

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

FIFTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 4588/11
by Volodymyr Mykolayovych KORZACHENKO
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 14 June 2011 as a Chamber composed of:

Dean Spielmann, *President,*
Elisabet Fura,
Boštjan M. Zupančič,
Isabelle Berro-Lefèvre,
Ann Power,
Ganna Yudkivska,
Angelika Nußberger, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above application lodged on 13 January 2011,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Volodymyr Mykolayovych Korzachenko, is a Ukrainian national who was born in 1976 and lives in Kyiv Region.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

A. The circumstances of the case

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

1. Events of February 2008 and ensuing proceedings against the applicant

On 12 January 2007 the applicant was appointed to the post of judge of the Nosivskyy District Court of Chernihiv Region.

On 22 February 2008 the applicant accepted for consideration a claim lodged by B. for reinstatement as general director of a State company. On the same date the applicant adopted a decision applying interim measures in that case. Among the interim measures applied, the applicant ordered the suspension of B.'s dismissal.

While the interim measures were in force B., acting as general director of the company, alienated its assets in the amount of 57,187,905 Ukrainian hryvnias[1] ("UAH") in favour of a foreign company. These circumstances gave rise to criminal proceedings against B.

On 25 March 2008 the applicant, having found out about B.'s actions, quashed the interim measures.

On 25 April 2008 the General Courts Qualification Commission of the Kyiv Appeal Region ("The Regional Qualification Commission") commenced disciplinary proceedings against the applicant for breach of professional duties when considering B.'s case.

On 14 May 2008 the President of the High Council of Justice ("the HCJ") instructed one of the HCJ members, K., to carry out an inquiry in order to establish whether there were grounds for dismissing the applicant from the post of judge on the ground of a "breach of oath" in connection with the decisions taken by the applicant in B.'s case.

On 29 May 2008 the Minster of Justice, acting as an *ex officio* member of the HCJ, lodged a request with the HCJ to determine whether the applicant could be dismissed from the post of judge for the breach of oath.

On 26 June 2008 the applicant established that B.'s case did not fall within the territorial jurisdiction of the Nosivskyy District Court and transferred it to another court.

On 26 September 2008 the Regional Qualification Commission found that the applicant had accepted B.'s claim in breach of rules governing the territorial jurisdiction of the courts, and wrongly and excessively applied interim measures in that case. It concluded that the applicant violated legislation when considering B.'s case. It found therefore that the applicant had committed a disciplinary offence as provided by section 31 of the Law

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"on the status of judges" of 15 December 1992 ("the Status of Judges Act 1992") and issued him with a reprimand.

On 7 June 2010 the HCJ examined the results of inquiry by K, the request of the Minister of Justice and the other materials in the applicant's case. K. participated in the hearing as a member of the HCJ. Following the deliberations, the HCJ found that in accepting B.'s claim for consideration the applicant had disregarded the rules governing territorial jurisdiction. It further found that the applicant had violated the rules concerning the application of interim measures in that case. In particular, as a result of the interim measures ordered, B. had in fact regained his position of general director of the State company and, acting in that capacity, had caused substantial damage to the State. The HCJ concluded that the applicant's acts constituted a "breach of oath" and decided to apply to the President of Ukraine to have the applicant dismissed in accordance with Article 126 § 5 (5) of the Constitution.

On 6 July 2010 the President of Ukraine issued a decree dismissing the applicant from the post of judge on the ground of "breach of oath".

The applicant challenged before the High Administrative Court ("the HAC") the decision of the HCJ of 7 June 2010 and the Presidential Decree of 6 July 2010. He claimed that the HCJ, in violation of Article 61 of the Constitution, had brought him to disciplinary responsibility for an offence he had already been punished for by the Regional Qualification Commission. The applicant also contended that the proceedings before the HCJ had become time-barred.

On 28 July 2010 the HAC held a hearing in the case with the participation of the applicant and a representative of the HCJ. The court examined the materials of the case and concluded that the applicant had violated procedural legislation when performing his professional duties, which had had serious consequences. It endorsed the factual findings and legal assessments of the HCJ in the applicant's case. The court further found that in adopting the impugned decisions the HCJ and the President of Ukraine had acted within their powers.

