



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

Communicated on 15 January 2014

FIFTH SECTION

Application no. 5114/09
Andriy Volodymyrovych KULYKOV against Ukraine
and 17 other applications

STATEMENT OF FACTS

THE FACTS

A. General facts

The applicants, Ukrainian nationals, were judges of the domestic courts. Proceedings were brought against them resulting in their dismissal from the posts of judges (and in the application no. 76639/11 – from the post of the president of the court). The facts giving rise to their dismissals were established by the High Council of Justice (“the HCJ”).

The applicants further unsuccessfully challenged their dismissals before the Higher Administrative Court (“the HAC”) or the other courts.

Summaries of the facts, as provided by the applicants, are set out below in respect of each application.

B. Relevant domestic law and international material

1. Code of Administrative Justice of 2005 (the “CAJ”)

Article 11 § 2 of the CAJ provides that the court should examine administrative cases only on the basis of a claim which has been submitted in accordance with this Code, and that the court cannot examine a case beyond the scope of the claim. The court may only examine the case beyond the scope of the claim if it is necessary for the full protection of the rights, freedoms and interests of the parties to the case or other persons whose rights are sought to be protected.

According to Article 160 §§ 1 and 3 of the CAJ, the administrative court should take a decision immediately after the consideration of the case. In exceptional circumstances, depending on the complexity of the case, the preparation of the full text of the decision may be postponed up to five days from the day when the consideration of the case has been terminated;

however, the court should pronounce introductory and operative parts of the decision in the court session in which the consideration of the case has been terminated.

According to Article 167 §§ 1 and 2 of the CAJ, the court decision should be pronounced publicly and immediately after the members of the court come out of the deliberation room. At the request of the participant of the proceedings, the court should issue on the same day a copy of the decision (or its introductory and operative parts). If the court pronounces only the introductory and operative parts of its decision, it should indicate the time when the participants of the proceedings may receive a copy of the full text of the decision. The court should prepare the full text of the decision within the time-limit provided for in Article 160 § 3 of the Code.

2. Other material

Other provisions of domestic law, international and comparative-law material may be found in the judgment in the case of *Oleksandr Volkov v. Ukraine* (no. 21722/11, §§ 56-82, ECHR 2013).

COMPLAINTS

Relying on various Convention provisions, all the applicants complain that their dismissal proceedings were unfair and not compatible with the Convention. In particular, all the applicants complain under Article 6 of the Convention that their dismissals were not considered by an independent and impartial tribunal. Certain applicants further complain that: their right of access to court was unfairly restricted; the proceedings lasted too long; the principles of legal certainty, equality of arms, “tribunal established by law”, and the public consideration of the case were not respected; the decisions in their cases were unlawful, they were not properly reasoned and substantiated.

Relying expressly or in substance on Article 8 of the Convention, certain applicants also complain that their private lives were substantially affected by their dismissals.

Some of the applicants raise other complaints under the Convention.

1. Application no. 5114/09
Andriy Volodymyrovych KULYKOV
Lodged on 21/12/2008

SUMMARY OF FACTS

On 20 October 2003 the Military Judges Qualification Commission, having carried out an inquiry, concluded that the applicant's professional conduct warranted his dismissal for "breach of oath". It therefore referred the file concerning the disciplinary case to the HCJ for consideration.

On 4 February 2004 the HCJ established that the applicant had breached the judicial oath. It decided to make submission to Parliament to have the applicant dismissed from the post of judge for "breach of oath". The HCJ noted that the applicant had ignored the instructions given to him by the chairman and deputy chairman of his court. In addition, the applicant had unlawfully instituted criminal proceedings against the chairman of the court. The HCJ further noted that the applicant had disregarded the internal rules of the court, he had not improved his professional competence and he had had communication difficulties with colleagues from the court. It rejected the applicant's contentions that the dismissal proposal had not been based on the real facts and that the chairman of the court had been biased against him and had interfered with the applicant's professional activity. The HCJ concluded that the applicant had not fairly and duly performed his duties and had to be dismissed.

On 22 May 2008 Parliament voted for his dismissal and adopted a resolution to that effect.

A. Challenging the HCJ decision

The applicant challenged the HCJ decision concerning his dismissal before the courts.

On 22 May 2006 the Shevchenkivskyy District Court of Kyiv adopted an interlocutory decision by which it suspended the HCJ decision of 4 February 2004. The interlocutory decision was open to appeal.

On 13 July 2007 the Shevchenkivskyy District Court of Kyiv rejected the applicant's claim as unsubstantiated.

On 26 October 2010 the Kyiv Administrative Court of Appeal upheld the judgment.

On 2 November 2010 the applicant unsuccessfully requested the court of appeal to provide him with a copy of the decision of 26 October 2010.

On 17 and 19 November 2010 the applicant lodged cassation appeals against that decision to the HAC. Allegedly, he was not informed about the outcome of the proceedings before the HAC.

B. Challenging the parliamentary resolution

On 22 April 2009 the applicant challenged the parliamentary resolution of 22 May 2008 before the Kyiv Administrative Court.

On 13 October 2009 the court suspended the proceedings pending the outcome of the proceedings concerning the lawfulness of the HCJ decision.

On 16 August 2012 that court left the applicant's claim without consideration on the merits. That decision was open to appeal.

QUESTIONS TO THE PARTIES

1. Has the applicant exhausted domestic remedies, as required by Article 35 § 1 of the Convention?

The Government are invited to provide a copy of the decision of 26 October 2010 of the Kyiv Administrative Court of Appeal and copies of all the subsequent judicial decisions taken in that case.

