



## The composition of the National Judicial Service Commission in the present case did not satisfy the Convention requirements of independence and impartiality

In today's Chamber judgment<sup>1</sup> in the case of [Catană v. the Republic of Moldova](#) (application no. 43237/13) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned disciplinary sanctions ("severe reprimands") which were imposed on the applicant in respect of her conduct as a judge.

The Court held that the requirements of independence and impartiality had not been satisfied in the present case with regard to the composition of the National Judicial Service Commission (CSM) that had ruled in the applicant's case. It found in particular that the presence, even in a merely passive role, of a member of the government within a body empowered to impose disciplinary sanctions on judges was in itself highly problematic in terms of the requirements of Article 6 of the Convention, and particularly the requirement for the disciplinary body to be independent. Furthermore, the lack of transparency as to the role of the Prosecutor General in the adoption of the CSM's decisions had been a wholly legitimate source of concern regarding a risk of bias on his part. Lastly, the Court held that the process for selecting the professors of law for appointment to the CSM had not provided sufficient guarantees of independence.

### Principal facts

The applicant, Angela Catană, is a Moldovan national who was born in 1963. She is a judge by profession and lives in Chişinău.

In 2011 two sets of disciplinary proceedings were brought against Ms Catană, resulting in two severe reprimands being issued to her by the Disciplinary Board of the National Judicial Service Commission (CSM). In the first set of proceedings, the Disciplinary Board found that Ms Catană had wrongfully applied the provisions on amnesty to a person convicted of aggravated rape. In the second set of proceedings the Board held that Ms Catană had exceeded her powers as a judge in setting aside orders by the public prosecutor to institute criminal proceedings, as such orders were not open to appeal before a judge. The CSM subsequently upheld both decisions and dismissed the appeals lodged by Ms Catană.

In 2012 the applicant lodged two applications with the Supreme Court of Justice seeking the setting-aside of the disciplinary sanctions imposed on her. In June and December of the same year that court dismissed the applications under the CSM Act (Law no. 947-XIII). According to that Act, which had entered into force in August 2012, decisions of the CSM could be appealed against directly to the Supreme Court of Justice, but "only in so far as they relate[d] to the procedure leading to adoption of the decision". In the present case the Supreme Court of Justice found that that procedure had been complied with in the contested decisions of the CSM, and declined jurisdiction

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

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

to examine the issues raised by the applicant in her two actions. It held that the legislature had limited the applicability of Article 6 of the Convention in disputes involving judges and that that provision was not applicable in the present case. It therefore dismissed the applicant's actions as unfounded.

## Complaints, procedure and composition of the Court

Relying on Article 6 (right to a fair hearing) of the Convention, the applicant alleged that the Disciplinary Board and the CSM had failed to conduct her case in an independent and impartial manner and that the Supreme Court of Justice's review of the decisions in question had been inadequate. With regard to the CSM, the applicant complained in particular about the presence of the three *ex officio* members – the Minister of Justice, the Prosecutor General and the President of the Supreme Court of Justice – and of professors of law who, in her view, had been elected by Parliament on the basis of political considerations. She also criticised the role of the Prosecutor General in the two sets of disciplinary proceedings concerning her.

The application was lodged with the European Court of Human Rights on 7 June 2013.

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

Arnfinn **Bårdsen** (Norway), *President*,  
Jovan **Ilievski** (North Macedonia),  
Egidijus **Kūris** (Lithuania),  
Pauliine **Koskelo** (Finland),  
Saadet **Yüksel** (Türkiye),  
Lorraine **Schembri Orland** (Malta),  
Frédéric **Krenc** (Belgium),

and also Hasan **Bakırcı**, *Section Registrar*.

## Decision of the Court

### Article 6

Where Article 6 § 1 of the Convention was applicable to disciplinary proceedings, the Convention required, as a minimum, one of the following two systems. Either the professional disciplinary bodies themselves must comply with the requirements of Article 6 of the Convention, or, if they did not comply with those requirements, the proceedings before them had to be subject to subsequent review by a judicial body that had full jurisdiction and provided the guarantees of Article 6.

In the present case the Supreme Court of Justice had not been competent to examine the factual issues, the legal characterisation of the acts of which the applicant was accused, or the proportionality of the disciplinary sanctions imposed. Hence it had not had full jurisdiction for the purposes of Article 6 of the Convention in the two sets of disciplinary proceedings concerning the applicant.

