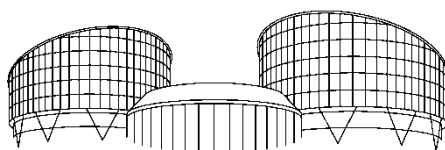


La Corte Edu sull'impedimento opposto all'esercizio delle funzioni giudiziarie (CEDU, sez. V, sent. 27 marzo 2025, ric. nn. 16111/19 e 4737/21)

Nella decisione che forma oggetto della presente annotazione, la Corte di Strasburgo si è pronunciata sul ricorso presentato da una cittadina ucraina la quale lamentava che, a seguito delle importanti riforme giudiziarie compiutesi in Ucraina nel 2016, le era stato illegittimamente impedito di esercitare la propria professione di giudice.

Richiamandosi ai principi già enunciati nella causa *Gumenyuk e altri*, i giudici hanno ribadito che la fattispecie integra una violazione dell'art. 8 della Convenzione poiché le misure contestate, privando la ricorrente della capacità di svolgere la propria attività lavorativa nell'ordinamento giudiziario appena riformato, hanno inciso gravemente sulla vita privata, impattando negativamente sull'ambito personale e professionale della medesima.



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

FIFTH SECTION

CASE OF XXX v. UKRAINE

(Applications nos. 16111/19 and 4737/21)

JUDGMENT
STRASBOURG
27 March 2025

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 XXX v. Ukraine,

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

Mattias Guyomar, *President*,

María Elósegui,

Gilberto Felici,

Andreas Zünd,

Diana Sârcu,
Kateřina Šimáčková,
Mykola Gnatovskyy, *judges*,
and Victor Soloveytkhik, *Section Registrar*,

Having regard to:

the applications (nos. 16111/19 and 4737/21) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Ms “omissis” (“the applicant”), on 17 March 2019 and 6 January 2021;

the decision to give notice to the Ukrainian Government (“the Government”) of part of the complaints under Articles 6, 8, 13 and 14 of the Convention and to declare inadmissible the remainder of the applications;

the parties’ observations;

Having deliberated in private on 4 March 2025,

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

INTRODUCTION

1. The applicant, a judge of the High Administrative Court (“the HAC”), one of three cassation courts at the material time, complained mainly under Articles 8 and 13 of the Convention that, as a result of major judicial reforms conducted in Ukraine in 2016 and subsequent developments, she had been unlawfully prevented from exercising her judicial functions.

THE FACTS

2. The applicant was born in “omissis” and lives in “omissis”. She was represented by Mr Y.L. Boychenko, a lawyer practising in Strasbourg.

3. The Government were represented by their Agent, most recently Ms M. Sokorenko from the Ministry of Justice.

4. The facts of the present case, as submitted by the parties, may be summarised as follows.

I. Background information

5. Full information about the origin and scope of the 2016 legislative amendments restructuring the higher courts in Ukraine, including, as a result, the abolition of the HAC, can be found in *Gumenyuk and Others v. Ukraine* (no. 11423/19, §§ 6-11, 22 July 2021). More specifically, those amendments stipulate the following.

6. On 2 June 2016 Parliament adopted amendments to the Constitution with regard to the rules governing the organisation and functioning of the domestic judiciary (Law No. 1401, which came into effect on 30 September 2016). According to the new wording of Article 125 § 3 of the Constitution, “the Supreme Court” (“the new SC”) is the highest court in the Ukrainian judicial system (*ibid.*, § 8).

7. Simultaneously with the amendments to the Constitution, Parliament enacted a new Law on the judiciary and status of judges on 2 June 2016 (Law No. 1402 – hereinafter “the 2016 Judiciary Act”)

which came into effect on 30 September 2016. The 2016 Judiciary Act provided that the new SC would, among other powers, exercise the function of cassation review (section 36(2)) and that it would be composed of the Grand Chamber, the Administrative Cassation Court (“the ACC”), the Commercial Cassation Court, the Criminal Cassation Court and the Civil Cassation Court (section 37(2)). The 2016 Judiciary Act also introduced a new method for determining judicial salaries which resulted in higher salaries for judges (*ibid.*, §§ 9 and 10).

