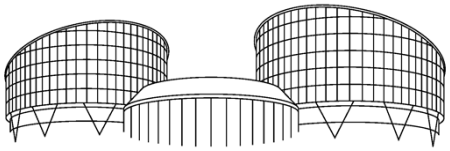

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF OVCHARENKO AND KOLOS v. UKRAINE

(Applications nos. 27276/15 and 33692/15)

JUDGMENT

Art 8 • Private life • Art 6 (civil) • Fair hearing • Constitutional Court judges' dismissal for participating in a debatable judgment, without clear interpretation of the imputed "breach of oath" and the scope of their functional immunity • No legislative change since *Oleksandr Volkov* bringing about better foreseeability • Utmost caution and detailed reasons crucial where Constitutional judges are dismissed by Parliament • Domestic authorities' use of discretionary powers undermining legal certainty, not justified by the context of massive protests and extraordinary change of State power • Inadequate judicial review lacking elaborate response on crucial issues • Clear European trend towards strict and narrow grounds for sanctioning Constitutional Court judges • Distinction to be made between a disputable interpretation or application of the law, on the one hand, and a serious and flagrant breach of the law, arbitrariness, a serious distortion of the facts, or an obvious lack of legal basis for a judicial measure, on the other hand • Cases concerning judges' liability requiring consideration of mental element of alleged misconduct

STRASBOURG

12 January 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ovcharenko and Kolos v. Ukraine,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Georges Ravarani*, President*,
Iulia Antoanella Motoc,
Mārtiņš Mits,
María Elósegui,
Mattias Guyomar,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 27276/15 and 33692/15) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Ukrainian nationals, Mr Vyacheslav Andriyovych Ovcharenko ("the first applicant") and Mr Mykhaylo Ivanovych Kolos ("the second applicant"), on 20 May and 2 July 2015 respectively;

the decision to give notice to the Ukrainian Government ("the Government") of the applications;

the parties' observations;

Having deliberated in private on 29 November 2022,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present case concerns the dismissal of two judges of the Constitutional Court of Ukraine, allegedly in breach of Articles 6, 8 and 18 of the Convention.

THE FACTS

2. The applicants were born in 1957 and 1953 respectively and were represented by Mr A. Bushchenko, at the relevant time a lawyer practising in Kyiv.

3. The Government were represented by their Agent, Mr I. Lishchyna.

4. The facts of the case may be summarised as follows.

I. BACKGROUND FACTS

5. On 28 June 1996 the Parliament (*Verkhovna Rada*) of Ukraine enacted the Constitution of Ukraine.

6. In December 2004 it introduced amendments to the Constitution which, among other things, increased the parliamentary features of the political

system and diminished the powers of the President of Ukraine. Possible irregularities as to the manner in which the constitutional amendments were introduced were a matter of public debate which was also a point of discussion in the Parliamentary Assembly of the Council of Europe (PACE), as reflected in its Resolution 1466 (2005) of 5 October 2005 "Honouring of obligations and commitments by Ukraine" (see paragraph 43 below).

7. On 4 August 2006 Parliament appointed the applicants as judges of the Constitutional Court of Ukraine ("the Constitutional Court").

8. On the same day, Parliament amended the "Final and Transitional Provisions" of the Constitutional Court of Ukraine Act ("the Constitutional Court Act"), specifying that the Constitutional Court was not authorised to review the constitutionality of Acts of Parliament concerning amendments to the Constitution.

9. On 5 February 2008 the Constitutional Court, following an application by members of parliament, refused to open proceedings in relation to the constitutionality of the Act of Parliament by which the Constitution had been amended in December 2004. The court remarked that the provisions of an Act of Parliament amending the Constitution "had accomplished their function" once they had come into force. It then rejected the application for constitutional review on procedural grounds (for failure to indicate the full title and registration number of the impugned Act and the date of its enactment).

10. On 26 June 2008 the Constitutional Court adopted a judgment declaring unconstitutional the provision of the Constitutional Court Act introduced in 2006 excluding from its jurisdiction Acts of Parliament on constitutional amendments (see paragraph 8 above). The court noted, in particular, that the Constitution established its power to examine the constitutionality of laws enacted by Parliament and made no exception as regards laws amending the Constitution.

11. In February 2010 Mr V. Yanukovych was elected President of Ukraine.

12. On 30 September 2010 the Constitutional Court, following an application by members of parliament lodged in July 2010, adopted a judgment declaring unconstitutional the 2004 amendments to the Constitution, finding that they had been enacted in breach of proper procedure. The court declared the amendments invalid with effect from the date of its judgment, and the applicability of the previous version of the Constitution was consequently restored. In its reasoning, the court referred, among other things, to PACE Resolution 1466 (2005) (see paragraphs 6 above and 49 below).

II. EVENTS OF NOVEMBER 2013 TO FEBRUARY 2014, CHANGE OF POWER IN UKRAINE AND THE APPLICANTS' REMOVAL

13. In late November 2013 anti-government demonstrations commenced in Kyiv and then spread to other cities in Ukraine, turning into massive popular protests in the country, reportedly in response to the Cabinet of Ministers' decision to suspend preparations for the signing of the Ukraine-European Union Association Agreement. By late February 2014 the demonstrations had escalated into serious clashes between protesters and law-enforcement authorities, causing numerous injuries and deaths (for further details, see *Shmorgunov and Others v. Ukraine*, nos. 15367/14 and 13 others, §§ 9-17, 21 January 2021).

14. On 21 February 2014 Parliament adopted the Revalidation of Certain Provisions of the Constitution of Ukraine Act ("the Revalidation Act") to revert to the 2004 Constitution with certain amendments. It also removed the Minister of the Interior from his post.

15. On 22 February 2014 Parliament declared that Mr Yanukovych had unconstitutionally abandoned his duties as President. On the same day and on 23 February 2014 Parliament dismissed the Prosecutor General and took a number of further decisions concerning the change of high-ranking officials in the State and the functioning of executive power (for further details, see *Shmorgunov and Others*, cited above, §§ 44-45).

16. On 24 February 2014 Parliament adopted a resolution "On responding to the 'breach of oath' by judges of the Constitutional Court of Ukraine". By that resolution, Parliament, referring to Article 126 of the Constitution, dismissed, for "breach of oath", the judges of the Constitutional Court who had been appointed under Parliament's quota, as provided for in Article 148 of the Constitution (see paragraph 33 below), including the applicants. It then invited the acting President of Ukraine and the Congress of Judges to take measures to dismiss, for "breach of oath", the other judges of the Constitutional Court (who had been appointed under the quotas of the President and the Congress of Judges, respectively). Lastly, it asked the Office of the Prosecutor General to initiate a criminal investigation into the circumstances in which the Constitutional Court had adopted its judgment of 30 September 2010 (see paragraph 12 above).

17. In its reasons for adopting the above-mentioned resolution, Parliament stated that on 30 September 2010 the Constitutional Court had unconstitutionally amended the Constitution by appropriating parliamentary powers, and that it had infringed the fundamental constitutional principles of democracy and separation of powers and changed the constitutional system. In that regard, Parliament referred to the reasoning of the Constitutional Court's ruling of 5 February 2008 (see paragraph 9 above) that the Act amending the Constitution "accomplished its function", having become a part of the Constitution. Parliament further referred to the Venice Commission's

opinion of 20 December 2010 "On the constitutional situation in Ukraine" (see paragraph 50 below), stating that the Constitutional Court's judgment of 30 September 2010 had called into question the legitimacy of the existing State institutions, since the President and Parliament had been elected under constitutional rules that were no longer recognised as valid; the President, with effect from that judgment, had enjoyed far more powers than could have been foreseen by the voters when he had been elected and, since that judgment, the workings of the main State organs had been based on rules changed by a court and not on rules changed by Parliament as a democratically legitimate body.

18. Parliament further stated that on 29 May 2013 the Constitutional Court had adopted a judgment which had effectively made it impossible to hold elections in the city of Kyiv and the Ternopil Regional Council until October 2015. Parliament considered that, with that judgment, the judges of the Constitutional Court had violated citizens' rights to elections.

19. Lastly, Parliament stated that on 25 January 2012 the Constitutional Court had adopted a judgment allowing the Cabinet of Ministers to "manually" regulate the level of social payments, despite having previously adopted contrary decisions on the same subject matter. In that regard, Parliament found that the judges of the Constitutional Court had violated citizens' constitutional rights to social security and an adequate standard of living.

20. Parliament concluded that the judges of the Constitutional Court who had adopted the above-mentioned judgments had failed in their obligation to ensure the supremacy of the Constitution and to protect the constitutional system and citizens' constitutional rights in violation of Articles 3, 19 and 147 to 153 of the Constitution, and that those failings had not been compatible with the judicial oath and the honest and rigorous performance of duties by a judge of the Constitutional Court.

21. In March 2014 the applicants submitted statements of resignation, wishing to terminate their duties on a voluntary basis rather than by way of sanction applied by Parliament. Simultaneously, they challenged the parliamentary resolution of 24 February 2014 on their dismissal for "breach of oath" in court (see below).

22. In a separate development, the Office of the Prosecutor General initiated criminal proceedings for unconstitutional seizure of State power by President Yanukovych through the introduction of amendments to the Constitution as a result of the adoption of an illegal judgment by the Constitutional Court, abuse of power by the judges of the Constitutional Court and the rendering of a knowingly illegal judgment on 30 September 2010. On 4 May 2020 the Pecherskyi District Court issued an arrest warrant *in absentia* for Mr Yanukovych within those criminal proceedings and that order was upheld by the Kyiv Court of Appeal on 25 March 2021. The proceedings in the case are still ongoing.

III. PROCEEDINGS INSTITUTED BY THE FIRST APPLICANT

23. On 27 February 2014 the first applicant, relying on the Code of Administrative Justice, lodged a claim with the Higher Administrative Court ("the HAC") challenging his dismissal.

24. On 18 June 2014 the HAC declared unlawful the parliamentary resolution of 24 February 2014 with respect to the first applicant's dismissal. It found that Parliament had failed to follow the procedure for the dismissal of a judge of the Constitutional Court. In particular, the Rules of the Constitutional Court provided for a procedure requiring preliminary consideration of the case by the Constitutional Court itself, but that procedure had not been followed. Moreover, Parliament had adopted the impugned decision by way of simplified procedure[1], which was not possible in the event of dismissal of judges of the Constitutional Court. In its decision, the HAC also referred to section 28 of the Constitutional Court Act establishing the principle that Constitutional Court judges would not be held legally liable for the results of their votes in that court. The HAC lastly mentioned international legal principles concerning the independence of the judiciary and concluded that those principles had not been respected by Parliament.

25. Parliament requested that the Supreme Court review the case.

26. On 2 December 2014 the Supreme Court quashed the HAC's judgment and dismissed the first applicant's claim as unfounded. It reiterated the facts of the case, the relevant provisions of domestic law and the position of the parties, and further stated:

> "Analysing the essence of the violations that became the basis for the dismissal of V.A. Ovcharenko, the panel of judges of the Administrative Chamber of the Supreme Court considers it necessary to point out the following.
>
> As stated in the judgment [of 30 September 2010], the grounds for examination of the case by the Constitutional Court of Ukraine was an affirmation by 252 members of parliament on the non-compliance of Law no. 2222-IV with the Constitution of Ukraine.
>
> In deciding the matter raised in the constitutional complaint by the above-mentioned members of parliament, the Constitutional Court, in the reasoning of the judgment [of 30 September 2010], noted that recognising Law no. 2222-IV as unconstitutional owing to a violation of the procedure of its examination and adoption meant the renewal of the previous wording of the norms of the Constitution of Ukraine, which were amended, supplemented or repealed by Law no. 2222-IV.
>
> In item 3 of the operative part of that judgment, the Constitutional Court of Ukraine obliged the bodies of State power to immediately execute the judgment with respect to

[1] The simplified procedure is regulated by Articles 49 and 50 of the Rules of Procedure of the Ukrainian Parliament. In so far as the ordinary procedure foresees the prior discussion of drafts and decisions in parliamentary committees and their inclusion in the agenda of the parliamentary session before the session starts, exceptionally those two stages can be omitted and the question can be added and to the agenda of the ongoing session of Parliament and examined with a shortened discussion.

bringing normative legal acts into line with the Constitution of Ukraine of 28 June 1996 as worded prior to the amendments by Law no. 2222-IV.

