

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

FOURTH SECTION

CASE OF BUZOIANU v. ROMANIA

(Application no. 44595/15)

JUDGMENT

STRASBOURG

2 November 2021

This judgment is final but it may be subject to editorial revision.



In the case of Buzoianu v. Romania,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Gabriele Kucsko-Stadlmayer, *President,*
Iulia Antoanella Motoc,
Pere Pastor Vilanova, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 44595/15) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Constantin Buzoianu ("the applicant"), on 1 September 2015;

the decision to give notice of the application to the Romanian Government ("the Government");

the parties' observations;

the decision to dismiss the Government's objection to examination of the application by a Committee;

Having deliberated in private on 28 September 2021,

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

INTRODUCTION

1. The applicant complained under Articles 6 and 8 of the Convention, and Article 13 taken in conjunction with both those Articles, that his right of access to a court, his right to respect for his private life and his right to an effective remedy had been breached. He alleged in particular that his challenge against a parliamentary decision terminating his service as a member and president of a central public authority, which had had negative effects of a pecuniary and non-pecuniary nature for him, had not been examined on the merits by an independent and impartial tribunal established by law.

THE FACTS

2. The applicant was born in 1949 and lives in Bucharest. He was represented before the Court by Mr O.M. Țibuleac, a lawyer practising in Bucharest.

3. The Government were represented by their Agent, Ms O. Ezer, of the Ministry of Foreign Affairs.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. DECISION TERMINATING THE APPLICANT'S SERVICE

5. On 27 September 2011 the joint chambers of Parliament appointed the applicant as a member and the President of the Council of the Insurance Supervisory Commission (*Comisia de Supraveghere a Asigurărilor* – "the CSA") for a term of office of five years.

6. On 16 October 2012 the joint chambers of Parliament adopted a decision removing the applicant from the above-mentioned positions by relying on Article 4 § 9 of Law no. 32/2000 on insurance activities and their supervision. The decision followed a joint report by the budget, banking and finance commissions of Parliament's chambers, identifying deficiencies in the monitoring and regulation by the CSA of the country's insurance market.

II. PRELIMINARY ADMINISTRATIVE COMPLAINT

7. On 9 November 2012 the applicant lodged a preliminary administrative complaint with Parliament against the decision of 16 October 2012, seeking to have it revoked.

8. On 20 November 2012 Parliament rejected his complaint on the grounds that the impugned decision was not an administrative act and could not be challenged by means of a preliminary administrative complaint. It had been a Parliament-specific legal act of the kind set out in Article 67 of the Constitution and had been adopted in accordance with the powers conferred on Parliament by Law no. 32/2000, namely appointing and removing members of the CSA.

III. STAY OF EXECUTION PROCEEDINGS

9. On an unspecified date the applicant lodged an application with an administrative court to stay the enforcement of the decision of 16 October 2012 pending the outcome of proceedings brought by him to challenge its validity. He argued that the decision had been unlawful and could permanently damage his honour and reputation, as well as the activities of the CSA.

10. By a judgment of 5 December 2012, which was amenable to appeal, the Bucharest Court of Appeal ("the Court of Appeal") rejected the applicant's application as inadmissible. It held that enforcement could be stayed only for administrative acts, which the impugned decision was deemed not to be. When adopting the kind of acts set out in Article 67 of the Constitution, Parliament exercised its constitutional prerogative in representing the people and such acts could not be challenged before the administrative courts, regardless of their content.

11. There is no evidence in the case file that the applicant appealed against that judgment.

IV. CIVIL COURT PROCEEDINGS

12. On 11 December 2012 the applicant brought proceedings against the joint chambers of Parliament in the Bucharest District Court ("the District Court") sitting as an ordinary civil court, seeking to have the decision of 16 October 2012 declared void. He argued that the decision had been unlawful and political, and that it had ignored his professional performance.

13. By a judgment of 29 January 2013, which was not amenable to appeal, the District Court held that the impugned decision had been an administrative act delivered by a central public authority. Consequently, it decided to refer the case to the administrative section of the Court of Appeal because it lacked jurisdiction to examine it.