As to the applicant's contentions that he had been punished twice for the same offence and that the proceedings before the HCJ had become time-barred, the court noted that the applicant was brought to different types of legal responsibility, which was not forbidden by Article 61 of the Constitution. In particular, the responsibility for the "breach of oath" was envisaged by Article 126 § 5 (5) of the Constitution and section 15 § 1 (5) of the Status of Judges Act 1992. At the same time, a separate Chapter 6 entitled "Disciplinary responsibility of judges" of the Status of Judges Act 1992 provided for only two types of disciplinary sanction for a judge: reprimand and downgrading of the qualification class. The court concluded therefore that the dismissal of a judge for a "breach of oath" stemmed from a specific type of legal responsibility which was different from disciplinary

responsibility. For the same reason the time-limits for bringing disciplinary proceedings did not apply to cases concerning dismissal for "breach of oath".

In view of the above, the court rejected the applicant's claims as unsubstantiated.

2. Events connected with the post of the President of the HAC

On 22 December 2004 the President of Ukraine, in accordance with section 20 of the Judicial System Act 2002, appointed judge P. to the post of President of the HAC.

On 16 May 2007 the Constitutional Court of Ukraine found that the provision of section 20 § 5 of the Judicial System Act 2002 concerning the procedure for appointing and dismissing presidents and deputy presidents of the courts by the President of Ukraine was unconstitutional. It recommended that the parliament of Ukraine adopt relevant legislative amendments to regulate that issue properly.

On 21 December 2009 the Presidium of the HAC decided that judge P. should continue performing the duties of President of the HAC after the expiry of the five-year term provided for by section 20 of the Judicial System Act 2002.

On 22 December 2009 the Constitutional Court of Ukraine adopted a decision interpreting the provisions of section 116 § 5 (4) and section 20 § 5 of the Judiciary System Act 2002. It provided that those provisions were to be understood as empowering the Council of Judges of Ukraine to give recommendations for appointing judges to administrative posts by another body (or an official) defined by the law. The court further obliged the parliament of Ukraine to immediately comply with the decision of 16 May 2007 and introduce relevant legislative amendments.

On 24 December 2009 the Conference of judges of the administrative courts decided that judge P. should continue to act as President of the HAC.

On 25 December 2009 the Council of Judges of Ukraine quashed the decision of 24 December 2009 as unlawful and noted that, by virtue of section 41 § 5 of the Judicial System Act 2002, the First Deputy President of the HAC, judge S., had to perform the duties of President of that court.

On 16 January 2010 the General Prosecutor's Office issued a press release noting that a body or an official empowered to appoint and dismiss presidents of the courts had not yet been determined by the laws of Ukraine, while the Council of Judges of Ukraine was only entitled to give recommendations on those issues. Judge P. had not been dismissed from the post of President of the HAC and therefore continued to occupy it lawfully.

Judge P. continued to act as President of the HAC.

The Chamber of the HAC dealing with the cases, referred to in Article 171-1 of the Code of Administrative Justice, was set up in

May-June 2010 in accordance with section 41 of the Judicial System Act 2002.

B. Relevant domestic law

1. Constitution of 28 June 1996

Article 61 of the Constitution provides the following:

"No one shall be brought to legal responsibility of the same type for the same offence twice.

The legal responsibility of a person is of an individual character."

Article 126 § 5 of the Constitution reads as follows:

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

1) the expiration of the term for which he or she was elected or appointed;

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

3) the impossibility to continue his or her duties for reasons of health;

4) violation by the judge of the requirements concerning incompatibility;

5) breach of oath by the judge;

6) the entry into legal force of a conviction against him or her;

7) the termination of his or her citizenship;

8) the declaration that he or she is missing, or the pronouncement that he or she is dead;

9) submission by the judge of a statement of resignation or of voluntary dismissal from office."

Articles 128 and 131 of the Constitution provide as follows:

Article 128.

"The initial appointment of a professional judge to office for a five-year term shall be made by the President of Ukraine. All other judges, except for the judges of the Constitutional Court of Ukraine, shall be elected by [the parliament] of Ukraine for an indefinite term in accordance with the procedure established by law. ..."

Article 131.

