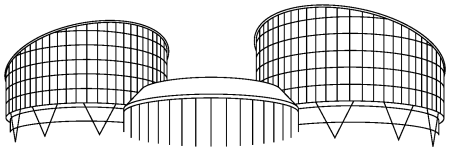

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MITRINOVSKI v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

(Application no. 6899/12)

JUDGMENT

STRASBOURG

30 April 2015

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Mitrinovski v. the former Yugoslav Republic of Macedonia,

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

Isabelle Berro, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 7 April 2015,

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

PROCEDURE

1. The case originated in an application (no. 6899/12) against the former Yugoslav Republic of Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Macedonian national, Mr Jordan Mitrinovski ("the applicant"), on 27 January 2012.

2. The applicant was represented by Mr J. Mitrinovski, a lawyer practising in Skopje. The Macedonian Government ("the Government") were represented by their Agent, Mr K. Bogdanov.

3. Mirjana Lazarova Trajkovska, the judge elected in respect of the former Yugoslav Republic of Macedonia, was unable to sit in the case (Rule 28). On 26 August 2014 the President of the Chamber decided to appoint Ksenija Turković to sit as an *ad hoc* judge (Rule 29).

4. The applicant alleged *inter alia* that the State Judicial Council that had dismissed him from the office of judge was not an "independent and impartial tribunal" within the meaning of Article 6 § 1 of the Convention.

5. On 18 February 2013 this complaint was communicated to the Government. It was also decided to apply Rule 41 of the Rules of Court and grant priority treatment to the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1950 and lives in Skopje.

A. Background to the case

7. On 6 December 2010 a three-judge panel of the Skopje Court of Appeal, presided over by the applicant (including Judges I.L. and M.S.), decided, in second instance, to grant an appeal of a detainee. The panel accepted a proposed bail and replaced an order for detention on remand with an order for house arrest (*Ксж.бр. 537/2010)*. On 9 December 2010 the State Public Prosecutor challenged this decision by means of a request for the protection of legality (*барање за заштита на законитоста*). He sought that the Supreme Court declared that decision unlawful and that it be remitted for fresh consideration.

8. On 10 December 2010 a five-judge panel of the Supreme Court, presided over by Judge J.V., the President of the Supreme Court at the time, held a session at which the public prosecutor's request was examined. The Supreme Court accepted the prosecutor's amended request (*преиначено*) and stated *inter alia* that:

> "The Supreme Court finds that Skopje Court of Appeal, which decided the appeal ... against the decision ... in which the Skopje Court of First Instance had dismissed a request for termination of pre-trial detention (*предлог за укинување на мерката притвор*) as unsubstantiated, had no statutory ground to decide the complaints on the merits, but, on the contrary, it was bound by law to establish that the appeal ... was inadmissible ..."

B. The applicant's dismissal

9. On 10 December 2010 the criminal division of the Supreme Court composed of six judges of that court, including Judge J.V. (see section 39(1) of the Rules of the Supreme Court, paragraph 22 below), held a session at which they discussed the case *Ксж.бр. 537/2010*. Following an examination of the record of the deliberations of the Skopje Court of Appeal regarding the decision of 6 December 2010 (see paragraph 7 above), the criminal division of the Supreme Court concluded that two judges had disclosed professional misconduct. The relevant part of the record of that session reads as follows:

> "... the criminal division of the Supreme Court unanimously found (*едногласно се донесе заклучок*) that there had been professional misconduct by two judges of the Skopje Court of Appeal who had adjudicated in the case *Ксж.бр. 537/2010.*

> The President of the Supreme Court, J.V., then closed the session of the criminal division."

