

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

GRAND CHAMBER

CASE OF DENISOV v. UKRAINE

(Application no. 76639/11)

JUDGMENT

STRASBOURG

25 September 2018

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



In the case of Denisov v. Ukraine,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Guido Raimondi, *President,*
Angelika Nußberger,
Linos-Alexandre Sicilianos,
Ganna Yudkivska,
Helena Jäderblom,
Robert Spano,
Vincent A. De Gaetano,
Erik Møse,
André Potocki,
Yonko Grozev,
Carlo Ranzoni,
Mārtiņš Mits,
Gabriele Kucsko-Stadlmayer,
Alena Poláčková,
Georgios A. Serghides,
Marko Bošnjak,
Péter Paczolay, *judges,*

and Françoise Elens-Passos, *Deputy Registrar,*

Having deliberated in private on 18 October 2017 and 13 June 2018,

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

PROCEDURE

1. The case originated in an application (no. 76639/11) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Anatoliy Oleksiyovych Denisov ("the applicant"), on 8 December 2011.

2. The applicant was represented by Ms J. Gavron and Mr A. Halban, lawyers practising in London. The Ukrainian Government ("the Government") were represented by their Agent, Mr I. Lishchyna.

3. The applicant alleged, in particular, that his dismissal from the position of president of a court of appeal had not been carried out in conformity with Article 6 § 1 of the Convention and constituted an unlawful and disproportionate interference with his private life, contrary to Article 8 of the Convention.

4. On 15 January 2014 the Government were given notice of the application.

5. On 25 April 2017, after having consulted the parties, a Chamber of the Fifth Section of the Court, composed of Angelika Nußberger, President, Erik Møse, Ganna Yudkivska, André Potocki, Yonko Grozev, Carlo Ranzoni, Mārtiņš Mits, judges, and Milan Blaško, Deputy Section Registrar, decided to relinquish jurisdiction in favour of the Grand Chamber in the above case, neither of the parties having objected to such relinquishment (Article 30 of the Convention and Rule 72 of the Rules of Court).

6. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

7. The applicant and the Government each filed written observations on the admissibility and merits of the application. In addition, third-party comments were received from the International Commission of Jurists, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3).

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 18 October 2017.

There appeared before the Court:

(a) *for the Government*
Mr I. LISHCHYNA, *Agent*,
Ms O. DAVYDCHUK, Office of the Government Agent,
Ministry of Justice,
Ms N. RYBACHOK, Office of the Government Agent,
Ministry of Justice, *Advisers*;

(b) *for the applicant*
Ms J. GAVRON,
Mr A. HALBAN, *Counsel*.

The Court heard addresses by Mr Lishchyna, Ms Gavron and Mr Halban and their replies to the questions from its members.

9. At the Court's request, the applicant, in a letter of 24 November 2017, amended his claims for costs and expenses to take into account the proceedings before the Grand Chamber. The Government submitted their comments on his revised claims on 11 December 2017.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant was born on 6 July 1948 and lives in Kyiv.

11. The applicant's judicial career started in 1976, when he was first elected to the post of judge of a district court. During his judicial career the applicant held the position of president in several courts.

12. On 22 December 2005 the applicant was elected to the post of judge of the Kyiv Administrative Court of Appeal by the Ukrainian Parliament.

13. On 10 November 2006 the applicant was appointed, by the President of Ukraine, as acting president of the Kyiv Administrative Court of Appeal. On 6 February 2009 he was appointed president of that court by the Council of Judges of Ukraine (a body of judicial self-governance). He was appointed for a five-year term, it being understood that he would reach the retirement age in July 2013, before the end of that term.

A. Preliminary inquiry into the applicant's performance as president of the court

14. In February 2011 the Council of Administrative Court Judges (another body of judicial self-governance) decided, among other issues, to review the functioning of the Kyiv Administrative Court of Appeal. The review was carried out in February and March 2011 and concerned the years 2009 and 2010, as well as the period between January and February 2011.

15. On 24 May 2011 the Council of Administrative Court Judges, chaired by Judge K., made a submission to the High Council of Justice ("the HCJ") proposing the applicant's dismissal from the position of president of the Kyiv Administrative Court of Appeal for failure to perform his administrative duties properly. The proposal was based on the results of the aforementioned review.

B. Proceedings before the HCJ

16. The HCJ scheduled hearings on 30 and 31 May 2011 and the applicant was invited to attend them. However, in view of information received from the Kyiv Administrative Court of Appeal on 27 May 2011 that the applicant was on annual leave until 8 July 2011, the HCJ adjourned the examination of the case. It sent the applicant a summons for the next hearing, which was scheduled on 14 June 2011. In reply, the Kyiv Administrative Court of Appeal informed the HCJ once again that the applicant was on holiday until 8 July 2011.

17. On 14 June 2011 the HCJ examined the case in the applicant's absence and decided to dismiss him from the post of president of the court, relying on section 20 of the Judiciary and Status of Judges Act and section 32-1 of the High Council of Justice Act. The HCJ noted that "significant shortcomings, omissions and errors, and grave violations of the foundations of the organisation and administration of justice set forth by law [had] been found in the organisation of the work of the Kyiv Administrative Court of

Appeal". It stated that "the improper organisation of the court's work was the result of the failure by the president of the court, Mr A. Denisov, to comply with the provisions of the applicable laws concerning the fulfilment of his administrative duties". It also found that "administrative documents issued by Mr A. Denisov regarding the distribution of duties between the vice-presidents of the court, the setting-up of court chambers and panels and the distribution of cases among judges, as well as personnel-related and other documents in certain cases, [violated] the provisions of [the domestic legislation]". It lastly stated that the applicant's failures as president of the court involved a "lack of proper planning, control and effective use of human resources".

18. The decision was voted on by the HCJ, whose members present on that occasion included Judge K., the Prosecutor General and other judicial and non-judicial members. Out of the eighteen members present, eight were judges. Fourteen votes were cast in favour of the applicant's dismissal.

19. According to the applicant, the composition of the HCJ in his case included two members who on earlier occasions had initiated proceedings for his dismissal from the post of judge for an alleged "breach of oath". Furthermore, the applicant alleged that the President of the HCJ and another member of the HCJ had previously communicated with him, attempting – albeit without success – to influence him in the course of his professional activities.

20. On 17 June 2011 the President of the HCJ asked the Kyiv Administrative Court of Appeal to ensure that the HCJ's decision on the applicant's dismissal was executed and that information about its execution was provided to the HCJ immediately. On 23 June 2011 the applicant was dismissed from his administrative position, remaining in office as a judge of the same court.

C. Proceedings before the Higher Administrative Court

21. The applicant challenged the decision of the HCJ before the Higher Administrative Court ("the HAC"), arguing that the decision on his dismissal was unlawful and unfounded. In his claim the applicant submitted that the HCJ had failed to comply with the requirements of an independent and impartial tribunal. He emphasised that those requirements were part of the procedural safeguards provided for by Article 6 of the Convention, which was applicable to his case in its civil limb because the impugned decision had substantially affected his right to work and his professional dignity. The applicant further argued that his right to participate in the hearings had not been secured. He alleged that the decision of the HCJ was worded in general terms and that it did not refer to any specific facts or indicate a specific time when those facts had taken place. The applicant then asked the HAC to take into account the fact that his judicial career had

exceeded thirty-five years, that he had held positions of president at several courts for twenty-five years, that he had been given awards for his judicial service and that during the initial period of his presidency of the Kyiv Administrative Court of Appeal that court had moved from a demolished military barracks to premises in the city centre with proper equipment and a sufficient number of hearing rooms.

22. The applicant also claimed compensation for the pecuniary damage caused by the ensuing reduction in his remuneration, which, at the date of the claim, had amounted to 4,034.33 Ukrainian hryvnias (UAH) [1] in relation to the period which had elapsed in July and August 2011.

23. On 25 August 2011 the HAC held a hearing in the presence of the applicant and decided to dismiss his claim in respect of pecuniary damage without considering it. The HAC adopted a decision to that effect, stating that it had no jurisdiction to determine that issue.

24. On 11 October 2011 the HAC rejected the applicant's claim concerning his dismissal from the administrative position as unsubstantiated. In its decision the HAC specified, in particular, that it had competence to review whether the impugned decision had been taken lawfully, reasonably, proportionately and, among other requirements, impartially. The HAC stated that the applicant had not contested the facts forming the grounds for his dismissal and therefore those facts had been taken as established. The HAC then reiterated the failings attributed to the applicant and concluded that the HCJ's decision had been lawful and that the applicant's right to participate in the proceedings in person had not been violated because the HCJ had taken all the necessary measures to inform him about the hearings and the applicant had not had any valid reason for being absent from the hearings. The HAC found that the HCJ had acted in accordance with the Constitution, the Judiciary and Status of Judges Act and the High Council of Justice Act. It had also complied with the Rules of the HCJ, which provided that one of the grounds for the dismissal of a judge from an administrative position was a "breach of official duties". In conclusion, the HAC stated that the HCJ had not violated the Constitution or the laws of Ukraine.

25. Following his dismissal from the position of president of the Kyiv Administrative Court of Appeal, the applicant continued to work as a regular judge in the same court until 20 June 2013, when Parliament dismissed him from the post of judge after he had tendered a statement of resignation.

1. About 345 euros at the relevant time

II. RELEVANT DOMESTIC LAW

A. Constitution of 28 June 1996 as worded at the relevant time

26. The relevant provisions of the Constitution read as follows at the relevant time:

Article 6

"The State power in Ukraine is exercised on the basis of its separation into legislative, executive and judicial branches. ..."

Article 126

"... A judge shall be dismissed from office by the body which elected or appointed him or her in the event of:

...