2. Do the applicant's complaints disclose violations of procedural guarantees and principles of Article 6 § 1 of the Convention?

In particular:

(a) With respect to the complaints concerning the proceedings before the High Council of Justice and the ensuing judicial proceedings, did the applicant have access to a court of cassation in accordance with the requirements of Article 6 of the Convention? Was the applicant provided with the opportunities to have a copy of the decision of 26 October 2010 of the Kyiv Administrative Court of Appeal?

(b) Were the domestic authorities dealing with the applicant's dismissal independent and impartial, as required by Article 6 § 1 of the Convention?

(c) Was the length of the proceedings in breach of the "reasonable time" requirement of Article 6 § 1 of the Convention?

3. Has there been an interference with the applicant's right to respect for his private life within the meaning of Article 8 § 1 of the Convention on account of his dismissal? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

2. Application no. 9740/11
Oleg Volodymyrovych BACHUN
Lodged on 8/02/2011

SUMMARY OF FACTS

On 17 May 2010 the HCJ established that the applicant had breached the judicial oath. It adopted two decisions on making submissions to Parliament to have the applicant dismissed from the post of judge for “breach of oath”. The facts giving rise to the decisions took place between 2004 and 2009. The HCJ noted that the applicant had systematically made procedural mistakes when administering justice, he had adopted decisions in breach of domestic law and he had wrongly applied interim measures. The HCJ also considered that the applicant had incurred expenses which were manifestly incommensurate with his official income. The HCJ concluded that the facts of the case suggested that the applicant had dishonoured judicial office and had caused doubts as to his objectivity and impartiality. The applicant’s objections were rejected as unsubstantiated.

On 3 June 2010 Parliament voted for his dismissal and adopted a resolution to that effect.

The applicant instituted proceedings in the HAC challenging the HCJ decisions and the parliamentary resolution concerning his dismissal.

On 13 August 2010 the HAC rejected the applicant’s claims as unsubstantiated.

QUESTIONS TO THE PARTIES

1. Do the applicant’s complaints disclose violations of procedural guarantees and principles of Article 6 § 1 of the Convention?

In particular:

(a) Were the domestic authorities dealing with the applicant’s dismissal independent and impartial, as required by Article 6 § 1 of the Convention?

(b) Was the principle of legal certainty, enshrined in Article 6 of the Convention, respected given that no limitation period was applied in the proceeding against the applicant?

2. Has there been an interference with the applicant’s right to respect for his private life within the meaning of Article 8 § 1 of the Convention on account of his dismissal? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

3. Application no. 12812/11
Sergiy Mykhaylovych KONYAKIN
Lodged on 11/02/2011

SUMMARY OF FACTS

On 11 June 2009 the HCJ established that the applicant had breached the judicial oath. It therefore decided to make a submission to Parliament to have the applicant dismissed from the post of judge for “breach of oath”. The HCJ noted that the applicant had adopted several unlawful and unsubstantiated decisions and that he had failed to follow procedural rules when administering justice. The HCJ considered that the applicant’s mistakes suggested that he had to be dismissed. The applicant’s objections were rejected as unsubstantiated.

On 3 June 2010 Parliament voted for the dismissal of the applicant and adopted a resolution to that effect.

The applicant instituted proceedings against Parliament challenging his dismissal before the HAC. In his claim he also argued that the conclusions of the HCJ were unfounded and unlawful; there had been violations in the proceedings before the HCJ. At the applicant’s request, the HCJ joined the proceedings as a third party.

On 18 August 2010 the HAC rejected the applicant’s claims as unsubstantiated. It found that the HCJ’s conclusions were well-founded and the decisions of the HCJ and Parliament were lawful.

QUESTIONS TO THE PARTIES

1. Do the applicant’s complaints disclose violations of procedural guarantees and principles of Article 6 § 1 of the Convention?

In particular:

Were the domestic authorities dealing with the applicant’s dismissal independent and impartial, as required by Article 6 § 1 of the Convention?

2. Has there been an interference with the applicant’s right to respect for his private life within the meaning of Article 8 § 1 of the Convention on account of his dismissal? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

4. Application no. 20554/11
Lyudmyla Ivanivna STASOVSKA
Lodged on 20/03/2011

SUMMARY OF FACTS

On 26 May 2010 the HCJ established that the applicant had breached the judicial oath. It adopted three decisions on making submissions to Parliament to have the applicant dismissed from the post of judge for “breach of oath”. Some facts giving rise to the decisions took place in 2004. The HCJ noted that the applicant had adopted a number of unlawful and unsubstantiated decisions and that she had failed to follow procedural rules when administering justice. The HCJ considered that the applicant’s procedural mistakes dishonoured the judicial office, they caused doubts as to her objectivity and impartiality and suggested that she had to be dismissed. The applicant’s objections were rejected as unsubstantiated.

On 17 June 2010 Parliament voted for the dismissal of the applicant and adopted a resolution to that effect.

The applicant instituted proceedings in the HAC challenging one of the HCJ decisions of 26 May 2010 and the parliamentary resolution concerning her dismissal.

On 23 September 2010 the HAC considered the case. It found that the HCJ decision was lawful and substantiated. As to the other two decisions taken on the same day by the HCJ, the HAC noted that the applicant did not challenge them. The HAC concluded that there had been no grounds to examine the lawfulness of the other HCJ decisions. The HAC further found that the applicant’s right to participate in the plenary session of Parliament had not been respected and declared the parliamentary resolution in respect of the applicant unlawful.

