



## Application challenging decision to strike Mr Bonnemaïson off the medical register is declared inadmissible

In its decision in the case of [Bonnemaïson v. France](#) (application no. 32216/15) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the Medical Association's decision to strike Mr Bonnemaïson off the medical register following several sudden patient deaths at the short-stay unit (UHCD) of the Côte Basque Hospital in Bayonne, where he worked as an accident and emergency doctor.

### Principal facts

The applicant, Nicolas Bonnemaïson, is a French national who was born in 1961 and lives in Bayonne (France). He is a general practitioner.

In 2011 a medical worker sent a serious incident report to the Director of the Côte Basque Hospital in Bayonne. He suspected Mr Bonnemaïson of having caused the death of four end-of-life patients, without the knowledge of their families and his colleagues. The deaths occurred very quickly after the doctor had left their rooms. In an article published in 2011, Mr Bonnemaïson's lawyer stated that his client had admitted to the facts, which he had carried out to put an end to the patients' suffering.

Having been remitted for trial by an investigating judge, he was eventually acquitted by an assize court in 2014. The court held that while he had administered lethal injections without informing the health-care team and the families, and without updating the patients' medical files, no intent to kill had been established, in view of the possible unintended effects of the products used. In 2015 the assize court of appeal acquitted Mr Bonnemaïson in respect of six deaths, but convicted him of the death of one female patient and imposed a two-year suspended prison sentence. Mr Bonnemaïson did not appeal on points of law.

In September 2011, concurrently with the criminal proceedings, the National Council of the Medical Association (the "*ordre des médecins*") submitted the case to its disciplinary board.

In 2012, after Mr Bonnemaïson had orally acknowledged the seriousness of the accusations, the first-instance disciplinary division of the Medical Association decided to strike Mr Bonnemaïson off the medical register on account of the seriousness and repeated nature of the ethical breaches in question. In 2014 the National Disciplinary Division of the Medical Association dismissed appeals by Mr Bonnemaïson and by the *Département* Council, on the grounds, specifically, of the lawfulness of the disciplinary proceedings, the independence of the criminal and disciplinary proceedings, and the fact that the applicant had not contested the veracity of the accusations.

The *Conseil d'État* dismissed the appeal on points of law in a lengthily reasoned judgment of 30 December 2014. In 2016 the National Disciplinary Division of the Medical Association, ruling on an application for reopening of the proceedings submitted by the applicant, upheld the sanction imposed.

### Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights, the applicant alleged that the disciplinary divisions had not been independent and that the *Conseil d'État*

had not been impartial. Under Article 6 § 2 (presumption of innocence), he alleged that the *Conseil d'État* ought not to have dismissed his application and that his acquittal at first instance exonerated him from disciplinary sanctions. Lastly, in view of the financial implications of the ban on exercising his profession, the applicant considered that his striking off the register had been in breach of Article 1 of Protocol No. 1 (protection of property).

The application was lodged with the European Court of Human Rights on 25 June 2015.

The decision was given by a Committee of three judges, composed as follows:

Mārtiņš Mits (Latvia), *President*,  
André Potocki (France),  
Lətif Hüseynov (Azerbaijan),

and also Milan Blaško, *Deputy Registrar*.

## Decision of the Court

### Article 6 § 1

The Court noted firstly that Mr Bonnemaïson had not raised the complaint alleging a lack of independence on the part of the disciplinary divisions before the *Conseil d'État*, and that he had not therefore exhausted domestic remedies.

Further, it found no evidence to suggest that there had been any lack of impartiality, since the decisions and judgment had been duly reasoned. The Court concluded that this complaint had to be rejected as manifestly ill-founded.

### Article 6 § 2

The Court noted that the judges had restricted themselves to noting the material facts and had refrained from drawing any conclusion regarding a criminal classification. In addition, the outcome of the criminal proceedings had not been decisive for the disciplinary proceedings, which had been fully autonomous and not the direct corollary of the criminal proceedings.

The Court concluded that Article 6 § 2 was not applicable to the present case and that the complaint had to be dismissed.

### Article 1 of Protocol No. 1

The Court noted that the alleged violation of Article 1 of Protocol No. 1 had not been expressly raised before the *Conseil d'État*. It further reiterated its case-law to the effect that future income in professional practice could only be considered a “possession” once it had been earned or where an enforceable claim to it existed. The termination of his professional activity had not interfered with the applicant’s “possessions” within the meaning of Article 1 of Protocol No. 1, which was not therefore applicable. It followed that this part of the application had also to be rejected.

*The decision is available only in French.*

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### Press contacts

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel: +33 3 90 21 42 08

**Denis Lambert (tel: + 33 3 90 21 41 09)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

Somi Nikol (tel: + 33 3 90 21 64 25)

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