V. ADMINISTRATIVE COURT PROCEEDINGS

14. By a judgment of 16 May 2013 the Court of Appeal dismissed the applicant's action seeking to have the decision of 16 October 2012 declared void as inadmissible. It held that the decision had been adopted in accordance with Article 76 § 2 of the Constitution and by relying on Article 4 § 9 of Law no. 32/2000. In addition, its prerogative of appointing or removing the President of the CSA was a natural manifestation of Parliament's constitutional mandate and reflected its involvement in the setting-up of other public authorities. By using that prerogative, Parliament could not turn into an administrative authority because its legal relationship with the CSA was of a constitutional nature and reflected its role as guarantor of the Constitution and as supervisor of central public authorities. It adopted decisions such as that in issue in the present case to exercise direct control over the CSA in line with the constitutional democratic principle of the separation and balance of powers. Therefore, the decision could not be classified as an administrative act.

15. The applicant appealed on points of law against the judgment before the High Court of Cassation and Justice ("the Court of Cassation"). He argued that the Court of Appeal's judgment had been unlawful because it had misinterpreted and wrongly applied the relevant domestic law, had ignored the relevant European law, and had breached his right to a fair trial and his right of access to an effective remedy. The impugned decision had been an administrative act, which the Court of Appeal could no longer deny once it had acknowledged that it was competent to examine the case following the District Court's decision of referral (see paragraph 14 above).

16. By a final judgment of 24 February 2015 (made available to the applicant on 20 May 2015), the Court of Cassation dismissed the applicant's

appeal on points of law. It reiterated the findings of the Court of Appeal (see paragraph 14 above). In addition, it held that the applicant had specified the legal grounds for his complaint before the Court of Appeal after the case had been referred to it and the court had merely examined his case within the framework set by him. It was true that the joint chambers of Parliament could also adopt administrative acts. However, acts of authority concerning the chambers' own powers had to be distinguished from those concerning purely administrative activities, such as the chambers' own organisation and operation, because only the latter acts could be challenged before the administrative courts.

17. The applicant's right to a fair trial and right of access to an effective remedy had not been breached because the impugned decision could be challenged before the Constitutional Court. That court had repeatedly examined challenges concerning both the lawfulness and the constitutionality of parliamentary decisions regarding appointments to the CSA. Moreover, the European Court of Human Rights had excluded from the sphere of application of Article 6 of the Convention any proceedings relating to the exercise of public-authority prerogatives which fell within Parliament's exclusive competence under the Constitution. In the Court of Cassation's view this was the case of the proceedings involving the appointment and removal of members of the CSA. The right of access to a court under Article 6 concerned the determination of civil rights and obligations, and not constitutional and political rights.

VI. CONSTITUTIONAL COURT PROCEEDINGS

18. On 14 June 2013 the applicant brought proceedings before the Constitutional Court and asked it to declare the decision of 16 October 2012 unconstitutional.

19. On 25 September 2013 the Constitutional Court rejected the applicant's action as inadmissible. It held that it was competent to review the constitutionality of decisions adopted by the joint chambers of Parliament. However, the relevant domestic law had not provided for a right of individual application to it.

VII. OTHER RELEVANT INFORMATION

20. On 2 July 2020 the Authority for Financial Supervision (*Autoritatea de Supraveghere Financiară* – "the ASF"), formerly the CSA, informed the Government that in 2014 a vice-president of the ASF had contested before the administrative courts a parliamentary decision removing him from his post. His action had been dismissed on grounds similar to those relied on by the courts to dismiss the applicant's action in the present case against the decision of October 2012.

21. The ASF further stated that members of the CSA were not civil servants because that position was not listed in the relevant national legislation among the posts in the civil service and also failed to meet the other mandatory conditions for the position to be classified as such. In addition, unlike regular CSA employees, members of the CSA were not subordinate to the CSA, their mandate could not be terminated on disciplinary grounds, and they were working on the basis of the decision appointing them and not on the basis of an individual contract of employment. The termination of their service could not be challenged before employment courts and did not fall within the scope of employment law.

RELEVANT LEGAL FRAMEWORK

22. Article 67 and Article 76 § 2 of the Constitution provide that the Chamber of Deputies and the Senate adopt laws and decisions in the presence of the majority of their members and by a vote of the majority of those present.