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

1) making applications on the appointment or dismissal of judges;

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

3) conducting disciplinary proceedings in respect of judges of the Supreme Court of Ukraine and judges of high specialised courts, and the consideration of complaints

regarding decisions on bringing judges of courts of appeal and local courts, and also prosecutors, to disciplinary responsibility.

The High Council of Justice shall consist of twenty members. The [parliament] of Ukraine, the President of Ukraine, the Congress of Judges of Ukraine, the Congress of Advocates of Ukraine, and the Congress 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 Employees of the Prosecutor's Offices shall appoint two members to the High Council of Justice.

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

2. Criminal Code of 5 April 2001

Article 375 of the Code provides:

"1. Adoption by a judge (or judges) of a premeditatedly wrongful conviction, judgment, decision or resolution –

shall be punished by restriction of liberty for up to five years or by imprisonment from two to five years.

2. The same acts, if they resulted in grievous consequences or were committed for financial gain or for other personal interest –

shall be punished by imprisonment from five to eight years."

3. Code of Administrative Justice of 6 July 2005 with further amendments

Article 27 of the Code, dealing with the grounds for withdrawal of a judge, provides as follows:

"1. A judge shall not participate in the consideration of an administrative case and shall withdraw if:

(1) he has participated in the consideration of that case or a case connected with it as a representative, a secretary of the hearing, a witness, an expert, a specialist, or an interpreter;

(2) he is directly or indirectly interested in the outcome of that case;

(3) he is a member of the family or a close relative ... of a party or other participants in the proceedings;

(4) there are other circumstances casting doubt on the impartiality of the judge;

(5) the procedure for assigning cases to judges, as established by Article 15-1 § 3 of the Code, has not been complied with.

2. A judge shall withdraw from sitting in the case under the circumstances provided by Article 28 of the Code.

3. No bench of the court shall be composed of persons who are members of one family, relatives, or relatives-in-law."

Article 15-1 of the Code provides for an automatic case-assignment system. Article 28 of the Code prohibits repeated participation of a judge in examining the same case at various levels of jurisdiction.

The other relevant provisions of the Code read as follows:

Article 161. Questions to be decided by the court when deciding on a case

"1. When deciding on a case, the 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 for the case (non-compliance with the time-limits for applying to the court) and the evidence in its support;

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

Article 171-1. Proceedings in cases concerning decisions, acts 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:

(1) the lawfulness (but not constitutionality) of decisions of [the parliament] of Ukraine, decrees and orders of the President of Ukraine;

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

2. Decisions, acts or omissions of [the parliament] of Ukraine, the President of Ukraine, the High Council of Justice, and the High Qualification Commission of Judges shall be challenged before the High Administrative Court. For this purpose a separate chamber shall be set up in the High Administrative Court. ...

4. Administrative cases concerning decisions, acts or omissions of [the parliament] of Ukraine, the President of Ukraine, the High Council of Justice, and the High Qualification Commission of Judges shall be considered by a bench composed of at least five judges ...

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

(1) declare the decision 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 acts 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 measures. ..."

4. The Law "on the judicial system" of 7 February 2002 with further amendments ("the Judicial system Act 2002") (in force until 30 July 2010)

The relevant provision of the Act provide as follows:

Section 20. The procedure for the setting up of courts

"...

5. The president and deputy president of a court shall be a judge appointed to this post for a five-year term and dismissed from that post by the President of Ukraine on application by the President of the Supreme Court of Ukraine (and, in respect of the specialised courts, on application by the president of the relevant high specialised court) made on the basis of a recommendation by the Council of Judges of Ukraine (and, in respect of the specialised courts, a recommendation by the relevant council of judges). ..."

In accordance with the decision of the Constitutional Court of Ukraine of 16 May 2007, the provision of section 20 § 5 of the Act concerning the appointment of presidents and deputy presidents of the courts by the President of Ukraine was declared unconstitutional.

Section 41. The president of a high specialised court

"1. The president of a high specialised court shall:

...

3) ... set up the chambers of the court; make proposals for the individual composition of the chambers to be approved by the presidium of the court; ...

9) make submissions for the appointment and election for an indefinite term of judges of the relevant local and appellate courts, judges of the high specialised courts, and for the removal of those judges;...