(2) the judge's attainment of the age of sixty-five ...;"

Article 131

"The High Council of Justice shall operate in Ukraine. Its tasks shall comprise:

(1) making submissions on the appointment or dismissal of judges;

(2) adopting decisions with regard to the violation by judges and prosecutors of the requirements concerning judicial incompatibility;

(3) conducting disciplinary proceedings in respect of judges of the Supreme Court and judges of higher specialised courts, and considering complaints against decisions imposing disciplinary liability on judges of courts of appeal and local courts and on prosecutors.

The High Council of Justice shall consist of twenty members. The Parliament of Ukraine, the President of Ukraine, the Assembly of Judges of Ukraine, the Assembly of Advocates of Ukraine, and the Assembly of Representatives of Higher Legal Educational Establishments and Scientific Institutions, shall each appoint three members to the High Council of Justice, and the All-Ukrainian Conference of Prosecutors shall appoint two members to the High Council of Justice.

The President of the Supreme Court, the Minister of Justice and the Prosecutor General shall be *ex officio* members of the High Council of Justice."

B. Code of Administrative Justice of 6 July 2005 as worded at the relevant time

27. The relevant provisions of the Code read as follows at the relevant time:

Article 161 – Questions to be determined by a court when deciding on a case

"1. When deciding on a case, a court shall determine:

(1) whether the circumstances referred to in the claim and objections took place and what evidence substantiates these circumstances;

(2) whether there is any other factual information relevant to the case and evidence in support of that information;

(3) which provision of law is to be applied to the legal relations in dispute;

...”

Article 171-1 – Proceedings in cases concerning acts, actions or omissions of the Parliament of Ukraine, the President of Ukraine, the High Council of Justice and the High Qualification Commission of Judges

“1. The rules set down in this Article shall apply to proceedings in administrative cases concerning:

...

(2) acts of the High Council of Justice; ...

2. Acts, actions or omissions of the Parliament of Ukraine, the President of Ukraine, the High Council of Justice and the High Qualification Commission of Judges may be challenged before the Higher Administrative Court. For this purpose a separate chamber shall be set up in the Higher Administrative Court.

...

5. Following the consideration of the case, the Higher Administrative Court may:

(1) declare the act of the Parliament of Ukraine, the President of Ukraine, the High Council of Justice or the High Qualification Commission of Judges unlawful in full or in part;

(2) declare the actions or omissions of the Parliament of Ukraine, the President of Ukraine, the High Council of Justice or the High Qualification Commission of Judges unlawful and oblige [it or them] to take certain actions. ...”

C. The Judiciary and Status of Judges Act of 7 July 2010 (in force at the relevant time)

28. The relevant provisions of this Act read as follows at the relevant time:

Section 20 – Procedure for appointing judges to administrative positions

“1. The administrative positions in a court are the positions of president and deputy president(s) of the court.

2. The president of ... the court of appeal ... [appointed for a five-year term from among the judges of the same court] may be dismissed from that position by the High Council of Justice on an application by the relevant council of judges.

...

6. The dismissal of a judge from an administrative position shall not entail removal from his or her judicial post. ...”

Section 29 – President of the court of appeal

"1. The president of the court of appeal shall:

(1) represent the court as a body of State power in relations with other State bodies, local self-government bodies, natural persons and legal entities;

(2) determine the administrative powers of the deputy presidents of the court of appeal;

(3) monitor the efficiency of the non-judicial staff at the court, and make proposals to the Head of the State Judicial Administration of Ukraine regarding the appointment of the head and deputy head of the non-judicial staff at the court, their dismissal from office and any incentives or disciplinary measures to be applied in respect of them in accordance with the law;

(4) issue relevant orders on the basis of decisions on the election or dismissal of a judge;

(5) notify, within ten days, the High Qualification Commission of Judges of Ukraine about available vacancies at the court of appeal;

(6) ensure the implementation of decisions taken at meetings of judges of the court of appeal;

(7) oversee the collection and analysis of judicial statistics, organise the examination and summarising of judicial practice, and provide information and analytical support to judges in order to improve the quality of justice;

(8) ensure the ongoing training requirements for judges of the court of appeal;

(9) exercise other powers envisaged by law."

Section 113 – Objectives of judicial self-governance

"1. Judicial self-governance shall be established in Ukraine as a means of independent collective resolution by judges of issues relating to the internal activity of the courts. ..."

Section 114 – Organisational forms of judicial self-governance

"1. The organisational forms of judicial self-governance shall be the meetings of judges, the councils of judges, the conferences of judges, and the Assembly of Judges of Ukraine. ..."

Section 115 – Meetings of judges

"... 2. Meetings of judges [of a court] shall be convened by the president of the court on his own initiative or at the request of at least one-third of the judicial staff of the court. ..."

Section 122 – Councils of judges

"1. In the period between conferences of judges the functions of judicial self-governance shall be performed by the relevant council of judges. ...

3. The council of judges shall be composed of eleven judges ...

6. The council of judges shall:

(1) oversee the organisation of the functioning of the relevant courts, examine reports on those issues by presidents of courts ...;

...

(3) make submissions to the High Council of Justice on the appointment of judges to administrative positions at the courts and their dismissal from such positions; ..."

D. The High Council of Justice Act of 15 January 1998 (in force at the relevant time)

29. The relevant provisions of this law read as follows at the material time:

Section 3 – Powers of the High Council of Justice

" The High Council of Justice shall:

...

(1-1) following the submission of a proposal by the relevant council of judges, ... dismiss judges from the positions of president and deputy president of courts ...;

..."

Section 32-1 – Dismissal of judges from the positions of president and deputy president of a court

"... The question of dismissing the president or deputy president of a court shall be examined at a hearing of the High Council of Justice, following the submission of a proposal by the relevant specialised council of judges. The president or deputy president of the court concerned shall be invited to attend the hearing. If the president or deputy president of the court cannot participate in the hearing for a valid reason, he or she shall be entitled to make written submissions, which shall be included in the case file. The written submissions by the judge shall be read out at the hearing before the High Council of Justice. A second failure on the part of the president or deputy president of the court to attend a hearing shall be grounds for considering the case in his or her absence.

A decision of the High Council of Justice to dismiss the president or deputy president of a court shall be taken by a majority of the constitutional composition of the High Council of Justice."

30. Other relevant provisions of this Act can be found in the judgment in the case of *Oleksandr Volkov v. Ukraine* (no. 21722/11, §§ 65-71, ECHR 2013).

E. Rules of the HCJ of 4 October 2010 (in force at the relevant time)

31. Paragraph 3.2 (1) of the Rules provided that a judge could be dismissed from the position of president or deputy president of a court by the HCJ following the submission of a proposal by the relevant council of judges.

32. Paragraph 3.2 (2) of the Rules provided the following grounds for the dismissal of a judge from an administrative position: (i) dismissal from the judiciary; (ii) submission of a statement of resignation from the administrative position; (iii) expiry of the period of appointment to the administrative position; (iv) transfer of the judge to another court; (v) breach of official duties.

III. RELEVANT INTERNATIONAL MATERIALS

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

> "*1. General Principles*
>
> ...
>
> 1.3. In respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary.
>
> ...
>
> *5. Liability*
>
> 5.1. The dereliction by a judge of one of the duties expressly defined by the statute, may only give rise to a sanction upon the decision, following the proposal, the recommendation, or with the agreement of a tribunal or authority composed at least as to one half of elected judges, within the framework of proceedings of a character involving the full hearing of the parties, in which the judge proceeded against must be entitled to representation. The scale of sanctions which may be imposed is set out in the statute, and their imposition is subject to the principle of proportionality. The decision of an executive authority, of a tribunal, or of an authority pronouncing a sanction, as envisaged herein, is open to an appeal to a higher judicial authority."

34. In the conclusions to its "Report on the Independence of the Judicial System, Part I: The Independence of Judges", adopted at its 82nd plenary session on 12 and 13 March 2010 (CDL-AD(2010)004), the Venice Commission found as follows:

> "82. The following standards should be respected by states in order to ensure internal and external judicial independence:
>
> ...
>
> 4. It is an appropriate method for guaranteeing the independence of the judiciary that an independent judicial council have decisive influence on decisions on the appointment and career of judges. While respecting the variety of legal systems existing, the Venice Commission recommends that states not yet having done so consider the establishment of an independent judicial council. In all cases the council should have a pluralistic composition, with a substantial part if not the majority of the

members being judges. With the exception of ex-officio members these judges should be elected or appointed by their peers.

...

6. Judicial councils, or disciplinary courts, should have a decisive influence in disciplinary proceedings. The possibility of an appeal to a court against decisions of disciplinary bodies should be provided for. ..."

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

"*Chapter IV – Councils for the judiciary*

26. Councils for the judiciary are independent bodies, established by law or under the constitution, that seek to safeguard the independence of the judiciary and of individual judges and thereby to promote the efficient functioning of the judicial system.

27. Not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary.

28. Councils for the judiciary should demonstrate the highest degree of transparency towards judges and society by developing pre-established procedures and reasoned decisions.

...

Chapter VI – Status of the judge

Selection and career

...

46. The authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers.

47. However, where the constitutional or other legal provisions prescribe that the head of state, the government or the legislative power take decisions concerning the selection and career of judges, an independent and competent authority drawn in substantial part from the judiciary (without prejudice to the rules applicable to councils for the judiciary contained in Chapter IV) should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice.

48. The membership of the independent authorities referred to in paragraphs 46 and 47 should ensure the widest possible representation. Their procedures should be transparent with reasons for decisions being made available to applicants on request.
...

Chapter VII – Duties and responsibilities

...

Liability and disciplinary proceedings

...