On 23 December 2010 Parliament once again voted for the dismissal of the applicant (on the basis of the HCJ decisions of 26 May 2010) and adopted a resolution to that effect.

The applicant instituted proceedings in the HAC challenging the second resolution of Parliament.

On 31 May 2011 the HAC rejected the claim as unsubstantiated. The HAC found that the procedure for the applicant’s dismissal in Parliament and the resolution to that effect were lawful.

QUESTIONS TO THE PARTIES

1. Has the applicant exhausted domestic remedies, as required by Article 35 § 1 of the Convention? In particular, has the applicant challenged all the decisions of the High Council of Justice concerning her dismissal?

2. Has the applicant complied with the six-month time-limit laid down in Article 35 § 1 of the Convention?

When was the applicant informed of the full text of the Higher Administrative Court's decision of 23 September 2010?

3. Do the applicant's complaints disclose violations of procedural guarantees and principles of Article 6 § 1 of the Convention?

In particular:

(a) Were the domestic authorities dealing with the applicant's dismissal independent and impartial, as required by Article 6 § 1 of the Convention?

(b) Did the applicant have access to court to challenge all the decisions of the High Council of Justice concerning her dismissal? Was the applicant provided with the opportunities to have copies of those decisions?

(c) Was the principle of legal certainty, enshrined in Article 6 of the Convention, respected given that no limitation period was applied in the proceeding against the applicant?

4. Has there been an interference with the applicant's right to respect for her private life within the meaning of Article 8 § 1 of the Convention on account of her dismissal? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

**5. Application no. 35336/11
Petro Olegovych KOVZEL
Lodged on 6/06/2011**

SUMMARY OF FACTS

On 22 August 2007 the applicant was appointed to the post of judge for a five-year term by decree of the President of Ukraine.

On 7 June 2010 the HCJ established that the applicant had breached the judicial oath. It therefore decided to make submission to President of Ukraine to have the applicant dismissed from the post of judge for “breach of oath”. The HCJ noted that the applicant had wrongly applied an interim measure in a case where the Ministry of Justice had been the defendant. The HCJ concluded that this violation caused doubts as to the applicant’s objectivity and impartiality and suggested that he had not duly performed his duties and that he had dishonoured judicial office.

On 18 June 2010 the applicant was dismissed by decree of the President of Ukraine.

The applicant challenged his dismissal before the HAC.

On 27 January 2011 the HAC found that the HCJ decision was unlawful. It further noted that the applicant did not seek to “declare unlawful” the presidential decree concerning his dismissal while his claim to “quash” that decree could not be allowed since such a measure was outside the competence of the HAC. In that regard the HAC referred to Article 11 of the CAJ preventing it from examining the case beyond the scope of the claims.

QUESTIONS TO THE PARTIES

1. Do the applicant’s complaints disclose violations of procedural guarantees and principles of Article 6 § 1 of the Convention?

In particular:

(a) Were the domestic authorities dealing with the applicant’s dismissal independent and impartial, as required by Article 6 § 1 of the Convention?

(b) Was the applicant’s claim relating to the presidential decree on the applicant’s dismissal considered by the Higher Administrative Court in accordance with the requirements of Article 6 § 1 of the Convention?

2. Has there been an interference with the applicant’s right to respect for his private life within the meaning of Article 8 § 1 of the Convention on account of his dismissal? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

6. Application no. 68443/11
Kyrylo Oleksandrovych KORMUSHYN
Lodged on 26/10/2011

SUMMARY OF FACTS

On 6 December 2010 the HCJ established that the applicant had breached the judicial oath. It therefore adopted two decisions on making submissions to Parliament to have the applicant dismissed from the post of judge for “breach of oath”. The HCJ noted that the applicant had violated procedural rules when administering justice and that he had interfered with the activities of law-enforcement authorities when they carried out a search operation. These violations cast doubts as to the applicant’s objectivity and impartiality and suggested that he had not performed his duties properly. The HCJ rejected the applicant’s contentions challenging the dismissal proposal.

On 23 December 2010 Parliament voted for the dismissal of the applicant and adopted a resolution to that effect.

The applicant challenged the decisions of the HCJ and Parliament concerning his dismissal before the HAC.

On 6 April 2011 the HAC rejected the applicant’s claims as unsubstantiated. According to the applicant, on that day the HAC pronounced the introductory and operative parts of the decision.

On 5 May 2011 the HAC dispatched a copy of the full text of its decision to the applicant. Allegedly, the applicant received that letter on 7 May 2011.

QUESTIONS TO THE PARTIES

1. Has the applicant complied with the six-month time-limit laid down in Article 35 § 1 of the Convention? When was the applicant informed of the full text of the Higher Administrative Court’s decision of 6 April 2011?

2. Do the applicant’s complaints disclose violations of procedural guarantees and principles of Article 6 § 1 of the Convention?

In particular:

Were the domestic authorities dealing with the applicant’s dismissal independent and impartial, as required by Article 6 § 1 of the Convention?