This conclusion of the Constitutional Court of Ukraine, as appears in Resolution No 775-VII, contradicts the procedure established by law for introducing amendments to the Constitution of Ukraine, according to which the provisions of law on amendments to the Constitution after they come into force become an integral part of the Basic Law – its individual provisions, and the law itself loses its function.

The Constitution of Ukraine does not empower the Constitutional Court of Ukraine to recognise the invalidity (*визнавати нечинність*) of a constitutional norm, regardless of the legal form of its fixation.

Under Article 85 § 1 (1) of the Constitution of Ukraine, the power of amending the Constitution of Ukraine is vested exactly in the [*Verkhovna Rada*] of Ukraine within the limits and in the manner prescribed by Chapter XII of the Constitution.

The Constitutional Court, by its judgment [of 30 September 2010], in the adoption of which V.A. Ovcharenko participated, did not ensure the supremacy of the Constitution of Ukraine, actually amended it, breached the fundamental constitutional principle of democracy (*народовладдя*), changed the constitutional order of Ukraine, breached the constitutional principle of separation of powers and legitimacy of the acting institutions of State power, which resulted in their activities being based on the norms modified by the Constitutional Court of Ukraine and not by the [*Verkhovna Rada*] of Ukraine as the appropriate authority.

The obvious non-compliance of the actions of V.A. Ovcharenko in the adoption of the judgment [of 30 September 2010] with the oath that he had taken, and the consequences of his actions, gave the [*Verkhovna Rada*] of Ukraine grounds to consider the actions of V.A. Ovcharenko as a breach of oath of a judge of the Constitutional Court and dismiss him from his position."

27. As regards the Constitutional Court's judgments of 25 January 2012 and 29 May 2013, which were also examined in the impugned parliamentary resolution, the Supreme Court found that those two judgments had been made by the Constitutional Court within the scope of its discretion and that the first applicant's participation in their adoption did not constitute a "breach of oath"[2].

28. With respect to the procedure adopted for the first applicant's dismissal, the Supreme Court found that the HAC's reference to the Rules of the Constitutional Court had been unfounded since they had been an internal document of the Constitutional Court, and the latter had not been empowered by the Constitution or the Constitutional Court Act to regulate the procedure for dismissing its own members. By contrast, the first applicant had been dismissed in the course of a procedure which had been compatible with the Constitution and the Rules of Parliament.

[2] Among five judges concerned by the resolution of 24 February 2014, only one, Mr P., was reinstated in his position by the domestic courts on the basis that he had been appointed in 2011, that is after adoption of the judgment of 30 September 2010, and his participation in adoption of the two other judgments did not constitute a "breach of oath".

IV. PROCEEDINGS INSTITUTED BY THE SECOND APPLICANT

29. On 5 March 2014 the second applicant, relying on the Code of Administrative Justice, lodged a claim with the HAC challenging his dismissal.

30. On 26 January 2015 the HAC dismissed the claim, referring to the Supreme Court's legal position as laid down in its decision of 2 December 2014 in the first applicant's case.

31. The second applicant lodged an application with the Supreme Court for a review of the case, arguing, among other things that his participation in the judgment of 30 September 2010 adopted by the Constitutional Court could not constitute grounds for his dismissal, that Parliament had not ensured a fair and independent examination of the case, that the procedure under the Rules of the Constitutional Court had not been followed, and that he could not be held liable for a judgment for which he had voted as a member of the Constitutional Court.

32. On 28 April 2015 the Supreme Court upheld the decision of 26 January 2015, repeating the reasoning given in the first applicant's case.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW

A. Constitution of 28 June 1996

33. The relevant provisions of the Constitution, as worded at the material time (prior to 2 June 2016), read as follows:

Article 3

"The human being, his or her life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value.

Human rights and freedoms and their guarantees determine the essence and orientation of the activity of the State. The State is answerable to the individual for its activity. To affirm and ensure human rights and freedoms is the main duty of the State."

Article 19

"The legal order in Ukraine is based on the principles according to which no one shall be forced to do what is not stipulated by law.

Bodies exercising State power and local self-government bodies and their officials are obliged to act only on the grounds, within the limits of authority, and in the manner stipulated by the Constitution and the laws of Ukraine."

Article 126

"The independence and immunity of judges are guaranteed by the Constitution and the laws of Ukraine.

Influencing judges in any manner is prohibited.

A judge shall not be detained or arrested without the consent of the *Verkhovna Rada* of Ukraine, until convicted by a court.

Judges hold office indefinitely, except judges of the Constitutional Court of Ukraine and judges appointed as a judge for the first time.

A judge is dismissed from office by the body that elected or appointed him or her in the event of:

(1) expiry of the term for which he or she was elected or appointed;

(2) the judge's attainment of the age of sixty-five;

(3) inability to continue his or her duties for health reasons;

(4) a violation by the judge of requirements concerning incompatibility;

(5) a breach of oath by the judge;

(6) entry into legal force of a verdict of guilty against him or her;

(7) termination of his or her citizenship;

(8) a declaration that he or she is missing, or the pronouncement that he or she is dead;

(9) submission by the judge of a statement of resignation or of voluntary dismissal from office.

The authority of the judge terminates in the event of his or her death.

The State ensures the personal security of judges and their families."

Article 147

"The Constitutional Court of Ukraine is the sole body of constitutional jurisdiction in Ukraine.

The Constitutional Court of Ukraine decides on the conformity of laws and other legal acts with the Constitution of Ukraine and provides an official interpretation of the Constitution of Ukraine and the laws of Ukraine."

Article 148

"The Constitutional Court of Ukraine is composed of eighteen judges of the Constitutional Court of Ukraine.

The President of Ukraine, the *Verkhovna Rada* of Ukraine and the Congress of Judges of Ukraine each appoint six judges to the Constitutional Court of Ukraine.

A citizen of Ukraine who has reached the age of forty on the day of appointment, has a higher legal education and at least ten years' professional experience, has resided in Ukraine for the last twenty years, and has command of the State language, may be a judge of the Constitutional Court of Ukraine.

A judge of the Constitutional Court of Ukraine is appointed for nine years without the right to be reappointed for a further term.

The Chairman of the Constitutional Court of Ukraine is elected for one three-year term by secret ballot at a special plenary meeting of the Constitutional Court of Ukraine from among the judges of the Constitutional Court of Ukraine."

Article 149

"Judges of the Constitutional Court of Ukraine are subject to the guarantees of independence and immunity, the grounds for dismissal from office provided for by Article 126 of this Constitution, and the requirements concerning incompatibility as determined in paragraph two of Article 127 of this Constitution."

Article 150

"The Constitutional Court of Ukraine has authority to:

1) decide on the conformity with the Constitution of Ukraine (constitutionality) of:

laws and other legal acts of the *Verkhovna Rada* of Ukraine;

acts of the President of Ukraine;

acts of the Cabinet of Ministers of Ukraine;

legal acts of the *Verkhovna Rada* of the Autonomous Republic of Crimea.

Such issues are considered upon application by: the President of Ukraine; no less than forty-five People's Deputies of Ukraine [members of parliament]; the Supreme Court of Ukraine; the Authorised Human Rights Representative of the *Verkhovna Rada* of Ukraine; the *Verkhovna Rada* of the Autonomous Republic of Crimea;

2) the official interpretation of the Constitution of Ukraine and the laws of Ukraine;

On issues stipulated by this Article, the Constitutional Court of Ukraine adopts decisions mandatory for execution throughout the territory of Ukraine, and such decisions are final and shall not be appealed."

Article 151

"The Constitutional Court of Ukraine, upon application by the President of Ukraine or the Cabinet of Ministers of Ukraine, provides opinions on the conformity with the Constitution of Ukraine of international treaties of Ukraine in force, or of international treaties submitted to the *Verkhovna Rada* of Ukraine for approval of their binding nature.

Upon application by the *Verkhovna Rada* of Ukraine, the Constitutional Court of Ukraine provides an opinion on the observance of the constitutional procedure of investigation and consideration of the case of removing the President of Ukraine from office by the impeachment procedure."

Article 152

"Laws and other legal acts, by decision of the Constitutional Court of Ukraine, are deemed to be unconstitutional, whether in whole or in part, should such laws not conform to the Constitution of Ukraine, or in the event of a violation of the procedure established by the Constitution of Ukraine for their review, adoption or entry into force.

Laws and other legal acts or their separate provisions that are deemed to be unconstitutional lose legal force from the day the Constitutional Court of Ukraine adopts the decision on their unconstitutionality.

Material or moral damages inflicted on natural and legal persons by acts or actions deemed to be unconstitutional are compensated by the State under the procedure established by law."

Article 153

"The procedure for the organisation and operation of the Constitutional Court of Ukraine, and the procedure for its review of cases, are determined by law."

Chapter XIII

Introducing Amendments to the Constitution of Ukraine

Article 154

"A draft law on introducing amendments to the Constitution of Ukraine may be submitted to the Verkhovna Rada of Ukraine by the President of Ukraine, or by no fewer National Deputies of Ukraine than one-third of the constitutional composition of the Verkhovna Rada of Ukraine."

Article 155

"A draft law on introducing amendments to the Constitution of Ukraine, with the exception of Chapter I — "General Principles," Chapter III — "Elections. Referendum," and Chapter XIII — "Introducing Amendments to the Constitution of Ukraine," previously adopted by the majority of the constitutional composition of the Verkhovna Rada of Ukraine, is deemed to be adopted, if at the next regular session of the Verkhovna Rada of Ukraine, no less than two-thirds of the constitutional composition of the Verkhovna Rada of Ukraine have voted in favour thereof."

Article 156

"A draft law on introducing amendments to Chapter I — "General Principles," Chapter III — "Elections. Referendum," and Chapter XIII — "Introducing Amendments to the Constitution of Ukraine," is submitted to the Verkhovna Rada of Ukraine by the President of Ukraine, or by no less than two-thirds of the constitutional composition of the Verkhovna Rada of Ukraine, and on the condition that it is adopted by no less than two-thirds of the constitutional composition of the Verkhovna Rada of Ukraine, and is approved by an All-Ukrainian referendum designated by the President of Ukraine.

The repeat submission of a draft law on introducing amendments to Chapters I, III and XIII of this Constitution on one and the same issue is possible only to the Verkhovna Rada of Ukraine of the next convocation."

Article 157

"The Constitution of Ukraine shall not be amended, if the amendments foresee the abolition or restriction of human and citizens' rights and freedoms, or if they are oriented toward the liquidation of the independence or violation of the territorial indivisibility of Ukraine.

The Constitution of Ukraine shall not be amended in conditions of martial law or a state of emergency."

Article 158

"The draft law on introducing amendments to the Constitution of Ukraine, considered by the Verkhovna Rada of Ukraine and not adopted, may be submitted to the Verkhovna Rada of Ukraine no sooner than one year from the day of the adoption of the decision on this draft law.

Within the term of its authority, the Verkhovna Rada of Ukraine shall not amend twice the same provisions of the Constitution."

Article 159

"A draft law on introducing amendments to the Constitution of Ukraine is considered by the Verkhovna Rada of Ukraine upon the availability of an opinion of the Constitutional Court of Ukraine on the conformity of the draft law with the requirements of Articles 157 and 158 of this Constitution."

34. On 2 June 2016 Parliament amended, among other things, Article 149 of the Constitution to provide, in particular, that a Constitutional Court judge could not have a measure of legal liability imposed on him or her for voting for judgments or opinions adopted by that court, except in cases where the judge had committed a criminal or disciplinary offence.