Chapter XII of the 2016 Judiciary Act, entitled “Final and transitional provisions”, provided, *inter alia*, that the new SC would be established and that the judges of the new SC would be appointed based on the results of a competition (point 4); the existing Supreme Court of Ukraine (“the old SCU”) and three courts of cassation, including the HAC, would operate within their powers defined by procedural law until the new SC starts functioning and the relevant procedural legislation governing the proceedings at the new SC takes effect (point 6); the old SCU and three courts of cassation, including the HAC, would cease operating and would be abolished in accordance with the procedure established by law (point 7); and the judges of the courts that would be abolished (including the HAC) would retain the status, rights and guarantees as determined by the previous law on the status of judges (point 7) and the right to participate in the competition for the new SC (point 14) (*ibid.*, § 11).

8. The provisions of the 2016 Judiciary Act, in so far as the termination of the functions of the old SCU and the establishment of the new SC were concerned, were declared unconstitutional by a ruling of the Constitutional Court of 18 February 2020. Most notably, the Constitutional Court found that there was only one supreme judicial body under the Ukrainian Constitution, and that it was the “Supreme Court of Ukraine” which had been renamed and was now known as the “Supreme Court”; it further found that the principle of the irremovability of judges meant that the judges of the old SCU should continue to perform their duties as judges of the new SC (*ibid.*, §§ 12 and 17). However, the Constitutional Court did not take a position on the continuation of the career of judges of the three cassation courts, including the HAC, whose activities had also been terminated by the disputed legislative changes.

II. Circumstances of the case

9. In 2008 the applicant was elected by Parliament to a post as a judge of the HAC for an indefinite period. There were then about 100 such judges.

10. On 7 November 2016 the High Qualification Commission of Judges (“the HQCJ”) announced a competition for 120 judicial posts in the new SC, including thirty positions in the ACC. A total of 846 candidates, including the applicant, took part in that competition. The applicant applied for a vacant position in the ACC within the new SC.

11. On 27 July 2017 the HQCJ determined the applicant’s results in the competition: she was recognised as having confirmed her suitability to sit as a judge but ranked 46th in the list of candidates for thirty vacant positions in the ACC within the new SC.

12. On 28 August 2017 the applicant brought court proceedings challenging the HQCJ’s decision, in particular, the determination of her results in the competition for the ACC within the new SC.

13. Following the competition, new judges were selected and appointed to the new SC, which began to operate on 15 December 2017.

14. On 22 March 2018 the ACC within the new SC dismissed the applicant's claim. It noted, *inter alia*, that the HQCJ's powers were discretionary and that no other State body, not even a court, could interfere with the exercise of its authority to assess and select candidates for judicial posts. That judgment was upheld on appeal by the Grand Chamber of the new SC on 18 September 2018.

15. On 17 May 2018 the HQCJ recommended the transfer of the applicant to a judicial panel of the Odesa Administrative Court of Appeal. That recommendation was not considered by the High Council of Justice ("the HCJ") because it had ceased functioning, having been abolished by the President of Ukraine in December 2017. Since then, there have been no further recommendations or decisions on transferring the applicant to another court.

16. On 2 August 2018 the HQCJ announced a second competition for a further seventy-eight judicial posts in the new SC, including twenty-three positions in its Civil Cassation Court. The applicant took part in the competition but was not successful. She was found unsuitable to sit as a judge in that court, so her participation was terminated without her having been given a ranking. That competition was concluded in 2019. There are now approximately 200 judges in the new SC.

17. Between November 2019 and June 2023, the HQCJ did not exercise its functions because it had no members.

18. Meanwhile, the applicant continued to retain the status, pay and benefits of a judge of the HAC until her resignation for early retirement ("the resignation") on 8 February 2024.