3. Has there been an interference with the applicant’s right to respect for his private life within the meaning of Article 8 § 1 of the Convention on account of his dismissal? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

**7. Application no. 75790/11
Liliya Anatoliyivna VASINA
Lodged on 01/12/2011**

SUMMARY OF FACTS

On 1 March 2011 the HCJ established that the applicant had breached the judicial oath. It therefore decided to make submission to Parliament to have the applicant dismissed from the post of judge for “breach of oath”. The facts giving rise to the decision took place between 2003 and 2006. The HCJ noted that the applicant had adopted several unlawful and unfounded decisions, she had wrongly applied an interim measure, and she had committed procedural errors when administering justice. The HCJ considered that these violations cast doubts as to the applicant’s objectivity, impartiality and independence; they also suggested that the applicant had ignored requirements of domestic law and had failed to perform her duties properly. The HCJ rejected the applicant’s objections as unfounded.

The applicant challenged the HCJ decision before the HAC.

On 2 June 2011 the HAC rejected the applicant’s claim as unsubstantiated.

On 7 July 2011 a majority of Parliament did not uphold the draft resolution concerning the applicant’s dismissal.

On 3 November 2011 Parliament voted for the dismissal of the applicant and adopted a resolution to that effect.

On 17 May 2012 the HAC rejected the applicant’s claim against the HCJ and Parliament concerning her dismissal noting in particular that the facts giving rise to the applicant’s dismissal had been established in the HCJ decision of 1 March 2011 which had already been subject to judicial review. The HAC further found no violations in the parliamentary procedure for applicant’s dismissal.

QUESTIONS TO THE PARTIES

1. Do the applicant’s complaints disclose violations of procedural guarantees and principles of Article 6 § 1 of the Convention?

In particular:

(a) Were the domestic authorities dealing with the applicant’s dismissal independent and impartial, as required by Article 6 § 1 of the Convention?

(b) Was the principle of legal certainty, enshrined in Article 6 of the Convention, respected given that no limitation period was applied in the proceeding against the applicant?

(c) Was the length of the proceedings in the present case in breach of the “reasonable time” requirement of Article 6 § 1 of the Convention? When did the inquiries in respect of the applicant commence?

2. Has there been an interference with the applicant’s right to respect for her private life within the meaning of Article 8 § 1 of the Convention on account of her dismissal? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

8. Application no. 76639/11
Anatoliy Oleksiyovych DENISOV
Lodged on 08/12/2011

SUMMARY OF FACTS

On 24 May 2011 the Council of judges of administrative courts decided to make a submission to the HCJ for the dismissal of the applicant from the post of president of Kyiv Administrative Court of Appeal for his failure to properly perform his administrative duties.

On 14 June 2011 the HCJ decided to dismiss the applicant from the post of president of the court. The HCJ considered that the administration of justice in the Kyiv Administrative Court of Appeal was not properly organised because of the applicant's failure to duly perform the duties of the president of that court.

The applicant challenged the decision of the HCJ before the HAC. He also sought payment of salary arrears.

On 25 August 2011 the HCJ left the applicant's claim concerning salary arrears without consideration noting that it had no jurisdiction to decide that issue.

On 11 October 2011 the HAC rejected the applicant's claim concerning his dismissal as unsubstantiated. It concluded in particular that the impugned decision was lawful and the applicant's procedural rights had not been violated.

Following his dismissal from the post of president of the court, the applicant continued to work as a judge.

On 20 June 2013 Parliament dismissed the applicant from the post of judge due to his statement of resignation.

QUESTIONS TO THE PARTIES

1. Do the applicant's complaints disclose violations of procedural guarantees and principles of Article 6 § 1 of the Convention?

In particular:

Were the domestic authorities dealing with the applicant's case independent and impartial, as required by Article 6 § 1 of the Convention?

2. Has there been an interference with the applicant's right to respect for his private life within the meaning of Article 8 § 1 of the Convention on account of his dismissal? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

9. Application no. 78241/11
Igor Ivanovych BARANENKO
Lodged on 16/12/2011

SUMMARY OF FACTS

On 26 May 2010 the HCJ established that the applicant had breached the judicial oath. It therefore decided to make submission to Parliament to have the applicant dismissed from the post of judge for “breach of oath”. The facts giving rise to the decision took place in May 2008. The HCJ noted that the applicant had participated, as a presiding judge, in the consideration of a case in which judge V., his relative, was a third party. The consideration of that case resulted in a wrong decision which had been quashed by a higher court. The HCJ further noted that the applicant had concealed the fact that he and judge V. were relatives. The HCJ considered that these facts cast doubts as to the applicant’s objectivity and impartiality; they suggested that the applicant had dishonoured the judicial office, he had neglected the ethical rules of judicial conduct, and he had failed to carry out his duties properly. The HCJ rejected the applicant’s objections as unfounded.

On 17 June 2010 Parliament voted for the dismissal of the applicant and adopted a resolution to that effect.

The applicant instituted proceedings in the HAC challenging the resolution of Parliament. In his claim the applicant also argued that the conclusions of the HCJ were unfounded and unlawful.

On 15 September 2010 the HAC considered the case. It noted that the applicant did not challenge the HCJ decision as such; nor did he indicate the HCJ as a party to the proceedings. The HAC concluded that there had been no grounds to examine the lawfulness of the HCJ decision in respect of the applicant. The HAC further found that the applicant’s right to participate in the parliamentary procedure had not been respected and declared the parliamentary resolution concerning the applicant unlawful.

On 23 December 2010 Parliament once again voted for the dismissal of the applicant (on the basis of the HCJ decision of 26 May 2010) and adopted a resolution to that effect.