B. Code of Administrative Justice of 6 July 2005 (as worded at the material time)

35. Pursuant to Article 161 of the Code, when an administrative court decided a case, it had to determine, among other things: (i) whether there were circumstances substantiating the claim and objections and what evidence they were supported by; (ii) whether there was any other factual information relevant to the case and evidence to support that information; and (iii) which legal provision was to be applied to the legal relations in dispute.

36. Article 162 of the Code provided that, if it found a claim substantiated, an administrative court could, among other things, declare the impugned decision, action or omission unlawful, overturn or annul the decision in question, oblige the defendant to undertake or abstain from taking certain actions, or order the defendant to make payments. An administrative court could also take other decisions to ensure the protection of human and citizens' rights, as well as the rights and interests of other subjects of public-law relationships.

37. Article 171-1 of the Code provided, among other things, that acts, actions or omissions of Parliament could be challenged before the HAC. After considering the case, the HAC could: (i) declare the Act of Parliament unlawful in full or in part; or (ii) declare the actions or omission of Parliament unlawful and oblige it to take certain actions. On 8 April 2014 Article 171-1 was amended to provide that, in this type of case, the HAC could also take further measures as set out in Article 162 of the Code.

38. On 14 March 2014 Article 171-1 was further amended to provide that, in such cases, the HAC's judgment only entered into force after being reviewed by the Supreme Court or after the expiry of the time-limit for applying for such a review.

C. Criminal Code of 5 April 2001

39. Article 375 of the Code (as worded at the relevant time) provided:

"1. The adoption by a judge (or judges) of a knowingly wrongful conviction, judgment, decision or resolution shall be punishable by restriction of liberty of up to five years or imprisonment of two to five years.

2. The same acts, if they led to serious consequences or were committed for financial gain or other personal benefit, shall be punishable by imprisonment of five to eight years."

D. Constitutional Court of Ukraine Act of 16 October 1996 (in force at the relevant time)

40. Section 3 of the Act provided:

"1. The organisation, competence and procedure for the functioning of the Constitutional Court of Ukraine shall be determined by the Constitution and this Act.

2. The Constitutional Court of Ukraine shall adopt acts [decisions] which regulate the organisation of its internal operations in accordance with this Act."

41. Section 28 of the Act provided:

"... Judges of the Constitutional Court of Ukraine shall not be held legally liable for the results of votes conducted or statements expressed in the Constitutional Court of Ukraine and its chambers, except in cases of liability for insult or defamation expressed in the course of the examination of cases, the adoption of judgments and the pronouncement of opinions by the Constitutional Court of Ukraine."

42. The new Constitutional Court Act was adopted on 13 July 2017. Section 24(3) reflects the new wording of Article 149 of the Constitution (see paragraph 34 above) and states that a Constitutional Court judge cannot have a measure of legal liability imposed on him or her for voting for judgments or opinions adopted by the Constitutional Court, except in cases where the judge has committed a criminal or disciplinary offence.

E. The High Council of Justice Act of 15 January 1998 ("the HCJ Act 1998"), as worded at the relevant time

43. Section 32(2) of the Act defined a breach of oath by judges as follows:

"Breach of oath by a judge is:

(i) the commission of actions which dishonour the judicial office and may call into question his or her objectivity, impartiality and independence, as well as the fairness and incorruptibility of the judiciary;

(ii) unlawful acquisition of wealth or expenditure by a judge which exceeds his or her income and that of his or her family;

(iii) deliberate delay in considering a case within the time-limits fixed; [or]

(iv) violation of the moral and ethical principles of the judicial code of conduct."

44. The above-cited provision was examined by the Constitutional Court in 2011 and found to be constitutional (see paragraph 47 below).

F. Judiciary and Status of Judges Act 2010 ("the 2010 Judiciary Act")

45. Section 105 of the Act provides for the procedure for dismissal of a judge from office in case of breach of oath:

> "1. In accordance with paragraph 5 of [Article 126 § 5] of the Constitution of Ukraine, a judge shall be dismissed in the event of a breach of judicial oath.
>
> 2. Facts indicating a breach of oath by the judge shall be established by the High Qualifications Commission of Judges of Ukraine or the High Council of Justice.
>
> 3. Dismissal of a judge on the basis of a breach of judicial oath shall be performed upon a motion of the High Council of Justice after consideration of this issue at its meeting in accordance with [the HCJ Act].
>
> 4. On the basis of a motion of the High Council of Justice, the President of Ukraine shall issue a decree on the dismissal of a judge.
>
> 5. On the basis of a motion of the High Council of Justice, the [*Verkhovna Rada*] of Ukraine shall adopt a resolution on dismissal of a judge."

G. Rules of the Constitutional Court of Ukraine of 5 March 1997, with further amendments (as in force at the relevant time)

46. In accordance with paragraph 63 of the Rules, if a body that had appointed a Constitutional Court judge raised the question of "breach of oath" by that judge, the Constitutional Court had to carry out an investigation and, following a conclusion of its Standing Committee on Rules and Ethics, had to take a decision as to the existence of grounds for dismissal of the Constitutional Court judge. It had to inform the relevant body of that decision within three days.

H. Judgment of the Constitutional Court of Ukraine of 11 March 2011 on the constitutionality of certain provisions of the High Council of Justice Act

47. Following an application by fifty-three members of parliament, the Constitutional Court of Ukraine examined several provisions of the HCJ Act, including section 32(2). The Constitutional Court of Ukraine noted with respect to that provision:

> "The procedure for appointment, election of a person to the position of a judge and the grounds for dismissal from that position are regulated by the Basic Law of Ukraine (Articles 126 [and] 128). Other issues of the legal status of judges are defined exclusively by the laws of Ukraine (paragraph 14 of [Article 92 § 1] of the Constitution of Ukraine).
>
> The legal status of a judge provides for both constitutionally defined guarantees of the independence and inviolability of judges in the administration of justice and legal liability for failure to perform their duties. Under the Basic Law of Ukraine, a judge is dismissed by the body that elected or appointed him, in the event, in particular, of a breach of oath by the judge; the submission of an application for the dismissal of judges

belongs to the powers of the High Council of Justice (paragraph 5 of [Article 126 § 4], paragraph 1 of [Article 131 § 1]). The procedure and grounds for filing an application to dismiss judges for breaching their oath are established by section 105 of the Judiciary Act and section 32 of [the HCJ Act].

...

Observance of the oath is the duty of a judge under paragraph 4 of [section 54(4)] of the Judiciary Act and corresponds to paragraph 5 of [Article 126 § 5] of the Constitution of Ukraine. This gives grounds to consider that a judge's observance of the oath is his constitutionally defined duty. Thus, the oath of a judge has the legal nature of a unilateral, individual, public law, constitutional obligation of a judge.

A judge's observance of his or her duties is a necessary condition for public trust in the judiciary and justice.

Breach of oath by a judge is one of the grounds for his dismissal in accordance with paragraph 5 of [Article 126 § 5] of the Basic Law of Ukraine.

The legal regulation of a judge's liability for failure to comply with the oath of a judge in the form of dismissal is in line with the 1998 European Charter on the statute for judges, which allows judges to be sanctioned for dereliction of one of the duties expressly defined by the statute (paragraph 5.1).

Thus, the [*Verkhovna Rada*] of Ukraine, having legally defined the criteria of liability for actions that constitute the breach of oath by a judge, acted within the powers and in the manner prescribed by the Constitution and the laws of Ukraine, and the provisions of section 32 of [the HCJ Act], which defines acts that are a breach of oath by a judge, do not contradict the Constitution of Ukraine."

48. On these grounds, the Constitutional Court found the provision in question to be constitutional.

II. INTERNATIONAL MATERIALS

A. Materials concerning the situation in Ukraine

49. In its Resolution 1466 (2005) of 5 October 2005 "Honouring of obligations and commitments by Ukraine", PACE stated as follows:

"14. The Assembly recalls its Resolutions 1346 (2003) and 1364 (2004), where it emphasised that all provisions of the constitution in force should be thoroughly respected ... . It deeply regrets that the constitutional amendments of 8 December 2004, adopted as part of a package deal to halt the political turmoil, contained provisions which the Venice Commission has repeatedly found incompatible with the principles of democracy and the rule of law, in particular with regard to the imperative mandate of people's deputies and the powers of the Prokuratura. The Assembly is also concerned that the new constitutional changes were adopted without prior consultation with the Constitutional Court, as envisaged by Article 159 of the Ukrainian Constitution and interpreted in the Constitutional Court of Ukraine's decision of 1998. Therefore, the Assembly urges the Ukrainian authorities to address these issues as soon as possible in order to secure the legitimacy of the constitutional amendments and their compliance with European standards."

50. The relevant extract from Opinion no. 599/2010 of 20 December 2010 "On the constitutional situation in Ukraine", adopted by the Venice Commission at its 85th Plenary Session (CDL-AD(2010)044), reads as follows:

> "69. The recent constitutional history of Ukraine has involved constant challenges and attempts to find the right balance of powers between the President, the Cabinet and Parliament. It soon became apparent that the text of the 1996 Constitution did not, taking into account realities in Ukraine, provide for sufficient checks and balances and that there was a risk of authoritarian presidential system. The Venice Commission therefore supported, already in 2003, the efforts for constitutional reform. These efforts led to the adoption of the 2004 constitutional amendments. The change brought about by these amendments was welcome, in principle, but neither coherent nor well thought through. The amendments therefore led to increased tension, especially between the President and the Cabinet of Ministers.
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> 70. The reinstatement of the 1996 version of the Constitution by a judgment of the Constitutional Court of Ukraine raises questions of the legitimacy of past actions, as the institutions of Ukraine worked for several years on the basis of constitutional rules later declared unconstitutional. It also raises questions of legitimacy with respect to the present state institutions, since the President and the Parliament were elected under constitutional rules that are no longer recognised as valid. The President of Ukraine, as from this judgment, enjoys far more powers than could be foreseen by the voters when he was elected. The working of the main state organs is now based on rules changed by a court and not on rules changed by the *Verkhovna Rada*, as a democratically legitimate body."

B. Materials concerning the independence of judges and their irremovability from office

1. The United Nations

51. The Basic Principles on the Independence of the Judiciary were adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which took place in Milan in 1985. They were endorsed by UN General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. The relevant parts read as follows:

> "8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.
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> ...
>
> 12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.
>
> ...
>
> 18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings."

52. The Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), prepared subsequently by the UN Special Rapporteur Mr. Singhvi, expands on the basic principles as follows:

"Discipline and Removal

26. (a) A complaint against a judge shall be processed expeditiously and fairly under an appropriate practice and the judge shall have the opportunity to comment on the complaint at the initial stage. The examination of the complaint at its initial stage shall be kept confidential, unless otherwise requested by the judge.

(b) The proceedings for judicial removal or discipline when such are initiated shall be held before a Court or a Board predominantly composed of members of the judiciary. The power of removal may, however, be vested in the Legislature by impeachment or joint address, preferably upon a recommendation of such a Court or Board.

27. All disciplinary action shall be based upon established standards of judicial conduct.

28. The proceedings for discipline of judges shall ensure fairness to the judge and the opportunity of a full hearing.

29. Judgments in disciplinary proceedings instituted against judges, whether held in camera or in public, shall be published.

30. A judge shall not be subject to removal except on proved grounds of incapacity or misbehaviour rendering him unfit to continue in office."

In its Resolution 1989/32, the Commission on Human Rights invited governments to take into account the principles set forth in the declaration in implementing the United Nations' Basic Principles on the Independence of the Judiciary.