69. Disciplinary proceedings may follow where judges fail to carry out their duties in an efficient and proper manner. Such proceedings should be conducted by an independent authority or a court with all the guarantees of a fair trial and provide the judge with the right to challenge the decision and sanction. Disciplinary sanctions should be proportionate."

36. The Consultative Council of European Judges, at its 11th plenary meeting (17-19 November 2010), adopted a Magna Carta of Judges (Fundamental Principles) summarising and codifying the main conclusions of the Opinions it had already adopted. The section entitled "Body in charge of guaranteeing independence" reads as follows:

"13. To ensure independence of judges, each State shall create a Council for the Judiciary or another specific body, itself independent from legislative and executive powers, endowed with broad competences for all questions concerning their status as well as the organisation, the functioning and the image of judicial institutions. The Council shall be composed either of judges exclusively or of a substantial majority of judges elected by their peers. The Council for the Judiciary shall be accountable for its activities and decisions."

37. Further relevant international texts can be found in *Baka v. Hungary* [GC] (no. 20261/12, §§ 72-73 and 82-86, ECHR 2016).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE PRINCIPLES OF AN INDEPENDENT AND IMPARTIAL TRIBUNAL

38. The applicant complained under Article 6 § 1 of the Convention that the proceedings before the HCJ and the HAC concerning his removal from the position of president of the Kyiv Administrative Court of Appeal had not been compatible with the requirements of independence and impartiality. He complained, in addition, that the HAC had not provided a sufficient review of his case, thereby impairing his right of access to a court.

39. The relevant part of Article 6 § 1 reads as follows:

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

A. Admissibility

1. The parties' submissions

40. Relying on the principles developed in *Vilho Eskelinen and Others v. Finland* ([GC], no. 63235/00, § 62, ECHR 2007-II), the applicant submitted that Article 6 § 1 of the Convention applied to his case under the civil limb. The national law did not expressly exclude access to court: his case had been examined by the HCJ performing a judicial function, and had subsequently been reviewed by the HAC, an ordinary court within the domestic judicial system. Therefore, the domestic law did not exclude access to a court for cases of this kind and the first limb of the test set out in *Vilho Eskelinen and Others* was not satisfied. Furthermore, the applicant's dismissal from his administrative position had caused him pecuniary loss, by way of a reduction in his salary, as well as non-pecuniary loss in view of his demotion in status. In his original application form the applicant submitted that Article 6 was also applicable under the "criminal" limb. However, in his submissions before the Grand Chamber he stated that the applicability of Article 6 was limited to its civil aspect.

41. The Government submitted that the civil limb of Article 6 was not applicable since there was no "civil" right at issue. The dispute had been entirely within the sphere of public law and the claim submitted by the applicant in respect of pecuniary damage concerned a small amount (see paragraph 22 above), which had not constituted a significant disadvantage for him. On those grounds the Government submitted that the complaint was incompatible *ratione materiae* with the Convention.

2. Third-party intervener

42. The third party, the International Commission of Jurists, submitted that the principle of independence of the judiciary necessarily implied security of tenure in the office of court president. In order to ensure such security of tenure and to maintain both the independence of individual court presidents and their capacity to uphold the independence of judges in their courts, proceedings for removal from the position of court president had to provide the same guarantees of independence and fairness as those for removal from the office of judge. The third party contended that the applicability of Article 6 in the present case had to be determined on the basis of the *Vilho Eskelinen* test, which had been applied by the Court in cases concerning judges including *Baka* (cited above).

3. The Court's assessment

43. It is common ground between the parties that Article 6 § 1 is not applicable under its criminal limb. Indeed, the proceedings at issue did not relate to the determination of a criminal charge, and for this reason the

criminal limb does not apply (see, *mutatis mutandis*, *Oleksandr Volkov*, cited above, §§ 93-95).

(a) The general requirements for the applicability of the civil limb of Article 6 § 1

(i) The relevant principles

44. For Article 6 § 1 in its "civil" limb to be applicable, there must be a "dispute" regarding a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether it is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, among many other authorities, *Boulois v. Luxembourg* [GC], no. 37575/04, § 90, ECHR 2012; *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 42, ECHR 2015; *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 71, ECHR 2016; and *Regner v. the Czech Republic* [GC], no. 35289/11, § 99, ECHR 2017).

45. Article 6 § 1 does not guarantee any particular content for (civil) "rights and obligations" in the substantive law of the Contracting States: the Court may not create by way of interpretation of Article 6 § 1 a substantive right which has no legal basis in the State concerned (see, for example, *Roche v. the United Kingdom* [GC], no. 32555/96, § 117, ECHR 2005-X). The starting-point must be the provisions of the relevant domestic law and their interpretation by the domestic courts (ibid., § 120; see also *Károly Nagy v. Hungary* [GC], no. 56665/09, § 62, ECHR 2017, and *Regner*, cited above, § 100). The Court would need strong reasons to differ from the conclusions reached by the superior national courts by finding, contrary to their view, that there was arguably a right recognised by domestic law (see *Károly Nagy*, cited above, § 62).

46. Although there is in principle no right under the Convention to hold a public post entailing the administration of justice (see *Dzhidzheva-Trendafilova v. Bulgaria* (dec.), no. 12628/09, § 38, 9 October 2012, and *Harabin v. Slovakia* (dec.), no. 62584/00, 29 June 2004), such a right may exist at the domestic level. In *Regner* (cited above) the Court reiterated that there can be no doubt about the fact that there is a right within the meaning of Article 6 § 1 where a substantive right recognised in domestic law is accompanied by a procedural right to have that right enforced through the courts. The mere fact that the wording of a legal provision affords an element of discretion does not in itself rule out the existence of a right. Indeed, Article 6 applies where the judicial proceedings concern a discretionary decision resulting in interference in an applicant's

rights (ibid., § 102). In some cases, national law, while not necessarily recognizing that an individual has a subjective right, confers the right to a lawful procedure for examination of his or her claim, involving matters such as ruling whether a decision was arbitrary or *ultra vires* or whether there were procedural irregularities. This is the case regarding certain decisions where the authorities have a purely discretionary power to grant or refuse an advantage or privilege, with the law conferring on the person concerned the right to apply to the courts, which, where they find that the decision was unlawful, may set it aside. In such a case Article 6 § 1 of the Convention is applicable, on condition that the advantage or privilege, once granted, gives rise to a civil right (ibid., § 105). While access to employment and to the functions performed may constitute in principle a privilege that cannot be legally enforced, this is not the case regarding the continuation of an employment relationship or the conditions in which it is exercised (ibid., § 117). In *Baka*, for instance, the Court recognised the right of the President of the Supreme Court to serve his full term of six years under Hungarian law (see *Baka*, cited above, §§ 107-11).

(ii) Application of these principles to the present case

47. Applying these principles to the present case, the Court observes, first of all, that there was a "dispute" concerning the exercise of the right to hold the position of president of a court. As regards the issue of 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 the position of president of the Kyiv Administrative Court of Appeal for a five-year term (see paragraph 13 above) and his appointment for such tenure was not disputed at the domestic level. The applicant was provided with specific remuneration for his service as president of the court and his dismissal from this position was subject to certain substantive and procedural conditions. 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, there is no ground for considering that the applicant's right to serve in that administrative position was not recognised under domestic law. Despite his appointment for a five-year period, the applicant's right to hold the position of president of the court was limited in time by the fact that he was due to reach the retirement age in 2013, before the expiry of that period (see Article 126 of the Constitution cited in paragraph 26 above).

48. The Court further observes that the dispute was "genuine" as the parties differed as to whether the applicant could continue to hold his administrative position. Moreover, the dispute was "serious", having regard to the role of the president of a court (see section 29 of the Judiciary and Status of Judges Act, cited in paragraph 28 above) and to the direct pecuniary consequences for the applicant resulting from his removal from that administrative position. In that regard the Government's argument that

the reduction in salary was insignificant for the applicant is not convincing. The applicant's calculation of pecuniary damage in his domestic claim was limited only to the short period (see paragraph 22 above) which had elapsed at that stage, because the principal purpose of the claim was to secure his reinstatement in the position of president of the court. However, the pecuniary consequences were not insignificant from the perspective of the whole period which remained for the applicant to serve as president.

49. Lastly, the dispute was "directly decisive" for the right at issue because it resulted in the premature termination of the applicant's exercise of that right.

(b) As to the "civil" nature of the right in dispute

50. The Government contested the applicability of Article 6, arguing that the dispute was in the area of public law and that, consequently, there was no "civil" right at issue.

(i) The relevant principles

51. In this connection it has to be noted that the scope of the "civil" concept in Article 6 is not limited by the immediate subject matter of the dispute. Instead, the Court has developed a wider approach, according to which the "civil" limb has covered cases which might not initially appear to concern a civil right but which may have direct and significant repercussions on a private pecuniary or non-pecuniary right belonging to an individual. Through this approach, the civil limb of Article 6 has been applied to a variety of disputes which may have been classified in domestic law as public-law disputes. These examples include disciplinary proceedings concerning the right to practise a profession (see *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, §§ 47 and 48, Series A no. 43, and *Philis v. Greece (no. 2)*, 27 June 1997, § 45, *Reports of Judgments and Decisions* 1997-IV), disputes involving the right to a healthy environment (see *Taşkın and Others v. Turkey*, no. 46117/99, § 133, ECHR 2004-X), prisoners' detention arrangements (see *Ganci v. Italy*, no. 41576/98, § 25, ECHR 2003-XI, and *Enea v. Italy* [GC], no. 74912/01, § 103, ECHR 2009), the right of access to investigation documents (see *Savitskyy v. Ukraine*, no. 38773/05, §§ 143-45, 26 July 2012), disputes regarding the non-inclusion of a conviction in a criminal record (see *Alexandre v. Portugal*, no. 33197/09, §§ 54 and 55, 20 November 2012), proceedings for the application of a non-custodial preventive measure (see *De Tommaso v. Italy* [GC], no. 43395/09, § 154, ECHR 2017 (extracts)), and the revocation of a civil servant's security clearance within the Ministry of Defence (see *Regner*, cited above, §§ 113-27).

