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

FIFTH SECTION

DECISION

Application no. 53825/15
Natalya Kostyantynivna SHAPTALA
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 7 November 2024 as a Committee composed of:

Andreas Zünd*, President*,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 53825/15) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 26 October 2015 by a Ukrainian national, Ms Natalya Kostyantynivna Shaptala ("the applicant"), who was born in 1959, lives in Kyiv and was represented by the late Ms O.Y. Lyoshenko, a lawyer who practised in Kyiv;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The present case concerns Parliament's proposal to dismiss the applicant from her post as judge of the Constitutional Court of Ukraine ("the Constitutional Court") for "breach of oath", allegedly in breach of Articles 6, 8, 10 and 18 of the Convention.

2. In September 2010 the Congress of Judges ("the Congress") 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 adopted a resolution on "Responding to the "breach of oath" by judges of the Constitutional Court of Ukraine" ("the Resolution"), which stated that the judges of the Constitutional Court who had adopted its judgment of 30 September 2010 declaring unconstitutional the 2004 amendments to the Constitution had breached their

judicial oath. By that resolution, Parliament dismissed the judges of the Constitutional Court who had been appointed by Parliament (see *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, §§ 5-20, 12 January 2023, and *Golovin v. Ukraine*, no. 47052/18, § 6, 13 July 2023). It also invited the President and the Congress to take measures to dismiss the judges of the Constitutional Court, including the applicant, who had been appointed by the President and the Congress. Lastly, Parliament asked the Office of the Prosecutor General ("the OPG") to launch a criminal investigation into the circumstances in which the Constitutional Court had delivered the above-mentioned judgment.

4. In March 2014 the applicant challenged the Resolution in the national courts. In a final decision, on 28 April 2015 the Supreme Court of Ukraine ("the Supreme Court") dismissed the applicant's claim. It held that Parliament had been empowered to assess the Constitutional Court's judgment of 30 September 2010 because amending the Constitution and appointing or dismissing one-third of the judges of the Constitutional Court fell within Parliament's competence. The Supreme Court emphasised that Parliament had not examined the question of the applicant's dismissal but had only submitted a proposal for such an examination to the Congress, which had appointed her to the judicial post. The Supreme Court also observed that Parliament had acted within its powers when asking the OPG to investigate a possible criminal offence in connection with the delivery of the Constitutional Court's judgment of 30 September 2010.

5. The applicant has not informed the Court about subsequent developments in her case following the Supreme Court's decision of 28 April 2015, but publicly available sources of information reveal the following.

6. On 14 May 2019 the applicant was elected as President of the Constitutional Court by her peers.

7. On 20 May 2019 the applicant, as President of the Constitutional Court, swore in the newly elected President of Ukraine.

8. On 17 September 2019 the applicant resigned from her position as a judge of the Constitutional Court at the end of her nine-year term.

9. On 8 October 2020 the President of Ukraine awarded the applicant the honorary title of "Honoured Lawyer of Ukraine".

RELEVANT LEGAL FRAMEWORK AND PRACTICE

10. The relevant material can be found in *Ovcharenko and Kolos* (cited above, §§ 33-73).

THE COURT'S ASSESSMENT

11. The applicant complained under Article 6 of the Convention (under both its criminal and civil limbs) that (i) her case had not been examined by

an "independent and impartial tribunal established by law"; (ii) she had been denied the procedural guarantees of a fair hearing; (iii) the right to a reasoned court decision had not been respected; and (iv) the principle of legal certainty had not been observed given that no time-limits existed for imposing liability for "breach of oath".

12. Regarding the criminal limb of Article 6 of the Convention, the Court considers that the facts of the present case do not give grounds for a conclusion that the applicant's case related to the determination of a criminal charge (see *Oleksandr Volkov v. Ukraine*, no. 21722/11, §§ 93-95, ECHR 2013). The Court proceeds on the basis that it was Parliament that invited the OPG to launch a criminal investigation into the circumstances of the delivery of the Constitutional Court's judgment of 30 September 2010 (see paragraph 3 above). There is no indication that the applicant had ever been formally suspected of, or charged with, any criminal offence in relation to her participation in the delivery of the above-mentioned judgment. Accordingly, Article 6 of the Convention is inapplicable under its criminal limb.

13. As to the applicability of Article 6 of the Convention under its civil limb, the Court has emphasised on many occasions that there must be a "dispute" ("*contestation*" in French) over a "civil" right which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether that right is protected under the Convention. The dispute must be genuine and serious and 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 of the Convention into play (see, among many other authorities, *Grzęda v. Poland* [GC], no. 43572/18, § 257, 15 March 2022).

14. Turning to the present case, the Court notes that Ukrainian legislation did not preclude the applicant from challenging the Resolution in the national courts which, in turn, considered her claim on the merits (see paragraph 4 above). It follows that there was a "dispute" over the applicant's right to contest Parliament's conclusion that there had been a "breach of oath", so such a right can be said to be recognised in domestic law. Nevertheless, the concept of "civil rights and obligations" is an autonomous concept deriving from the Convention which cannot be interpreted solely by reference to the respondent State's domestic law (see, among many other examples, *Grzęda*, cited above, § 287).

