued that there was no link between the criminal cases investigated by the NABU under the applicant's leadership and the administrative-offence proceedings brought against him.

134. In the Government's view, there were no grounds to question the good faith of the domestic authorities, which had simply complied with their duty to investigate any allegation of corruption. Once such an allegation had

been received from N. concerning the applicant, the prosecution authorities, having considered that an administrative offence might have been committed, had sent the case materials to the National Police of Ukraine for further verification.

135. The Government next submitted that there was no evidence proving that the Minister of the Interior had influenced the National Police in any way in respect of the administrative-offence proceedings against the applicant.

136. Lastly, the Government reiterated their arguments, which they had earlier advanced in respect of the complaints under Articles 6 § 1 and 8 of the Convention, to the effect that the applicant had been found guilty of a corruption-related administrative offence by lawful judicial decisions, that the inclusion of his name in the Corrupt Officials Register had been in compliance with the applicable legal provisions, and, that, in any event, all that had had little impact on the applicant's career.

2. The Court's assessment

(a) General principles

137. The general principles concerning the interpretation and application of Article 18 of the Convention were established in *Merabishvili v. Georgia* ([GC], no. 72508/13, 287-317, 28 November 2017) and were subsequently confirmed in *Navalnyy v. Russia* ([GC], nos. 29580/12 and 4 others, §§ 164-65, 15 November 2018) and *Selahattin Demirtaş v. Turkey (no. 2)* ([GC], no. 14305/17, §§ 421-22, 22 December 2020).

138. According to the Court's case-law, Article 18 is capable of applying in conjunction with both Article 6 and Article 8 of the Convention. In so far as its applicability in conjunction with Article 6 is concerned, the Court has held that rights protected under the latter provision are guarantees with reference to which fundamental abuses by a State may be likely to manifest themselves (see *Ukraine v. Russia (re Crimea)* [GC], nos. 20958/14 and 38334/18, § 1338, 25 June 2024). As regards the applicability of Article 18 in conjunction with Article 8 of the Convention, the Court has viewed the former provision as complementing the latter, given that Article 18 expressly prohibits the High Contracting Parties from restricting the rights and freedoms enshrined in the Convention for purposes not prescribed by the Convention itself (see *Merabishvili*, cited above, §§ 287-88).

139. Separate examination of a complaint under Article 18 is only warranted if the claim that a restriction has been applied for a purpose not prescribed by the Convention appears to be a fundamental aspect of the case (ibid., § 291).

140. The Court has held that there is a considerable difference between cases in which the prescribed purpose was the one that truly actuated the authorities, though they also wanted to gain some other advantage, and cases

in which the prescribed purpose, while present, was in reality simply a cover enabling the authorities to attain an extraneous purpose, which was the overriding focus of their efforts. Holding that the presence of any other purpose by itself contravenes Article 18 would not do justice to that fundamental difference, and would be inconsistent with the object and purpose of Article 18, which is to prohibit the misuse of power. Indeed, it could mean that each time the Court excludes an aim or a ground pleaded by the Government under a substantive provision of the Convention, it must find a breach of Article 18, because the Government's pleadings would be proof that the authorities pursued not only the purpose that the Court accepted as legitimate, but also another one (ibid., § 303).

141. For the same reason, a finding that the restriction pursues a purpose prescribed by the Convention does not necessarily rule out a breach of Article 18 either. Indeed, holding otherwise would strip that provision of its autonomous character (ibid., § 304).

142. The Court is therefore of the view that a restriction can be compatible with the substantive Convention provision which authorises it because it pursues an aim permissible under that provision, but still infringe Article 18 because it was chiefly meant for another purpose that is not prescribed by the Convention; in other words, if that other purpose was predominant. Conversely, if the prescribed purpose was the main one, the restriction does not run counter to Article 18 even if it also pursues another purpose (ibid., § 305).

143. Which purpose is predominant in a given case depends on all the circumstances. In assessing that point, the Court will have regard to the nature and degree of reprehensibility of the alleged ulterior purpose, and bear in mind that the Convention was designed to maintain and promote the ideals and values of a democratic society governed by the rule of law (ibid., § 307).

144. The Court applies its usual approach to proof when dealing with complaints under Article 18 of the Convention (ibid., § 310). The first aspect of that approach is that, as a general rule, the burden of proof is not borne by one or the other party because the Court examines all material before it irrespective of its origin, and because it can, if necessary, obtain material of its own motion. The second aspect of the Court's approach is that the standard of proof before it is "beyond reasonable doubt". That standard, however, is not co-extensive with that of the national legal systems which employ it. First, such proof can follow from the coexistence of sufficiently strong, clear and concordant inferences or similar unrebutted presumptions of fact. Secondly, the level of persuasion required to reach a conclusion is intrinsically linked to the specificity of the facts, the nature of the allegation made, and the Convention right at stake. The third aspect of the Court's approach is that the Court is free to assess not only the admissibility and relevance but also the probative value of each item of evidence before it. There is no reason for the Court to restrict itself to direct proof in relation to complaints under Article 18

of the Convention or to apply a special standard of proof to such allegations. Circumstantial evidence in this context means information about the primary facts, or contextual facts or sequences of events which can form the basis for inferences about the primary facts (ibid., §§ 311 and 314-17).

(b) Application of the above principles to the present case

145. The Court considers that the applicant's grievance under Article 18 of the Convention concerns a fundamental aspect of the case, the essence of which has not been addressed in the Court's assessment of the applicant's complaints under Articles 6 § 1 and 8. The Court will therefore examine this complaint separately (see paragraph 139 above).