RELEVANT LEGAL FRAMEWORK

19. A full account of the relevant domestic law and international material can be found in *Gumenyuk and Others* (cited above, §§ 23-34). In particular, the following domestic provisions are significant.

20. Article 126 of the Constitution (as worded before the amendments of 2016) provided that judges held their posts for an indefinite term, except for the judges of the Constitutional Court and those judges who were appointed for the first time for a period of five years. The same provision provided for the following exhaustive list of grounds for the dismissal of judges: (1) expiry of the term for which the judge was elected or appointed; (2) reaching the age of 65; (3) inability to perform judicial duties resulting from health problems; (4) violation by a judge of the incompatibility requirements; (5) breach of the judicial oath; (6) criminal conviction; (7) termination of citizenship; (8) death or a decision declaring a judge missing or dead; and (9) resignation.

After the amendments of 2016, the Constitution similarly proclaims the principle that judges hold their posts for an indefinite term (Article 126 § 5) and provides for an exhaustive list of grounds for the dismissal of judges and their removal from office which includes a refusal by a judge to be transferred to a different court in the event of the abolition or reorganisation of the court where the judge was employed (Article 126 § 6 (5)). Point 16-1 (4) of Chapter XV "Transitional provisions" of the Constitution also provides that a judge appointed for the five-year period or elected for an indefinite term before the amendments of 2016 must confirm his or her suitability to sit as a judge, which shall be evaluated in the order determined by law. If such evaluation finds a judge unsuitable for the post held in terms of his or her competence, professional ethics or integrity, or a judge refuses to undergo such evaluation, this shall be the grounds for the dismissal of a judge.

21. Section 53 of the 2016 Judiciary Act provides that a judge may not be transferred to another court without his or her consent, except for (1) transfer in case of reorganisation, abolition or cessation of operations of a court; (2) transfer as a disciplinary sanction.

22. Under the 2016 High Council of Justice Act, the transfer of a judge from one court to another must be decided by the HCJ, which must take into account (1) the reasons and limits of any recommendation made by the HQCJ and the materials provided in support of that recommendation; or (2) the reasons for the transfer of a judge to a lower court by way of disciplinary sanction as set out in a report of the Disciplinary Chamber of the HCJ (section 70). The HCJ must give reasons for their decision so that it can be appealed against (section 71); the court examining the appeal must annul the HCJ's decision if, among other grounds, it does not state the grounds for the transfer, which must have been determined according to law, or the reasons for the HCJ's conclusions (section 72).

23. Following the Constitutional Court's ruling of 18 February 2020 (see paragraph 8 above), Parliament adopted Law No. 3481 of 21 November 2023 (in force as of 27 December 2023), which amended the 2016 Judiciary Act by bringing in a new point 14-1 of Chapter XII "Final and transitional provisions". That point provides that a judge of the "old" high court may be transferred to an appellate or local court, depending on his or her specialisation, without a recommendation from the HQCJ, but on the basis of his or her request for a transfer, to be lodged within thirty days of the 2023 Law entering into force. If no such request is filed, the HCJ may propose the transfer of a judge to an appellate court, depending on his or her specialisation, independently and without a recommendation from the HQCJ. A judge who declines to take up the HCJ's proposal may be dismissed for that reason.

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. PRELIMINARY OBSERVATIONS

25. Given the prominent place that the judiciary occupies among State organs in a democratic society and the growing importance attached to the separation of powers and to the necessity of safeguarding the independence of the judiciary (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], no. 55391/13 and 2 others, § 196, 6 November 2018), the Court must be particularly attentive to the protection of members of the judiciary against measures affecting their status or career that can threaten their judicial independence and autonomy (see *Gumenyuk and Others*, cited above, § 52). The Court nevertheless reminds that the Convention does not prevent States from taking legitimate and necessary decisions to reform the judiciary. Furthermore, the Court is aware of the complicated background to and context of the impugned judicial reform in Ukraine and considers that it is not its role to adjudicate upon its goals and appropriateness or determine whether it was justified under Ukrainian constitutional law. As highlighted by the Venice Commission, it may be necessary and justified to take extraordinary measures in order to remedy corruption and incompetence among the judiciary (*ibid.*, § 43).