5. In the absence of the president of the high specialised court, his duties shall be performed by the first deputy president, or, in the absence of the latter, by one of the deputy presidents of the court according to the distribution of administrative powers."

Section 97. Disciplinary proceedings against a judge

"1. Disciplinary proceedings shall be defined as the process of considering an application containing information about a violation by a judge of the obligations arising from his status, professional duties or judicial oath.

2. The right to raise the question of the disciplinary responsibility of a judge shall be vested in the people's deputies of Ukraine, Human Rights Commissioner at [the parliament] of Ukraine, the President of the Supreme Court (the president of a high specialised court as regards a judge of the relevant specialised court except for cases of dismissal), the Ministry of Justice, the head of the relevant council of judges, members of the Council of Judges of Ukraine. ..."

Section 101. Challenging a decision in a disciplinary case against a judge

"1. Within a month of the date of the receipt of the decision on disciplinary responsibility adopted by a qualification commission of judges, a judge or a person mentioned in section 97 § 2 of the Act may challenge that decision before the High Council of Justice ..."

Section 116. Council of Judges of Ukraine

"1. The Council of Judges of Ukraine shall operate as a higher body of judicial self-government in the period between the sessions of the Assembly of Judges of Ukraine. ...

5. The Council of Judges of Ukraine shall:

...

4) decide on the appointment of judges to administrative posts and their dismissal from those posts in the cases and in accordance with the procedure provided for by this Act;...

6. The decisions of the Council of Judges of Ukraine shall be binding for all the bodies of judicial self-government. A decision of the Council of Judges of Ukraine may be repealed by the Assembly of Judges of Ukraine."

5. The Law "on the status of judges" of 15 December 1992 with further amendments ("the Status of Judges Act 1992") (in force until 30 July 2010)

The relevant provisions of the Act provide as follows:

Section 5. Requirements of compatibility

"A judge may not be a member of a political party or trade union, participate in any political activity, have been given any mandate of representation, have any other gainful occupation, or hold any other paying job with the exception of scientific, educational or artistic occupations."

Section 6. Duties of judges

"Judges shall be obliged:

- to adhere to the Constitution and the laws of Ukraine when administering justice, and to ensure the full, comprehensive and objective consideration of cases within the time-limits fixed;

- to comply with the requirements of section 5 of the Act and the internal regulations;

- not to divulge information which is classified as state, military, commercial, or bank secrets ...

- to refrain from any acts or actions which dishonour a judicial office and may cause doubts in his objectivity, impartiality and independence."

Section 10. Judicial oath

"Upon initial appointment, a judge shall solemnly take the following oath:

"I solemnly declare that I will honestly and rigorously perform the duties of a judge, abide only by the law when administering justice, and be objective and fair".

The oath shall be taken before the President of Ukraine."

Section 15. Termination of judge's office

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

1) the expiration of the term for which he or she was elected or appointed;

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

3) the impossibility to exercise his or her duties for reasons of health;

4) violation by the judge of the requirements concerning incompatibility;

5) breach of oath by the judge;

6) the entry into legal force of a conviction against him;

7) the termination of his citizenship;

8) the declaration that he or she is missing, or the pronouncement that he or she is dead;

9) the submission by the judge of a statement of resignation or of voluntary dismissal from office.

A judge's office shall be terminated in the event of his or her death. ..."

Chapter VI, "Disciplinary responsibility of judges", of the Act contains the following provisions:

Section 31. Grounds for disciplinary responsibility of judges

"1. A judge shall be brought to disciplinary responsibility for a disciplinary offence, that is, for breach of:

- the legislation when considering the case;

- the requirements of section 5 of the Act;

- the duties set out in section 6 of the Act.

2. The revocation or amendment of a judicial decision shall not entail disciplinary responsibility of a judge who participated in the adoption of that decision provided that there was no intent to violate the law or the requirements of rigorousness and that no substantial consequences were brought about by that decision."

Section 32. Types of disciplinary penalties

"1. The following disciplinary penalties may be imposed on judges:

- reprimand;

- downgrading of qualification class.

2. For each of the violations described in section 31 of the Act, only one disciplinary penalty shall be imposed.

3. Following the results of the disciplinary proceedings a relevant qualification commission of judges may decide to send a recommendation to the High Council of Justice to determine whether there are grounds for dismissing a judge."