10. In submissions of the same date, Judge J.V., as an *ex officio* member of the State Judicial Council ("the SJC", see Amendment XXVIII to the Constitution, paragraph 19 below), requested that the SJC establish professional misconduct in respect of the applicant and Judge I.L. This request was submitted pursuant to sections 78 and 79 of the State Judicial Act 2010 ("the Act", see paragraph 20 below) according to which a member of the SJC or the president of the higher court can seek that professional misconduct proceedings were launched regarding a judge. As stated in the request, there were reasonable grounds to believe that the applicant and Judge I.L. had exercised the office of judge in an unprofessional and unconscientious manner given that they had voted in favour of the decision of 6 December 2010 in the criminal case *Ксж.бр. 537/2010*, which had been in violation of the Criminal Proceedings Act. In support, he submitted copies of the decisions of 6 and 10 December 2010 (see paragraphs 7 and 8 above).

11. On 23 December 2010 the plenary of the SJC, including Judge J.V., discussed Judge J.V.'s request for determination of professional misconduct on the part of the applicant and accepted it as timely, complete and admissible. It also set up a Commission for determination of professional misconduct by the applicant ("the Commission"), composed of five of its members, including the President of the SJC (see section 80 of the Act, paragraph 20 below). The composition of the Commission did not include Judge J.V.

12. On 29 December 2010 the Commission communicated Judge J.V.'s request and the supporting evidence to the applicant. On 18 January 2011 the applicant responded in writing and provided evidence in support (see section 81 of the Act, paragraph 20 below). Judge I.L. resigned in the meantime. After the Commission had obtained the material in the case *Ксж.бр. 537/*2010, on 14 January 2011 it submitted a report to the (plenary of the) SJC as to whether Judge J.V.'s request was justified.

13. On 23 February 2010, the plenary of the SJC, including Judge J.V., initiated professional misconduct proceedings against the applicant and temporarily suspended him from the office of judge. In the decision, the SJC relied on sections 84 and 86 of the Act (see paragraph 20 below). The relevant parts of this decision read as follows:

> "The SJC, on the basis of (Judge J.V.'s) request ... set up (the Commission) ... After the Commission had taken actions pursuant to sections 81 and 82 of (the Act), it submitted, under section 83 of (the Act), to the SJC a report as to whether the request was justified.
>
> The SJC ... discussed the request and the Commission's proposal and decided to initiate professional misconduct proceedings ..."

14. On 19 April 2011 the Commission held, pursuant to section 87 of the Act (see paragraph 20 below), a hearing. As noted in the record of the hearing, it was attended by the applicant and his legal representative, as well as by Judge J.V. as complainant. Judge J.V.stated *inter alia* that:

> "... I submitted the request (for determination of unprofessional and unconscientious exercise of the office of judge regarding the applicant) for the following reasons: (the applicant), as the chairman of the panel and a judge rapporteur (in the case *Ксж.бр. 537/*2010) and judge I.L., as a member of that panel, contrary to (the Criminal Proceedings Act) ... had unlawfully decided on the merits ... they had no statutory ground to decide on the merits of the complaints raised in the appeal, but they were bound by law to reject the appeal as inadmissible. For these reasons, I consider that in this case ... there are grounds [to be established that there was] unprofessional and unconscientious exercise of the office of judge ...
>
> I must underline that I submitted this request to the SJC in view of the conclusion of the criminal division of the Supreme Court of 10 December 2010 [see paragraph 9 above] ..."

15. After the applicant had presented his arguments verbally, the President of the Commission put several questions to him. The applicant's lawyer and judge J.V. did not put any questions notwithstanding that they were provided with such an opportunity. Then, the applicant and judge J.V. made concluding remarks. The record of the hearing indicated that under section 92 of the Act (see paragraph 20 below), the Commission would draw up a report, which would be communicated to the SJC for consideration. The record of the hearing was signed by the applicant, judge J.V., as the complainant, and the members of the Commission (see section 90 of the Act, paragraph 20 below). As evident from the available material, the Commission submitted such a report in which it proposed that the SJC dismiss the applicant for professional misconduct.