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

26. The applicant complained of a violation of the principle of immovability of judges and, therefore, of an unlawful interference with her right to respect for her private life, on account of the

fact that following the abolition of the HAC, in which she had sat as a judge, she was unlawfully obliged to sit a competition for the new SC and, not having succeeded in that competition, had been *de facto* removed from her judicial duties. The applicant relied on Article 8 of the Convention, which 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*

27. The Government referred to *Denisov v. Ukraine* ([GC], no. 76639/11, §§ 102 and 115-17, 25 September 2018) and submitted that the disputed measures did not affect the applicant's reputation (the reason-based approach) and had not had serious negative consequences for her private life (the consequence-based approach). According to the Government, the measures complained about did not result in any substantial loss of salary to the applicant; she was not deprived of the status and benefits of being a judge of the HAC. The Government therefore asserted that the disputed measures had not crossed the threshold of seriousness as was required to engage Article 8, so the applicant's complaints were incompatible *ratione materiae* with the Convention.

28. The applicant disagreed with the Government, insisting that her case did engage Article 8 of the Convention. In particular, the applicant underlined that, like in the *Gumenyuk and Others* case, the 2016 legislative amendments and their subsequent implementation had effectively prevented her from exercising her judicial functions, without formally dismissing her. In addition, according to the applicant, having been *de facto* removed from the judicial service but still holding a judicial mandate, she was subject to legal restrictions on her ability to take up other employment or to develop her career; her salary was five times lower than the salary paid to the judges of the new SC.

2. *The Court's assessment*

29. In *Gumenyuk and Others* (cited above, §§ 87-89), the Court has already dealt with the question of whether Article 8 of the Convention was engaged when judges of the old SCU were prevented from exercising their judicial functions without being formally dismissed as a result of the 2016 legislative amendments and their subsequent implementation. The Court observed in that case that “[t]he reasons underpinning those measures were not expressly related to the applicants, let alone to their private lives” (the reason-based approach). The Court relied on the consequence-based approach, saying that “even assuming that the applicants were not substantially affected financially, the impugned measures deprived them of the opportunity to continue their judicial work and to live in the professional environment where they could pursue their goals of professional and personal development”. The Court therefore concluded that “the impugned measures affected the applicants' private lives to a very significant degree, falling therefore within the scope of Article 8”.

30. The Court observes that the aforementioned findings in *Gumenyuk and Others* are fully relevant to the present case. The applicant complained about her continued inability to perform her duties as

a judge without her having been formally dismissed, a situation which resulted from the same amendments and their subsequent implementation. Even though the reasons behind those measures were not linked to the applicant's private life in any way, they had a direct bearing on her professional and personal development and her opportunities to establish relationships with others in the professional environment where she had previously worked. In addition, it is not in dispute between the parties that the measures complained about had significantly restricted the applicant's ability to take up other employment opportunities or to develop her career, because she continued to hold a judicial mandate which prevented her from taking up other jobs until the issue of her employment in the national court system had been decided. The issue therefore had substantial repercussions on the applicant's private life until her resignation in February 2024 (see paragraph 18 above).

31. Having regard to the nature and duration of those adverse repercussions, the Court considers that the disputed measures affected the applicant's private life seriously enough to engage Article 8 of the Convention.

32. The Court further notes that the applicant's complaints under Article 8 of the Convention are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. These complaints must therefore be declared admissible.