52. Besides the above-mentioned development of the case-law, the scope of the "civil" limb has been substantially extended in relation to public-employment disputes, a field which is directly relevant to the present

case. In *Vilho Eskelinen and Others* (cited above) the Court, having regard to the existing state of affairs in the Contracting States and in view of non-discrimination considerations in relation to civil servants as compared to private employees, established a presumption that Article 6 applied to "ordinary labour disputes" between a civil servant and the State and that it would be for the respondent Government to show that a civil servant did not have a right of access to a court under national law and that this exclusion of the rights under Article 6 was justified (ibid., § 62). On the basis of the principles set out in *Vilho Eskelinen and Others*, Article 6 has been applied to employment disputes involving judges who were dismissed from judicial office (see, for example, *Oleksandr Volkov*, cited above, §§ 91 and 96; *Kulykov and Others v. Ukraine*, nos. 5114/09 and 17 others, §§ 118 and 132, 19 January 2017; *Sturua v. Georgia*, no. 45729/05, § 27, 28 March 2017; and *Kamenos v. Cyprus*, no. 147/07, § 88, 31 October 2017), removed from an administrative position without the termination of their duties as a judge (see *Baka*, cited above, §§ 34 and 107-11) or suspended from judicial office (see *Paluda v. Slovakia*, no. 33392/12, § 34, 23 May 2017). It has also been applied to employment disputes involving civil servants who had lost a remote-area allowance which had been added to their salaries as a bonus (see *Vilho Eskelinen*, cited above, §§ 40 and 41) or who had been transferred to another office or post against their will, resulting in a decrease in salary (see *Zalli v. Albania*, no. 52531/07, 8 February 2011, and *Ohneberg v. Austria*, no. 10781/08, 18 September 2012). Furthermore, in *Bayer v. Germany* (no. 8453/04, 16 July 2009), which concerned the removal from office of a State-employed bailiff following disciplinary proceedings, the Court held that disputes about "salaries, allowances or similar entitlements" were only non-exhaustive examples of "ordinary labour disputes" to which Article 6 should in principle apply under the *Vilho Eskelinen* test (ibid., § 38; see also *Regner*, cited above, § 108).

(ii) Application of these principles to the present case

53. In the light of the above principles, the Government's argument that the civil limb of Article 6 § 1 is not applicable for the sole reason that the applicant's dispute falls within the field of public law and there is no "civil" right at stake is not convincing. As shown above, a public-law dispute may bring the civil limb into play if the private-law aspects predominate over the public-law ones in view of the direct consequences for a civil pecuniary or non-pecuniary right. Furthermore, the Court follows the criteria set out in *Vilho Eskelinen and Others* and applies a general presumption that such direct consequences for civil rights exist in "ordinary labour disputes" involving members of the public service, including judges (ibid., § 62 and *Baka*, cited above, § 104).

54. Indeed, the present case concerned an "ordinary labour dispute" given that it essentially affected (i) the scope of the work which the

applicant was required to perform as an employee and (ii) his remuneration as part of his employment relationship (compare *Ohneberg*, cited above, § 25). Having regard to these two aspects, there is no reason to conclude 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.

55. Applying the *Vilho Eskelinen* test further, it is not disputed that domestic law provides for access to a court in the case of claims concerning dismissal from administrative positions in the judiciary. Accordingly, Article 6 applies under its civil head.

56. It follows that the Government's preliminary objection as to the applicability of Article 6 § 1 of the Convention must be dismissed.

57. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

58. The applicant submitted that the HCJ did not constitute an "independent and impartial tribunal" owing to the manner of its composition, the subordination of its members to other State bodies and the lack of objective impartiality and the existence of personal bias on the part of some of its members. Furthermore, the obligation to provide an "independent and impartial tribunal" had not been satisfied by the HAC either.

59. The Government submitted that the requirements of Article 6 § 1 had been met and that there was no indication of bias on the part of the national authorities. They emphasised that the HAC's judgment had been based on the parties' submissions and had included sufficient reasons.

2. The Court's assessment

(a) General principles relating to the requirements of an "independent and impartial tribunal" at the stages of the determination and the review of the case

60. In determining whether a body could be considered "independent"-in particular, from the executive and the parties to the case-the Court has in previous cases had regard to such factors as the manner of appointment of the body's members, the duration of their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence (see *Maktouf and Damjanović*

v. Bosnia and Herzegovina [GC], nos. 2312/08 and 34179/08, § 49, ECHR 2013 (extracts), with further references therein).

61. As a rule, impartiality denotes the absence of prejudice or bias. According to the Court's settled case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined according to (i) a subjective test, where regard must be had to the personal conviction and behaviour of a particular judge – that is, whether the judge held any personal prejudice or bias in a given case; and (ii) an objective test, that is to say, by ascertaining whether, quite apart from the personal conduct of any of its members, the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see, among other authorities, *Micallef v. Malta* [GC], no. 17056/06, § 93, ECHR 2009, with further references).

62. However, there is no watertight division between subjective and objective impartiality, as the conduct of a judge may not only prompt objectively held misgivings as to the tribunal's impartiality from the point of view of the external observer (the objective test) but may also go to the issue of the judges' personal conviction (the subjective test) (see *Kyprianou v. Cyprus* [GC], no. 73797/01, § 119, ECHR 2005-XIII). Thus, in some cases where it may be difficult to procure evidence with which to rebut the presumption of the judge's subjective impartiality, the requirement of objective impartiality provides a further important guarantee (see *Pullar v. the United Kingdom*, 10 June 1996, § 32, *Reports* 1996-III).

63. In this respect, even appearances may be of a certain importance, or in other words, "justice must not only be done, it must also be seen to be done". What is at stake is the confidence which the courts in a democratic society must inspire in the public (see *Morice v. France* [GC], no. 29369/10, § 78, ECHR 2015).

64. Finally, the concepts of independence and objective impartiality are closely linked and, depending on the circumstances, may require joint examination (see, for example, *Cooper v. the United Kingdom* [GC], no. 48843/99, § 104, ECHR 2003-XII).

65. According to the Court's case-law, even where an adjudicatory body determining disputes over "civil rights and obligations" does not comply with Article 6 § 1 in some respect, no violation of the Convention can be found if the proceedings before that body are "subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 § 1" (see *Albert and Le Compte v. Belgium*, 10 February 1983, § 29, Series A no. 58, and *Tsfayo v. the United Kingdom*, no. 60860/00, § 42, 14 November 2006).

(b) Application of those principles to the present case

(i) Approach to examining the complaint

66. The issue of the applicant's performance in the position of president of the Kyiv Administrative Court of Appeal was initially raised by the Council of Administrative Court Judges, which, having conducted its inquiry, decided to submit a proposal to the HCJ for the applicant's dismissal from his administrative position. The issue was then examined by the HCJ, which was not bound by the initial proposal from the Council of Administrative Court Judges. On the contrary, the HCJ was empowered to carry out its own assessment of the facts, provide its own legal characterisation of the matter and adopt a binding decision after holding a hearing and assessing the evidence. In the present case the examination of the issue by the HCJ ended with a decision to dismiss the applicant and that decision was executed shortly after its adoption (see paragraph 20 above). Subsequently, following its execution, the decision of the HCJ was reviewed by the HAC.

67. The above-mentioned features of the domestic proceedings suggest that the Council of Administrative Court Judges played a preliminary investigative role in the case. This part of the case is not being challenged by the applicant, who focuses his complaint on the alleged unfairness of the proceedings before the HCJ and the HAC and the lack of a "sufficient review" by the latter. In these circumstances the Court must examine whether the HCJ and the HAC satisfied the requirements of Article 6 § 1 of the Convention. However, if the HCJ did not meet those requirements, an issue under Article 6 would arise only if the HAC failed to provide a "sufficient review" in compliance with Article 6 (compare *Le Compte, Van Leuven and De Meyere*, cited above, §§ 51 and 54, and *Oleksandr Volkov*, cited above, §§ 108, 123 and 130). Accordingly, in the present case the Court is called upon to examine firstly whether the requirements of an "independent and impartial tribunal" were complied with by the HCJ. Secondly, if those requirements were not satisfied at that stage, it is necessary to determine whether the review of the case by the HAC was "sufficient" to remedy the shortcomings identified. Thirdly, it has to be established whether the HAC itself complied with the requirements of independence and impartiality.

(ii) Proceedings before the HCJ

68. In its *Oleksandr Volkov* judgment (cited above) the Court set out a number of criteria for examining whether the HCJ as a disciplinary body of judges complied with the requirements of independence and impartiality. In doing so, the Court relied on its previous case-law and took into account relevant international texts, notably the opinions and recommendations of other bodies of the Council of Europe. First, it emphasised the need for

substantial representation of judges within such a body, specifying that where at least half of the membership of a tribunal was composed of judges, including the chairman with a casting vote, this would be a strong indicator of impartiality (ibid., § 109). Second, in view of the importance of reducing the influence of political organs on the composition of the disciplinary body, it was relevant to assess the manner in which judges were appointed to that body, having regard to the authorities which delegated them and the role of the judicial community in that process (ibid., § 112). Third, it was relevant to establish whether the members of the disciplinary body worked on a full-time basis or continued to work and receive a salary outside; given that the latter case would inevitably involve their material, hierarchical and administrative dependence on their primary employers, this would endanger their independence and impartiality (ibid., § 113). Fourth, attention had to be paid to the participation of representatives of the prosecution authorities in the composition of the disciplinary body for judges; the inclusion of the Prosecutor General *ex officio* and the other members delegated by the prosecution authorities raised concerns as to the impartiality of the disciplinary body of judges in view of the functional role of prosecutors in domestic judicial proceedings (ibid., § 114). Fifth, where the members of the disciplinary body played a role in the preliminary inquiry in a disciplinary case and subsequently participated in the determination of the same case by the disciplinary body, such a duplication of functions could cast objective doubt on the impartiality of those members (ibid., § 115).

