



Decision to remove MP from office because of conflict of interest was not arbitrary or manifestly unreasonable

In today's **Chamber** judgment¹ in the case of [Kokëdhima v. Albania](#) (application no. 55159/16) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 3 of Protocol No. 1 (right to free elections) to the European Convention on Human Rights.

The case concerned the decision to remove Mr Kokëdhima from office as a Member of Parliament because of a conflict of interest with his ownership of a company that received income from public resources.

The Constitutional Court had taken particular issue with the fact that Mr Kokëdhima had only sold the shares in his company more than six months after his election. The Court could not find anything arbitrary or manifestly unreasonable in that approach. Moreover, Mr Kokëdhima had to have known about the applicable laws and practice in his case and therefore could have foreseen that continuing to benefit from income generated from contracts with public authorities in his new role as an MP would amount to a conflict in interest.

Principal facts

The applicant, Koço Kokëdhima, is an Albanian national who was born in 1959 and lives in Tirana.

Mr Kokëdhima was elected as a Member of Parliament on 2 August 2013 in a general election in Albania.

He had been the sole shareholder of a private joint-stock company, Abissnet SHA, since 1999 and, as such, sought guidance from the relevant authorities as to whether there was a potential conflict of interest with his role as an MP. In particular, Abissnet SHA had concluded contracts for providing internet and fixed telephony services to various public authorities between 3 January and 2 August 2013. He did not, however, receive any clear answer and Mr Kokëdhima sold his shares in the company on 6 February 2014.

In February 2015 the Democratic Party's Parliamentary Group requested that Parliament refer to the Constitutional Court the question of whether Mr Kokëdhima's position as an MP was incompatible with his being the sole shareholder of Abissnet SHA.

In a judgment of June 2016 the Constitutional Court concluded that there had been a conflict of interest within the meaning of Article 70 § 3 of the Constitution, which provided that MPs were not allowed to engage in any profit-making activities that generated income from public assets. The Constitutional Court noted in particular that even though Mr Kokëdhima's company had not entered into any new agreements with public authorities after 2 August 2013, it had nevertheless continued to receive payments under the pre-existing contracts.

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.

In accordance with the Constitutional Court's judgment Mr Kokëdhima was removed from office as an MP.

Complaints, procedure and composition of the Court

Relying on Article 3 of Protocol No. 1 (right to free elections), Mr Kokëdhima complained about his removal from office as an MP. He argued in particular that the Constitutional Court's interpretation of the legislation in his case had been overly broad and that he could not have foreseen what legal steps he had been required to take to ensure that he had not been in a situation of conflict of interest.

Also relying on Article 8 (right to respect for private life), he alleged that the decision removing him from office had been widely covered by the media and tarnished his reputation.

The application was lodged with the European Court of Human Rights on 15 September 2016.

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

Jolien **Schukking** (the Netherlands), *President*,
Georgios A. **Serghides** (Cyprus),
Darian **Pavli** (Albania),
Peeter **Roosma** (Estonia),
Andreas **Zünd** (Switzerland),
Oddný Mjöll **Arnardóttir** (Iceland),
Diana **Kovatcheva** (Bulgaria),

and also Milan **Blaško**, *Section Registrar*.

Decision of the Court

Article 3 of Protocol No. 1

Mr Kokëdhima's case turned on the interpretation of national constitutional law. Unless such interpretation was arbitrary or manifestly unreasonable, the Court reiterated that its role was limited to deciding whether the effects of that interpretation were compatible with the European Convention.

Firstly, there was little doubt under Albanian law that active ownership of a company that generated income from contracts with State bodies was incompatible with being an MP.

Secondly, what was decisive in the Constitutional Court's assessment of Mr Kokëdhima's case was the fact that the payments to his company under contracts concluded with public authorities had continued even after he had assumed his role as an MP. The Court could not see anything arbitrary in that approach.

Moreover, he had to have been aware that the contracts, the last of which had been concluded on 2 August 2013, would carry on generating income into his term of office as an MP and that, on the basis of the relevant legislation and the Constitutional Court's jurisprudence, benefitting from such continued payments would amount to a conflict of interest. However, he had only sold his shares in Abissnet SHA more than six months after his election.

Although it was regrettable that the relevant authorities had failed to provide him with a clear response to his enquiries, under the relevant national law it was the official who was ultimately responsible for taking all necessary steps to prevent any conflict of interest.

Nor could the Court find any issues around Mr Kokëdhima not having had access to or known about the applicable laws and practice in his case. Indeed, he had referred to the Constitutional Court's interpretation of Article 70 § 3 in his pleadings to that court.

The Court concluded that the Constitutional Court's decision removing Mr Kokëdhima from office as an MP had been neither arbitrary nor insufficiently foreseeable.

There had been no violation of Article 3 of Protocol No. 1 to the Convention.

Article 8

The Constitutional Court had held that Mr Kokëdhima had failed to act diligently to comply with the strict duties of an elected MP to avoid any conflicts of interest. The removal of Mr Kokëdhima from office as an MP and its consequences for his private life were therefore the foreseeable outcome of his own conduct. Accordingly, his complaint under Article 8 was manifestly ill-founded and rejected as inadmissible.

Separate opinions

Judges Serghides and Pavli expressed concurring opinions, which are annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.