15. The Court has already gone some way in recognising the existence of a "right" under the civil limb of Article 6 of the Convention by developing 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 (see *Denisov v. Ukraine* [GC], no. 76639/11, § 51, 25 September 2018). It follows that for Article 6 of the Convention in its civil

limb to be applicable to the present case, the dispute must be "genuine", "serious" and "directly decisive" for the right at issue.

16. The Court observes at the outset that, unlike the applicants in *Ovcharenko and Kolos* and *Golovin* (cited above), Parliament did not dismiss the applicant from her position as a judge of the Constitutional Court as it was not competent to impose such a disciplinary sanction. Instead, Parliament invited other competent authorities to examine that question (see paragraph 3 above). In the applicant's case, only the Congress, which had appointed her to the post of judge of the Constitutional Court (see paragraph 2 above), was empowered to issue a dismissal order. However, the Congress did not follow Parliament's proposal and the applicant remained in her post as a judge of the Constitutional Court until her resignation at the end of the maximum term of office (see paragraph 8 above).

17. The Court further stresses that there was inevitably a political element in the adoption of the Resolution in which Parliament assessed the Constitutional Court's judgment of 30 September 2010. The Supreme Court held that such an assessment was lawful because of Parliament's competence to amend the Constitution and to appoint and/or dismiss one-third of the judges of the Constitutional Court (see paragraph 4 above). The Court sees no reason to cast doubt on that interpretation of Parliament's powers in the applicant's case because of the absence of any "direct and significant repercussions" on her private pecuniary or non-pecuniary rights. Hence, there is no indication that the Resolution had any impact on the applicant's remuneration as a judge of the Constitutional Court, so she did not suffer any pecuniary consequences. As regards non-pecuniary rights, it cannot be said that the Resolution had any effect on the applicant's professional and social reputation given her subsequent election as President of the Constitutional Court, her role in swearing in the President of Ukraine, and the honorary title awarded to her (see paragraphs 6, 7 and 9 above).

18. The foregoing considerations are sufficient for the Court to conclude that the applicant's dispute was not "genuine", "serious" and "directly decisive" for her right recognised under domestic law, such as to bring the civil limb of Article 6 of the Convention into play.

19. It follows that the applicant's complaints under Article 6 of the Convention must be rejected as incompatible *ratione materiae* with the provisions of the Convention pursuant to Article 35 §§ 3 (a) and 4.

20. The applicant further complained under Article 8 of the Convention that the Resolution had violated her right to respect for her private life since Parliament's conclusion that there had been a "breach of oath" had infringed her reputation.

21. The relevant case-law concerning this matter was restated in *Denisov* (cited above, §§ 115-17). In particular, the Court held that employment-related disputes were 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 (reason-based approach) or – in certain cases – because of the consequences for private life (consequence-based approach). If the latter 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 must present evidence substantiating the consequences of the impugned measure. The Court will only accept that Article 8 of the Convention is applicable where these consequences are very serious and affect his or her private life to a very significant degree. 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 has also considered 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.

22. In the present case, there is no indication that any "private life" issue was the reason for Parliament's conclusion that the applicant had breached her judicial oath. That conclusion was strictly limited to the assessment of her exercise of judicial functions and even the applicant viewed the events complained of as an arbitrary and politically motivated attack on the Constitutional Court as an institution – a matter unrelated to her private life (see, for a similar approach, *Ovcharenko and Kolos*, cited above, § 86). However, the applicant submitted that the Resolution which contained that conclusion had had a significantly detrimental effect on her reputation. Therefore, the Court considers it appropriate to follow the consequence-based approach and to examine whether the Resolution had sufficiently serious negative consequences for the applicant's private life, in particular as regards her "inner circle", her opportunities to establish and develop relationships with others and her reputation (see, for a similar approach, *Gyulumyan and Others v. Armenia* (dec.), no. 25240/20, § 89, 21 November 2023).

23. At the outset, there are no signs that the Resolution resulted in a reduction of the applicant's income. In addition, there are no other indications that the "inner circle" of her private life was affected by the impugned

measure (see, for instance, *J.B. and Others v. Hungary* (dec.), no. 45434/12, § 132, 27 November 2018).

24. Turning to the question of establishing and maintaining relationships with others, the Resolution did not lead to the applicant's dismissal from her position as a judge of the Constitutional Court – she remained in judicial office until her resignation at the end of her nine-year term (see paragraph 8 above).

25. It remains to be examined whether the Resolution encroached upon the applicant's reputation in such a way that it seriously affected the esteem in which she was held by others, with the result that it had a serious impact on her interaction with society (see *Gyulumyan and Others*, cited above, § 92). However, the Resolution could not have affected the applicant's private life to a very significant degree given the lack of consequences for her professional and social reputation (see paragraph 17 above).

26. Accordingly, the Court cannot but conclude that the negative effects which the contested measure had on the applicant's private life did not cross the threshold of seriousness for Article 8 of the Convention to be engaged. It follows that this Article is not applicable to the present case and that the applicant's complaint must be rejected as incompatible *ratione materiae* with the provisions of the Convention pursuant to Article 35 §§ 3 (a) and 4.

27. The applicant also raised other complaints under Articles 10 and 18 of the Convention.

28. The Court 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, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

29. It follows that the application must be dismissed in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 28 November 2024.

Martina Keller Deputy Registrar	Andreas Zünd President