53. In its General Comment no. 32 on Article 14 of the International Covenant on Civil and Political Rights (Right to equality before courts and tribunals and to a fair trial) published on 23 August 2007, the UN Human Rights Committee stated as follows (footnotes omitted):

"19. The requirement of competence, independence and impartiality of a tribunal in the sense of Article 14, paragraph 1, is an absolute right that is not subject to any exception. The requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature. States should take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions

taken against them. A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal. It is necessary to protect judges against conflicts of interest and intimidation. In order to safeguard their independence, the status of judges, including their term of office, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

20. Judges may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the constitution or the law. The dismissal of judges by the executive, e.g. before the expiry of the term for which they have been appointed, without any specific reasons given to them and without effective judicial protection being available to contest the dismissal is incompatible with the independence of the judiciary. The same is true, for instance, for the dismissal by the executive of judges alleged to be corrupt, without following any of the procedures provided for by the law."

54. In 2006 the United Nations Economic and Social Council (ECOSOC) adopted Resolution 2006/23 "Strengthening Basic Principles of Judicial Conduct", by which it endorsed the Bangalore Principles, which were drafted by a group of chief justices and superior court judges from around the world (the Judicial Integrity Group) and were intended to establish standards of ethical conduct for judges. The "Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct (the Implementation Measures)", adopted by the Judicial Integrity Group in 2010, contain the following sections on the discipline and removal of judges:

"Discipline of Judges

15.1 Disciplinary proceedings against a judge may be commenced only for serious misconduct. The law applicable to judges may define, as far as possible in specific terms, conduct that may give rise to disciplinary sanctions as well as the procedures to be followed.

...

15.5 All disciplinary proceedings should be determined by reference to established standards of judicial conduct, and in accordance with a procedure guaranteeing full rights of defence.

Removal of Judges from Office

16.1 A judge may be removed from office only for proved incapacity, conviction of a serious crime, gross incompetence, or conduct that is manifestly contrary to the independence, impartiality and integrity of the judiciary.

16.2 Where the legislature is vested with the power of removal of a judge, such power should be exercised only after a recommendation to that effect of the independent authority vested with power to discipline judges."

55. In 2013 the Human Rights Council in its Resolution 35/12 "Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers" reiterated its earlier view and stressed that:

"3. ... the term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and age of retirement should be

adequately secured by law, that the security of tenure of judges is an essential guarantee of the independence of the judiciary and that grounds for their removal must be explicit, with well-defined circumstances provided by law, involving reasons of incapacity or behaviour that renders them unfit to discharge their functions, and that procedures upon which the discipline, suspension or removal of a judge are based should comply with due process;"

56. In the decision of the UN Human Rights Committee (CCPR) in *Pastukhov v. Belarus*, Communication No. 814/1998, UN Doc. CCPR/C/78/D/814/1998 (2003), the Committee stated as follows:

"7.3 The Committee takes note of the author's claim that he could not be removed from the bench since he had, in accordance with the law in force at the time, been elected a judge on 28 April 1994 for a term of office of 11 years. The Committee also notes that presidential decree of 24 January 1997 No. 106 was not based on the replacement of the Constitutional Court with a new court but that the decree referred to the author in person and the sole reason given in the presidential decree for the dismissal of the author was stated as the expiry of his term as Constitutional Court judge, which was manifestly not the case. Furthermore, no effective judicial protections were available to the author to contest his dismissal by the executive. In these circumstances, the Committee considers that the author's dismissal from his position as a judge of the Constitutional Court, several years before the expiry of the term for which he had been appointed, constituted an attack on the independence of the judiciary and failed to respect the author's right of access, on general terms of equality, to public service in his country. Consequently, there has been a violation of Article 25 (c) of the Covenant, read in conjunction with Article 14, paragraph 1, on the independence of the judiciary and the provisions of Article 2."

2. The Council of Europe

57. The relevant extracts from the European Charter on the Statute for Judges of 8 to 10 July 1998[3] read as follows:

"1.3. In respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary.

...

5.1. The dereliction by a judge of one of the duties expressly defined by the statute, may only give rise to a sanction upon the decision, following the proposal, the recommendation, or with the agreement of a tribunal or authority composed at least as to one half of elected judges, within the framework of proceedings of a character involving the full hearing of the parties, in which the judge proceeded against must be entitled to representation. The scale of sanctions which may be imposed is set out in the

[3] Adopted by participants from European countries and two international associations for judges at a meeting held in Strasbourg on 8 to 10 July 1998 (organised under the auspices of the Council of Europe). The Charter was endorsed by the meeting of the Presidents of the Supreme Courts of Central and Eastern European countries in Kyiv on 12 to 14 October 1998, and again by judges and representatives from ministries of justice of twenty-five European countries at a meeting held in Lisbon on 8 to 10 April 1999.

statute, and their imposition is subject to the principle of proportionality. The decision of an executive authority, of a tribunal, or of an authority pronouncing a sanction, as envisaged herein, is open to an appeal to a higher judicial authority.

...

7.1. A judge permanently ceases to exercise office through resignation, medical certification of physical unfitness, reaching the age limit, the expiry of a fixed legal term, or dismissal pronounced within the framework of a procedure such as envisaged at paragraph 5.1 hereof.

7.2. The occurrence of one of the causes envisaged at paragraph 7.1 hereof, other than reaching the age limit or the expiry of a fixed term of office, must be verified by the authority referred to at paragraph 1.3 hereof."

58. The relevant extracts from the appendix to Recommendation CM/Rec (2010)12 of the Committee of Ministers of the Council of Europe to member States entitled "Judges: independence, efficiency and responsibilities", adopted on 17 November 2010, provide as follows:

"Tenure and irremovability

49. Security of tenure and irremovability are key elements of the independence of judges. Accordingly, judges should have guaranteed tenure until a mandatory retirement age, where such exists.

50. The terms of office of judges should be established by law. A permanent appointment should only be terminated in cases of serious breaches of disciplinary or criminal provisions established by law, or where the judge can no longer perform judicial functions. Early retirement should be possible only at the request of the judge concerned or on medical grounds.

...

52. A judge should not receive a new appointment or be moved to another judicial office without consenting to it, except in cases of disciplinary sanctions or reform of the organisation of the judicial system.

...

Liability and disciplinary proceedings

66. The interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to civil or disciplinary liability, except in cases of malice and gross negligence.

...

68. The interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to criminal liability, except in cases of malice.

69. Disciplinary proceedings may follow where judges fail to carry out their duties in an efficient and proper manner. Such proceedings should be conducted by an independent authority or a court with all the guarantees of a fair trial and provide the judge with the right to challenge the decision and sanction. Disciplinary sanctions should be proportionate."

59. The relevant passages of Opinion no. 1 (2001) of the Consultative Council of European Judges (CCJE) on standards concerning the independence of the judiciary and the irremovability of judges, adopted on 23 November 2001, read as follows:

"*Tenure – irremovability and discipline*

57. It is a fundamental tenet of judicial independence that tenure is guaranteed until a mandatory retirement age or the expiry of a fixed term of office: see the UN basic principles [on the Independence of the Judiciary], paragraph 12; Recommendation No. R (94) 12 [of the Committee of Ministers on the independence, efficiency and role of judges] Principle I(2)(a)(ii) and (3) and Principle VI (1) and (2). The European Charter [on the Statute for Judges] affirms that this principle extends to appointment or assignment to a different office or location without consent (other than in case of court re-organisation or temporarily), but both it and Recommendation No. R (94) 12 contemplate that transfer to other duties may be ordered by way of disciplinary sanction.

...

59. The existence of exceptions to irremovability, particularly those deriving from disciplinary sanctions, leads immediately to consideration of the body and method by which, and basis upon which, judges may be disciplined. Recommendation No. R (94) 12, Principle VI(2) and (3), insists on the need for precise definition of offences for which a judge may be removed from office and for disciplinary procedures complying with the due process requirements of the Convention on Human Rights. Beyond that it says only that 'States should consider setting up, by law, a special competent body which has as its task to apply any disciplinary sanctions and measures, where they are not dealt with by a court, and whose decisions shall be controlled by a superior judicial organ, or which is a superior judicial organ itself'. The European Charter assigns this role to the independent authority which it suggests should 'intervene' in all aspects of the selection and career of every judge.

60. The CCJE considered

(a) that the irremovability of judges should be an express element of the independence enshrined at the highest internal level (...);

(b) that the intervention of an independent authority, with procedures guaranteeing full rights of defence, is of particular importance in matters of discipline; and

(c) that it would be useful to prepare standards defining not just the conduct which may lead to removal from office, but also all conduct which may lead to any disciplinary steps or change of status, including for example a move to a different court or area. ..."

60. The Magna Carta of Judges (Fundamental Principles) was adopted by the CCJE in November 2010. The relevant sections read as follows:

"**Rule of law and justice**

1. The judiciary is one of the three powers of any democratic state. Its mission is to guarantee the very existence of the Rule of Law and, thus, to ensure the proper application of the law in an impartial, just, fair and efficient manner.

Judicial Independence

2. Judicial independence and impartiality are essential prerequisites for the operation of justice.

3. Judicial independence shall be statutory, functional and financial. It shall be guaranteed with regard to the other powers of the State, to those seeking justice, other judges and society in general, by means of national rules at the highest level. The State and each judge are responsible for promoting and protecting judicial independence.

4. Judicial independence shall be guaranteed in respect of judicial activities and in particular in respect of recruitment, nomination until the age of retirement, promotions, irremovability, training, judicial immunity, discipline, remuneration and financing of the judiciary.

Guarantees of independence

...

6. Disciplinary proceedings shall take place before an independent body with the possibility of recourse before a court.

...

9. The judiciary shall be involved in all decisions which affect the practice of judicial functions (organisation of courts, procedures, other legislation)."

61. The relevant part of the Joint opinion by the Venice Commission and the Directorate of Co-operation within the Directorate General of Human Rights and Legal Affairs of the Council of Europe on the law amending certain legislative acts of Ukraine in relation to the prevention of abuse of the right to appeal, adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010, CDL-AD(2010)029), reads as follows:

"45. ... Precision and forseeability [*sic*] of the grounds for disciplinary liability is desirable for legal certainty and particularly to safeguard the independence of the judges; therefore an effort should be made to avoid vague grounds or broad definitions. However, the new definition includes very general concepts, such as 'the [commission] of actions that dishonour a judicial office or may cause doubts [as to] his/her impartiality, objectivity and independence, [or the] integrity, incorruptibility of the judiciary' and 'violation of moral and ethical principles of human conduct' among others. This seems particularly dangerous because of the vague terms used and the possibility of using it as a political weapon against judges. ... Thus, the grounds for disciplinary liability are still too broadly conceived and a more precise regulation is required to guarantee judicial independence."

62. In the Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and the Rule of Law (DGI) of the Council of Europe, on the draft law on amendments to the Organic Law on General Courts of Georgia, adopted by the Venice Commission at its 100th Plenary Session (Rome, 10-11 October 2014, CDL-AD(2014)031), the issue of the termination of the mandates of court presidents was examined as follows (footnotes omitted):

"**3. Termination of certain mandates with the enactment of the Draft amendment law (Art. 2 of the Draft amendment law)**

95. According to Article 2 (3) of the Draft amendment law, upon enactment of this draft law, the mandate of chairpersons of district courts and courts of appeal and deputy chairpersons of courts of appeal shall be terminated. Article 2(4) terminates in the same

manner the mandate of chairpersons of court chambers/court panels/investigation panels and Article 2(5) provides for the reappointment of court managers.

96. The amendments provide no justification for such a wide ranging termination of judicial mandates.

97. The Venice Commission and the Directorate consider that the interest of maintaining the independence of the judiciary and the good administration of justice requires that the judiciary be protected against arbitrary dismissal and interference in the exercise of the functions. Also, although currently the term of office of court presidents is limited to five years from the date of their appointment, it might still be argued that the court presidents had legitimate expectations that their past appointments will not be terminated before the term of five years as set out in the Organic Law. This radical change of court presidents could give the impression that the only reason of the transitional rules is to create the opportunity of such a change, which could undermine public trust in the judiciary.