The applicant instituted proceedings in the HAC challenging the second resolution of Parliament. In his claim he also argued that the conclusions of the HCJ were unfounded and unlawful, and that there had been violations in the proceedings before the HCJ. The applicant requested that the HCJ should be admitted to the case as a third party.

On 5 July 2011 the HAC considered the case and rejected the claim as unsubstantiated. It noted that the applicant did not challenge the HCJ decision as such and found that there were no grounds to review the findings of the HCJ. The HAC further found that the procedure for the applicant’s dismissal in Parliament and the resolution to that effect were lawful.

QUESTIONS TO THE PARTIES

1. Has the applicant exhausted domestic remedies, as required by Article 35 § 1 of the Convention? In particular, has the applicant exhausted remedies in respect of his complaints related to the proceedings before the High Council of Justice?

2. Do the applicant's complaints disclose violations of procedural guarantees and principles of Article 6 § 1 of the Convention?

In particular:

(a) Did the applicant have access to court in respect of his claims against the High Council of Justice in accordance with requirements of Article 6 § 1 of the Convention?

(b) Were the domestic authorities dealing with the applicant's case independent and impartial, as required by Article 6 § 1 of the Convention?

(c) Was the principle of legal certainty, enshrined in Article 6 of the Convention, respected given that no limitation period was applied in the proceeding against the applicant?

3. Has there been an interference with the applicant's right to respect for his private life within the meaning of Article 8 § 1 of the Convention on account of his dismissal? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

10. Application no. 5678/12
Igor Anatoliyovych BONDARENKO
Lodged on 20/01/2012

SUMMARY OF FACTS

On 6 December 2010 the HCJ established that the applicant had breached the judicial oath. It decided to make submission to Parliament to have the applicant dismissed from the post of judge for “breach of oath”. Some facts giving rise to the decision took place in October 2007. The HCJ noted that the applicant had wrongly applied domestic law in land and administrative cases and had not followed procedural rules when dealing with those cases. The HCJ concluded that these violations had cast doubts as to the applicant’s objectivity and impartiality; they suggested that the applicant had failed to carry out his duties properly and that he had dishonoured judicial office. The applicant’s objections were dismissed as unfounded.

On 21 April 2011 Parliament voted for the applicant’s dismissal and adopted a resolution to that effect.

On 19 May 2011 the applicant applied to the HAC challenging the HCJ decision and the parliamentary resolution concerning his dismissal. He also argued that he had missed the time-limit for challenging the HCJ decision because of the serious illness of his child.

On 21 June 2011 the HAC left the applicant’s claim against the HCJ without consideration, finding that the applicant missed the time-limit for challenging the HCJ decision without any valid reason.

On 21 July 2011 the HAC rejected the applicant’s claim against Parliament as unsubstantiated. The HAC noted in particular that the applicant had been informed of the plenary meeting and his failure to appear did not give grounds to declare the parliamentary resolution unlawful.

QUESTIONS TO THE PARTIES

1. With respect to the complaints related to the proceedings before the High Council of Justice, has the applicant complied with the six-month time-limit laid down in Article 35 § 1 of the Convention?

When was the applicant informed of the full text of the Higher Administrative Court’s ruling of 21 June 2011?

2. Has the applicant exhausted domestic remedies, as required by Article 35 § 1 of the Convention? In particular, has the applicant exhausted remedies in respect of his complaints related to the proceedings before the High Council of Justice?

3. Do the applicant’s complaints disclose violations of procedural guarantees and principles of Article 6 § 1 of the Convention?

In particular:

(a) Did the applicant have access to court in respect of his claims against the High Council of Justice, in accordance with requirements of Article 6 § 1 of the Convention?

(b) Were the domestic authorities dealing with the applicant's case independent and impartial, as required by Article 6 § 1 of the Convention?

(c) Was the principle of legal certainty, enshrined in Article 6 of the Convention, respected given that no limitation period was applied in the proceeding against the applicant?

4. Has there been an interference with the applicant's right to respect for his private life within the meaning of Article 8 § 1 of the Convention on account of his dismissal? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

11. Application no. 11775/12
Nina Dmytrivna BABYCH
Lodged on 23/02/2012

SUMMARY OF FACTS

On 26 May 2010 the HCJ established that the applicant had breached the judicial oath. It therefore decided to make submission to Parliament to have the applicant dismissed from the post of judge for “breach of oath”. The facts giving rise to the decision took place in 2006. The HCJ found that the applicant failed to follow procedural rules when administering justice in a corporate dispute and adopted unlawful decision in that case. The HCJ considered that these violations suggested that the applicant had dishonoured judicial office and that she had not acted diligently and impartially. The applicant’s contentions challenging these conclusions were rejected as unsubstantiated.

On 17 June 2010 Parliament voted for the dismissal of the applicant and adopted a resolution to that effect.

The applicant instituted proceedings in the HAC challenging the HCJ decision and the resolution of Parliament.

On 18 August 2010 the HAC found that the decision of the HCJ was lawful. As to the proceedings in Parliament, the HAC found that the applicant’s right to participate in the parliamentary procedure had not been respected and declared the parliamentary resolution in respect of the applicant unlawful.

On 23 December 2010 Parliament once again voted for the dismissal of the applicant (on the basis of the HCJ decision of 26 May 2010) and adopted a resolution to that effect.

The applicant instituted proceedings in the HAC challenging the second resolution of Parliament. At the applicant’s request, the HCJ joined the case as a third party.

