

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

FIFTH SECTION

CASE OF MARKUSH v. UKRAINE

(Application no. 37358/21)

JUDGMENT

STRASBOURG

23 October 2025

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



In the case of Markush v. Ukraine,

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

María Elósegui*, President*,
Andreas Zünd,
Mykola Gnatovskyy*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 37358/21) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 15 July 2021 by a Ukrainian national, Ms Mariya Andriyivna Markush ("the applicant"), who was born in 1955, lives in Kyiv and was represented by Mr I. Boychenyuk, a lawyer practising in Kyiv;

the decision to give notice of part of the complaints under Article 6 § 1 and Article 8 of the Convention to the Ukrainian Government ("the Government"), represented by their Agent, Ms M. Sokorenko, from the Ministry of Justice, and to declare the complaint under Article 18 of the Convention in conjunction with Article 8 inadmissible;

the parties' observations;

Having deliberated in private on 25 September 2025,

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

SUBJECT MATTER OF THE CASE

1. The present case concerns the dismissal of a Constitutional Court judge by Parliament, allegedly in breach of Article 6 § 1 and Article 8 of the Convention.

2. On 4 August 2006 Parliament appointed the applicant to the post of judge of the Constitutional Court for a non-renewable term of nine years.

3. On 24 February 2014 Parliament voted to dismiss the applicant from her post for breach of her judicial oath in connection with her participation in the delivery of the Constitutional Court's judgment of 30 September 2010. By the same resolution, Parliament also dismissed the other Constitutional Court judges who had been appointed under Parliament's quota (see *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, §§ 16-20, 12 January 2023, and *Golovin v. Ukraine*, no. 47052/18, § 6, 13 July 2023).

4. In March 2014 the applicant challenged her dismissal before the High Administrative Court ("the HAC").

5. On 26 June 2017 the HAC declared unlawful the parliamentary resolution of 24 February 2014 with respect to the applicant's dismissal but refused to order her reinstatement. In its decision the HAC referred to

international and domestic legal principles concerning the independence of the judiciary and concluded that those principles had not been respected by Parliament. In particular, the HAC referred to section 28 of the Constitutional Court Act, which specified that judges could not be held liable for the results of their votes (see *Ovcharenko and Kolos*, cited above, § 41). It further found that Parliament had failed to follow the procedure for the dismissal of a judge of the Constitutional Court and that there had been no indication that any individual liability of the applicant had been established.

6. In July 2017 the applicant and Parliament asked the Supreme Court of Ukraine ("the SCU") to review the HAC's decision of 26 June 2017.

7. As a result of judicial reforms in 2016, on 15 December 2017 the new Supreme Court ("the SC") began to operate, and the HAC and the SCU ceased to function.

8. On 19 December 2018 the Administrative Cassation Court within the SC ("the ACC") granted the above-mentioned requests for review in part. The ACC pointed out that the HAC had not established, *inter alia*, whether Parliament had complied with the procedure for the dismissal of a judge of the Constitutional Court or whether the applicant's actions had constituted a "breach of judicial oath". As a result, the ACC quashed the HAC's decision of 26 June 2017 and remitted the case for fresh consideration by a first-instance court (that is, the ACC sitting as another panel of judges).

9. On 24 July 2019 the ACC found against the applicant, noting that Parliament, in adopting its resolution of 24 February 2014, had acted within its powers and in the order provided for in the Constitution and laws of Ukraine. In particular, the ACC pointed out that Parliament had complied with the procedure for the dismissal of the applicant from her post of judge of the Constitutional Court and that the dismissal had been compatible with the Constitution, the Constitutional Court Act and the Rules of Parliament. The ACC also emphasised that Parliament had dismissed the applicant not for the position she had taken and/or the way she had voted in relation to the Constitutional Court's judgment of 30 September 2010, but for actions that amounted to a breach of her judicial oath in connection with the delivery of the judgment.