98. For these reasons, such dismissal of court presidents with the enactment of the amendment law can be justified only if compelling reasons are given. However, it does not appear from the explanatory note provided by the authorities, the meetings held in Tbilisi, and from the draft amendment law itself that the need of the removal of the sitting presidents of these courts from their office is so urgent as to justify such a wide ranging termination of judicial mandates.

99. For these reasons, it is recommended that the Article 2 of the Draft amendment law be removed and the sitting court presidents stay in office until the end of their term."

63. In Opinion no. 967 / 2019 9 December 2019 "Amicus Curiae brief on the criminal liability of Constitutional Court judges", adopted at its 121st Plenary Session (CDL-AD(2019)028), the Venice Commission provided as follows:

"54. ... [F]or Constitutional Court judges who, unlike ordinary judges, deal with fundamental constitutional questions and politically sensitive issues, failures performed intentionally by Constitutional Court judges in the exercise of their functions, with deliberate abuse may give rise to disciplinary actions and should only give rise to penalties, criminal responsibility or civil liability in exceptional cases of extreme deviation from principles and standards of the rule of law and constitutionality."

64. In Opinion no. 481 / 2008 of 24 October 2008 "On the draft laws amending and supplementing (1) the Law on constitutional proceedings and (2) the Law on the Constitutional Court of Kyrgyzstan" adopted at its 76th Plenary Session (CDL-AD(2008)029), the Venice Commission provided as follows:

"14. It seems that these amendments intend to assimilate judges of the Constitutional Court to those of ordinary courts. Such an assimilation does not take into account the special position of a Constitutional Court, which has a specific constitutional task, notably the annulment of laws and normative acts. By its very nature, this task may create conflicts between the Constitutional Court and political powers. While the basic requirements for judicial independence are the same for both ordinary and constitutional court judges, the latter must be protected from any attempt of political influence due to their position, which is particularly exposed to criticism and pressure from other state powers. **Therefore, constitutional court judges are in need of special guarantees for their independence... .**"

3. The Inter-American Court of Human Rights

65. The Inter-American Court of Human Rights, in its case-law concerning the removal of judges, has referred to the UN Basic Principles on the Independence of the Judiciary and to General Comment No. 32 of the UN Human Rights Committee. The case of *Supreme Court of Justice (Quintana Coello et al.) v. Ecuador* (preliminary objection, merits, reparations and costs), judgment of 23 August 2013, Series C No. 266, concerned the removal of twenty-seven judges of the Supreme Court of Justice of Ecuador through a parliamentary resolution. The Inter-American Court found that the State had violated Article 8 § 1 (right to a fair trial), in conjunction with Article 1 § 1 (obligation to respect rights) of the American Convention on Human Rights, to the detriment of the victims, because they had been dismissed from office by a body without jurisdiction, which, moreover, had not granted them an opportunity to be heard. Furthermore, the Court found a violation of Article 8 § 1 in conjunction with Article 23 § 1 (c) (right to have access, under general conditions of equality, to the public service of his country) and Article 1 § 1 of the American Convention, given the arbitrary effects on the tenure in office of the judiciary and the consequent effects on judicial independence, to the detriment of the twenty-seven victims. It noted as follows as regards the general standards on judicial independence (footnotes omitted):

> "1(1). General standards on judicial independence
>
> 144. In its case law, the Court has indicated that the scope of judicial guarantees and effective judicial protection for judges must be examined in relation to the standards on judicial independence. In the case of *Reverón Trujillo v. Venezuela*, the Court emphasized that judges, unlike other public officials, enjoy specific guarantees due to the independence required of the judiciary, which the Court has understood as 'essential for the exercise of the judiciary.' The Court has reiterated that one of the main objectives of the separation of public powers is to guarantee the independence of judges. The purpose of protection is to ensure that the judicial system in general, and its members in particular, are not subject to possible undue restrictions in the exercise their duties by bodies outside the Judiciary, or even by judges who exercise functions of review or appeal. In line with the case law of this Court and of the European Court of Human Rights, and in accordance with the United Nations Basic Principles on the Independence of the Judiciary (hereinafter 'Basic Principles'), the following guarantees are derived from judicial independence: an appropriate process of appointment, guaranteed tenure and guarantees against external pressures.
>
> 145. Regarding the scope of security of tenure relevant to this case, the Basic Principles establish that '[t]he term of office of judges ... shall be adequately secured by law' and that '[j]udges, whether appointed or elected, shall have guaranteed tenure until the mandatory retirement age or the expiry of the term of office, where such exists.' Moreover, the Human Rights Committee has stated that judges may be dismissed only on grounds of serious misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the Constitution or the law. This Court has accepted these principles and has stated that the authority responsible for the process of removing a judge must act independently and impartially in the procedure established for that purpose and must allow for the exercise of the right

to defense. This is so because the free removal of judges raises the objective doubt of the observer regarding the judges' real possibilities of ruling on specific disputes without fear of reprisals.

...

147. Nevertheless, judges do not have absolute guarantees of tenure in their positions. International human rights law accepts that judges may be dismissed for conduct that is clearly unacceptable. In General Comment No. 32, the Human Rights Committee has established that judges may be dismissed only for reasons of serious misconduct or incompetence. ...

148. In addition, other standards draw a distinction between the sanctions applicable, emphasizing that the guarantee of immovability implies that dismissal is the result of serious misconduct, while other sanctions may be considered in the event of negligence or incompetence. ...

150. Furthermore, regarding the protection afforded by Article 23(1) (c) of the American Convention in the cases of *Apitz Barbera et al.*, and *Reverón Trujillo*, this Court specified that Article 23(1) (c) does not establish the right to participate in government, but to do so 'under general conditions of equality.' This means that respect for and guarantee of this right are fulfilled when there are 'clear procedures and objective criteria for appointment, promotion, suspension and dismissal' and that 'persons are not subject to discrimination' in the exercise of this right. In this respect, the Court has pointed out that equality of opportunities in access to and tenure in office guarantee freedom from all interference or political pressure.

151. Likewise, the Court has stated that a judge's guarantee of tenure is related to the right to remain in public office, under general conditions of equality. Indeed, in the case of *Reverón Trujillo* it established that 'access in equal conditions would constitute an insufficient guarantee if it were not accompanied by the effective protection of the continuance in what is accessed.'

152. For its part, in cases of arbitrary dismissal of Judges the Human Rights Committee has considered that failure to observe the basic requirements of due process violates the right to due process enshrined in Article 14 of the International Covenant on Civil and Political Rights (the counterpart of Article 8 of the American Convention), in conjunction with the right to have access under general conditions of equality to public office in the country, as provided for under Article 25(c) International Covenant on Civil and Political Rights (the counterpart of Article 23(1)(c) of the American Convention).

153. The foregoing serves to clarify some aspects of the Court's jurisprudence. Indeed, in the case of *Reverón Trujillo v. Venezuela*, the Court concluded that the right to be heard by an independent tribunal, enshrined in Article 8(1) of the Convention, only implied that a citizen has a right to be judged by an independent judge. However, it is important to point out that judicial independence should not only be analyzed in relation to justiciable matters, given that the judge must have a series of guarantees that allow for judicial independence. The Court considers it pertinent to specify that the violation of the guarantee of judicial independence, as it relates to a judge's tenure and stability in his position, must be examined in light of the conventional rights of a judge who is affected by a State decision that arbitrarily affects the term of his appointment. In that sense, the institutional guarantee of judicial independence is directly related to a judge's right to remain in his post, as a consequence of the guarantee of tenure in office.

154. Finally, the Court has emphasized that the State must guarantee the independent exercise of the judiciary, both in its institutional aspect, that is, in terms of the judicial

branch as a system, and in its individual aspect, that is, in relation to a particular individual judge. The Court deems it pertinent to point out that the objective dimension is related to essential aspects for the Rule of Law, such as the principle of separation of powers, and the important role played by the judiciary in a democracy. Consequently, this objective dimension transcends the figure of the judge and collectively affects society as a whole. Likewise, there is a direct connection between the objective dimension of judicial independence and the right of judges to have access to and remain in public service, under general conditions of equality, as an expression of their guaranteed tenure.

155. Bearing in mind the aforementioned standards, the Court considers that: i) respect for judicial guarantees implies respect for judicial independence; ii) the scope of judicial independence translates into a judge's subjective right to be dismissed from his position exclusively for the reasons permitted, either by means of a process that complies with judicial guarantees or because the term or period of his mandate has expired, and iii) when a judge's tenure is affected in an arbitrary manner, the right to judicial independence enshrined in Article 8(1) of the American Convention is violated, in conjunction with the right to access and remain in public office, on general terms of equality, established in Article 23(1)(c) of the American Convention."

66. The Inter-American Court reiterated the same principles and reached a similar conclusion in the cases of *Constitutional Tribunal (Camba Campos et al.) v. Ecuador* (preliminary objections, merits, reparations and costs), judgment of 28 August 2013, §§ 188-99, Series C No. 268, and *López Lone et al. v. Honduras* (preliminary objection, merits, reparations and costs), 5 October 2015, §§ 190-202 and 239-40, Series C No. 302.

4. Other international texts

67. The Universal Charter of the Judge was approved by the International Association of Judges on 17 November 1999. Article 8 reads as follows:

Security of office

"A judge cannot be transferred, suspended or removed from office unless it is provided for by law and then only by decision in the proper disciplinary procedure.

A judge must be appointed for life or for such other period and conditions, that the judicial independence is not endangered.

Any change to the judicial obligatory retirement age must not have retroactive effect."

III. RELEVANT COMPARATIVE-LAW MATERIAL

68. The Court has conducted a comparative survey with regard to member States' domestic law concerning the disciplinary liability of judges, including those in the Constitutional Courts, as regards the content of their decisions.

69. The survey shows that the disciplinary liability of judges can in principle be linked to the substance of a judicial decision in approximately one quarter of the countries studied. However, decisions must generally reveal a serious, flagrant, repeated or intentional breach of the law, arbitrariness, a distortion of the facts, a lack of legal basis or reasoning, or

other grave acts as stipulated by law. In addition, in two of these countries, however, the law or practice clearly excludes from liability judicial interpretation of the law and assessment of the facts. In some countries, although any breach of law could in principle lead to a disciplinary sanction, there are no examples where this has happened in practice in view of its implications for judicial independence.

70. In the majority of the States studied, disciplinary liability for the content of a judicial decision appears to be excluded in law and practice. However, in several countries, unlawful rulings may constitute a criminal offence under certain conditions.

71. A number of countries allow exceptions to the general principle of non-liability in practice, including through the interpretation and application of the provisions relating to the performance of duties and misconduct. In one country, the reputation and dignity of the judiciary were found to have been undermined by a judge's decision containing discriminatory and irrational statements running counter to the basic precepts of the Constitution and the relevant law. Furthermore, in some countries, a disciplinary charge can exceptionally be brought if a breach of law is manifest, serious and the result of a culpable disregard by a judge; judges can be made liable if they grossly and systematically exceed their powers; judges can be prosecuted for breaches of duty where they act deliberately to cause damage or in cases of manifest misapplication of the law; a failure of impartiality, propriety, competence and diligence can possibly constitute a "*departure from acknowledged standards of judicial conduct*"; a judge can be sanctioned for having discredited the name of the judge if his judicial actions show that he lacks proper qualification or diligence; "*proven misbehaviour*" may include use of inappropriate language in a judicial decision or persistent refusal to follow case-law; sanction for decisions taken without any statutory grounds.

72. As to the differences between judges of the Constitutional Court and other judges in relation to the grounds for their disciplinary liability, the survey shows that many countries do not provide for a disciplinary procedure in respect of judges of the Constitutional Court. Judges in those countries are only subject to a removal procedure on the grounds set out in the Constitution or laws on the Constitutional Court with stricter conditions than those applicable to ordinary judges.