Section 36. Time-limits for imposing a disciplinary penalty and removing a disciplinary record

"1. A judge shall receive a disciplinary penalty within six months of the date the offence became known, excluding any period of temporary disability or leave.

2. If, within a year of the date the disciplinary measure was applied, the judge does not receive a new disciplinary penalty, that judge shall be considered as having no disciplinary record. ..."

5. The Law "on the High Council of Justice" of 15 January 1998 (The High Council of Justice Act 1998) as worded at the relevant time

The relevant provisions of the Act provide as follows:

Section 27. Acts of the High Council of Justice

"... The acts of the High Council of Justice may be challenged exclusively before the High Administrative Court in accordance with the procedure provided for by the Code of Administrative Justice."

Section 32. An application for dismissal of a judge in special circumstances [wording of the section before 15 May 2010]

"The High Council of Justice shall consider the question of dismissing a judge on the grounds provided for by Article 126 § 5 (4) – (6) of the Constitution upon receipt of the relevant opinion from the qualification commission or of its own motion. The judge concerned shall be sent written invitation to the hearing before the High Council of Justice.

The decision of the High Council of Justice to apply for dismissal of a judge under Article 126 § 5 (4) and (5) of the Constitution shall be taken by a two-thirds majority of the members of the High Council of Justice participating in the hearing, and, in the cases provided for by Article 126 § 5 (6) of the Constitution, by the majority of the constitutional composition of the High Council of Justice."

Section 32. An application for dismissal of a judge in special circumstances [wording of the section as of 15 May 2010]

"The High Council of Justice shall consider the question of dismissing a judge on the grounds provided for by Article 126 § 5 (4) – (6) of the Constitution (violation of incompatibility requirements, breach of oath, entry into legal force of a conviction against a judge) upon receipt of the relevant opinion from the qualification commission or of its own motion.

Breach of oath by a judge shall comprise:

the commission of actions which dishonour the judicial office and may call into question his objectivity, impartiality and independence, as well as the fairness and incorruptibility of the judiciary;

unlawful acquisition of wealth or expenditure by the judge which exceeds his income and the income of his family;

deliberate delaying of consideration of a case exceeding the time-limits fixed;

violation of the moral and ethical principles of a judge's code of conduct.

The judge concerned shall be sent written invitation to the hearing before the High Council of Justice. If the judge cannot participate in the hearing for a valid reason, he 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 judge to attend the hearing shall be grounds for considering the case in his absence.

A decision of the High Council of Justice to apply for dismissal of a judge under Article 126 § 5 (4) – (6) of the Constitution shall be taken by the majority of the constitutional composition of the High Council of Justice."

C. Relevant Council of Europe material

The relevant extracts from the Joint Opinion on the Law Amending Certain Legislative Acts of Ukraine in Relation to the Prevention of Abuse of the Right to Appeal by the Venice Commission and the Directorate of Co-operation within the Directorate General of Human Rights and Legal Affairs of the Council of Europe, adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010), read as follows (emphasis added in the original text):

"30. The actual composition of the HCJ may well allow concessions to the interplay of parliamentary majorities and pressure from the executive, but this cannot overcome the structural deficiency of its composition. This body may not be free from any subordination to political party consideration. There are not enough guarantees ensuring that the HCJ safeguards the values and fundamental principles of justice. The composition is set up in the Constitution and a constitutional amendment would be required. The inclusion of the Prosecutor General as [an] *ex officio* member raises particular concerns, as it may have a deterrence effect in judges and be perceived as a potential threat. The Prosecutor General is a party to many cases which the judges have to decide, and his presence on a body concerned with the appointment, disciplining and removal of judges creates a risk that judges will not act impartially in such cases or that the Prosecutor General will not act impartially towards judges whose decisions he disapproves of. Consequently, the composition of the HCJ of Ukraine does not correspond to European standards. As a changed composition would require an amendment of the Constitution and this may be difficult, **the Law should include, in order to counterbalance the flawed composition of the HCJ, a stronger regulation of incompatibilities**. Taking into account the powers granted to the HCJ, it should work as a full time body and the elected members, unlike the *ex officio* members, should not be able to exercise any other public or private activity while sitting in the HCJ. ...