On 28 September 2011 the HAC considered the case and rejected the claim as unfounded. It noted that the lawfulness of the HCJ decision of 26 May 2010 had been confirmed by the HAC decision of 18 August 2010. It found that the procedure for the applicant’s dismissal in Parliament and the resolution to that effect were lawful.

QUESTIONS TO THE PARTIES

1. With respect to the complaints related to the proceedings before the High Council of Justice, has the applicant complied with the six-month time-limit laid down in Article 35 § 1 of the Convention?

2. Do the applicant’s complaints disclose violations of procedural guarantees and principles of Article 6 § 1 of the Convention?

In particular:

(a) Were the domestic authorities dealing with the applicant's case independent and impartial, as required by Article 6 § 1 of the Convention?

(b) Was the principle of legal certainty, enshrined in Article 6 of the Convention, respected given that no limitation period was applied in the proceeding against the applicant?

3. Has there been an interference with the applicant's right to respect for her private life within the meaning of Article 8 § 1 of the Convention on account of her dismissal? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

12. Application no. 21546/12
Oleksandr Mykolayovych ROZDOBUDKO
Lodged on 04/04/2012

SUMMARY OF FACTS

On 14 June 2011 the HCJ established that the applicant had breached the judicial oath. It decided to make submission to Parliament to have the applicant dismissed from the post of judge for “breach of oath”. The HCJ noted that the applicant had adopted several unlawful decisions and had committed procedural errors when administering justice. It considered that the applicant’s errors cast doubts as to his objectivity, impartiality and independence and suggested that he had not performed his duties properly.

On 22 September 2011 Parliament voted for the applicant’s dismissal and adopted a resolution to that effect.

On 4 October 2011 the HAC dismissed the applicant’s claim concerning the alleged unlawfulness of the HCJ decision.

QUESTIONS TO THE PARTIES

1. Do the applicant’s complaints disclose violations of procedural guarantees and principles of Article 6 § 1 of the Convention?

In particular:

Were the domestic authorities dealing with the applicant’s case independent and impartial, as required by Article 6 § 1 of the Convention?

2. Has there been an interference with the applicant’s right to respect for his private life within the meaning of Article 8 § 1 of the Convention on account of his dismissal? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

13. Application no. 54135/12
Lidiya Volodymyrivna TOKAR
Lodged on 18/08/2012

SUMMARY OF FACTS

On 21 February 2007 the HCJ established that the applicant had breached the judicial oath. It decided to make a submission to Parliament to have the applicant dismissed from the post of judge for “breach of oath”. The facts giving rise to the decision took place in July 2005. The HCJ noted that the applicant wrongly applied an interim measure in a corporate dispute by which she groundlessly interfered with the economic activities of a company; she further failed to follow procedural rules when administering justice in that case. The HCJ found that these violations suggested that the applicant had not acted lawfully, impartially and independently. The applicant’s objections were rejected as unsubstantiated.

On 5 June 2008 Parliament voted for the applicant’s dismissal and adopted a resolution to that effect.

The applicant challenged her dismissal before the Vinnytsya Administrative Court arguing that the HCJ and Parliament acted unlawfully.

On 28 November 2008 that court rejected the applicant’s claim as unfounded.

On 16 December 2009 the Kyiv Administrative Court of Appeal rejected the applicant’s appeal.

On 6 March 2012 the HAC rejected the applicant’s cassation appeal.

QUESTIONS TO THE PARTIES

1. Do the applicant’s complaints disclose violations of procedural guarantees and principles of Article 6 § 1 of the Convention?

In particular:

(a) Were the domestic authorities dealing with the applicant’s dismissal independent and impartial, as required by Article 6 § 1 of the Convention?

(b) Was the principle of legal certainty, enshrined in Article 6 of the Convention, respected given that no limitation period was applied in the proceeding against the applicant?

(c) Was the length of the proceedings in the present case in breach of the “reasonable time” requirement of Article 6 § 1 of the Convention?

2. Has there been an interference with the applicant’s right to respect for her private life within the meaning of Article 8 § 1 of the Convention on account of her dismissal? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

14. Application no. 65207/12
Oleksandr Anatoliyovych SHKINDER
Lodged on 22/09/2012

SUMMARY OF FACTS

On 24 January 2012 the HCJ established that the applicant had breached the judicial oath. It decided to make a submission to Parliament to have the applicant dismissed from the post of judge for “breach of oath”. The HCJ noted that the applicant had on several occasions taken leaves without relevant approvals by the court administration; he had not appeared in office without valid reasons; he had prevented his judicial assistant from performing his functions; he had refused to take cases for consideration; and he had not complied with requirements to submit income tax declarations. Having regard to these facts, the HCJ found that the applicant had neglected his professional duties, dishonored the judicial office, and had to be dismissed.

On 12 April 2012 Parliament voted for the applicant’s dismissal and adopted a resolution to that effect.

A. Challenging the HCJ decision

Between February and August 2012 the applicant attempted to institute proceedings in the HAC challenging the HCJ decision. By several decisions the HAC refused to open proceedings noting that the applicant failed to prepare and submit the claim in accordance with the requirements of the CAJ.

B. Challenging the parliamentary resolution

In his claim, submitted to the HAC, the applicant argued in particular that the vote on his dismissal was unlawful since certain members of Parliament used the voting cards of their absent peers. He asked the HAC to procure evidence in respect of this allegation and in particular to request the defendant to provide a video recording of the vote. He enclosed the relevant statements of two other judges who were present at the meeting and observed the voting process. The applicant requested the HAC to question those witnesses.

