



## Lack of an effective remedy by which to challenge a decision by the High Judicial Council suspending one of its members

In today's **Chamber** judgment<sup>1</sup> in the case of [Loquifer v. Belgium](#) (application nos. 79089/13, 13085/14 and 54534/14) the European Court of Human Rights held, by a majority (6 votes to 1), 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 a former judge who was appointed to the High Judicial Council ("the CSJ") in 2012. The CSJ suspended her from her duties within that body from May 2013 to March 2015, on the grounds that she was facing criminal prosecution. Following her acquittal in 2015 the CSJ found that the criteria for her reinstatement were satisfied.

In the proceedings before the Court Ms Loquifer alleged that she had had no remedy by which to challenge the CSJ's decisions suspending her from all her duties.

The Court found in particular that the Government had not demonstrated the existence of any remedy enabling Ms Loquifer to have the decision suspending her from her duties within the CSJ reviewed by the courts and to obtain the setting-aside or a stay of execution of that decision. The applicant had thus been deprived of her right of access to a court in order to challenge the measure suspending her from her duties.

### Principal facts

The applicant, Michèle Loquifer, is a Belgian national who was born in 1952 and lives in Feluy (Belgium).

In April 2012 Ms Loquifer took early retirement after serving as a judge for twenty years. In June 2012 the Senate appointed her to the CSJ as a "non-judicial" member.

In February 2013 the applicant was charged with offences including forgery and using forged documents, for acts allegedly committed in her capacity as President of the Nivelles Court of First Instance in connection with the procedure for appointing her successor.

In May 2013 a general meeting of the CSJ adopted an administrative measure suspending Ms Loquifer from all her duties within that body for a renewable six-month period. It was specified that the measure, which took immediate effect, would be revoked automatically if the principal public prosecutor at the Brussels Court of Appeal decided not to proceed with the charges against the applicant. The suspension measure was subsequently extended several times pending a final decision concerning the criminal proceedings against her.

In 2014 Ms Loquifer was summoned to appear before the Brussels Court of Appeal on charges of forgery of documents by a public official and use of forged documents. She was acquitted in January 2015. She subsequently requested the CSJ to review the decision suspending her from all her duties.

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).

On 25 March 2015 a general meeting of the CSJ took note of the final decision acquitting Ms Loquifer in the criminal proceedings and observed that the criteria for her reinstatement were fully satisfied. On 30 March 2015 Ms Loquifer resigned from her position on the CSJ.

## Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right of access to a court) of the Convention, Ms Loquifer alleged that the disciplinary sanction in disguise to which she had been made subject had been imposed by a non-judicial body and that there had been no means of challenging the measure in question.

Under Article 6 § 1 (right to a fair trial), she also complained of the lack of a public hearing and of the refusal to give her access to the minutes of the CSJ's general meeting.

The applications were lodged with the European Court of Human Rights on 29 November 2013, 24 January 2014 and 28 July 2014.

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

Georgios A. Serghides (Cyprus), *President*,  
Paul Lemmens (Belgium),  
Georges Ravarani (Luxembourg),  
María Elósegui (Spain),  
Darian Pavli (Albania),  
Peeter Roosma (Estonia),  
Andreas Zünd (Switzerland),

and also Milan Blaško, *Section Registrar*.

## Decision of the Court

### Article 6 (right of access to a court)

The Court considered that there had been a “dispute” in the present case concerning a “civil right” and that Ms Loquifer had been entitled, in the procedure concerning her suspension from her duties within the CSJ, to the protection afforded by Article 6 § 1 of the Convention.

The Court noted that, according to the relevant constitutional and statutory provisions, the CSJ was an administrative body. As it was not its task to determine disputes, it did not constitute a court. Hence, it did not constitute a “tribunal” within the meaning of Article 6 § 1 of the Convention.

In that connection the Court reiterated its case-law to the effect that, where an authority determining disputes over “civil rights and obligations” did not satisfy the requirements of Article 6 § 1, no violation of the Convention could be found if its decision was subject to “subsequent control by a judicial body that [had] full jurisdiction and [did] provide the guarantees of Article 6 § 1”. It observed that under section 14(1) of the consolidated Acts on the *Conseil d'État* Ms Loquifer had not been entitled, as a member of the CSJ, to apply to the administrative courts to have the decision in question set aside. As to the powers of the ordinary courts to give orders, the Court further noted that the Government's assertions concerning the adequacy and effectiveness of such a remedy were based on the general principles governing disputes over subjective rights. The Government did not make clear to what extent those principles were applicable to a body like the CSJ whose independence from the other branches of government, and in particular the judiciary, was guaranteed by the Constitution. Furthermore, the Government had not provided any examples of orders issued against the CSJ or another comparable body. Lastly, with regard to the possibility of bringing an action for damages, this would not have allowed the court to set aside the measures suspending the applicant from her duties. In the Court's view, the only appropriate remedy in the

present case was one that was capable of resulting in the setting-aside of the decisions in question and of restoring the applicant's right to perform her duties within the CSJ if her suspension was found to be unlawful. Hence, an action for damages did not constitute an adequate remedy in the present case.

In the Court's view, therefore, the Government had not demonstrated the existence of any remedy enabling Ms Loquifer to have the decision suspending her from the CSJ reviewed by the courts and to obtain the setting-aside or a stay of execution of that decision. The decisions in question had thus not been taken by a "tribunal" or other body exercising judicial powers and were not subject to review by such a body. Accordingly, Ms Loquifer had been deprived of the right of access to a court in order to appeal against the measure suspending her from her duties within the CSJ. It followed that the very essence of the applicant's right of access to a court had been impaired.

**There had therefore been a violation of Article 6 § 1 of the Convention.**

### Other articles

In the Court's view, the complaints concerning the lack of a public hearing and the refusal of access to the minutes of the CSJ's general meeting were adjuncts to the complaint concerning the fact that the CSJ was not a "tribunal" within the meaning of Article 6 § 1 of the Convention and the lack of a judicial body with jurisdiction to rule on the applicant's suspension. Consequently, in view of its conclusion regarding the main complaint, the Court considered it unnecessary to examine these additional complaints separately.

### Just satisfaction (Article 41)

The Court held that Belgium was to pay the applicant 12,000 euros (EUR) in respect of non-pecuniary damage and EUR 5,000 in respect of costs and expenses.

### Separate opinions

Judge Pavli expressed a concurring opinion. Judge Zünd expressed a dissenting opinion. These opinions are annexed to the judgment.

*The judgment is available only in French.*

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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.