23. Article 4 §§ 9, 9^1 and 16 and Article 40 of Law no. 32/2000, as in force at the relevant time, provided that members of the CSA could be removed from their position only by a joint meeting of the two chambers of Parliament and only if they had ceased to meet the conditions which were necessary for them to perform their duties or they had been responsible for serious breaches (*abatere gravă*) incompatible with their position. In order to be appointed to the CSA, a person had to have, among other things, at least five years' professional experience in the finance and banking sector or in the insurance sector.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

24. The applicant complained that his right of access to a court had been breached because he could not have his challenge against the parliamentary decision terminating his service as a member and President of the CSA examined on the merits by an independent and impartial tribunal established by law. The ordinary courts had rejected his challenge because the decision could be reviewed exclusively by way of a constitutional challenge, and the Constitutional Court had rejected his constitutional challenge as inadmissible because domestic law did not provide for a right of individual application. He relied on Article 6 of the Convention, the relevant parts of which read as follows:

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

A. Admissibility

1. The parties' submissions

25. The Government argued that Article 6 under its civil limb was not applicable to the case. The applicant did not have a right under domestic law to challenge the decision of 16 October 2012 before the domestic courts. He was merely a member and the President of the CSA appointed by Parliament, and not a civil servant; moreover, his service had been terminated by applying existing legal rules. In addition, he did not have a right of individual application to the Constitutional Court under national law, and the ordinary courts had repeatedly held that decisions such as the one terminating his service were not administrative acts and therefore could not be reviewed by administrative courts.

26. Decisions of the kind in dispute could not be contested before the courts by individuals because the legal relationship between Parliament and the CSA was of a constitutional nature and reflected the former's role as guarantor of the Constitution and as supervisor of a central public authority in its capacity as the representative body of the people.

27. The applicant acknowledged that he had not been a civil servant or an employee. Nevertheless, the dispute in question concerned civil rights and obligations and therefore Article 6 under its civil limb was applicable to the case.

2. The Court's assessment

28. The Court reiterates that unless there is a particular reason to join the question of applicability of Article 6 to the Convention to the merits, the general rule of dealing with applications should be respected and the relevant analysis should be carried out at the admissibility stage (see *Kövesi v. Romania*, no. 3594/19, § 104, 5 May 2020). No such particular reason exists in the present case, and thus the above-mentioned issue falls to be examined at the admissibility stage.

(a) Preliminary observation

29. The Court notes at the outset the parties' agreement that domestic law did not formally recognise the applicant as an ordinary civil servant or part of the civil service and that he was not considered an employee as such (see paragraphs 27 above and 60 below).

30. The Court notes, however, that the Government have not denied that the applicant was a publicly appointed official occupying a public office and performing work ultimately aimed at benefiting society and the general public interest (see paragraphs 5-6 above). It also notes that the criteria established in its case-law in relation to the general requirements that have to be met for the civil limb of Article 6 to be applicable to disputes

concerning ordinary civil servants (*Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-II) have also been applied by the Court to termination-of-service and other work-related disputes concerning judges. In doing so, the Court noted that although the judiciary was not part of the ordinary civil service it was considered part of typical public service (see *Baka v. Hungary* [GC], no. 20261/12, §§ 104-05, 23 June 2016). In these circumstances, given the nature of the applicant's office and of his work, which can also be considered as a part of public service, the Court sees no reason to hold that the above-mentioned criteria could not also be applied to the apparent dispute in the present case. Therefore, it will pursue the examination of the applicant's case by relying on those criteria.

31. In this connection the Court reiterates the relevant principles set out in its case-law concerning the general requirements for the applicability of the civil limb of Article 6 (see *Kövesi*, cited above, §§ 105-10) and the scope of the "civil" concept within the autonomous meaning of the same Article of the Convention (for the right in dispute, see *Denisov v. Ukraine* [GC], no. 76639/11, §§ 51-52, 25 September 2018).

(b) Existence of a dispute regarding a right

32. The Court notes that in the present case there was a "dispute" concerning the exercise of the right to hold the positions of member and President of the CSA. As to whether such a "right" could be said, at least on arguable grounds, to be recognised in domestic law, it has to be noted that the applicant was appointed to those positions for a five-year term (see paragraph 5 above). It is undisputed that the applicant received specific remuneration for his service as a member and President of the CSA and that the termination of his service was subject to certain substantive and procedural conditions laid down in Law no. 32/2000 as in force at the relevant time (see paragraph 23 above). In the light of the above, and given that there was no dispute between the parties as to the existence of the right in question, the Court accepts that the applicant's right to serve in those positions was recognised under domestic law. Despite his appointment for a five-year period, the applicant's right to hold the positions in question was limited in time to little more than a year by the fact that he was removed from office (see paragraph 6 above).

