



## Supreme Court judge's inability to challenge his suspension in court breached the Convention

In today's **Chamber** judgment<sup>1</sup> in the case of **Paluda v. Slovakia** (application no. 33392/12) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 6 § 1 (right of access to a court) of the European Convention on Human Rights.**

The case concerned the inability of a judge to challenge in court a decision to suspend him from office. Mr Paluda, the applicant and judge of the Supreme Court, was suspended pending disciplinary proceedings against him for accusing the President of the Supreme Court of abuse of authority.

The Court accepted that the guarantee of access to court under Article 6 § 1 of the Convention applied to Mr Paluda's suspension and that there had been a legal basis for denying it to him. However, it observed that the legitimacy of the aim pursued by denying him access to court was questionable and concluded that, in any event, that denial had not been proportionate in the circumstances.

In coming to that conclusion, the Court found that the body suspending Mr Paluda and initiating the disciplinary proceedings against him – the Judicial Council of Slovakia – itself had not provided the institutional and procedural guarantees inherent in Article 6 § 1 of the Convention. Among other things, the Court noted that under domestic law as it stood at the relevant time the Judicial Council had by definition been presided over by the President of the Supreme Court, that is the very person who had been at the centre of Mr Paluda's criticisms. Next, at the time of his suspension, Mr Paluda had not been heard either about the suspension itself or about the underlying disciplinary proceedings against him. Lastly, he had been unable to exercise his mandate for two years during which time he had had half of his salary withheld and he had been unable to exercise any other gainful activity.

### Principal facts

The applicant, Peter Paluda, is a Slovak national who was born in 1959 and lives in Bratislava. In September 2009 Mr Paluda, a Supreme Court judge, was suspended from office pending disciplinary proceedings brought against him. The proceedings were brought following his making accusations – in a criminal complaint and public statements – of abuse of authority against the President of the Supreme Court. The decisions to suspend him and to bring disciplinary proceedings were taken by the national Judicial Council, the supreme governing body of the judiciary in Slovakia, presided under domestic law applicable at the time by definition by the President of the Supreme Court.

Mr Paluda attempted, unsuccessfully, to challenge his suspension before the Judicial Council, the administrative courts and the Constitutional Court. The Judicial Council found that the law did not allow for decisions of the Council to be challenged by means of appeals to the Council and that its decisions were reviewable by administrative courts. The latter, however concluded that the decision

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

to suspend the applicant was of a preliminary nature and that under the applicable law – namely, Article 248 (a) of the Code of Civil Procedure – such decisions were exempt from judicial review, a position that was ultimately endorsed by the Constitutional Court in December 2011.

The disciplinary proceedings against Mr Paluda had in the meantime been discontinued by a final decision of September 2011. A 50% part of his salary that had been retained during his two years' suspension was restored to him in July 2012.

## Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right of access to a court), Mr Paluda complained that he had been denied access to court with regard to his suspension from office.

The application was lodged with the European Court of Human Rights on 24 May 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

Branko **Lubarda** (Serbia), *President*,  
Helena **Jäderblom** (Sweden), *ad hoc judge*,  
Luis **López Guerra** (Spain),  
Helen **Keller** (Switzerland),  
Dmitry **Dedov** (Russia),  
Pere **Pastor Vilanova** (Andorra),  
Georgios A. **Serghides** (Cyprus),

and also Fatoş **Aracı**, *Deputy Section Registrar*.

## Decision of the Court

As a preliminary matter, the Court accepted that the guarantees under Article 6 § 1 applied to the main proceedings on the disciplinary charges against Mr Paluda and that his suspension constituted a determination of the same civil rights and obligations in terms of the Court's case-law. The access-to-court guarantee relied on by Mr Paluda therefore applied to the suspension itself.

The Court found that Mr Paluda had not had the benefit of judicial protection in relation to his suspension. That exclusion of Mr Paluda's suspension from judicial review had nonetheless had a legal basis, namely Article 248 (a) of the Code of Civil Procedure, a provision of general application which made no allowances for the particular measure – the suspension of a judge from his mandate – at the heart of Mr Paluda's case. Noting *inter alia* the growing importance that is being attached to procedural fairness in cases involving the removal or dismissal of judges, the Court found that the legitimacy of the aim pursued by denying Mr Paluda access to court was open to question. Nevertheless, it was not necessary to give that question a definitive answer since his lack of access to court in any event failed the test of proportionality.

From that perspective, the Court noted that Mr Paluda's suspension had been imposed on him by a body, the Judicial Council, one half of the members of which had been directly appointed by the legislative and executive power. In addition, the Court noted that under domestic law as applicable at the time the Judicial Council had been presided over by the person who had been at the centre of Mr Paluda's criminal complaint and public statements, the President of the Supreme Court. His suspension had not therefore had institutional guarantees as required under Article 6 § 1 of the Convention.

The Court further observed that there was no indication that the proceedings before the Judicial Council were of a judicial character and that, at the time of his suspension, Mr Paluda had not been heard either about the suspension itself or about the underlying disciplinary charges against him.

Accordingly, with regard to his suspension, Mr Paluda could not be said to have enjoyed the procedural guarantees inherent in Article 6 § 1 of the Convention.

Moreover, the Court noted that Mr Paluda's lack of access to court concerned a measure that placed him for two years in the situation of being unable to exercise his mandate, having half of his salary withheld, and at the same time being unable to exercise any other gainful activity. Although the withheld part of his salary was ultimately restored to him, this essentially had to do with his suspension rather than with his lack of access to court in respect of it. In relation to the lack of access to court no additional corrective or remedial measures were taken at the domestic level.

Given those shortcomings, the Court concluded that Mr Paluda's lack of access to a tribunal to challenge his suspension could not have been proportionate to any legitimate aim that it pursued and that therefore the very essence of his right of access to court had been breached, in violation of Article 6 § 1 of the Convention.

### Just satisfaction (Article 41)

The Court held that Slovakia was to pay Mr Paluda 7,800 euros (EUR) in respect non-pecuniary damage.

*The judgment is available only in English.*

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