With regard to disciplinary proceedings against judges, the Court had previously stressed the need for substantial representation of judges on the relevant disciplinary body, this being a strong indicator of impartiality.

As to the Disciplinary Board, the Court observed that the Government had not substantiated their assertion that judges had made up a majority of the members of the formations that had ruled in the two sets of proceedings.

Regarding the CSM, the Court observed that in the first set of disciplinary proceedings that body had given its decision prior to the legislative amendment of 31 August 2012, and that it had been made up of the three aforementioned *ex officio* members, five judges elected by their peers and four professors of law. The CSM's ruling in the second set of proceedings had been given after that date. In addition to the three *ex officio* members it had comprised six judges elected by their peers and three professors of law.

As to the status of the Minister of Justice as an *ex officio* member, the Court noted that the Minister was a member of the government, in other words, of the executive. In that connection it reiterated the importance in its case-law of the notion of separation of powers between the executive and the judiciary. It considered that the presence, even in a merely passive role, of a member of the government within a body empowered to impose disciplinary sanctions on judges was in itself highly problematic in terms of the requirements of Article 6 of the Convention, and particularly the requirement for the disciplinary body to be independent.

The Court also considered that the presence of the Prosecutor General within a body concerned with the disciplining of judges was problematic with regard to the impartiality and independence requirements under Article 6 of the Convention. The risk was that the judges might not hear cases impartially for fear of being made subject to disciplinary sanctions, or that the Prosecutor General might not act impartially towards judges with whose decisions he or she disagreed. In the Court's view, the fact that the Prosecutor General was an *ex officio* member of the CSM was especially problematic given that both sets of disciplinary proceedings against the applicant had been instituted by him. Although the Government asserted that the Prosecutor General had withdrawn from the CSM's deliberations, as required by law, there was nothing in the case file to corroborate that assertion, as it appeared that no official record had been drawn up of the deliberations. Furthermore, both decisions of the CSM in the present case had been signed only by the President of the CSM, without any mention being made of which members had taken part in the deliberations. Hence the lack of transparency regarding the role of the Prosecutor General in the adoption of the CSM's decisions had been a wholly legitimate source of concern regarding a risk of bias on his part.

As far as the presence of the professors of law within the CSM was concerned, the Court noted that they had been elected by Parliament on the basis of a simple majority of MPs, on a proposal from at least 20 MPs. In the present case it was not apparent from the domestic legislation that candidates had had to fulfil any pre-established selection criteria other than holding a post as a professor of law. It therefore appeared that MPs, and particularly those of the governing majority, had had broad discretion in the choice of candidates. Furthermore, the Court was unable to conclude on the basis of the information available to it that a clear and transparent process had existed for selecting the candidates to be voted on by Parliament. Thus the process for selecting the professors of law had not provided sufficient guarantees of independence.

In the light of the above, the Court considered that the requirements of independence and impartiality had not been met in the present case with regard to the composition of the CSM that had ruled in the applicant's case. There had therefore been a violation of Article 6 § 1 of the Convention owing to a failure to comply with the requirement of an independent and impartial tribunal in the two sets of disciplinary proceedings against the applicant.

However, the Court noted that following a recent amendment to the Constitution the composition of the CSM had been altered, such that it no longer included the three *ex officio* members, including the Minister of Justice and the Prosecutor General. Furthermore, it was now specified that the non-judicial members of the CSM were to be selected on the basis of merit, by a qualified majority vote of Parliament following a transparent procedure.

### Just satisfaction (Article 41)

The Court held that the Republic of Moldova was to pay the applicant 3,600 euros (EUR) in respect of non-pecuniary damage and EUR 1,355 in respect of costs and expenses.

*The judgment is available only in French.*

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### Press contacts

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel : +33 3 90 21 42 08

**Inci Ertekin (tel : + 33 3 90 21 55 30)**

Tracey Turner-Tretz (tel : + 33 3 88 41 35 30)

Denis Lambert (tel : + 33 3 90 21 41 09)

Neil Connolly (tel : + 33 3 90 21 48 05)

Jane Swift (tel : + 33 3 88 41 29 04)

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