33. The Court further observes that the dispute was "genuine" as the parties differed as to whether the legal conditions for removing the applicant from his positions were met (see paragraphs 46 and 48 below). Moreover, the dispute was "serious", having regard to the role of the members and of the President of the CSA (see paragraph 6 above) and to the direct pecuniary consequences for the applicant resulting from his removal from those positions; the Government have not argued that such consequences were insignificant.

34. Lastly, the dispute was "directly decisive" for the right in issue because it resulted in the premature termination of the applicant's exercise of that right (see *Denisov*, cited above, § 49).

(c) "Civil" nature of the right in dispute

35. The Court must determine whether the "right" claimed by the applicant was "civil" within the autonomous meaning of Article 6 of the Convention in the light of the criteria developed in the *Vilho Eskelinen* judgment (cited above).

36. In so far as the information provided by the Government amounts to an argument suggesting that the dispute at hand was not an ordinary labour dispute (see paragraph 21 above), the Court notes that it has already established in relation to the applicability of Article 6 that the essential criteria defining an employment relationship and the scope of work required from the employee are the appointment to a specific post and the salary attached to that post. Also, disputes regarding transfers to another post involving a grade change and a salary adjustment concern the defining factors of the employment relationship and are therefore ordinary labour disputes (see *Ohneberg v. Austria*, no. 10781/08, § 25, 18 September 2012). In addition, the Court generally presumes that ordinary labour disputes involving members of the public service have direct consequences for civil pecuniary or non-pecuniary rights (see *Denisov*, cited above, § 53).

37. In this context the Court concludes that the present case concerned an "ordinary labour dispute", given that it essentially concerned the termination of the applicant's service and affected the scope of the work he was required to perform and his remuneration as part of his work relationship. Having regard to these aspects, the Court finds no reason to hold that there was no "civil" element in the applicant's dispute or that such an element was insufficiently significant to bring the "civil" limb of Article 6 into play (see *Denisov*, cited above, § 54).

38. As to whether national law "expressly excluded" access to a court for the positions or category of workers in question and whether there was an objective justification for this exclusion in the State's interest, the Court has serious doubts that any of these cumulative criteria, still less both of them, were met in the applicant's case (see *Kövesi*, cited above, §§ 118, 119 and 124).

39. It notes in this connection that the Government have not pointed to any provision in the domestic legal system clearly and "expressly" excluding the positions or category of workers in question from the right of access to a court. In those circumstances, the Court finds it difficult to conclude that national law "expressly excluded access to a court" for a claim based on the alleged unlawfulness of the termination of the applicant's service (contrast and compare *Kövesi*, cited above, §§ 118-23 and the cases cited therein). This is true even though it is clear that the

applicant has also not pointed to any law expressly providing for a right to a court in his circumstances and it could be assumed on the basis of the information submitted to the Court that the courts at the relevant time – in spite of the finding of the civil court called upon to examine the applicant's case (see paragraph 14 above) – had a well-established practice of classifying parliamentary decisions such as the one in issue as a constitutional act not subject to the review of the administrative courts (see paragraphs 10, 14, 16 and 20 above).

40. Even assuming that the absence of legislation expressly acknowledging a right to a court and the well-established practice of the courts as mentioned above would suffice for the Court to conclude that national law "expressly excluded access to a court" in the applicant's situation, the Court is highly sceptical that an objective justification for this exclusion existed in the State's interest.

41. The justification given by the Government, like the national courts, for the applicant's situation appears to be based exclusively on the absolute legislative power and authority conferred on Parliament by the Constitution. Indeed, Article 6 of the Convention does not guarantee a right of access to a court with power to invalidate or override a law enacted by the legislature (see *Ruiz-Mateos and Others v. Spain*, no. 14324/88, Commission decision of 19 April 1991, Decisions and Reports 69, p. 231, and *Posti and Rahko v. Finland*, no. 27824/95, § 52, ECHR 2002-VII).