42. ... Taking into account that the Minister of Justice and the Procurator General of Ukraine are members *ex officio* of the HCJ (Article 131 of the Constitution), and that the Ukrainian Constitution does not guarantee that the HCJ will be composed of a majority or substantial number of judges elected by their peers, the submitting of proposals for dismissal by members of the executive might impair the independence of the judges ... . In any event, **the member of the HCJ who submitted the proposal should not be allowed to take part in the decision to remove from office the relevant judge**: this would affect the guarantee of impartiality ...

45. ... Precision and forseeability of the grounds for disciplinary liability is desirable for legal certainty and particularly to safeguard the independence of the judges;

therefore an effort should be made to avoid vague grounds or broad definitions. However, the **new definition includes very general concepts**, such as "the [commission] of actions that dishonour a judicial office or may cause doubts [as to] his/her impartiality, objectivity and independence, [or the] integrity, incorruptibility of the judiciary" and "violation of moral and ethical principles of human conduct" among others. This seems particularly dangerous because of the vague terms used and the possibility of using it as a political weapon against judges. ... Thus, the grounds for disciplinary liability are still too broadly conceived and a more precise regulation is required to guarantee judicial independence.

46. Finally, Article 32, in its last paragraph, requires decisions about the submission of the HCJ's petition regarding dismissal of a judge to be taken by a simple rather than a two-thirds majority. In the light of the flawed composition of the HCJ, this is a regrettable step which would go against the independence of the judges ...

51. Finally, the composition of the and new highly influential so-called "fifth chamber" of the High Administrative Court should be precisely determined by the law in order to comply with the requirements of the fundamental right of access to a court pre-established by the law. ..."

COMPLAINTS

1. The applicant makes the following complaints under Article 6 § 1 of the Convention:

(a) the HCJ and the HAC did not comply with the requirements of "independent and impartial tribunal", regard being had to the composition of the HCJ and to the alleged lack of independence of the judges of the HAC from the president of that court and the HCJ;

(b) the principle of legal certainty was not respected given that after the regional qualification commission had imposed a disciplinary penalty on the applicant, the HCJ punished him once again for the same disciplinary offence;

(c) the submissions of the members of the HCJ concerning the applicant's case were couched in terms clearly suggesting that the applicant had breached the law, which was incompatible with the principle of the presumption of innocence;

(d) the HCJ wrongly applied the domestic law governing its competence in considering the applicant's case; the new amendments to the domestic law, broadly defining the offence of "breach of oath", were applied retrospectively, to the detriment of the applicant;

(e) the decisions of the HCJ and the HAC in the applicant's case were ill-founded and lacked reasoning;

(f) the proceedings before the HCJ and the HAC did not comply with the principle of equality of arms, as the applicant was not given an opportunity to properly examine the case file, make submissions and mount a proper defence;

(g) the applicant's case was not heard by a "tribunal established by law" as the chamber of the HAC dealing with the applicant's case was set up and composed in contravention of the domestic law;

(h) the applicant had no access to a court of appeal to challenge the decision of the HAC.

2. The applicant complains under Article 4 of Protocol No. 7 that he was punished twice for the same offence.

THE LAW

1. The applicant complains that the proceedings in his case did not comply with the requirements of Article 6 § 1 in that his case was not heard by an "independent and impartial tribunal". He complains that his case was not heard by a "tribunal established by law" as the chamber of the HAC dealing with his case was not set up and composed in compliance with the domestic law. The applicant also alleges that the principle of legal certainty was not respected in his case given that after the regional qualification commission had imposed a disciplinary penalty on him, the HCJ punished him once again for the same disciplinary offence. In the latter regard he also invokes Article 4 of Protocol No. 7.

The Court considers that the applicant's complaints should be examined exclusively under Article 6 § 1 of the Convention, which provides, in so far as relevant, as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The Court has examined the remainder of the applicant's complaints. It considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints under Article 6 § 1 of the Convention concerning the alleged violation of his

right to "an independent and impartial tribunal established by law" and the principle of legal certainty;

Declares the remainder of the application inadmissible.

Claudia Westerdiek
Registrar

Dean Spielmann
President