B. Merits

1. The parties' submissions

33. The applicant maintained that there had been a violation of Article 8 of the Convention because she had been unable to resume her judicial activities during a considerable period, although her suitability to sit as a judge in the ACC within the new SC, a cassation court allegedly equivalent to the HAC where she had previously worked, had been confirmed. Furthermore, the applicant asserted that the HQCJ and the HCJ, which had unfettered discretionary powers to transfer judges from one court to another, had not even given her a transfer to a lower court where she could still perform her judicial duties.

34. The Government contended that the measures complained about had a clear basis in domestic law and pursued the legitimate aim of reforming the domestic judiciary. Moreover, according to the Government, the measures at issue were not disproportionate in respect of the applicant, who had had the options of participating in the competition for the new SC or being transferred to a lower court. Given that, the Government stressed that there had been no violation of Article 8 of the Convention.

2. The Court's assessment

35. The Court observes that, as already noted (see paragraph 31 above), the applicant's private life was affected to a very significant degree by her being prevented from performing her judicial duties and therefore finds that the disputed measures constituted an interference with the applicant's right to respect for her private life within the meaning of Article 8 of the Convention (see also *Oleksandr Volkov v. Ukraine*, no. 21722/11, §§ 165-67, ECHR 2013, with further references). Such an interference will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of its Article 8 as being "in accordance with the law", pursuing one or more of the legitimate aims in that paragraph, and being "necessary in a democratic society" to achieve the aim or aims concerned (see *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, § 92, 12 January 2023).

36. In *Gumenyuk and Others* (cited above, §§ 95-101) the Court has previously found a violation of Article 8 of the Convention regarding the unlawfulness of the *de facto* removal of judges of the old SCU from their judicial role by virtue of the same judicial reform. In reaching that conclusion, the Court gave paramount importance to the Constitutional Court's ruling of 18 February 2020 declaring the relevant legislative measures unconstitutional and stating that judges of the old SCU were entitled to continue serving as judges of the new SC. The Court agreed with the Constitutional Court that the principle of the irremovability of judges had not been observed in the applicants' cases since they had not been able to continue to exercise their functions as judges of the new SC. The Court also emphasised that the domestic authorities' failure to resolve the applicants' situation after the Constitutional Court's ruling of 18 February 2020, resulting in their being unable to resume their judicial activities for a considerable period, had also "seriously undermined the legal certainty and predictability of the constitutional principles on judicial independence".

37. The Court considers that the present case should be distinguished from *Gumenyuk and Others* because the Constitutional Court's ruling of 18 February 2020 was limited to the situation of the SCU which continued to exist after the reform, albeit under a new name. That ruling had no relevance to the three cassation courts (including the HAC) whose activities had been terminated as a result of the 2016 legislative amendments and their subsequent implementation (see paragraph 8 above). Instead, it was clear from the legal framework (see paragraph 7 above) that the three courts of cassation, including the HAC where the applicant was sitting as a judge, would cease operating and would be abolished, and that the judges of those courts would have the right to compete for positions in the new SC, where judges would be appointed on a competitive basis. The judges of the three cassation courts that had been abolished (including the HAC) could not therefore have expected to be transferred automatically, without participating in the competition, to the new SC, the highest ordinary court in the Ukrainian judicial system.

38. However, it transpires from the Constitution that the applicant was entitled to remain a judge if none of the exceptional grounds for premature termination of office, as set out in Article 126, materialised (see paragraph 20 above). Following the 2016 amendments to the Constitution, those exceptional grounds included a refusal by a judge to be transferred to a different court in the event of the abolition or reorganisation of the court where the judge sat before (*ibid.*), as well as a refusal to undergo a fresh evaluation of competence, professional ethics and integrity or a failure to pass that evaluation (*ibid.*). The applicant never refused a transfer as such and complied with the evaluation requirement in the course of her first competition for the new SC (see paragraph 11 above), so her judicial mandate including the status, rights and guarantees of a judge was upheld.