42. Nevertheless, where a decree, decision or other measure, albeit not formally addressed to any individual natural or legal person, in substance does affect the "civil rights" or "obligations" of such a person or of a group of persons in a similar situation, whether by reason of certain attributes peculiar to them or by reason of a factual situation which differentiates them from all other persons, Article 6 § 1 may require the substance of the decision or measure in question is capable of being challenged by that person or group before a "tribunal" meeting the requirements of that provision (see *Posti and Rahko*, cited above, § 53). In the Court's opinion, this is all the more so where, as in the present case, the decision in question is not legislation in the substantive sense (a normative act of general application which applies to objectively determined situations), but a decision applying the relevant legislation solely to a particular case (see *Project-Trade d.o.o. v. Croatia*, no. 1920/14, § 68, 19 November 2020).

43. Accordingly, the Court considers that Article 6 applies under its civil head.

44. It follows that the Government's preliminary objection as to the applicability of Article 6 of the Convention must be dismissed.

45. The Court notes further 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

46. The applicant contested the Government's contention that on 16 May 2013 the Court of Appeal (see paragraph 14 above) had assessed the lawfulness of the decision terminating his service. The court had acknowledged only that Parliament had a right to adopt decisions and that those decisions had to be adopted by a certain majority. It had not touched on the merits of the case and reviewed whether and to what extent the mandatory conditions for the removal of a member of the CSA had been met in his case.

47. The applicant submitted that he had been unable to challenge the impugned decision before the courts and it had been clear that parliamentary decisions of the kind adopted in his case were not subject to any judicial review.

48. The Government submitted that the report constituting the grounds for the decision terminating the applicant's service (see paragraph 6 above) had provided clear reasons as to why the applicant had been considered responsible for serious breaches of his duties. Those reasons seemed to be consistent with Parliament's role as guarantor of the Constitution and as supervisor of the CSA.

49. The impugned parliamentary decision could be reviewed by the Constitutional Court. Moreover, on 16 May 2013 the Court of Appeal had concluded that the impugned decision had been adopted lawfully even though it had rejected the applicant's challenge as inadmissible. Furthermore, all courts, including the Constitutional Court, had provided clear reasons for rejecting the applicant's actions.

2. The Court's assessment

50. The Court reiterates the relevant principles set out in its case-law concerning a person's right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal (see *Kövesi*, cited above, §§ 145-47).

51. The Court notes that the parties appear to disagree about whether there was a complete lack of judicial review in the applicant's case. Whereas the Government maintained that on 16 May 2013 the Court of Appeal had assessed the lawfulness of the decision terminating the applicant's service, the applicant contested that assertion (see paragraphs 46 and 49 above).

52. The Court for its part agrees with the applicant that on 16 May 2013 the Court of Appeal did not actually assess the lawfulness of the impugned decision but merely acknowledged that Parliament had a right to adopt it and had to do so by a certain majority. In addition, the court restricted its assessment to determining the nature of the act in dispute and did not touch at all on the merits of the case or review whether and to what extent the procedural and substantive mandatory conditions for the removal of a CSA member had been met in the applicant's case.

53. The Court notes that its above findings also apply to the parliamentary decision of 20 November 2012 (see paragraph 8 above) and the Court of Cassation's judgment of 24 February 2015 (see paragraph 16 above). Likewise, the Constitutional Court rejected the applicant's constitutional challenge as inadmissible for lack of standing, without actually reviewing the impugned decision (see paragraph 19 above).

54. The Court notes further that the Government have not argued or provided evidence that the applicant also had access to other more effective domestic remedies in order to obtain a determination of the dispute at hand. Therefore, it can only conclude that the extent of the judicial review available to the applicant in the circumstances of the current case cannot be considered "sufficient" for the purposes of Article 6 of the Convention.

55. In the Court's opinion, this can hardly be reconciled with the essence of the right to access to a court, which includes not only the right to institute proceedings but also the right to obtain a determination of the dispute by a court (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 86, 29 November 2016). Where there is a serious and genuine dispute as to the lawfulness of the interference into an individual's civil rights, going either to the very existence or the scope of the asserted civil right, Article 6 § 1 entitles the individual concerned "to have this question of domestic law determined by a tribunal" (ibid., § 85).

56. In the light of the above, the Court concludes that the respondent State impaired the very essence of the applicant's right of access to a court owing to the specific boundaries for a review of his case set down in the ruling of the national courts.