73. In those countries where disciplinary procedures exist for Constitutional Court judges, the common grounds for disciplinary sanctions or the removal of such judges include commission of a criminal offence or dishonourable act, failure to perform or a serious breach of judicial duties and incapacity. Under impeachment schemes, in some countries, judges can also be removed for a serious violation of the Constitution or breach of oath (Lithuania), or a breach of their constitutional duties (Norway, concerning Supreme Court justices). In certain countries, the grounds for disciplinary

liability or removal are defined similarly or are the same for ordinary judges and Constitutional Court judges.

THE LAW

I. JOINDER OF THE APPLICATIONS

74. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

75. The applicants complained, under Article 8 of the Convention, that their dismissal had been an unjustified interference with the right to respect for their private life.

76. Article 8 of reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. The parties' submissions

77. The Government submitted that the applicants, when lodging their applications, had failed to inform the Court that in March 2014 they had submitted statements of resignation and that they had therefore abused their right of application.

78. The Government further submitted that, in the light of the resignation statements, the outcome of the domestic proceedings complained of had been irrelevant given that the applicants would not return to the Constitutional Court. Accordingly, the applicants' complaints under Article 8 were pointless and, consequently, manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

79. The applicants argued that they had been dismissed by the parliamentary resolution of 24 February 2014 and that their subsequent correspondence with Parliament referred to by the Government had had no legal consequences. No parliamentary resolution had been taken on the basis of their resignation statements and the domestic courts had not taken them into account. Accordingly, they could not be regarded as having misled the Court on essential parts of their applications.

80. The applicants then contended that, regardless of the resignation statements, the domestic proceedings had had a serious impact on their rights under Article 8 of the Convention. They submitted that there was a substantial difference between voluntary resignation and dismissal for "breach of oath" as regards both pecuniary benefits and reputational effects. In their view, their complaints under Article 8 could not be dismissed as manifestly ill-founded.

2. The Court's assessment

(a) The Government's objections on admissibility

81. The Court reiterates that the submission of incomplete and thus misleading information may amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information. However, the applicant's intention to mislead the Court must always be established with sufficient certainty (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, with further references).

82. The applicants' resignation statements were not the grounds for their dismissal and were not the subject matter of the domestic proceedings complained of. Furthermore, there is no indication that they were given any consideration by Parliament. Accordingly, the applicants could have reasonably assumed that these circumstances were not essential for their applications complaining about their dismissal by Parliament for "breach of oath" and the ensuing court proceedings. While the information regarding the resignation statements is closely linked to the matters complained of and could be seen as potentially relevant, no intention to mislead the Court as to the essential elements of the case has been established. The applications cannot therefore be rejected for abuse of the right of application.

83. In so far as the Government may be understood to be arguing that the applicants, having requested voluntary resignation, were not affected by the parliamentary resolution at issue, and cannot therefore claim to be victims of a violation of their rights, the Court notes that the resignation statements, by which the applicants tried to change the legal grounds for their dismissal from "breach of oath" to voluntary termination of their duties, were never considered or given any effect. The applicants' duties were terminated precisely by virtue of the impugned parliamentary resolution and the applicants can claim to be victims of a violation of their Convention rights in this regard. Having regard to the very particular context and the sequence of the events in the present case, the fact that by submitting their resignations the applicants could be understood to have contemplated, at a particular moment in time, putting an end to their functions as Constitutional Court judges, cannot serve as basis for concluding that they were not adversely affected by the impugned decision – the legal act which effectively removed them from office.

84. Accordingly, the Government's objections are dismissed.

(b) Applicability of Article 8

85. Turning next to the issue of the applicability of Article 8, which must be examined independently of the respondent Government's position, the Court reiterates that employment-related disputes are 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 (in that event the Court employs the reason-based approach) or – in certain cases – because of the consequences for private life (in that event the Court employs the consequence-based approach) (see *Denisov v. Ukraine* [GC], no. 76639/11, § 115, 25 September 2018). If the consequence-based approach is at stake, the Court will only accept that Article 8 is applicable where these consequences are very serious and affect an individual's private life to a very significant degree (ibid., § 116).

86. In the present case, the reasons for the applicants' dismissal were strictly limited to their exercise of judicial office and had no connection to their private life. It is also true that the applicants viewed the events complained of as an arbitrary and politically motivated attack on the Constitutional Court as an institution – a matter unrelated to their right to respect for their private life. However, they also submitted that their dismissal for "breach of oath" had had significant detrimental reputational effects for them. They also stated that it had had negative financial consequences. Having examined these submissions, the Court considers that the applicants' dismissal did indeed have a serious impact on their inner circle, given the ensuing pecuniary losses, and on their reputation, given that the grounds for the dismissal – "breach of oath" – directly concerned their personal integrity and professional competence. The Court finds that the impugned measure affected the applicants' private life to a very significant degree, therefore falling within the scope of Article 8 (compare and contrast *Denisov*, cited above, § 122 and § 129). It follows that Article 8 is applicable.

(c) Conclusion on admissibility

87. The Court further finds that the complaints under Article 8 cannot be rejected as manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

88. The applicants submitted that the interference with their rights under Article 8 had not been lawful because domestic law did not allow the imposition of a measure of liability on Constitutional Court judges for the content of a Constitutional Court judgment.

89. The applicants then stated that they had acted lawfully when adopting the judgment of 30 September 2010. In particular, the previous application to declare unconstitutional the 2004 Act of Parliament amending the Constitution had been rejected by the Constitutional Court on 5 February 2008 for purely procedural reasons (see paragraph 9 above) and the Constitutional Court had not been prevented from examining a new application on the merits of the same issue. Moreover, the possibility for such a review had been confirmed by a judgment of the Constitutional Court of 26 June 2008 clarifying that court's constitutional jurisdiction (see paragraph 10 above). The applicants then contended that there was no indication that they had acted with malice or gross negligence when voting for the judgment of 30 September 2010. Parliament's reasons for dismissing them had been limited to its disagreement with the legal position taken by the Constitutional Court.

90. The Government submitted that the applicants had been dismissed on proper grounds. The judgment of 30 September 2010 had not been validly adopted because of the standing Constitutional Court decision of 5 February 2008 (see paragraph 9 above) rejecting a similar application for a constitutional review of the 2004 constitutional amendments. Furthermore, the judgment of 30 September 2010 had been considered by Parliament to be an unlawful act which had led to the usurpation of power by the then President of Ukraine and had eventually brought about the violent events in Ukraine which had started at the end of 2013 and continued until February 2014. It was therefore important for Parliament to renew the public's trust in the judiciary by taking, in particular, the decision on the applicants' removal from office. Lastly, the procedure for the applicants' dismissal had provided appropriate safeguards ensuring their procedural rights.

2. The Court's assessment

(a) Whether there was an interference

91. As noted above (see paragraph 86 above), the applicants' dismissal for "breach of oath" affected their private life to a very significant degree in view of the negative financial and reputational consequences ensuing from the dismissal for "breach of oath". Such a measure therefore constituted an interference with the applicants' right to respect for their private life (see also

Oleksandr Volkov v. Ukraine, no. 21722/11, §§ 165-67, ECHR 2013, with further references).

92. An interference with the right to respect for private life will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of Article 8 as being "in accordance with the law", pursuing one or more of the legitimate aims listed therein, and being "necessary in a democratic society" in order to achieve the aim or aims concerned.

(b) Whether the interference was lawful

93. The expression "in accordance with the law" in Article 8 § 2 of the Convention, in essence, refers back to national law and states the obligation to conform to the substantive and procedural rules thereof (see *Akopyan v. Ukraine*, no. 12317/06, § 109, 5 June 2014). Where it has been shown that the interference was not in accordance with the law, a violation of Article 8 will normally be found without investigating whether the interference pursued a "legitimate aim" or was "necessary in a democratic society" (see, for example, *Ciorap v. Moldova*, no. 12066/02, § 104, 19 June 2007; *Khalikova v. Azerbaijan*, no. 42883/11, § 128, 22 October 2015; *Chukayev v. Russia*, no. 36814/06, § 137, 5 November 2015; and *Porowski v. Poland*, no. 34458/03, § 171, 21 March 2017).

94. Moreover, the expression "in accordance with the law" refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences for him or her, and compatible with the rule of law. The phrase thus implies, *inter alia*, that domestic law must be sufficiently foreseeable in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which the authorities are entitled to resort to measures affecting their rights under the Convention (see *Fernández Martínez v. Spain* [GC], no. 56030/07, § 117, ECHR 2014 (extracts), with further references). The law must, moreover, afford a degree of legal protection against arbitrary interference by the authorities. The existence of specific procedural safeguards is material in this context. What is required by way of safeguard will depend, to some extent at least, on the nature and extent of the interference in question (see *Oleksandr Volkov*, cited above, § 170, with further references).

95. In the present case, the decision to dismiss the applicants was based solely on Article 126 of the Constitution, which provided, *inter alia*, that in the event of a "breach of oath" a judge would be dismissed from office by the body which elected or appointed him or her. These legal grounds for interference were very general and, unless circumscribed by other applicable provisions and case-law, appeared to allow wide discretion to the domestic authorities.

96. The Court notes that it has already dealt with the "quality of the law" aspect of the lawfulness of sanctions imposed in Ukraine on judges for

"breach of oath". In its judgment in the case of *Oleksandr Volkov* (cited above, §§ 174-82), it had regard to the following relevant considerations:

> "174. The Court notes that the text of the judicial oath offered wide discretion in interpreting the offence of 'breach of oath'. The new legislation now specifically deals with the external elements of that offence (see section 32 of the HCJ Act 1998, as amended ...). While the new legislation did not apply to the applicant's case, it is relevant to note that the specification of 'breach of oath' in that section still provides the disciplinary authority with wide discretion on this issue (see also the relevant extract from the opinion of the Venice Commission ...).
>
> 175. However, the Court recognises that in certain areas it may be difficult to frame laws with high precision and that a certain degree of flexibility may even be desirable to enable the national courts to develop the law in the light of their assessment of what measures are necessary in the particular circumstances of each case (see *Goodwin v. the United Kingdom*, 27 March 1996, § 33, *Reports* 1996-II). It is a logical consequence of the principle that laws must be of general application that the wording of statutes is not always precise. The need to avoid excessive rigidity and to keep pace with changing circumstances means that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague. The interpretation and application of such enactments depend on practice (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 64, ECHR 2004-I).
>
> 176. These qualifications, imposing limits on the requirement of precision of statutes, are particularly relevant to the area of disciplinary law. Indeed, as far as military discipline is concerned, the Court has held that it would scarcely be possible to draw up rules describing different types of conduct in detail. It may therefore be necessary for the authorities to formulate such rules more broadly (see *Vereinigung demokratischer Soldaten Österreichs and Gubi v. Austria*, 19 December 1994, § 31, Series A no. 302).
>
> 177. The experience of other States suggests that the grounds for the disciplinary liability of judges are usually couched in general terms, while the examples of detailed statutory regulation of that matter do not necessarily prove the adequacy of the legislative technique employed and the foreseeability of that area of law ...
>
> 178. Therefore, in the context of disciplinary law, there should be a reasonable approach in assessing statutory precision, as it is a matter of objective necessity that the actus reus of such offences should be worded in general language. Otherwise, the statute may not deal with the issue comprehensively and will require constant review and updating according to the numerous new circumstances arising in practice. It follows that a description of an offence in a statute, based on a list of specific behaviours but aimed at general and uncountable application, does not provide a guarantee for addressing properly the matter of the foreseeability of the law. The other factors affecting the quality of legal regulation and the adequacy of the legal protection against arbitrariness should be identified and examined.
>
> 179. In this connection, the Court notes that it has found the existence of specific and consistent interpretational practice concerning the legal provision in issue to constitute a factor leading to the conclusion that the provision was foreseeable as to its effects (see *Goodwin*, cited above, § 33). While this conclusion was made in the context of a common-law system, the interpretational role of adjudicative bodies in ensuring the foreseeability of legal provisions cannot be underestimated in civil-law systems. It is precisely for those bodies to construe the exact meaning of general provisions of law in a consistent manner and dissipate any interpretational doubts (see, *mutatis mutandis*, *Gorzelik and Others*, cited above, § 65).