10. In August 2019 the applicant appealed to the Grand Chamber of the SC ("the GC") against the ACC's decision of 24 July 2019.

11. By a final decision dated 20 January 2021, the GC amended the reasoning of the ACC's decision of 24 July 2019. The GC held that the Constitutional Court had acted beyond its powers during the delivery of its judgment of 30 September 2010 as it had in fact invalidated binding provisions of the Constitution. The GC considered that in delivering its judgment the Constitutional Court had failed to ensure the supremacy of the Constitution, had changed the Constitution and the constitutional system by violating the fundamental principles of democracy and the separation of powers, and had undermined the legitimacy of the State

authorities, whose activities had since then been based on rules established by the Constitutional Court and not by Parliament. The GC found that the applicant's participation in the delivery of that judgment and the consequences of such participation had been manifestly inconsistent with her judicial oath.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

12. The relevant domestic law, international materials and comparative-law material can be found in *Ovcharenko and Kolos* (cited above, §§ 33-73).

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 8 (RIGHT TO RESPECT FOR PRIVATE LIFE) AND ARTICLE 6 § 1 OF THE CONVENTION (RIGHT TO A REASONED JUDGMENT)

13. Relying on Article 8 of the Convention, the applicant complained that her right to respect for her private life had been violated because of her unlawful dismissal.

14. Referring to Article 6 § 1 of the Convention, the applicant complained that her right to a reasoned judgment had not been respected in her case.

15. The Government made submissions similar to those made in *Ovcharenko and Kolos* (cited above, §§ 90 and 117-19) and *Golovin* (cited above, § 20). Most notably, they contended that there had been no violation of Article 8 of the Convention because the grounds and procedure for the applicant's dismissal for breach of her judicial oath had complied with domestic legislation and had not resulted in a violation of her rights. The Government also submitted that there had been no violation of Article 6 § 1 of the Convention because the domestic courts had ensured a sufficient review of the parliamentary resolution dismissing the applicant from her post as a judge of the Constitutional Court and had carefully examined her arguments, concluding that only her conduct in respect of the delivery of the Constitutional Court's judgment of 30 September 2010 had constituted a "breach of judicial oath" and sufficient grounds for her dismissal.

16. In reply, the applicant maintained her complaints under Article 6 § 1 and Article 8 of the Convention, stating that a "breach of judicial oath" by her had never been established in accordance with the domestic law, which did not allow Constitutional Court judges to be held liable for their participation (that is, their positions and/or votes) in the delivery of that court's judgments; in addition, she had not been heard by the domestic courts, which had superficially examined her crucial arguments.

17. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

18. The Court further observes that the applicant's situation and the domestic decisions in her case are almost identical to those in respect of the applicants in *Ovcharenko and Kolos* (cited above) and *Golovin* (cited above).

19. In the above-mentioned cases, the Court established a violation of Article 8 of the Convention, finding the following: (i) the legal framework concerning the question of what conduct by a Constitutional Court judge would constitute a "breach of judicial oath" under Ukrainian law lacked the requisite clarity and foreseeability, and the domestic decisions applying that framework in the applicants' cases had not been sufficiently reasoned; and (ii) the applicants had been dismissed precisely on account of the results of their votes in favour of the Constitutional Court's judgment of 30 September 2010, and there had not been sufficient clarification on the question whether functional immunity for Constitutional Court judges exempting them from liability for the results of their votes in that court, as enshrined in section 28 of the Constitutional Court Act, was to be interpreted as limiting the scope of the liability of those judges for a breach of their judicial oath (see *Ovcharenko and Kolos*, cited above, §§ 98-110, and *Golovin*, cited above, §§ 26-31).

20. The Court also established a violation of Article 6 § 1 of the Convention in the cases cited above, finding that the domestic decisions in the applicants' cases had not been sufficiently reasoned on the issue of whether their dismissal had been compatible with the constitutional guarantees of judicial independence, including the question of functional immunity of Constitutional Court judges limiting the scope of their liability for the results of their votes (see *Ovcharenko and Kolos*, cited above, §§ 120-27, and *Golovin*, cited above, §§ 32-36).