16. On 18 May 2011 the plenary of the SJC, which included judge J.V., dismissed the applicant from the office of judge for professional misconduct. The relevant parts of the decision read as follows:

> "The SJC finds that Skopje Court of Appeal had no statutory ground to examine and decide on the merits of the complaints raised in the appeal [in the criminal case *Ксж.бр. 537/*2010], but it was bound by law to establish that the accused's appeal submitted by his lawyer had been inadmissible. Accordingly, it decided in violation to (the Criminal Proceedings Act).
>
> ...
>
> Such a decision is unlawful and contrary to [relevant provisions of the Criminal Proceedings Act] ...
>
> ...
>
> When establishing unprofessional and unconscientious exercise of the office of judge [by the applicant], the SJC relied, as a legal ground, on the judgment of the Supreme Court [see paragraph 8 above] and the conclusion of the criminal division of the Supreme Court of 10 December 2010 [see paragraph 9 above]. The (criminal) division explicitly established that (the applicant), as chairman of the panel and a

judge rapporteur, ... had been unprofessional and decided contrary to [the relevant provisions of the Criminal Proceedings Act] ...”

17. The applicant appealed against that decision before the second-instance body, namely an Appeal Panel formed within the Supreme Court on an *ad hoc* basis in each case separately and composed, as specified in section 96 of the Act (see paragraph 20 below), of nine judges, of whom three were to be Supreme Court judges, four Appeal Court judges and two judges of the court of the applicant. He also sought withdrawal of judge J.V. and all the Supreme Court judges. In support he stated that there was a conflict of interest, as judge J.V. had sought his dismissal and had later voted for it as an *ex officio* member of the SJC. The position he held was such that he could influence other judges of that court.

18. On 13 September 2011 the Appeal Panel dismissed the appeal and confirmed the SJC’s decision dismissing him from the office of judge. It also refused his request for the withdrawal of judges. It found that it was the plenary of the Supreme Court, and not the Appeal Panel, which had competence to decide on the applicant’s request for the withdrawal of the President of the Supreme Court. Relying on the Civil Proceedings Act it further rejected as inadmissible the applicant’s request for the withdrawal of all the judges of a court.

II. RELEVANT DOMESTIC LAW

A. The 1991 Constitution (as amended in 2005)

19. In December 2005 Parliament adopted several Amendments to the Constitution. The relevant provisions read as follows:

Amendment XXVI

“1. ... A judge can be dismissed from office:

- for serious violation of disciplinary rules which makes him or her unsuitable to exercise the office of judge and - for unprofessional and unconscientious exercise of the office of judge under conditions stipulated by law.”

Amendment XXVIII

“... The Judicial Council is composed of fifteen members. The President of the Supreme Court of the Republic of Macedonia and the Minister of Justice are *ex officio* members of the Judicial Council. Eight members of the Council are elected by judges from among their peers ... Five members ... are elected by Parliament.”

B. State Judicial Act of November 2010 (Official Gazette no. 150/2010)

20. Relevant provisions of the State Judicial Act 2010 ("the Act") read as follows:

Decisions of the SJC
Section 71

"On the basis of a report [of the Commission] and the deliberations, the SJC can ...

- stay the disciplinary proceedings;

- issue a disciplinary penalty adequate to the violation and

- dismiss the judge for a gross violation of disciplinary rules (*потешка дисциплинска повреда*)."

Disciplinary measures
Section 73(1)

"The SJC can issue the following disciplinary penalties if it establishes that a judge is responsible for a disciplinary offense:

- a written reprimand,

- a public reprimand and

- a salary reduction in the range of 15% to 30% ..."

Professional misconduct proceedings
Section 77

"A judge can be dismissed for unprofessional and unconscientious exercise of the office of judge under conditions specified by law."

Request for determination of professional misconduct of judge
Section 78(1)(2) and (3)

"Professional misconduct proceedings in respect of a judge may be instituted by a member of the SJC, the president of the court [of a judge whose dismissal is being sought], the president of the higher court or plenary of the Supreme Court of the Republic of Macedonia ("the complainant") ...

The proceedings are urgent and confidential. The public are excluded and the reputation and dignity of the judge concerned are respected ...

At the request of a judge, the SJC may decide that the proceedings are to be public ..."