180. As to the present case, there is no indication that at the time of the determination of the applicant's case there were any guidelines or practice establishing a consistent and restrictive interpretation of the notion of 'breach of oath'.

181. The Court further considers that the requisite procedural safeguards had not been put in place to prevent arbitrary application of the relevant substantive law. In particular, domestic law did not set out any time-limits for initiating and conducting proceedings against a judge for a 'breach of oath'. The absence of any limitation periods, as discussed above under Article 6 of the Convention, made the discretion of the disciplinary authorities open-ended and undermined the principle of legal certainty.

182. Moreover, domestic law did not set out an appropriate scale of sanctions for disciplinary offences and did not develop rules ensuring their application in accordance with the principle of proportionality. At the time when the applicant's case was determined, only three sanctions for disciplinary wrongdoing existed: reprimand, downgrading of qualification class, and dismissal. These three types of sanction left little room for disciplining a judge on a proportionate basis. Thus, the authorities were given limited opportunities to balance the competing public and individual interests in the light of each individual case."

97. Applying the above considerations, the Court found in the case of *Oleksandr Volkov* that the applicable domestic law failed to satisfy the requirements of foreseeability and protection against arbitrariness, summing up its conclusions as follows (ibid., §§ 184 and 185):

"184. Finally, the most important counterbalance against the inevitable discretion of a disciplinary body in this area would be the availability of an independent and impartial review. However, domestic law did not lay down an appropriate framework for such a review and, as discussed earlier, it did not prove to be available to the applicant.

185. Accordingly, the absence of any guidelines and practice establishing a consistent and restrictive interpretation of the offence of "breach of oath" and the lack of appropriate legal safeguards resulted in the relevant provisions of domestic law being unforeseeable as to their effects. Against this background, it could well be assumed that almost any misbehaviour by a judge occurring at any time during his or her career could be interpreted, if desired by a disciplinary body, as a sufficient factual basis for a disciplinary charge of "breach of oath" and lead to his or her removal from office."

98. The present case differs in that it concerns a judge of the Constitutional Court and, hence, legal provisions specific to that court, not only Article 126 of the Constitution, which is applicable to all judges. Furthermore, other relevant legislative changes occurred in the interval between the events in *Oleksandr Volkov* and the events in the present case, notably the adoption of a new Judiciary Act in July 2010 (see paragraph 45 above), and the context of the two cases is significantly different. The Court will therefore examine whether the above warrants a different conclusion regarding the "quality of the law" and the foreseeability of the sanction imposed on the applicant for "breach of oath".

99. At the material time in the present case, dismissal of a judge for breach of oath was regulated, in addition to Article 126 of the Constitution, by section 32 of the HCJ Act and section 105 of the 2010 Judiciary Act (see paragraphs 43 and 45 above). Article 126 of the Constitution has

remained unchanged since the events in the case of *Oleksandr Volkov*. Section 32 of the HCJ Act, which was found to be in compliance with the Constitution (see paragraph 47 above), provided some guidance, albeit very general, as to what could be considered as a breach of judicial oath. While that provision did not apply to the case of the applicant in *Oleksandr Volkov*, in its judgment in that case the Court, referring to the opinion of the Venice Commission, did have regard to the fact that the "specification of 'breach of oath' in [section 32 of the HCJ Act] ... provides the disciplinary authority with wide discretion on this issue" (see paragraph 96 above). Lastly, section 105 of the 2010 Judiciary Act concerned the procedure for dismissal and did not bring any clarity to the content of the concept of "breach of oath".

100. It follows that the Court cannot discern any legislative change since *Oleksandr Volkov* that could be seen as having brought about significantly better foreseeability on the question of what conduct of a judge constituted "breach of oath" under Ukrainian law. Nor has the Government referred to relevant case-law that may have contributed in this regard.

101. The Court further notes that the status of Constitutional Court judges was defined by specific legislation, namely the Constitutional Court Act. Section 28 of that Act, as in force at the relevant time, established functional immunity for Constitutional Court judges by stating, in particular, that they would not be held legally liable for the results of their votes in that court. The parties have not elaborated on the interpretation of that provision and, notably, on the question whether it provided immunity not only from criminal and civil liability, but was also intended to protect against dismissal. However, having regard to the fact that the applicants were dismissed precisely for the results of their votes, notably for their judicial opinion expressed in the judgment of 30 September 2010 (see paragraph 17 above), the question whether that provision of the Constitutional Court Act was to be interpreted as limiting the scope of liability of Constitutional Court judges for "breach of oath" under Article 126 of the Constitution and section 32 of the HCJ Act was of crucial importance and required detailed analysis.

102. It appears that no clarification on these questions was available at the relevant time in case-law or another authoritative source.

103. In such circumstances, a very detailed and clear analysis is normally needed in order to demonstrate that all relevant arguments are taken into consideration in the application of the Constitution and the law and that the impugned decision is based on a careful interpretation of the relevant legal principles. No such analysis and reasoning was provided by Parliament. Moreover, while the HAC, acting as a first-instance court in the applicants' cases, took the view that the functional immunity under section 28 of the Constitutional Court Act prevailed and prevented the applicants' dismissal on the grounds of "breach of oath", the Supreme Court quashed that decision without providing a detailed analysis of the scope of judicial immunity granted by the Constitutional Court Act.

104. In this regard, the Court cannot but emphasise the importance of a clear and foreseeable legal framework concerning judicial immunity and judicial accountability for the purposes of ensuring judicial independence. It refers to the comparative-law survey (see paragraphs 68-71 above) and international standards on judicial independence, and considers, more generally, that the liability of a judge for the substance of judicial activity is a highly delicate question which requires that a distinction be made between a disputable interpretation or application of the law, on the one hand, and a decision or measure which reveals, for example, a serious and flagrant breach of the law, arbitrariness, a serious distortion of the facts, or an obvious lack of legal basis for a judicial measure, on the other hand. Only the latter conduct may constitute the *actus reus* of such offences. Furthermore, cases involving the liability of a judge require consideration of the mental element of the alleged judicial misconduct. A good-faith legal error should be distinguished from bad-faith judicial misconduct. The Court takes note of the relevant principles developed in the Recommendation of the Committee of Ministers (see paragraph 58 above) and considers that, in such cases, it is necessary to carry out a specific analysis of the *mens rea* of the individual judge to establish the individual mental aspect of such activity.

105. This holds true with regard to judges of the Constitutional Court who, as observed by the Venice Commission, should be subject to liability for their judicial opinions in exceptional cases of extreme deviation from the principles and standards of the rule of law and constitutionality (see paragraph 63 above). The comparative survey with regard to member States' domestic law concerning the disciplinary liability and removal of judges (see paragraphs 72 and 73 above) suggests that there exists a clear trend among the Member States towards common understanding that the grounds for sanctioning Constitutional Court judges must be particularly strict and narrow.

106. In the Court's view, utmost caution and detailed reasons are particularly crucial with regard to the dismissal of Constitutional Court judges and in circumstances where the decision to dismiss them is taken by Parliament. Therefore, insufficient clarity of the law on the dismissal of Constitutional Court judges, as well as its application by Parliament and the courts without detailed legal reasoning on, in particular, the constituent elements of "breach of oath" under the applicable law, is difficult to reconcile with the very goal pursued by sanctioning breaches of oath – maintaining confidence in the rule of law.

107. In the present case, the judgment for the adoption of which the applicants were dismissed was debatable in a constitutional-law dimension, as observed by the Venice Commission (see paragraph 50 above). It cannot be overlooked that the applicants were sanctioned for a judicial opinion on a complex legal issue which had also been a matter of serious debate inside and outside Ukraine. Notably, the issue reached the attention of PACE, which

expressed concerns as to the manner in which the 2004 constitutional amendments had been adopted and urged the Ukrainian authorities to address that issue as soon as possible in order to secure the legitimacy of the 2004 constitutional amendments and their compliance with European standards (see paragraph above). While the above is certainly not decisive as to whether the judgment for which the applicants were sanctioned interpreted the Constitution and Ukrainian law correctly, the particular context and complexity involved called for particular caution and solid arguments if the body vested with the power to dismiss Constitutional Court judges, Parliament, considered that the applicants' votes in the adoption of a judgment on such issues constituted a "breach of oath".

108. In the light of the above, the Court considers that the lack of clarity and detailed explanations in the circumstances described led to a situation of legal uncertainty, which is unacceptable and even more so when it comes to the tenure of judges in a court playing a crucial role in maintaining the rule of law and democracy. While it is clear that on the question what constitutes "breach of oath" by a Constitutional Court judge, it is natural that case-law might be scarce, especially in a new democracy like Ukraine, the requirements of legal certainty should be seen as mandating particularly stringent legal argumentation taking into account all the applicable law and its underlying principles, when applying such a concept as "breach of oath" – untested with regard to Constitutional Court judges until the events complained of. Without very detailed and clear reasoning on the constituent elements of "breach of oath" in relation to the acts attributed to the applicants, the domestic authorities used their discretionary powers in a way that undermined legal certainty and thus compromised the requirement of lawfulness for the purposes of Article 8.

109. The Court is mindful of the particular context in which the applicants were dismissed. The massive popular protests and violent events leading to the extraordinary change of State power in Ukraine must have influenced the decisions taken by Parliament in that period. However, it has not been shown to the Court that Parliament had to act in extreme urgency as regards that particular matter and, in any event, the reviewing courts had sufficient time to properly contemplate the applicants' cases in the course of the subsequent judicial review. Accordingly, the general background existing at the time of the applicants' dismissal by Parliament did not justify the failure by the authorities to respect the basic Convention requirements of lawfulness and foreseeability.

110. There has therefore been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

111. The applicants complained under Article 6 § 1 of the Convention that the cases relating to their dismissal had not been examined by an

"independent and impartial tribunal". They also complained that their cases had not been examined by "a tribunal established by law"; that the proper domestic procedure involving a preliminary investigation by the Constitutional Court had not been followed; that they had not been permitted to effectively participate in the examination of their cases; that their right to a reasoned decision had not been ensured; and that the principle of legal certainty had not been respected, given that there was no time-limit for imposing liability for "breach of oath".

112. Article 6 § 1 of the Convention provides, in so far as relevant, as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

A. Admissibility

113. The parties did not dispute that Article 6 of the Convention was applicable. The Court previously held on several occasions that disputes regarding the removal of judges in Ukraine concerned a "right" within the meaning of Article 6 of the Convention and that in such matters it was not justified to exclude members of the judiciary from the protection of the civil limb of Article 6 on the basis of the special bond of loyalty and trust to the State (see, among other authorities, *Oleksandr Volkov*, cited above, §§ 87-91, and *Gumenyuk and Others v. Ukraine*, no. 11423/19, §§ 44 to 67, 22 July 2021, with further references). The Court sees no reason to reach a different conclusion in the present case.

114. The Court further notes that the above complaints under Article 6 § 1 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. They are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

115. The applicants contended that the proceedings before Parliament had not been compatible with the principles of independence and impartiality given that the process had been highly politicised and the prevailing political considerations had frustrated the fair examination of their cases. They further argued that the lack of procedural fairness at the parliamentary stage had not been remedied by the subsequent judicial review of their cases because the reviewing courts had failed to give any valid justification for their dismissal and had disregarded the fact that the proper procedure provided by the Rules of the Constitutional Court (involving a preliminary investigation of the disciplinary case by that court) had not been followed. Furthermore, the

courts had not examined whether the requirements of fairness and impartiality had been respected by Parliament and whether the guarantees of judicial independence had been ensured.