21. The Court considers that its above findings are equally pertinent to the applicant's complaints under Article 6 § 1 and Article 8 of the Convention. The Court therefore has no grounds to reach different conclusions in the circumstances of the present case.

22. There has accordingly been a violation of Article 8 and of Article 6 § 1 of the Convention.

II. OTHER COMPLAINTS

23. The applicant also complained under Article 6 § 1 of the Convention that (i) her case had not been examined by "an independent and impartial tribunal established by law"; (ii) she had been deprived of an opportunity to use procedural guarantees of a fair hearing; and (iii) the principle of legal certainty had not been observed in her case.

24. Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

I. REINSTATEMENT REQUEST

25. Referring to Article 46 of the Convention, the applicant asked the Court to indicate to the Government the need to ensure her reinstatement as a Constitutional Court judge, which would then enable her to resign. The applicant explained the need to ensure her reinstatement by referring to the fact that, following the Court's judgments in *Ovcharenko and Kolos* (cited above) and *Golovin* (cited above), the domestic courts had failed to review the applicants' cases in the light of the Court's findings in support of a violation of Article 6 § 1 and Article 8 of the Convention.

26. The Government asked the Court to dismiss the applicant's request for reinstatement because she did not intend to continue working as a Constitutional Court judge and would have the opportunity to seek the reopening of the domestic proceedings on the basis of a judgment of the Court in her favour, which would constitute an appropriate form of redress.

27. In many cases where the domestic proceedings were found to be in breach of the Convention, the Court has held that the most appropriate form of reparation for the violations found would be the reopening of the domestic proceedings (see, for example, *Kulykov and Others v. Ukraine*, no. 5114/09 and 17 others, § 147, 19 January 2017, with further references). In addition, the Court cannot speculate on the eventual outcome of the reopened domestic proceedings in the present case. The foregoing considerations enable the Court to dismiss the applicant's request for reinstatement.

II. JUST SATISFACTION CLAIMS

28. The applicant claimed 574,940 euros (EUR) in respect of pecuniary damage (that is, the alleged amount of lost severance pay and the monthly lifelong allowance for retired judges of the Constitutional Court), EUR 10,000 in respect of non-pecuniary damage and EUR 1,500 in legal fees for her representation before the Court.

29. The Government submitted that the applicant's pecuniary and non-pecuniary claims were ill-founded and exorbitant. As to her claim for legal fees, they contended that the amount claimed had not been actually and necessarily incurred and was not reasonable as to quantum.

30. The Court considers that the applicant failed to prove that she had sustained any pecuniary damage that had resulted directly from the violations found. It therefore rejects her claim in respect of pecuniary damage.

31. As to the claim in respect of non-pecuniary damage, having regard to its approach in *Ovcharenko and Kolos* (cited above, § 141) and *Golovin* (cited above, § 56), the Court considers that, in the circumstances of the present case, the finding of a violation of Article 6 § 1 and Article 8 of the Convention in itself constitutes adequate just satisfaction for the purposes of Article 41 of the Convention.

32. As to the claim for legal fees, according to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court finds it reasonable to award the applicant EUR 1,500 for the legal fees incurred in the proceedings before the Court, as claimed by her.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 8 of the Convention and the complaint under Article 6 § 1 of the Convention concerning the right to a reasoned judgment admissible;

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

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

4. *Holds* that there is no need to examine the admissibility and merits of the applicant's remaining complaints under Article 6 § 1 of the Convention;

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

6. *Holds*
   (a) that the respondent State is to pay EUR 1,500 (one thousand five hundred euros) to the applicant within three months, plus any tax that may be chargeable to her, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the applicant's claim for just satisfaction in respect of pecuniary damage.

Done in English, and notified in writing on 23 October 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	María Elósegui President