39. The Court further notes that the applicant did not succeed in two competitions for the new SC (see paragraphs 10, 11 and 16 above). Nevertheless, in respect of such situations the 2016 reform expressly provided for the transfer of judges to other courts. This opportunity, coupled with the fact that the applicant confirmed her suitability to sit as a judge and thus kept the status and benefits of a judge, means that the law did not envisage a situation in which a person in the applicant's situation would not obtain a new judicial assignment. Therefore, domestic law must be interpreted in the sense that the applicant had a right to obtain such assignment, which would be in line with the principle of the irremovability of judges – a key element for the maintenance of judicial

independence and public trust in the judiciary (see *Baka v. Hungary* [GC], no. 20261/12, § 172, ECHR 2016).

40. The Court observes that between December 2017 and December 2023, the issue of the applicant's transfer to sit in a lower court was entirely in the hands of the HQCJ and the HCJ. As the domestic legislation shows, the applicant had no realistic opportunity to intervene in that process and she could only agree or disagree with what was suggested (see paragraphs 20, 21 and 22 above). However, those authorities did not make any proposal to transfer the applicant to another court during this considerably lengthy period: initially – because of the abolition of the appellate court which had originally been suggested as an alternative for the applicant; then – for unknown reasons; and lastly – because the HQCJ's functions had been terminated (see paragraphs 15 and 17 above). The applicant was not responsible for any of those events. Moreover, it is unclear from the wording of the legislation whether she could have brought an effective challenge to the failure to act in her case, as only a transfer proposal was subject to appeal (see paragraph 22 above). The Government did not give the Court any example from the domestic jurisprudence suggesting that a challenge to the domestic authorities' failure to make a proposal to transfer a judge to a lower court would have had a reasonable prospect of success. The situation in which the applicant found herself was difficult to reconcile with the principle of legal certainty and judicial independence.

41. The Court takes note that because of legislative amendments (see paragraph 23 above), in December 2023 the applicant eventually obtained the right to apply to the HCJ for a transfer to an appellate or local court consistent with her specialisation. However, the applicant decided not to take that opportunity and resigned in February 2024 as she already had a sufficient number of years of professional experience for early retirement (see paragraph 18 above). The applicant's decision to resign does not diminish the fact that she had been prevented from exercising her judicial functions for six years because of the domestic authorities' failure to transfer her to another court.

42. The foregoing considerations are sufficient to enable the Court to conclude that the interference with the applicant's rights fell short of the requirements of lawfulness for the purposes of the Convention. Where it has been shown that an interference fell short of the requirements of lawfulness for the purposes of the Convention, a violation of its 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, *Ovcharenko and Kolos*, cited above, § 93).

43. There has accordingly been a violation of Article 8 of the Convention.

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

44. The applicant complained, relying on Article 13 of the Convention, that she did not have effective remedies available to her to challenge the situation in which she was prevented from exercising her judicial functions. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention as a complaint about a lack of access to a court.

45. The relevant parts of Article 6 § 1 of the Convention read as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

46. The Government did not raise any objections in respect of the admissibility of this applicant's complaint, limiting themselves to the statement that there was no "arguable claim" under Article 8 of the Convention, so the Article 13 complaint was manifestly ill-founded.

47. The Court finds that the question of whether Article 6 § 1 of the Convention applies to the situation complained of should be examined independently of the respondent Government's position (see, for a similar approach, *Ovcharenko and Kolos*, cited above, § 85).