69. The Court found in *Oleksandr Volkov* that the composition of the HCJ, as provided for by the Constitution, had disclosed a number of structural shortcomings which had compromised the requirements of independence and impartiality. Under these constitutional rules, the majority of the HCJ had consisted of non-judicial staff appointed directly by the executive and the legislative authorities, with the Minister of Justice and the Prosecutor General being *ex officio* members. The decision to dismiss the applicant in *Oleksandr Volkov* had been taken by sixteen members of the HCJ, only three of whom were judges. Furthermore, only four out of the twenty members of the HCJ worked there on a full-time basis, while the other members continued to work and receive a salary outside the HCJ. The membership and presence of the Prosecutor General and other representatives of the prosecution system within the HCJ raised further concerns in terms of impartiality, given the functional role of the prosecutor's office in domestic court proceedings. Moreover, there were two members of the HCJ who had brought disciplinary charges against the applicant, based on the results of their own preliminary inquiries, and subsequently decided on the merits of his case (ibid., §§ 110-15).

70. Those findings are entirely pertinent to the present application. The HCJ was formed and functioned under the same constitutional rules as in *Oleksandr Volkov.* Therefore, the same concerns arise as regards the

compliance of the proceedings before the HCJ with the standards of independence and impartiality. The applicant's case was heard and determined by eighteen members of the HCJ, of whom only eight were judges. The non-judicial members therefore constituted a majority capable of determining the outcome of the proceedings. Moreover, there remained issues both with the manner in which the judicial members were delegated to the HCJ by the executive and legislative authorities, limiting the number of judges in the HCJ elected by their peers, and also with the fact that the majority of the HCJ's members were not employed there full time and that the Prosecutor General was a member.

71. Furthermore, as regards the applicant's allegations, set out in detail before the Court, that certain members of the HCJ had shown personal bias in his case, it cannot be overlooked that Judge K., who was a member of the HCJ, had initially, in his capacity as chairman of the Council of Administrative Court Judges, played a role in the preliminary inquiry of the applicant's case and in making the proposal to the HCJ for his dismissal (see paragraphs 15 and 18 above). This preliminary involvement cast objective doubt on Judge K.'s impartiality when he subsequently took part in the decision of the HCJ on the merits of the applicant's case (compare *Oleksandr Volkov*, cited above, § 115; *Poposki and Duma v. the former Yugoslav Republic of Macedonia*, nos. 69916/10 and 36531/11, § 48, 7 January 2016; and *Sturua*, cited above, § 35).

72. The above considerations are sufficient for the Court to conclude that the proceedings before the HCJ lacked the guarantees of independence and impartiality in view of the structural deficiencies and the appearance of personal bias.

(iii) Whether the examination by the HAC provided a sufficient review

73. In order to determine firstly whether a second-level tribunal had "full jurisdiction", or provided "sufficiency of review" to remedy a lack of independence and impartiality at first instance, the Court has considered that it is necessary to have regard to such factors as the subject matter of the decision appealed against, the manner in which that decision was arrived at and the content of the dispute, including the desired and actual grounds of appeal (see *Bryan v. the United Kingdom*, 22 November 1995, §§ 44-47, Series A no. 335-A, and *Tsfayo*, cited above, § 43).

74. In *Oleksandr Volkov* the Court specifically found that the HAC had not provided a sufficient review of a case concerning a judge's dismissal from office. Firstly, the Court observed that the HAC had powers to declare the impugned decisions unlawful, but that it was unable to quash them and take any further appropriate steps if deemed necessary. Even though no legal consequences arose from a decision being declared unlawful, the HAC's inability to quash the impugned decision, together with the absence of rules as to the further progress of the disciplinary proceedings (in

particular, the steps that had to be taken by the authorities involved after the impugned decisions had been declared unlawful and the time-limits for those steps to be taken), produced serious uncertainty about the real legal consequences of such judicial declarations. Judicial practice suggested, moreover, that there was no automatic reinstatement in the event of a positive declaration by the HAC, because the judges concerned had to institute new proceedings for reinstatement (ibid., §§ 125 and 126). The Court also examined the manner and the actual scope of the HAC's review and concluded that these were likewise inappropriate to provide a "sufficient review" (ibid., §§ 127 and 128).

75. The above considerations are equally pertinent to the present case. In reviewing the HCJ's decision, which had immediate effect, the HAC was acting within the same legal framework with the same limited powers and uncertainties as to the eventual legal consequences.

76. Moreover, looking into the content of the dispute at stake in the present case, there are serious mismatches between the advanced and actual grounds of review. Firstly, in its decision the HAC considered that the applicant had not contested the facts forming the grounds for his dismissal and therefore those facts were taken as established. This conclusion is not consistent with the grounds of the applicant's claim before the HAC, in which he clearly contested those facts. The applicant argued in particular that the findings of the HCJ were too general and that in order to substantiate its conclusions the HCJ should have referred to the specific circumstances and their time frame.

77. Secondly, the HAC made no genuine attempt to examine another important argument by the applicant alleging a lack of independence and impartiality in the proceedings before the HCJ (see paragraph 21 above). Having mentioned its competence to review whether the impugned decision had been taken in a manner compatible with a number of criteria, notably the requirement of impartiality, the HAC reached a general conclusion that the HCJ had not violated the Constitution or the laws of Ukraine. However, the HAC failed to assess whether the proceedings before the HCJ had complied with the principles of independence and impartiality. It provided no reasons in that regard.

78. Therefore, the review of the applicant's case by the HAC was not sufficient. Accordingly, it was unable to remedy the defects regarding procedural fairness resulting from the proceedings before the HCJ.

(iv) Whether the HAC complied with standards of independence and impartiality

79. As to the guarantees of independence and impartiality under Article 6 § 1 to be provided by the reviewing judicial body, such a review was performed in the present case by the judges of the HAC, who were also under the disciplinary jurisdiction of the HCJ. This means that those judges could also be the subject of disciplinary proceedings before the HCJ. The

fact that judges of the HAC were subject to disciplinary law and were bound by rules of judicial discipline and ethics is not in itself a reason to put in doubt their independence and impartiality in relation to the authority empowered to implement disciplinary rules. The question of compliance with the fundamental guarantees of independence and impartiality may arise, however, if the structure and functioning of the disciplinary body raises serious issues in this regard. The present case does indeed disclose serious issues of this kind on the part of the HCJ, in particular structural deficiencies and the appearance of personal bias (see paragraphs 70-72 above). Secondly, the HCJ was not merely a disciplinary authority; it was in reality an authority with extensive powers with respect to the careers of judges (appointment, disciplining and dismissal). On the basis of those factors and having regard to the specific context of the Ukrainian system at the time, the Court, in the light of *Oleksandr Volkov* (cited above, § 130), finds that the judges of the HAC considering the applicant's case, in which the HCJ participated, were not able to demonstrate the "independence and impartiality" required by Article 6 of the Convention.

80. It follows that the judicial review by the HAC in the present case did not comply with the requirement of independence and impartiality.

(v) Conclusion

81. Accordingly, the HCJ failed to ensure an independent and impartial examination of the applicant's case, and the subsequent review of his case by the HAC did not put those defects right.

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

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

83. The applicant complained under Article 8 of the Convention that his right to respect for his private life had been violated by his dismissal from the position of president of the Kyiv Administrative Court of Appeal.

84. The relevant parts of Article 8 of the Convention provide as follows:

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

A. The parties' submissions

1. The applicant

85. The applicant submitted that his right to respect for his private life was engaged because his career, reputation and social and professional relationships had been irreparably damaged. Furthermore, his material well-being had been affected given the reduction in his salary and in the prospective pension benefits. In support of his contention, the applicant relied on *Erményi v. Hungary* (no. 22254/14, §§ 30 and 31, 22 November 2016), in which the termination of the applicant's mandate as Vice-President of the Supreme Court was found to have interfered with his right to respect for his private life.

86. As regards reputation, the applicant argued that the position of president of a court of appeal was prestigious and powerful. As he had occupied positions as president of several courts over a period of twenty-five years, the position from which he had been dismissed represented the apex of his legal career and the culmination of decades of personal dedication and professional commitment. His dismissal from that position had damaged his peers' perceptions of his personal authority and competence. Furthermore, the reason for his dismissal, namely breaches of laws relating to the organisation of the justice process, had affected his professional standing generally and his future career and promotion prospects. This was particularly relevant in view of the fact that the information about his dismissal had been widely disseminated. In the context of his allegation of serious damage to his reputation, the applicant contended that the interests of his children as trained lawyers had been affected by his wrongful dismissal.

87. The applicant further submitted, as to the merits of his complaint, that the interference with his right to respect for his private life had not been "in accordance with the law" as the applicable law was too vague and did not provide for procedural safeguards to prevent its arbitrary application. He then submitted that his dismissal had been disproportionate in the circumstances as the manner in which he had been dismissed had not given him any opportunity to remedy his alleged managerial failings.

2. The Government

88. The Government submitted that the right to exercise administrative functions in a court did not fall within the ambit of Article 8 of the Convention. In contrast to the cases of *Oleksandr Volkov* (cited above) and *Özpınar v. Turkey* (no. 20999/04, 19 October 2010), the applicant in the present case had not been removed from judicial office. Given this important distinction, the complaint was incompatible *ratione materiae* with the Convention.