57. There has accordingly been a violation of the applicant's right of access to a court, as guaranteed by Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

58. The applicant complained that the proceedings brought by him before the courts had not enabled him to challenge the unlawful termination of his employment and that this had had negative effects of a pecuniary and non-pecuniary nature for him. He relied in substance on Article 8 of the Convention, the relevant parts of which read as follows:

"1. Everyone has the right to respect for his private ... life ...

..."

A. The parties' submissions

59. The Government submitted that Article 8 of the Convention was not applicable to the case because the termination of his service had had few negative effects on the applicant's private life and had not crossed the threshold of seriousness required by that Article.

60. The applicant had not been an employee; he had failed to substantiate his allegations that he had suffered pecuniary and non-pecuniary damage; and his service had not been terminated for any intentional wrongdoing or criminal behaviour on his part (see paragraph 6 above).

61. The applicant contested the Government's submissions. He contended that he had not had at his disposal any effective remedy to contest the decision terminating his service and it could not be argued that that decision had not affected in any way his family life, social relationships, employment prospects and reputation.

B. The Court's assessment

62. The Court reiterates the relevant principles set out in its case-law concerning the scope of Article 8 in employment-related disputes (see *Denisov*, cited above, §§ 95-117).

63. In the instant case, the Court notes that the applicant has contested the existence of any unlawful behaviour on his part (see paragraph 12 above), thus implying that the termination of his service could not have been a foreseeable consequence of his conduct while he held these positions. In those circumstances, the Court considers that the applicant can rely on Article 8 to argue that the negative effects entailed by the measure encroached upon his private life (ibid., § 121).

64. The Court notes further that the explicit reasons for the termination of the applicant's service were strictly limited to his performance in the public arena (see paragraph 6 above). Those reasons related only to the applicant's administrative tasks associated with his position and had no connection to his private life. In the absence of any such issues in the reasons given for the termination of his service, it has to be determined whether, in the light of the evidence and the allegations put forward by the applicant, the measure had serious negative consequences for the aspects constituting his "private life", namely (i) his "inner circle", (ii) his opportunities to establish and develop relationships with others, or (iii) his reputation.

65. As to the consequences for his "inner circle", the applicant contended that his removal had had negative effects of a pecuniary nature for him (see paragraph 58 above). This argument has to be viewed as relating to the worsening of his and his family's material well-being. Even though the pecuniary element of the dispute has been considered significant for the purpose of the applicability of Article 6 under its civil head, this conclusion does not automatically bring the issue within the scope of Article 8 of the Convention (ibid., § 122). The applicant has not provided evidence suggesting that the loss of remuneration from the CSA seriously affected the "inner circle" of his private life and in the absence of such evidence, it would be speculative to assume the contrary.

66. As to establishing and maintaining relationships with others, the Court notes that there is no evidence that the termination of the applicant's service also resulted in his removal from his actual profession in the finance, banking or insurance sectors or that he was unable to continue working if he wished to do so. It follows that, even if his opportunities to establish and maintain relationships might have been affected, there are no factual grounds for concluding that such effects were substantial. After all, it appears inappropriate to measure the extent and quality of relationships in private life in terms of administrative positions and roles (ibid., § 123).

67. The question remains whether or not the impugned measure encroached upon the applicant's reputation in such a way that it seriously affected his esteem among others, with the result that it had a serious impact on his interaction with society in terms of professional and social reputation.

68. As regards the applicant's professional reputation, the Court notes that the applicant has never argued that his principal professional function was that of a member and President of the CSA. Therefore, the positions in issue, however important and prestigious they might be and however they might have been subjectively perceived and valued by the applicant, did not relate to the principal sphere of his professional activity.

69. In the proceedings in issue, at no point did the domestic authorities examine the applicant's performance as a professional in the finance, banking or insurance sectors. Thus, the limited area of the impugned scrutiny and criticism cannot be regarded as relating to the core of his professional reputation (ibid., § 126). The Court also notes in this connection that the applicant did not substantiate how the termination of his service had affected his aforementioned professional career.

70. As regards social reputation in general, the authorities' criticism does not appear to have affected a wider ethical aspect of the applicant's personality. The decision terminating his service did not entail any accusation of intentional misconduct or criminal behaviour and the applicant's moral values were not called into question and no reproaches of this nature can be identified in the impugned decisions (contrast *Lekavičienė*

v. Lithuania, no. 48427/09, 27 June 2017, and *Jankauskas v. Lithuania (no. 2)*, no. 50446/09, 27 June 2017).