48. In *Gumenyuk and Others* (cited above, §§ 44-67), the Court has already dealt with the question of whether there was a civil right at stake in the situation when judges of the old SCU were prevented from exercising their judicial functions without being formally dismissed as a result of the 2016 legislative amendments and their subsequent implementation. The Court noted that following the 2016 reform, the Constitutional Court, in its ruling of 18 February 2020, had confirmed that judges of the old SCU were entitled to remain judges at the new SC. On this basis, and taking into account that the constitutional and international law principles on the independence of the judiciary "provided the applicants at least with an arguable basis on which the right to be protected against arbitrary removal from judicial duties could be claimed", the Court found that the applicants' dispute concerned a "right" which was sufficiently established and articulated under the domestic law, and then that such dispute was genuine, serious and "directly decisive" for their rights. As to the "civil" nature of the right at stake, the Court took note that "the applicants were effectively prevented from exercising their judicial duties by a parliamentary enactment reforming the judiciary", the situation where at the material time they had no remedy which could be considered effective. Applying the *Eskelinen* test, the Court noted that the applicants did not have a right of access to a court under national law and that such exclusion was not based on objective grounds in the State's interest (largely because of the paramount importance of the independence of the judiciary in comparison with the "special bond of trust and loyalty" required of civil servants). The foregoing considerations enabled the Court to reach a conclusion that Article 6 § 1 of the Convention was applicable in *Gumenyuk and Others*.

49. Turning to the present case, the Court observes that it differs significantly from *Gumenyuk and Others* in that the Constitutional Court remained silent on the question of whether judges of the three cassation courts whose activities had been terminated by virtue of the 2016 legislative changes, including the HAC where the applicant was employed, were entitled to sit as judges of the new SC (see paragraph 8 above). However, as it already found in the context of Article 8 of the Convention (see paragraphs 39 and 40 above), the applicant had a right under domestic law to obtain a new assignment as a judge. It is also relevant that, in accordance with the principles of the independence of the judiciary, she had a right to be protected against arbitrary removal from judicial office. Therefore, the Court finds that the applicant's dispute concerned a "right" within the meaning of Article 6 § 1 of the Convention. Having regard to the role of the judicial duties which she was prevented from exercising, such dispute was genuine and serious; it was also "directly decisive" for her rights because of the continued inability to sit as a judge.

50. As regards the "civil" nature of the applicant's right in question, the Court notes that, like in *Gumenyuk and Others* (cited above, § 61), the 2016 legislative amendments implicitly excluded her dispute from the protection of Article 6 § 1 of the Convention and that she had no effective domestic remedies at the material time to challenge the state of law. It follows that the applicant did not have

a right of access to a court under national law in relation to her claim which is at issue in the present case. However, given that the guarantees for judicial independence mostly prevail over the “special bond of trust and loyalty” required of civil servants, the Court does not consider it justified to exclude members of the judiciary from the protection of Article 6 § 1 of the Convention in matters concerning the conditions of their employment (*ibid.*, § 66). These considerations are equally pertinent to the present case, so Article 6 § 1 of the Convention applies to the situation complained of.

51. The Court further finds that the applicant’s complaint under Article 6 § 1 of the Convention is neither manifestly ill-founded nor inadmissible on any other of the grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties’ submissions*

52. The applicant emphasised that she had been deprived of the right of access to a court within the meaning of Article 6 § 1 of the Convention to challenge having been prevented from performing her judicial duties.

53. The Government made no submissions on the merits of this complaint.

2. *The Court’s assessment*

54. In *Gumenyuk and Others* (cited above, §§ 73 and 74), the Court has already set out its approach to the old SCU’s judges’ lack of access to a court to challenge being prevented from exercising their judicial functions as a result of the 2016 reform. Most notably, the Court emphasised that “the right of access to a court is one of the fundamental procedural rights for the protection of members of the judiciary and the applicants should have in principle enjoyed direct access to a court in respect of their allegations of unlawful termination of their judicial duties”. The Court found it difficult to see how the proclaimed aims of the judicial reform (securing a fair domestic judiciary and speeding up domestic proceedings via the reorganisation of the higher courts of Ukraine) “could be achieved by restricting the applicants’ access to a court in relation to their claims regarding the termination of their judicial duties”. In view of this, the Court found that “the lack of access to a court was not reasonably proportionate to the legitimate aim pursued”.

55. As stated above (see paragraph 50 above), the domestic law did not provide the applicant with a possibility to bring an action to challenge the *de facto* removal from exercising her judicial functions, and there was no objective justification for excluding her from access to a court from the standpoint of the necessity of safeguarding the independence of the judiciary.