89. The Government further contended that even assuming that Article 8 was applicable, the applicant's removal from his administrative position had had very little impact on his private life. The applicant had probably changed office in the same court building and had received a slightly lower salary. Therefore, he had not suffered a "significant disadvantage" and the complaint had to be declared inadmissible under Article 35 §§ 3 (b) and 4 of the Convention.

90. As to the merits, the Government submitted that, unlike in the case of *Oleksandr Volkov*, the applicable domestic law had been sufficiently clear and foreseeable as to its application; the interference had pursued the legitimate aims of public safety, the economic well-being of the country, the prevention of disorder or crime and the protection of the rights of others. They submitted that the applicant's operational failings had threatened the proper administration of justice in the Kyiv Administrative Court of Appeal, which covered several regions of the country. The interference had been necessary in the circumstances in order to achieve the above-mentioned legitimate aims.

B. The third-party intervener

91. The third party submitted that the issue of the applicability of Article 8 of the Convention had to be determined with regard to the fact that the position of court president always implied a leadership role in the judiciary and that removal from that position engaged the individual's private life. In particular, such removal affected the professional relationships of the individual concerned, as well as his reputation and standing.

C. The Court's assessment

Admissibility

(a) Preliminary remarks

92. The Court notes that the present case concerns an employment-related dispute between an individual and a State. The decision to dismiss the applicant was taken by a State authority. In the assessment of whether or not a private-life issue under Article 8 of the Convention is raised in such a case, there is a strong tie between the questions of applicability and the merits. Once a measure is found to have seriously affected the applicant's private life, that conclusion means that the complaint is compatible *ratione materiae* with the Convention and, at the same time, that the measure constituted an "interference" with the "right to respect for private life" for the purpose of the three-limb merits test under Article 8 (assessment of the lawfulness, the legitimate aim and the necessity of such "interference").

Therefore, the questions of applicability and the existence of "interference" are inextricably linked in these categories of complaints.

93. In previous cases the Court has taken up this matter either at the stage of admissibility (see, for example, *Bigaeva v. Greece*, no. 26713/05, §§ 22-25, 28 May 2009; *Gillberg v. Sweden* [GC], no. 41723/06, §§ 64-74, 3 April 2012; and *Fernández Martínez v. Spain* [GC], no. 56030/07, §§ 109-13, ECHR 2014 (extracts)) or at the stage of the merits (see *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, §§ 42-50, ECHR 2004-VIII; *Campagnano v. Italy*, no. 77955/01, §§ 53 and 54, ECHR 2006-IV; *Özpınar*, cited above, §§ 43-48; *Sodan v. Turkey*, no. 18650/05, §§ 43-50, 2 February 2016; and *Şahin Kuş v. Turkey*, no. 33160/04, §§ 34-37, 7 June 2016). This divergent practice cannot be justified in terms of consistency. As the question of applicability is an issue of the Court's jurisdiction *ratione materiae*, the general rule of dealing with applications should be respected and the relevant analysis should be carried out at the admissibility stage unless there is a particular reason to join this question to the merits. No such particular reason exists in the present case and the issue of the applicability of Article 8 falls to be examined at the admissibility stage.

94. The Court therefore has to examine whether Article 8 of the Convention is applicable to the present case, and accordingly whether it has jurisdiction *ratione materiae* to examine the relevant complaint on the merits.

(b) General principles

(i) "Private life" as a broad term

95. The concept of "private life" is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person. It can therefore embrace multiple aspects of the person's physical and social identity. Article 8 protects in addition a right to personal development, and the right to establish and develop relationships with other human beings and the outside world (see *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 66, ECHR 2008; *Gillberg*, cited above, § 66; and *Bărbulescu v. Romania* [GC], no. 61496/08, § 70, ECHR 2017 (extracts), with further references therein).

96. Therefore, it would be too restrictive to limit the notion of "private life" to an "inner circle" in which the individual may live his own personal life as he chooses and to exclude therefrom entirely the outside world not encompassed within that circle (see *Fernández Martínez*, cited above, § 109).

(ii) Right to respect for reputation

97. Alongside this development in the case-law, the Court has been called upon to determine whether the notion of "private life" should cover a right to respect for reputation, which is not expressly mentioned in Article 8. In *Pfeifer v. Austria* (no. 12556/03, § 35, 15 November 2007) the Court, having regard to its case-law, found that a person's reputation, even if that person was criticised in the context of a public debate, formed part of his or her personal identity and psychological integrity and therefore also fell within the scope of his or her "private life".

98. However, it is important to stress that Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one's own actions, such as, for example, the commission of a criminal offence (see *Sidabras and Džiautas*, cited above, § 49, and *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012). In *Gillberg* (cited above) the Grand Chamber did not limit this rule to reputational damage and expanded it to a wider principle that any personal, social, psychological and economic suffering could be foreseeable consequences of the commission of a criminal offence and could not therefore be relied on in order to complain that a criminal conviction in itself amounted to an interference with the right to respect for "private life" (ibid., § 68). This extended principle should cover not only criminal offences but also other misconduct entailing a measure of legal responsibility with foreseeable negative effects on "private life".

99. On the basis of this case-law, the Court has applied Article 8 to the exercise of professional functions in a number of cases.

(iii) "Private life" in employment-related scenarios

100. Whereas no general right to employment, nor a right of access to the civil service or a right to choose a particular profession, can be derived from Article 8, the notion of "private life", as a broad term, does not exclude in principle activities of a professional or business nature. It is, after all, in the course of their working lives that the majority of people have a significant opportunity to develop relationships with the outside world (see *Niemietz v. Germany*, 16 December 1992, § 29, Series A no. 251-B; *Oleksandr Volkov*, cited above, § 165; and *Bărbulescu*, cited above, § 71). Professional life is therefore part of the zone of interaction between a person and others which, even in a public context, may, under certain circumstances, fall within the scope of "private life" (see *Fernández Martínez*, cited above, § 110).

101. Within the employment-related scenarios involving Article 8, the Court has dealt with different types of cases. In particular, it has dealt with discharge from military service (see *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, ECHR 1999-VI), dismissal from judicial office (see *Özpınar*, cited above; *Oleksandr Volkov*, cited above;

and *Kulykov and Others*, cited above), removal from administrative functions in the judiciary (see *Erményi*, cited above), and transfers between posts in the public service (see *Sodan*, cited above). Other types of cases have concerned restrictions on access to employment in the public service (see *Naidin v. Romania*, no. 38162/07, 21 October 2014), loss of employment outside the public service (see *Obst v. Germany*, no. 425/03, 23 September 2010; *Schüth v. Germany*, no. 1620/03, ECHR 2010; *Fernández Martínez*, cited above; *Şahin Kuş*, cited above; and *Bărbulescu*, cited above), and restrictions on access to a profession in the private sector (see *Sidabras and Džiautas*, cited above; *Campagnano*, cited above; and *Bigaeva*, cited above).

102. In the cases falling into the above-mentioned category, the Court applies the concept of "private life" on the basis of two different approaches: (α) identification of the "private life" issue as the reason for the dispute (reason-based approach) and (β) deriving the "private life" issue from the consequences of the impugned measure (consequence-based approach).

(α) Reason-based approach

103. Complaints concerning the exercise of professional functions have been found to fall within the ambit of "private life" when factors relating to private life were regarded as qualifying criteria for the function in question and when the impugned measure was based on reasons encroaching upon the individual's freedom of choice in the sphere of private life.

104. Thus, in the area of public service, where measures taken by State authorities were contested, the Court has found, for example, that investigations by the military police into the applicants' homosexuality and their consequent administrative discharge on the sole ground of their sexual orientation directly interfered with their right to respect for private life (see *Smith and Grady*, cited above, § 71). In *Özpınar* (cited above), proceedings for the applicant's dismissal as a judge fell under Article 8 of the Convention because they concerned not only her professional performance but also targeted aspects of her private life, in particular her close private relationships, the clothes and make-up she wore and the fact that she lived separately from her mother (ibid., §§ 43 and 47). In another case the applicant's transfer to a less important post within the public service raised an issue under "private life" given that such a measure amounted to a disguised penalty and had been prompted by reasons relating to the applicant's beliefs and his wife's clothing (see *Sodan*, cited above, §§ 47-49).

105. The Court has applied similar logic from the standpoint of the positive obligations to carry out a careful balancing exercise between the private interests of employees and those of a non-governmental employer when the reasons for the dismissal related directly to the applicants' conduct

in their private life, such as an extramarital relationship (see *Obst*, cited above, §§ 43 et seq.) or living with a new partner after separation (see *Schüth*, cited above, §§ 57 et seq.). Where a private company dismissed an employee on the basis of monitoring of his correspondence by his employer in the workplace, such a measure fell within the ambit of Article 8 in so far as it concerned the "correspondence" and because it encroached upon the reasonable possibility of enjoying any "private life" in the workplace (see *Bărbulescu*, cited above, §§ 81 and 127).

106. As can be seen from these examples, the underlying reasons for the impugned measure affecting professional life may be linked to the individual's private life and these reasons themselves may render Article 8 applicable.

(β) Consequence-based approach

107. When the reasons for imposing a measure affecting an individual's professional life are not linked to the individual's private life, an issue under Article 8 may still arise in so far as the impugned measure has or may have serious negative effects on the individual's private life. In this connection the Court has taken into account negative consequences as regards (i) impact on the individual's "inner circle", in particular where there are serious material consequences, (ii) the individual's opportunities "to establish and develop relationships with others", and (iii) the impact on the individual's reputation.