71. Lastly, there is no evidence in the file that the damage to the applicant's reputation was serious in terms of any harm caused to the interests of his family and that such harm negatively affected his private life. Even assuming that the measure taken against him received media attention and became known to an unidentified number of people, this cannot, as such, demonstrate substantial damage to his professional and social reputation (see *Denisov*, cited above, § 130).

72. Accordingly, it has to be concluded that the measure against him had few negative effects on his private life and did not cross the threshold of seriousness for an issue to be raised under Article 8 of the Convention.

73. It follows that this Article is not applicable in his case and the applicant's complaint must be dismissed as incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 §§ 3 (a) and 4.

III. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLES 6 AND 8 OF THE CONVENTION

74. Relying expressly or in substance on Article 13 taken in conjunction with Articles 6 and 8 of the Convention, the applicant complained that he had been deprived of an effective domestic remedy in relation to the termination of his service as a member and President of the CSA. Article 13 reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

75. Both parties essentially reiterated their previous arguments under Articles 6 and 8 of the Convention (see paragraphs 25-27 and 59-61 above).

B. The Court's assessment

76. The Court reiterates that Article 13 of the Convention requires a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). In addition, the role of Article 6 in relation to Article 13 is that of *lex specialis*, the requirements of Article 13 being absorbed by the more stringent requirements of Article 6 (see, for example, *Kuznetsov and Others v. Russia*, no. 184/02, § 87,

11 January 2007, and *Efendiyeva v. Azerbaijan*, no. 31556/03, § 59, 25 October 2007).

77. Given that the applicant's complaint under Article 6 of the Convention was declared admissible (see paragraph 45 above) and that therefore his grievances in this connection can be regarded as "arguable" in terms of the Convention, the Court considers that the applicant's complaint under Article 13 must likewise be declared admissible. However, given the Court's findings under Article 6 of the Convention (see paragraphs 57 above) the present complaint does not give rise to any separate issue (see, for instance, *Baka*, cited above, § 181). Consequently, the Court holds that it is not necessary to examine the complaint under Article 13 of the Convention taken in conjunction with Article 6 separately.

78. As to the applicant's complaint under Article 8 of the Convention which was declared inadmissible and therefore does not give rise to grievances in this connection that can be regarded as "arguable" in terms of the Convention, the Court considers that the applicant's complaint under Article 13 is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. Article 41 of the Convention provides:

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

A. Damage

80. The applicant claimed 576,502 euros (EUR) in respect of pecuniary damage for loss of income following the termination of his service. He also claimed EUR 25,000 in respect of non-pecuniary damage for the physical and psychological suffering experienced by him because of the breach of his rights.

81. The Government argued that the applicant's claim in respect of pecuniary damage was speculative. Moreover, his claim in respect of non-pecuniary damage was excessive and had no causal link to the violation found, and the mere finding of a violation would amount to sufficient just satisfaction.

82. The Court reiterates that it cannot speculate what the outcome of the proceedings would have been if they had been in conformity with Article 6 of the Convention (see *Ohneberg*, cited above, § 38). Moreover, it cannot discern any causal link between the pecuniary damage alleged and the

violation found. The Court therefore rejects the claim under that head. However, it considers that the applicant suffered some non-pecuniary damage as a result of the infringement of his right of access to a court, which cannot be made good by the mere finding of a violation. Making an assessment on an equitable basis, it awards the applicant EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

83. The applicant also claimed EUR 22,659 for the costs and expenses incurred before the domestic authorities and before the Court. He submitted several legal assistance contracts and related invoices substantiating almost his entire claim.

84. The Government argued that the applicant's claim was excessive and not fully substantiated.

85. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession, the violation found and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 5,000, covering costs under all heads.

C. Default interest

86. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 6 of the Convention, taken alone or in conjunction with Article 13, admissible and the complaints under Article 8, taken alone or in conjunction with Article 13, inadmissible;

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

3. *Holds* that there is no need to examine the complaint under Article 13 taken in conjunction with Article 6 of the Convention;

4. *Holds*

   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 2 November 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Deputy Registrar	Gabriele Kucsko-Stadlmayer President