On 5 June 2012 the HAC rejected the applicant’s claim as unsubstantiated. As to the voting process, the HAC noted that the resolution had been voted by a majority and this had been confirmed by the transcript of the plenary meeting.

QUESTIONS TO THE PARTIES

1. Has the applicant exhausted domestic remedies, as required by Article 35 § 1 of the Convention? In particular, has the applicant exhausted

remedies in respect of his complaints related to the proceedings before the High Council of Justice?

2. Do the applicant's complaints disclose violations of procedural guarantees and principles of Article 6 § 1 of the Convention?

In particular:

(a) Did the applicant have access to court in respect of his claims against the High Council of Justice, in accordance with requirements of Article 6 § 1 of the Convention?

(b) Were the domestic authorities dealing with the applicant's case independent and impartial, as required by Article 6 § 1 of the Convention?

(c) Was the principle of the legal certainty, enshrined in Article 6 of the Convention, respected during the consideration of the applicant's case at the plenary meeting of Parliament? In particular, was the voting procedure in conformity with domestic law? Did the domestic court deal with that issue in accordance with the requirements of Article 6?

3. Has there been an interference with the applicant's right to respect for his private life within the meaning of Article 8 § 1 of the Convention on account of his dismissal? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

15. Application no. 77810/12
Aleksandr Ivanovich VOLVENKO
Lodged on 17/10/2012

SUMMARY OF FACTS

On 24 January 2012 the HCJ established that the applicant had breached the judicial oath. It decided to make a submission to Parliament to have the applicant dismissed from the post of judge for “breach of oath”. The HCJ noted that the applicant had on several occasions taken leaves without relevant approvals by the court administration; he had not appeared in office without valid reasons; he had refused to take cases for consideration; he had delayed examination of criminal cases; he had prevented his judicial assistant from performing his functions; and he had not complied with requirements to submit income tax declarations. Having regard to these facts, the HCJ found that the applicant had neglected his professional duties, dishonored the judicial office, and had to be dismissed.

On 12 April 2012 Parliament voted for the applicant’s dismissal and adopted a resolution to that effect.

A. Challenging the HCJ decision

Between February and August 2012 the applicant attempted to institute proceedings in the HAC challenging the HCJ decision. By several decisions the HAC refused to open proceedings noting that the applicant failed to prepare and submit the claim in accordance with the requirements of the CAJ.

B. Challenging the parliamentary resolution

In his claim, submitted to the HAC, the applicant argued in particular that the vote on his dismissal was unlawful since certain members of Parliament used the voting cards of their absent peers. He asked the HAC to procure evidence in respect of this allegation and in particular to request the defendant to provide a video recording of the vote. He enclosed the relevant statements of two other judges who were present at the meeting and observed the voting process. The applicant requested the HAC to question those witnesses.

On 27 June 2012 the HAC rejected the applicant’s claim as unsubstantiated. As to the voting process, the HAC noted that the resolution had been voted by a majority and this had been confirmed by the transcript of the meeting and the roll call records.

QUESTIONS TO THE PARTIES

1. Has the applicant exhausted domestic remedies, as required by Article 35 § 1 of the Convention? In particular, has the applicant exhausted

remedies in respect of his complaints related to the proceedings before the High Council of Justice?

2. Do the applicant's complaints disclose violations of procedural guarantees and principles of Article 6 § 1 of the Convention?

In particular:

(a) Did the applicant have access to court in respect of his claims against the High Council of Justice, in accordance with requirements of Article 6 § 1 of the Convention?

(b) Were the domestic authorities dealing with the applicant's case independent and impartial, as required by Article 6 § 1 of the Convention?

(c) Was the principle of the legal certainty, enshrined in Article 6 of the Convention, respected during the consideration of the applicant's case at the plenary meeting of Parliament? In particular, was the voting procedure in conformity with domestic law? Did the domestic court deal with that issue in accordance with the requirements of Article 6?

3. Has there been an interference with the applicant's right to respect for his private life within the meaning of Article 8 § 1 of the Convention on account of his dismissal? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

16. Application no. 242/13
Yuriy Oleksiyovych STREBKOV
Lodged on 29/11/2012

SUMMARY OF FACTS

On 24 January 2012 the HCJ established that the applicant had breached the judicial oath. It decided to make a submission to Parliament to have the applicant dismissed from the post of judge for “breach of oath”. The HCJ noted that the applicant had on several occasions taken leaves without relevant approvals by the court administration; he had not appeared in office without valid reasons; he had refused to take cases for consideration; he had shown disrespect to the officers of the court registry; and he had not complied with requirements to submit income tax declarations. Having regard to these facts, the HCJ found that the applicant had neglected his professional duties, dishonored the judicial office, and had to be dismissed.

On 12 April 2012 Parliament voted for the applicant’s dismissal and adopted a resolution to that effect.

A. Challenging the HCJ decision

Between February and October 2012 the applicant attempted to institute proceedings in the HAC challenging the HCJ decision. By several decisions the HAC refused to open proceedings noting that the applicant failed to prepare and submit the claim in accordance with the requirements of the CAJ.

B. Challenging the parliamentary resolution

In his claim, submitted to the HAC, the applicant argued in particular that the vote on his dismissal was unlawful since certain members of Parliament used the voting cards of their absent peers. Allegedly, the applicant submitted to the HAC a video recording of the vote in Parliament; this evidence was not admitted to the file. The HAC further examined witness statements in that regard.