146. In analysing the applicant's complaints under Article 6 § 1 and in finding a breach of that provision, the Court was not called upon to decide whether the applicant's trial was used for any "ulterior purposes" (see paragraphs 59-94 above). That question is to be answered now, in the context of the Court's analysis of the applicant's complaint under Article 18 of the Convention (see paragraph 138 above).

147. In so far as the applicant's complaint under Article 8 of the Convention is concerned, the Court has accepted that the interference with his right to respect for his private life might have been regarded as pursuing the legitimate purpose of preventing corruption in the public service (see paragraph 119 above). It remains to be seen whether that interference additionally pursued any other purpose and, if so, whether that ulterior purpose was predominant (see paragraphs 140-143 above).

148. The Court notes that, prior to the events in question, the Minister of the Interior did indeed manifested hostility towards the applicant (see paragraphs 6-9 above) and there had been certain disagreements – if not conflicts – between the NABU and the PGO (see paragraphs 11-12 above). These factors alone are not, however, sufficient to draw any conclusions (see *Merabishvili*, cited above, §§ 320 and 322, and *Saakashvili v. Georgia*, nos. 6232/20 and 22394/20, § 161, 23 May 2024).

149. The Court agrees with the Government that any allegations of corruption should be duly investigated (see paragraph 134 above). Furthermore, according to the Court's case-law, there is no right as such under the Convention not to be prosecuted (see, *mutatis mutandis*, *Merabishvili*, cited above, § 320).

150. That said, the Court does not overlook some circumstances relating to the administrative-offence proceedings against the applicant, which might be interpreted as indicative of a certain hidden agenda being pursued.

151. According to the applicant's statements, which were consistent throughout his trial and which were never refuted, in March 2019 his friend, N., applied to the authorities to have an old criminal conviction of his removed from the official records (see paragraph 30 above). The Court accepts the applicant's argument that that could be regarded as having given

the prosecution authorities means of leverage over N. It notes that shortly thereafter N. was questioned by the PGO as a witness within a criminal investigation unrelated to the events of the present case (see paragraph 15 above). It appears that N. mentioned something about having been involved in organising holidays for the applicant's family (ibid.), but it is unknown what exactly and in which circumstances. As it follows from the report on his second questioning, on 23 April 2019, this time dedicated solely to the issue of his alleged funding of the applicant's holidays, it was the investigator who appeared to summarise the account of the events supposedly earlier given by N. and mainly demanded the latter's confirmation to that (see paragraph 16 above).

152. Furthermore, according to the questioning report of 23 April 2019, N. alleged having spent more than EUR 16,000 on the applicant's holidays, whereas later the respective amount in his allegation dropped to about EUR 250 (see paragraphs 16 and 20 above). By that time, the witness questioning report referring to EUR 16,000 had been leaked to the mass media by "a source in law-enforcement authorities" and had received widespread media coverage, which had mainly emphasised the extremely large amounts allegedly spent on the applicant's "luxurious" holidays (see paragraph 17 above).

153. Against that background, the Prosecutor General made a public statement that the applicant might have "forgotten to pay quite considerable bills for the holidays of his family and friends" (see paragraph 19 above).

154. The Court considers that all the above-mentioned circumstances taken cumulatively indicate that, in addition to the declared purpose of verifying an allegation of corruption, the prosecution authorities might have also sought to target the applicant personally and to discredit him. Moreover, it appears that that ulterior purpose was the one that truly actuated the authorities. The Court refers in this connection to: the existence of a certain degree of antagonism between the NABU and the PGO; the vulnerability of N. to pressure from the prosecution authorities; the unclear circumstances in which he made his first statements in respect of the applicant, which were interpreted as incriminating the latter; the striking difference between the amount initially alleged in relation to the applicant's holidays, which was leaked to the mass media, and the amount given by N. thereafter (namely EUR 16,000 versus EUR 250); the existence of that leak itself; and the public statement by the Prosecutor General.

155. The Court next observes that the investigation was subsequently entrusted to the National Police, which was under the authority of the Minister of the Interior, whose hostile attitude towards the applicant was public knowledge (see paragraphs 6-9, 18, 38 and 58 above).

156. As far as the judicial proceedings in the applicant's case are concerned, the Court has already held that they were undermined by serious shortcomings. Notably, the Court has found that the applicant had justified

fears as regards lack of objective impartiality on the part of the trial court judge and that those fears had never been addressed (see paragraphs 88-92 above). Furthermore, the Court has found that the domestic courts distributed the burden of proof in an arbitrary manner and failed to address the applicant's decisive arguments, consequently depriving him of any practical opportunity to effectively challenge the charges against him (see, in particular, paragraph 82 above).

157. The Court considers that the manner in which those proceedings were conducted not only failed to dissipate the already existing by then serious suspicion of predominant ulterior motives behind the applicant's prosecution but rather contributed to it.

158. In the light of all the foregoing, the Court finds it sufficiently established that the overriding focus of the authorities in the present case was not preventing corruption in the public service as asserted by the Government but rather a personal attack on the applicant's moral and professional integrity.

159. There has therefore been a violation of Article 18 of the Convention taken in conjunction with Articles 6 and 8.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

160. 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."

161. The applicant submitted that, although he had suffered pecuniary and non-pecuniary damage and had incurred considerable expenses for his legal representation in the proceedings before the Court, he considered that the Court's finding of a violation would constitute sufficient just satisfaction in his case.

162. The Court sees no reason to disagree and holds that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant (compare *Centre for Democracy and the Rule of Law v. Ukraine*, no. 10090/16, §§ 123-24, 26 March 2020).

163. In the absence of a claim from the applicant for pecuniary damage or for costs and expenses, no award is called for in those respects.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *Holds* that there has been a violation of Article 18 of the Convention taken in conjunction with Articles 6 and 8;

5. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

Done in English, and notified in writing on 24 April 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Mattias Guyomar President