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

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The Court declares complaint inadmissible because Judicial Service Commission found no disciplinary offence by applicant and imposed no sanction

In its decision in the case of Amar v. France (application no. 4028/23) the European Court of Human Rights has unanimously declared the application inadmissible.

The case concerned disciplinary proceedings against the applicant, who at the relevant time had been Deputy Prosecutor at the National Public Prosecutor's Office for Financial Offences ("PNF"). In that capacity, he had worked on several cases concerning former French President Nicolas Sarkozy, including on a charge of bribing a member of the Court of Cassation. On 26 March and 21 April 2021 the Prime Minister lodged a disciplinary complaint against the applicant with the Judicial Service Commission (*Conseil supérieur de la magistrature*, "CSM"), alleging that he had breached his ethical obligations.

At the end of the proceedings, the CSM delivered an opinion finding that the applicant had committed no disciplinary offence and that, accordingly, no sanction was called for.

The applicant submitted that the CSM had not addressed his arguments, specifically those concerning his allegations of "retaliation" against him, the unlawfulness of the proceedings, or his requests for preliminary references on constitutionality to the Constitutional Council. He also submitted that by finding that he had acted unethically the CSM had infringed his right to moral integrity and his right to freedom of expression. He had been unable to complain of those interferences subsequently, he argued, because there had been no decision by the Prime Minister.

The Court noted that no sanction had been imposed on the applicant by the competent authority, the CSM, which had delivered an opinion finding that he had committed no disciplinary offence. The Prime Minister had subsequently taken note of that opinion. The Court therefore considered that the applicant could not claim to be a victim, within the meaning of Article 34 of the Convention, of the alleged failure to address the various arguments that he had raised before the CSM. It accordingly rejected his application as inadmissible.

The decision is final.

A legal summary of this case will be available in the Court's database HUDOC (link).

Principal facts

The applicant, Patrice Amar, is a French national who lives in Paris. As First Deputy Prosecutor at the PNF, Mr Amar worked on several cases concerning former French President Nicolas Sarkozy and his lawyer T.H., more specifically in proceedings against Mr Sarkozy on a charge of bribing a member of the Court of Cassation.

After the investigating judges in those proceedings ordered telephone tapping, police officers at the Central Anti-Corruption Office noticed that Mr Sarkozy was using a phone line set up by T.H. under an assumed name, Paul Bismuth. That phone line was also placed under surveillance and, on the basis of the intercepted conversations, the police became convinced that Mr Sarkozy had been informed of the tapping.

The PNF opened a preliminary investigation to identify the person who had potentially committed a breach of professional secrecy. A list of judicial figures and lawyers potentially involved was drawn

up and their phone bills checked, but the results were inconclusive. One such lawyer, Éric Dupond-Moretti, lodged a criminal complaint on 30 June 2020 for breach of professional secrecy.

On 1 July 2020 Nicole Belloubet, the then Minister of Justice, instructed the General Inspectorate of the Justice System to conduct an inquiry into how the preliminary investigation had been run. Ms Belloubet was replaced by Mr Dupond-Moretti as Minister of Justice on 6 July 2020. In that capacity, on 15 September 2020, Mr Dupond-Moretti was presented with the report of the General Inspectorate, which found that there had been no operational shortcomings or professional misconduct.

On 18 September 2020 the director of Mr Dupond-Moretti's private office instructed the General Inspectorate to carry out an administrative inquiry into the conduct of three PNF prosecutors, namely the applicant, one of his colleagues and his former official superior, the then head of the PNF.

In a decree of 23 October 2020 the Prime Minister took over responsibility for those proceedings on account of a conflict of interest in respect of the Minister of Justice, Mr Dupond-Moretti. On 21 April 2021 the Prime Minister referred the matter to the CSM's disciplinary panel, notably criticising the applicant for his accusations against the former head of the PNF, his official superior.

The CSM delivered a reasoned opinion on 19 October 2022, finding that the applicant had committed no disciplinary offence and that, accordingly, no sanction was called for.

On 28 October 2022 the Director of Judicial Services wrote to inform the applicant and his lawyers that the Prime Minister had taken note of the CSM's opinion. The letter specified that the applicant could request to have the documents concerning the proceedings removed from his record as of right because they had been discontinued without a sanction being imposed.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 16 January 2023.

Relying on Article 6 § 1 (right to a fair hearing), the applicant submitted that the CSM had not addressed his arguments, specifically those concerning his allegations of "retaliation" against him, the unlawfulness of the proceedings, or his requests for preliminary references on constitutionality to the Constitutional Council. He also complained of the lack of a decision subsequent to the CSM's finding, which in his view had merely been an opinion.