108. On the basis of that approach, the Court has found that the dismissal of a judge on the grounds of a violation of his professional duties amounting to a breach of the judicial oath affected a wide range of his professional and other relationships. The dismissal also had a negative impact on the applicant's "inner circle" in view of his loss of earnings, and it also affected his reputation (see *Oleksandr Volkov*, cited above, § 166). The refusal to allow an applicant who was a foreigner to sit for the Bar examinations in Greece fell within the scope of Article 8 because it affected her personal choice as to the way she wished to pursue her professional and private life (see *Bigaeva*, cited above, §§ 24 and 25). The entry of an applicant's name in the bankruptcy register entailed a series of legal restrictions on the exercise of her professional activities and civil rights. It therefore affected the applicant's opportunities to develop relationships with the outside world and fell within the sphere of her private life (see *Campagnano*, cited above, § 54). A far-reaching ban on taking up private-sector employment has also been found to affect "private life" (see *Sidabras and Džiautas*, cited above, § 47).

109. Where no reason-based approach justifies the applicability of Article 8, an analysis of the effects of the impugned measure on the above-mentioned aspects of private life is necessary to conclude that the complaint falls within the scope of "private life". Nevertheless, this division does not

preclude cases in which the Court may find it appropriate to employ both approaches in combination, examining whether there is a private-life issue in the underpinning reasons for the impugned measure and, in addition, analysing the consequences of the measure (see *Fernández Martínez*, cited above, §§ 110-12).

(iv) Minimum level of severity of the alleged violation

110. In cases where the Court employs the consequence-based approach, the analysis of the seriousness of the impugned measure's effects occupies an important place. The Court has addressed the issue of the seriousness or severity of the alleged violation in several contexts. Notably, it has done so when assessing the "significant disadvantage" under Article 35 § 3 (b) of the Convention as an explicit admissibility requirement for the whole system of the Convention rights (see, for example, *Giusti v. Italy*, no. 13175/03, § 34, 18 October 2011; *Gagliano Giorgi v. Italy*, no. 23563/07, § 56, ECHR 2012 (extracts); and *El Kaada v. Germany*, no. 2130/10, § 41, 12 November 2015). The Court has also consistently applied a threshold of severity in cases concerning Article 3 of the Convention (see, for example, *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX; *Gäfgen v. Germany* [GC], no. 22978/05, § 88, ECHR 2010; and *Bouyid v. Belgium* [GC], no. 23380/09, § 86, ECHR 2015).

111. The concept of threshold of severity has been specifically examined under Article 8. In environmental cases, in particular, an arguable claim under Article 8 may arise where an environmental hazard attains a level of severity resulting in significant impairment of the applicant's ability to enjoy his or her home or private or family life. The Court has ruled that the assessment of this minimum level in such cases is relative and depends on all the circumstances of the case, such as the intensity and duration of the nuisance and its physical or mental effects on the individual's health or quality of life (see *Fadeyeva v. Russia*, no. 55723/00, §§ 68 and 69, ECHR 2005-IV; *Dubetska and Others v. Ukraine*, no. 30499/03, § 105, 10 February 2011; and *Grimkovskaya v. Ukraine*, no. 38182/03, § 58, 21 July 2011). This approach has also been applied in nuisance cases under Article 8 with close similarities to the environmental cases mentioned above (see *Borysiewicz v. Poland*, no. 71146/01, § 51, 1 July 2008, and *Udovičić v. Croatia*, no. 27310/09, § 137, 24 April 2014).

112. In addition, the Court has ruled that an attack on a person's reputation must attain a certain level of seriousness and be made in a manner causing prejudice to personal enjoyment of the right to respect for private life (see *A. v. Norway*, no. 28070/06, §§ 63-64, 9 April 2009; *Polanco Torres and Movilla Polanco v. Spain*, no. 34147/06, §§ 40 and 44, 21 September 2010; *Axel Springer AG*, cited above, § 83; *Delfi AS v. Estonia* [GC], no. 64569/09, § 137, ECHR 2015; and *Bédat v. Switzerland* [GC], no. 56925/08, § 72, ECHR 2016). This requirement

covers social reputation in general as well as professional reputation in particular (for the latter, see *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], nos. 17224/11, §§ 76 and 105-06, ECHR 2017).

113. In the recent case of *Erményi* the Court found that the applicant's dismissal from the administrative position of Vice-President of the Supreme Court constituted an interference with his right to respect for private life (see *Erményi*, cited above, § 31). Even though the Court did not elaborate on this point, in the absence of the parties' submissions in that regard, it implied that the impugned measure had seriously affected the applicant's private life. That finding cannot be read as presuming that the applicant's dismissal had "automatically" generated an issue in the sphere of private life. In that regard the Court reiterates that the threshold of severity occupies an important place in cases where the existence of a private-life issue is examined according to the consequence-based approach.

114. It is thus an intrinsic feature of the consequence-based approach within Article 8 that convincing evidence showing that the threshold of severity was attained has to be submitted by the applicant. As the Grand Chamber has held, applicants are obliged to identify and explain the concrete repercussions on their private life and the nature and extent of their suffering, and to substantiate such allegations in a proper way (see *Gillberg*, cited above, §§ 70-73). According to the requirement of exhaustion of domestic remedies, such allegations have to be sufficiently raised at the domestic level.

(v) Conclusions: the scope of Article 8 in employment-related disputes

115. The Court concludes from the above case-law that employment-related disputes are not *per se* excluded from the scope of "private life" within the meaning of Article 8 of the Convention. There are some typical aspects of private life which may be affected in such disputes by dismissal, demotion, non-admission to a profession or other similarly unfavourable measures. These aspects include (i) the applicant's "inner circle", (ii) the applicant's opportunity to establish and develop relationships with others, and (iii) the applicant's social and professional reputation. There are two ways in which a private-life issue would usually arise in such a dispute: either because of the underlying reasons for the impugned measure (in that event the Court employs the reason-based approach) or – in certain cases – because of the consequences for private life (in that event the Court employs the consequence-based approach).

116. If the consequence-based approach is at stake, the threshold of severity with respect to all the above-mentioned aspects assumes crucial importance. It is for the applicant to show convincingly that the threshold was attained in his or her case. The applicant has to present evidence substantiating consequences of the impugned measure. The Court will only

accept that Article 8 is applicable where these consequences are very serious and affect his or her private life to a very significant degree.

117. The Court has established criteria for assessing the severity or seriousness of alleged violations in different regulatory contexts. An applicant's suffering is to be assessed by comparing his or her life before and after the measure in question. The Court further considers that in determining the seriousness of the consequences in employment-related cases it is appropriate to assess the subjective perceptions claimed by the applicant against the background of the objective circumstances existing in the particular case. This analysis would have to cover both the material and the non-material impact of the alleged measure. However, it remains for the applicant to define and substantiate the nature and extent of his or her suffering, which should have a causal connection with the impugned measure. Having regard to the rule of exhaustion of domestic remedies, the essential elements of such allegations must be sufficiently raised before the domestic authorities dealing with the matter.

(c) Application of the general principles to the present case

118. In the present case the Court is required to answer the question whether the applicant's dismissal from the position of president of a court of appeal, without his removal from the post of judge, affected his private life, thus rendering Article 8 applicable.

119. The Court will first examine the way in which a private-life issue could arise in the present employment dispute: whether because of the underlying reasons for the applicant's dismissal or because of the consequences for his private life.

120. The explicit reasons for the applicant's dismissal from the position of president of the Kyiv Administrative Court of Appeal were strictly limited to his performance in the public arena, namely his alleged managerial failings, which were said to undermine the proper functioning of the court. Those reasons related only to the applicant's administrative tasks in the workplace and had no connection to his private life. In the absence of any such issues in the reasons given for his dismissal, it has to be determined whether, according to the evidence and the substantiated 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.

121. When it comes to the consequences of the applicant's dismissal, the first question which arises is whether there can be any scope for an issue under Article 8 in the light of the *Gillberg* exclusionary principle (see paragraph 98 above). According to that principle, where the negative effects complained of are limited to the consequences of the unlawful conduct which were foreseeable by the applicant, Article 8 cannot be relied upon to

allege that such negative effects encroach upon private life. It has to be noted that in *Gillberg* the fact of the applicant's unlawful conduct was largely undisputed (see *Gillberg*, cited above, § 71), whereas in the present case the applicant contested the very existence of any misconduct, thus implying that the measure involving his legal liability – his dismissal – could not have been a foreseeable consequence of his conduct in the position of president of a court of appeal. In these circumstances the present case is distinguishable from *Gillberg* and the Court cannot follow this approach.

122. As to the consequences of the applicant's dismissal for his "inner circle", he contended that his removal had resulted in a reduction in his salary and in his prospective pension benefits. This argument has to be viewed as relating to the worsening of the material well-being of the applicant and his family. 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. In the present case the applicant has not provided any evidence to suggest that the ensuing reduction in his monthly remuneration (see paragraph 22 above) seriously affected the "inner circle" of his private life. In the absence of such evidence, it would be speculative to assume the contrary. There are no other indications that the "inner circle" of the applicant's private life was affected by the impugned measure.

123. As to establishing and maintaining relationships with others, the applicant's dismissal from the position of president of the Kyiv Administrative Court of Appeal did not result in his removal from his profession. He continued to work as an ordinary judge and he remained at the same court alongside his colleagues. The applicant did not put forward any other allegations in this respect. It follows that, even if his opportunities to establish and maintain relationships, including those of a professional nature, 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.

124. 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 has a serious impact on his interaction with society. The Court will look at this issue in terms of professional and social reputation.