116. The applicants also maintained that they had not received proper justification of the decision on their dismissal. According to them, the disagreement with the Constitutional Court's judgment could not justify the conclusion that they had breached the oath. Moreover, neither the parliamentary resolution nor the decision of the courts contained justification of their guilt for breach of the oath, that was based on the facts, which in turn could be classified as breach of oath under domestic law.

117. The Government objected to the applicants' submissions. They insisted that the domestic courts had had full jurisdiction to review the parliamentary resolution and had thereby remedied any possible issues of unfairness present at the parliamentary stage. The Government emphasised that the Rules of the Constitutional Court had not been binding on Parliament, that the applicants had effectively participated in the court hearings and that there had been no indication of unfairness in the court proceedings.

118. The Government further noted that in adopting the resolution on the applicants' dismissal, Parliament had considered the judgment of 30 September 2010 not as a court decision *per se*, but as the unlawful act which had led to the usurpation of State power by the then President of Ukraine and had eventually resulted in the violence in 2013-14. The domestic courts, in turn, had carefully examined the applicants' submissions and ultimately only their conduct in respect of adoption of the judgment of 30 September 2010 had been found to constitute a breach of oath and sufficient grounds for their dismissal.

119. They concluded that there had been no violation of Article 6 § 1 of the Convention.

2. The Court's assessment

120. The Court reiterates that, in view of the principle that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective, the right to a fair trial cannot be seen as effective unless the requests and observations of the parties are truly "heard", that is to say, properly examined by the tribunal. Judgments of courts and tribunals should adequately state the reasons on which they are based. Without requiring a detailed answer to every argument advanced by the complainant, this obligation to give reasons presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments which are decisive for the outcome of those proceedings. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see, *Mazahir Jafarov v. Azerbaijan*, (no. 39331/09, §§ 34-35, 2 April 2020, with further references).

121. In the present case, Parliament held proceedings which resulted in a decision dismissing the applicants for the offence of "breach of oath". The parliamentary resolution was further reviewed by the HAC and the Supreme Court. Accordingly, having regard to the scope of the applicants' complaints, the Court is called upon to examine firstly whether the requirements of an "independent and impartial tribunal" were complied with at the parliamentary decision-making stage. Secondly, if those requirements were not satisfied at that stage, it is necessary to determine whether the review of the case by the domestic courts remedied the shortcomings identified.

122. The Court notes that the present case concerns the accountability of two judges before a political body which did not act as a preliminary authority but exercised conclusive decision-making power resulting in the applicants' dismissal. As that use of power was not preconditioned by any assessment of the matter by an independent authority, the *ex post* judicial review of the case was of crucial significance in the global assessment of the compatibility of the domestic proceedings with Article 6 § 1. This issue is examined below.

123. According to the Court's case-law, even where an adjudicatory body determining disputes over "civil rights and obligations" does not comply with Article 6 § 1 in some respect, no violation of the Convention can be found if the proceedings before that body are "subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 § 1" (see *Albert and Le Compte v. Belgium*, 10 February 1983, § 29, Series A no. 58, and *Tsfayo v. the United Kingdom*, no. 60860/00, § 42, 14 November 2006).

124. In its case-law the Court stressed on the autonomous definition of the requirement of «full jurisdiction». It also specified the criteria against which the scope of judicial review must be assessed. First, in the case of disputes over "civil rights and obligations", the court must have jurisdiction to consider all questions of fact and law relevant to the dispute before it. Second, such a "full jurisdiction" implies that the court has exercised sufficient jurisdiction or provided sufficient review in the proceedings before it. Thirdly, in order to assess whether, in a given case, the extent of the review carried out by the domestic courts was sufficient, it is necessary to have regard to the powers of the judicial body in question and to such factors as: (a) the subject-matter of the dispute; (b) the procedural safeguards existing in the administrative procedure subject to judicial review; (c) the method and scope of the actual judicial review (see, *mutatis mutandis*, *Dahan v. France*, no. 32314/14, § 51, 3 November 2022).

125. The applicants contended that the judicial review had not been appropriate because the domestic courts had failed to ensure a proper domestic procedure, which, in their opinion, should have included a preliminary investigation by the Constitutional Court as required by the Rules of the Constitutional Court. In this regard, the Court notes that the applicants' argument was sufficiently addressed by the domestic courts, who suggested

that the Constitutional Court had no powers to introduce, by way of Rules of the Constitutional Court, a binding procedure for the dismissal of its judges (see paragraph 28 above). As the domestic courts are best placed to interpret domestic law, it is not the Court's role to express a view on the correct interpretation of Ukrainian law in this regard. The Court observes, in addition, that the applicants have not claimed that the courts which reviewed the Parliament's decision did not have "full jurisdiction" to examine all relevant facts and legal issues. Indeed, there is no indication that Ukrainian law limited in some way the scope of review that the courts could exercise in cases such as the applicants'.

126. The Court notes, however, that, in the light of that interpretation, it was crucial for the domestic courts to assess whether the applicants had been provided with sufficient guarantees of an independent and impartial examination of their cases and to address all relevant factual and legal issues that were decisive for the outcome of the case. In particular, the question whether the applicants' dismissal was compatible with the constitutional guarantees of judicial independence, including the question of functional immunity of Constitutional Court judges limiting the scope of their legal liability for the results of their votes as members of the Constitutional Court, called for an elaborate response. It could not be tacitly discarded and had to be examined in detail, if the judicial review were to be considered "sufficient" for the purposes of the Convention. In this respect, the Court reiterates its findings under Article 8 that the domestic courts, in the circumstances of the cases before them and with regard to the importance of judges' tenure for maintaining the rule of law and democracy, were called to provide very elaborated and clear reasoning on the constituent elements of "breach of oath" allegedly committed by a Constitutional Court judge (see paragraphs 95 to 108 above). As this was not done, the decisions on the applicants' dismissal could not be considered sufficiently reasoned. In these circumstances, the Court sees no reason to pronounce also on whether such insufficient reasoning undermined the independence and impartiality of the domestic courts. Neither it sees a need to examine the other procedural deficiencies complained of by the applicants.

127. There has therefore been a violation of Article 6 § 1 of the Convention as regards the applicants' right to a reasoned decision in their cases.

IV. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION TAKEN IN CONJUNCTION OF ARTICLE 8

128. Relying on Articles 8 and 18 of the Convention, the applicants complained that their dismissal had had a purpose other than that stated by the authorities. Article 18 reads as follows:

> "The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

A. The parties' submissions

129. The Government reiterated that, according to the Court's case-law, a mere suspicion that the authorities had used their powers for some other purpose than those defined in the Convention was not sufficient to prove that Article 18 had been breached (see *Khodorkovskiy v. Russia*, no. 5829/04, § 255, 31 May 2011). They submitted that the applicants had failed to provide any evidence that the real aim of their dismissal had differed from the aim officially proclaimed. The Government submitted that the Revalidation Act, which in effect quashed the judgment of 30 September 2010, preceded the resolution on the applicants' dismissal (see paragraphs 14 and 16 above). Thus, the resolution had been a legal consequence of the Act and not the other way round. They also noted that the applicants' dismissal could not achieve the aim which the applicants alleged, that is, invalidation of the judgment of 30 September 2010.

130. The applicants maintained that the real reasons behind their dismissal had been the creation of a legal basis for changing the Constitution under the simplified procedure, their punishment for legal views not shared by the majority in Parliament, and a demonstration to other judges that they could be held disciplinarily liable for their views and opinions if their views differed from those of the legislature at any given time. They continued that the real aim of the authorities had been a conditioned political agreement that could be interpreted as a poorly hidden agenda.

B. The Court's assessment

1. General principles

131. The general principles concerning the interpretation and application of Article 18 of the Convention are set out in the Grand Chamber judgment *Merabishvili v. Georgia* ([GC], no. 72508/13, 28 November 2017, §§ 287-317), and may be summarised as follows.

132. In a similar way to Article 14, Article 18 of the Convention has no independent existence. It can only be applied in conjunction with an Article of the Convention or the Protocols thereto which sets out or qualifies the rights and freedoms that the High Contracting Parties have undertaken to secure to those under their jurisdiction. Article 18 prohibits the High Contracting Parties from restricting the rights and freedoms enshrined in the Convention for purposes not prescribed by the Convention itself, and to this extent it is autonomous. Therefore, as is also the position in regard to

Article 14, there can be a breach of Article 18 even if there is no breach of the Article in conjunction with which it applies (ibid., §§ 287-88).

133. The mere fact that a restriction of a Convention right or freedom does not meet all the requirements of the clause that permits it does not necessarily raise an issue under Article 18. Separate examination of a complaint under that Article is only warranted if the claim that a restriction has been applied for a purpose not prescribed by the Convention appears to be a fundamental aspect of the case (ibid., § 291).

2. Application to the present case

134. The Court notes that the applicants were dismissed for their participation in the adoption of the judgment of 30 September 2010. The applicants themselves considered the above-mentioned judgment lawful, while the domestic authorities viewed it as an unlawful act which had led to the usurpation of power by the then President of Ukraine and had eventually brought about the violent events between November 2013 and the end of February 2014. Thus, in the applicants' view, their dismissal could not be explained by anything other than an ulterior motive, given that they had not committed any unlawful act, whereas the Government considered that it had constituted a lawful sanction for the applicants' unlawful conduct.

135. The Court reiterates that the judgment for the adoption of which the applicants were dismissed was debatable in a constitutional-law dimension (see paragraphs 50 and 96 above).It observes that, according to the Supreme Court, the adoption of the judgment of 30 September 2010 was manifestly inconsistent with the judicial oath and amounted to a breach thereof because it upset the balance of powers and interfered with the competences of the legislature (see paragraph 26 above). While the Court has found above that the applicants' dismissal for breach of oath did violate their Article 8 rights for lack of clear law and practice regarding, in particular, the constituent elements of "breach of oath" and also because the authorities used their discretionary powers in a way that undermined legal certainty and compromised the requirement of lawfulness (see paragraph 108 above), there is no indication that the applicants' dismissal was based on anything other than an interpretation of the relevant law aimed at sanctioning judges for "breach of oath" or that it otherwise pursued a hidden agenda. The Court accepts that, in the very complex legal context in which the impugned dismissal took place, the authorities acted in belief that the applicants had committed a breach of oath. The applicants' arguments do not convince the Court of the existence of an ulterior motive contrary to Article 18 on the part of the authorities.

136. In sum, in the absence of any arguable claim under this head, the Court considers that the complaint under Article 18 in conjunction with Article 8 is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be rejected.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

137. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

138. As regards pecuniary damage, the applicants requested that they be awarded the retirement benefits to which a former judge would be entitled under domestic law and, in addition, that they be paid the amount of those benefits for the period between their dismissal and the day of the execution of the Court's judgment finding violations of their rights. The applicants further claimed 50,000 euros (EUR) each in respect of non-pecuniary damage.

139. The Government contended that the applicants' claims were unsubstantiated and should be rejected by the Court.

140. The Court notes that the applicants did not provide relevant evidence in respect of their claims for pecuniary damage. It therefore rejects this claim (see *Konstantin Markin v. Russia* [GC], no. 30078/06, §§ 165 and 167, ECHR 2012 (extracts)).

141. As regards non-pecuniary damage, the Court considers that, in the circumstances of the case, a finding of violations of Articles 8 and 6 § 1 in itself constitutes adequate just satisfaction for the purposes of Article 41 of the Convention.

B. Costs and expenses

142. The applicants did not submit any claims under this head. The Court therefore makes no award.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaints under Article 8 and Article 6 § 1 of the Convention admissible and the remainder of the applications inadmissible;

3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the right to an independent and impartial tribunal and the right to a reasoned judgment;

5. *Holds* that there is no need to examine the admissibility and merits of the applicants' remaining complaints under Article 6 § 1 of the Convention;

6. *Holds* that the finding of a violation is sufficient just satisfaction for any non-pecuniary damage suffered by the applicants and *dismisses* the applicants' claim for just satisfaction.

Done in English, and notified in writing on 12 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Georges Ravarani President