Relying on Article 8 (right to respect for private and family life), Article 10 (freedom of expression) and Article 13 (right to an effective remedy), the applicant also submitted, in particular, that by finding that he had acted unethically the CSM had infringed his right to moral integrity and his right to freedom of expression. He had been unable to complain of those interferences subsequently, he argued, because there had been no decision by the Prime Minister.

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

Georges **Ravarani** (Luxembourg), *President*,
Lado **Chanturia** (Georgia),
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
María **Elósegui** (Spain),
Mattias **Guyomar** (France),
Kateřina **Šimáčková** (the Czech Republic),

and also Victor **Soloveytchik**, *Section Registrar.*

Decision of the Court

Article 6 § 1

The Court began by pointing out that disciplinary proceedings as such could not be characterised as "criminal" and that Article 6 was not applicable to such proceedings under its criminal head, except in certain specific cases. However, the Court had previously found Article 6 applicable under its civil head to disciplinary proceedings concerning members of national legal services where sanctions such as dismissals, demotions and salary reductions had been at stake.

In the present case, the disciplinary proceedings against the applicant could have resulted in various sanctions affecting his employment relationship. They could therefore, in principle, have been decisive for some of his rights under domestic law.

The Court nevertheless noted at the outset that no sanction had been imposed on the applicant. The CSM had delivered an opinion finding that he had committed no disciplinary offence and the Prime Minister had subsequently taken note thereof. Given that no decision had been taken to the applicant's detriment, the Court considered that he could not claim to be a victim, within the meaning of Article 34 of the Convention, of the alleged failure to address the various arguments that he had raised before the CSM.

Emphasising that fairness was to be assessed with regard to proceedings and their outcome considered as a whole, the Court observed that the CSM had in fact addressed all of the applicant's arguments. It had implicitly but necessarily denied his requests for preliminary references on constitutionality, observing that it was not a court and that it only delivered opinions.

The Court then turned to the applicant's claim that the alleged "retaliation" against him had not been addressed. While reiterating that it was not its role to act as a court of fourth instance, the Court noted that, according to the CSM, the applicant had "breached his ethical duty of prudence and loyalty" and had failed to fulfil his "obligations of discretion, respect and loyalty towards his official superior". The CSM's statements had come after it had found that the conflict of interest with regard to the Minister of Justice had had no impact on the impartiality or fairness of the administrative inquiry.

Lastly, in the Court's view, the right of access to a court for the purposes of Article 6 of the Convention could not be interpreted so as to guarantee the right to a decision amenable to appeal should disciplinary proceedings be discontinued or should the competent authorities find that no disciplinary offence had been committed.

This part of the application accordingly had to be declared inadmissible.

Articles 8, 10 and 13

The Court repeated its observation that no sanction had been imposed on the applicant because the CSM had found that no disciplinary offence had been committed.

Regarding the complaint under Article 8 of the Convention, the Court had previously held that only disciplinary proceedings and sanctions against judges could trigger the applicability of that provision. Furthermore, in the present case, the alleged negative effects of the proceedings could not be the result of any sanction, as no such measure had been imposed. They would also be limited to the consequences of the unlawful conduct which had been foreseeable by the applicant, within the framework of his duties as a prosecutor and his ethical obligations.

The applicant could not therefore claim to be a victim, within the meaning of Article 34 of the Convention, of a violation of Article 8.

The Court further noted that the applicant had directly and personally been the subject of a disciplinary complaint and, assisted by his lawyers, had been able to defend himself from the administrative inquiry stage until the end of the disciplinary proceedings against him.

Concerning the complaint under Article 10 of the Convention, the Court reiterated that no sanctions, disciplinary or otherwise, had been imposed on the applicant who, furthermore, had not shown that his statements had been censured. He thus could not claim to be a victim of a violation of Article 10.

Lastly, Article 13 would only apply if the applicant were able to claim to have been a victim of a violation of another Convention right. As the Court had found the complaints under Articles 6, 8 and 10 of the Convention to be inadmissible in the present case, this complaint was incompatible with the provisions of the Convention within the meaning of Article 35 § 3 (a).

It followed that this part of the application had to be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously declared the application inadmissible.

The decision is available only in French.

Press contacts
echrpress@echr.coe.int | tel.: + 33 3 90 21 42 08

We are happy to receive journalists' enquiries via either email or telephone.

Denis Lambert (tel.: + 33 3 90 21 41 09)
Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)
Inci Ertekin (tel.: + 33 3 90 21 55 30)
Neil Connolly (tel.: + 33 3 90 21 48 05)
Jane Swift (tel.: + 33 3 88 41 29 04)