125. As regards the applicant's professional reputation, the Court notes that his principal professional function was that of a judge. The profession of judge required him to possess specific knowledge, educational qualifications, skills and experience. In recompense for his service in this capacity, the applicant was paid the predominant part of his salary. At the

same time, the successful performance of a presidential or administrative function in a court is not, strictly speaking, a characteristic of the judicial profession. Therefore, in objective terms, the judicial function constituted the applicant's fundamental professional role. His position as president of a court, however important and prestigious it might be in the judicial sphere and however it might have been subjectively perceived and valued by the applicant, did not relate to the principal sphere of his professional activity.

126. In the proceedings at issue, at no point did the domestic authorities examine the applicant's performance as a judge or express any opinion as to his judicial competence and professionalism. The decisions in the applicant's case concerned only his managerial skills, while his professional role as a judge was not touched upon. This limited area of scrutiny and criticism cannot be regarded as relating to the core of the applicant's professional reputation. In that regard the present case differs in substance from *Oleksandr Volkov* (cited above), in which the applicant was criticised and received a disciplinary sanction for his performance as a judge.

127. Next, the Court takes note of the applicant's argument that, after he had occupied positions as president of a court over a period of twenty-five years, the position of president of the Kyiv Administrative Court of Appeal had represented the apex of his legal career and his dismissal had undermined his peers' opinion of his competence. However, the applicant did not specify how this alleged loss of esteem, even assuming that it affected the core of his professional reputation, had caused him serious prejudice in his professional environment. In any event, the Court does not have sufficient material to conclude that the alleged loss of esteem reached the high degree of seriousness required by Article 8 of the Convention, as discussed in paragraphs 116 and 117 above.

128. In particular, the applicant did not substantiate how his dismissal from his position had affected his further career as a judge. The Court notes that the applicant's dismissal did not preclude his reappointment, even though this latter consideration may have been purely theoretical, because of his advanced age. In any event, the measure did not have a significant effect as to its duration because it was limited by the applicant's remaining period of service in the judiciary before he was due to reach the retirement age, about two years later (see Article 125 of the Constitution cited in paragraph 26 above).

129. As regards social reputation in general, the criticism by the authorities did not affect a wider ethical aspect of the applicant's personality and character. Even though the applicant's dismissal was based on the findings of breaches of official duties in the administration of justice, it did not contain any accusation of intentional misconduct or criminal behaviour. 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).

130. The applicant's contention that the decision on his dismissal had been disseminated in the mass media and had become known to an unidentified number of persons cannot, as such, demonstrate substantial damage to his professional and social reputation. Moreover, the applicant failed to substantiate this allegation by providing specific details concerning the persons responsible for publishing such information, the coverage it received and its impact.

131. Finally, there is no support in the file for the applicant's allegation that the damage to his reputation was serious in view of the harm caused to the interests of his children and that this harm negatively affected his private life. This allegation has not been raised at domestic level and it has not been substantiated in the proceedings before the Court.

132. The applicant did not put forward, either before the Court or in the domestic proceedings, any other specific personal circumstances indicating that the measure had had a serious impact on his private life.

133. Accordingly, measuring the applicant's subjective perceptions against the objective background and assessing the material and non-material impact of his dismissal on the basis of the evidence presented before the Court, it has to be concluded that the dismissal had limited negative effects on the applicant's private life and did not cross the threshold of seriousness for an issue to be raised under Article 8 of the Convention.

134. Given that neither the reasons for the applicant's dismissal were linked to nor that the consequences of that measure affected his "private life" within the meaning of Article 8, the Court finds that this Article is not applicable. The Government's objection in this respect should therefore be upheld and the complaint must be dismissed as incompatible *ratione materiae* with the Convention pursuant to Article 35 §§ 3 (a) and 4. In the light of this conclusion, it is not necessary to rule on the Government's second objection, based on Article 35 § 3 (b) of the Convention.

III. ALLEGED VIOLATIONS OF ARTICLE 18 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

135. The applicant asserted before the Grand Chamber that his dismissal from the position of president of the Kyiv Administrative Court of Appeal had pursued ulterior political purposes, in breach of Article 18 of the Convention. He further complained of a violation of his pecuniary rights under Article 1 of Protocol No. 1 because he had been precluded from receiving a higher salary and higher retirement benefits. Those Articles provide:

Article 18

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

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

136. The Court notes that the applicant's complaint under Article 18 of the Convention was raised for the first time in 2017, in the applicant's submissions to the Grand Chamber. The complaint was therefore lodged outside the six-month time-limit and must be declared inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention.

137. As to the applicant's complaint under Article 1 of Protocol No. 1, this Article applies only to a person's existing possessions and does not create a right to acquire property (see *Stummer v. Austria* [GC], no. 37452/02, § 82, ECHR 2011). Future income cannot be considered to constitute "possessions" unless it has already been earned or is definitely payable (see *Erkan v. Turkey* (dec.), no. 29840/03, 24 March 2005, and *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 64, ECHR 2007-I). The applicant's dismissal from the post of court president precluded him from receiving a higher salary in that position and applying for higher retirement benefits at a later stage. However, this additional income has not actually been earned. Neither can it be argued that it was definitely payable. In these circumstances, this complaint is incompatible *ratione materiae* with the provisions of the Convention and the Protocols thereto and must be rejected in accordance with Article 35 §§ 3 (a) and 4.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

138. The applicant complained under Article 6 § 1 of the Convention that the principles of equality of arms, legal certainty and a "tribunal established by law" had been breached and that the requirement for decisions to contain proper reasons had not been complied with. Relying on Article 13 of the Convention, the applicant alleged that there had been no effective remedy in his case.

139. Having regard to the facts of the case and the above findings under Article 6 § 1 of the Convention as regards the principles of an independent

and impartial tribunal, the Court considers that the main legal questions under the Convention have been determined. It follows that there is no need to give a separate ruling on the admissibility and merits of the remaining complaints (see, among other authorities, *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, §§ 210-11, ECHR 2009, and *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, with further references).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

140. 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

141. The applicant initially submitted a claim in respect of pecuniary damage, which he subsequently withdrew in a letter of 24 November 2017. The applicant also claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

142. The Government submitted that the claim for non-pecuniary damage was unfounded.

143. The Court considers that the applicant must have sustained non-pecuniary damage which the finding of a violation of the Convention in this judgment does not suffice to remedy. Ruling on an equitable basis, it awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

144. In the Chamber proceedings, Mr Denisov and eleven other applicants claimed jointly 15,691.97 pounds sterling (GBP) in respect of costs and expenses. Subsequently, the application by Mr Denisov was dealt with separately, following relinquishment of jurisdiction in favour of the Grand Chamber. Before the Grand Chamber, Mr Denisov, who was represented by two lawyers, claimed GBP 33,600 in respect of legal fees, GBP 1,418.98 and EUR 2,499.79 in respect of administrative and translation costs and other disbursements, and GBP 712, EUR 630.20 and UAH 8,867 in respect of travel expenses, including the applicant's personal appearance at the hearing before the Court. The applicant asked for the award for costs and expenses to be paid into the UK bank account designated by his representatives.

145. The Government submitted that the claims were excessive and not sufficiently substantiated. They argued in particular that the claims for legal fees had been exaggerated and the translation costs had not been necessarily incurred. Accordingly, the award under this head had to be decreased substantially if a violation of the Convention were found.

146. 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. Furthermore, costs and expenses are only recoverable to the extent that they relate to the violation found (see *Murray v. the Netherlands* [GC], no. 10511/10, § 134, ECHR 2016). In this regard the Court notes that the applicant's complaints were only partially successful and that a substantial portion of his pleadings concerned an inadmissible part of the application. In such circumstances the Court may find it appropriate to reduce the award in respect of costs and expenses (see, for example, *Bykov v. Russia* [GC], no. 4378/02, § 114, 10 March 2009, and *Bayatyan v. Armenia* [GC], no. 23459/03, § 135, ECHR 2011).

147. The Court further notes that the personal appearance of the applicant before the Grand Chamber was not required and it could be doubted if the costs and expenses in this regard were incurred necessarily (compare *Martinie v. France* [GC], no. 58675/00, § 62, ECHR 2006-VI). Nevertheless, taking into account the previous case-law (see, in particular, *Folgerø and Others v. Norway* [GC], no. 15472/02, § 112, ECHR 2007-III, *Söderman v. Sweden* [GC], no. 5786/08, § 126, ECHR 2013, and *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 135, 3 October 2014), the Court accepts that the costs and expenses connected with the applicant's participation in the hearing before the Grand Chamber may be granted inasmuch as they are reasonable and properly substantiated.

148. In the light of the above considerations, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,000 covering costs under all heads. As requested, the amount awarded is to be paid directly into the bank account designated by the applicant's representatives (see, for example, *Hristovi v. Bulgaria*, no. 42697/05, § 109, 11 October 2011, and *Singartiyski and Others v. Bulgaria*, no. 48284/07, § 54, 18 October 2011).

C. Default interest

149. 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,

1. *Declares* admissible, unanimously, the complaint under Article 6 § 1 of the Convention as regards the principles of an independent and impartial tribunal;

2. *Declares* inadmissible, by a majority, the complaint under Article 8 of the Convention;

3. *Declares* inadmissible, unanimously, the complaints under Article 18 of the Convention and Article 1 of Protocol No. 1 to the Convention;

4. *Holds*, unanimously, that there has been a violation of Article 6 § 1 of the Convention as regards the principles of an independent and impartial tribunal;

5. *Holds*, unanimously, that it is not necessary to examine the admissibility and merits of the remaining complaints;

6. *Holds*, unanimously,
   (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 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, this amount to be paid into the bank account designated by the applicant's representatives, this amount to be paid into the bank account designated by the applicant's representatives;
   (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;

7. *Dismisses*, by sixteen votes to one, the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 25 September 2018.

Françoise Elens-Passos	Guido Raimondi
Deputy Registrar	President