On 20 September 2012 the HAC rejected the applicant’s claim as unsubstantiated. As to the voting process, the HAC noted that the resolution had been voted by a majority and this had been confirmed by the transcript of the plenary meeting; the witness statements were not persuasive.

QUESTIONS TO THE PARTIES

1. Has the applicant exhausted domestic remedies, as required by Article 35 § 1 of the Convention? In particular, has the applicant exhausted remedies in respect of his complaints related to the proceedings before the High Council of Justice?

2. Do the applicant's complaints disclose violations of procedural guarantees and principles of Article 6 § 1 of the Convention?

In particular:

(a) Did the applicant have access to court in respect of his claims against the High Council of Justice, in accordance with requirements of Article 6 § 1 of the Convention?

(b) Were the domestic authorities dealing with the applicant's case independent and impartial, as required by Article 6 § 1 of the Convention?

(c) Was the principle of the legal certainty, enshrined in Article 6 of the Convention, respected during the consideration of the applicant's case at the plenary meeting of Parliament? In particular, was the voting procedure in conformity with domestic law? Did the domestic court deal with that issue in accordance with the requirements of Article 6?

3. Has there been an interference with the applicant's right to respect for his private life within the meaning of Article 8 § 1 of the Convention on account of his dismissal? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

17. Application no. 15073/13
Gennadiy Leonidovych NEMYNUSHCHYI
Lodged on 22/02/2013

SUMMARY OF FACTS

On 29 May 2012 the HCJ established that the applicant had breached the judicial oath. It decided to make submission to Parliament to have the applicant dismissed from the post of judge for “breach of oath”. The HCJ found that the applicant committed numerous procedural errors when reviewing under newly-discovered circumstances a case involving local authorities. The HCJ considered that the errors were committed intentionally; they cast doubts as to the applicant’s objectivity and impartiality and called for his dismissal. The applicant’s objections were rejected as unsubstantiated.

The applicant instituted proceedings in the HAC challenging the HCJ decision.

On 21 June 2012 a majority of Parliament did not uphold the draft resolution concerning the applicant’s dismissal.

On 4 July 2012 the HAC rejected the applicant’s claim against the HCJ as unsubstantiated.

On 5 July 2012 Parliament voted for the applicant’s dismissal and adopted a resolution to that effect.

The applicant instituted proceedings in the HAC challenging the resolution of Parliament.

On 4 September 2012 the HAC considered the case and rejected the claim as unfounded. It noted that the lawfulness of the HCJ decision of 29 May 2012 had been confirmed by the HAC decision of 4 July 2012 and could not be reviewed in those proceedings. It further found that the procedure for the applicant’s dismissal in Parliament and the resolution to that effect were lawful.

QUESTIONS TO THE PARTIES

1. With respect to the complaints related to the proceedings before the High Council of Justice, has the applicant complied with the six-month time-limit laid down in Article 35 § 1 of the Convention? When was the applicant informed of the full text of the Higher Administrative Court’s decision of 4 July 2012?

2. Do the applicant’s complaints disclose violations of procedural guarantees and principles of Article 6 § 1 of the Convention?

In particular:

Were the domestic authorities dealing with the applicant’s case independent and impartial, as required by Article 6 § 1 of the Convention?

3. Has there been an interference with the applicant's right to respect for his private life within the meaning of Article 8 § 1 of the Convention on account of his dismissal? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

18. Application no. 57154/13
Nataliya Grygorivha SEREDNYA
Lodged on 27/08/2013

SUMMARY OF FACTS

On 16 October 2012 the HCJ established that the applicant had breached the judicial oath. It decided to make submission to Parliament to have the applicant dismissed from the post of judge for “breach of oath”. The facts giving rise to the decision took place in March 2012. The HCJ noted that the applicant, as a member of a panel of judges, had participated in the consideration of a criminal case and adoption of the judgment in that case. Subsequently, that judgment had been partly quashed by a higher court for the reason that it had been unsubstantiated and the sentence had been too lenient. The HCJ considered that the judgment of the first-instance court had brought about negative consequences; it had produced discontent in society since the criminal case had been largely discussed in the media. The HCJ concluded that the applicant had disregarded the requirements of procedural law, she had not acted diligently and impartially when considering the criminal case and had to be dismissed. The applicant’s objections were rejected as unfounded.

The applicant instituted proceedings in the HAC challenging the HCJ decision.

On 28 February 2013 the HAC rejected the applicant’s claims as unsubstantiated. It noted, among other things, that the HCJ had repeatedly postponed the hearings due to the applicant’s failure to appear and had properly informed the applicant of the hearings.

On 23 May 2013 Parliament voted for the applicant’s dismissal and adopted a resolution to that effect.

QUESTIONS TO THE PARTIES

1. Do the applicant’s complaints disclose violations of procedural guarantees and principles of Article 6 § 1 of the Convention?

In particular:

Were the domestic authorities dealing with the applicant’s case independent and impartial, as required by Article 6 § 1 of the Convention?

2. Was the principle of legal certainty, enshrined in Articles 6 and 8 of the Convention, respected in the proceeding against the applicant?

3. Has there been an interference with the applicant’s right to respect for her private life within the meaning of Article 8 § 1 of the Convention on account of his dismissal? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

OBSERVATIONS TO BE PROVIDED BY THE GOVERNMENT

The Government are invited to submit in respect of each application separate observations, enclosing copies of the decisions taken by the authorities in the applicants' cases, minutes of the hearings and other relevant material.