Even though the present case differs from *Gumenyuk and Others* in that the latter concerned judges of the old SCU who had been prevented from exercising their judicial functions by virtue of the 2016 reform, the Court sees no reason to reach a different conclusion in the present case, since the applicant was also unable to challenge before the courts her continued inability to sit as a judge as a result of the same reform.

56. The foregoing considerations are sufficient to enable the Court to conclude that the applicant did not have access to a court to challenge the fact that she had been prevented from performing her judicial duties. In the Court’s view, that lack of access to a court was not reasonably proportionate to the legitimate aims sought to be achieved (see, for similar conclusions, *Gumenyuk and Others*, cited above, § 74).

57. There has accordingly been a violation of Article 6 § 1 of the Convention because of the lack of access to a court for the applicant to challenge her continued inability to sit as a judge.

V. OTHER complaints

58. The applicant complained under Article 6 § 1 of the Convention that the court proceedings regarding her unsuccessful participation in the competition for the new SC had been unfair. The applicant also complained under Article 14 of the Convention in conjunction with its Article 8 that she had been subjected to different treatment by comparison with judges of lower courts, who had not been forced to compete for positions in the new SC as a condition for continuing to sit as judges.

59. Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the admissibility and merits of the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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. Reinstatement request

61. The applicant asked the Court to indicate to the Government the need to ensure her reinstatement as a judge of the ACC within the new SC. The applicant made this request around eight months before she decided to resign as a judge of the HAC (see paragraph 18 above).

62. The Court considers that the fact of the applicant’s resignation makes it unnecessary to examine her reinstatement request.

B. Damage

63. The applicant provided calculations of alleged pecuniary damage which consisted of a sum equivalent to the difference between the salary paid to the applicant and the remuneration due to a judge of the new SC for the period from 27 July 2017 to 1 March 2022. The applicant further claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

64. The Government submitted that these claims were wholly unsubstantiated and excessive.

65. The Court considers that the applicant has failed to prove that she sustained any pecuniary damage that resulted directly from the violations found. It therefore dismisses the claim for pecuniary damage.

66. The Court nevertheless considers that the applicant has suffered non-pecuniary damage which is not sufficiently compensated for by the mere finding of violations of the Convention. Regard being had to the circumstances of the present case and to the approach taken by the Court in *Gumenyuk and Others* (cited above, § 106), it awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to her.

C. Costs and expenses

67. The applicant claimed reimbursement of the following costs and expenses:

(i) 960 Ukrainian hryvnias (UAH) for court fees incurred at the national level (she provided a receipt related to the court proceedings regarding her unsuccessful participation in the competition for the new SC);

(ii) UAH 1,305 in respect of postal expenses for sending two applications to the Court (she provided receipts); and

(iii) EUR 8,400 in legal fees for the representation before the Court (she provided a legal assistance agreement, an act of performed legal services, an invoice for EUR 3,000 and a written consent to transfer EUR 5,400 directly to the account of her representative).

68. The Government submitted that the amounts claimed were unjustified, in particular, because:

(i) the court fees were not necessarily incurred;

(ii) the receipts in support of the postal expenses were of poor quality;

(iii) the part of the claim that was for legal fees (EUR 5,400) was not actually incurred; and

(iv) another part of that claim (EUR 3,000) was not corroborated by appropriate evidence.

69. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claims for court fees and postal expenses and considers it reasonable to award the applicant EUR 3,000 for legal fees in the proceedings before the Court, plus any tax that may be chargeable to her.

D. Default interest

70. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the complaint under Article 6 § 1 of the Convention about lack of access to a court and the complaint under its Article 8 admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the applicant's right of access to a court;
4. *Holds* that there has been a violation of Article 8 of the Convention;
5. *Holds* that there is no need to examine the admissibility and merits of the remaining complaints;
6. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 March 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar

Mattias Guyomar President