Contents of the request
Section 79

"A request for professional misconduct proceedings specified in section 78(1) of this Act is submitted to the SJC and it contains, *inter alia*, [personal information] about the judge, address and place of residence ... description of the alleged violation ... and an outline of the evidence to be admitted at a hearing.

The request should be accompanied by supporting evidence."

Commission for determination of professional misconduct ("the Commission")
Section 80(1) and (3)

"The SJC decides whether a request for professional misconduct proceedings is timely, complete and admissible.

...

If the SJC finds the request admissible, it sets up from among its members a Commission for determination of professional misconduct (*Комисија за утврдување нестручно и несовесно вршење на судиската функција*) composed of a chairman and four members ..."

Section 81(1)-(4)

"The Commission communicates the request and supporting evidence to the judge concerned.

The judge may respond in writing or give a verbal statement within 8 days after the request is served on him or her.

The judge against whom the request is submitted has the right to a legal representative whom he or she invites to the hearing.

Together with the observations in reply to the request, the judge concerned submits all evidence in support of his or her response ..."

Collection of data and evidence
Section 82(1)

"The Commission seeks information and gathers evidence relevant for [the case]."

Report and recommendation
Section 83

"On the basis of information and evidence gathered, the Commission submits a report to the SJC stating whether the request is justified."

Examination of the request
Section 84(1) and (2)

"The SJC examines the request and the Commission's proposal and decides to institute or stay professional misconduct proceedings.

The SJC takes (this) decision by a majority of all its members ..."

Service of the decision
Section 85

"The decision specified in section 84 of this Act is served on the complainant (*подносител на барањето*), the judge [whose dismissal is sought], and the president of that judge's court and the case file is forwarded to the Commission."

Temporary suspension
Section 86

"When the SJC initiates professional misconduct proceedings, it may temporary suspend from work the judge concerned."

Hearing before the Commission
Section 87

"The Commission must schedule a hearing within fifteen days of the institution of professional misconduct proceedings.

All members of the Commission attend the hearing.

The chairman of the Commission presides over the hearing."

Summons for the hearing
Section 88

"The complainant and the judge concerned are summoned to a hearing. They are provided with evidence gathered by the Commission.

If they have been duly summoned and fail to attend without providing any justification, the hearing is held in their absence."

Section 89

"All evidence presented by the complainant, the judge concerned and evidence obtained by the Commission is heard at the hearing.

The judge concerned can argue in relation to all evidence adduced at the hearing."

Record [of the hearing]
Section 90(4)

"The record of the hearing is signed by the complainant, the judge concerned or his or her representative, the (members of the) Commission and the minutes holder ..."

Report of the Commission
Section 92(1)

"The Commission draws up a report for the SJC within fifteen days of the hearing with a proposal for (one of the) following decisions:

- that the proceedings are stayed if there are no grounds for professional misconduct by a judge or

- that the judge must be dismissed due to professional misconduct."

Decisions of the SJC
Section 93

"On the basis of the (Commission's) report and after the hearing, the SJC may ...

- stay the proceedings if there are no grounds for professional misconduct or

- dismiss the judge due to professional misconduct."

Section 95(1) and (3)

"The SJC takes the decision specified in section 94 of this Act by a two-thirds majority of all its members.

...

A transcript of the decision is served on the judge, his or her representative, the complainant and the president of the court of the judge concerned or to the president of the immediate higher court."

Right to appeal
Section 96(1)-(4)

"The judge concerned can challenge the SJC's dismissal decision before a second-instance panel set up within the Supreme Court ("the Appeal Panel") ...

The Appeal Panel is composed of nine members, of whom three Supreme Court judges, four Appeal Court judges and two judges of the court of the judge against whom proceedings have been conducted.

The President of the Supreme Court may not be a member of the Appeal Panel.

The Appeal Panel may uphold or quash the SJC's dismissal decision ..."

C. Civil Proceedings Act of 2005

21. Section 400 of the 2005 Civil Proceedings Act provides for the possibility of reopening proceedings in respect of which the Court has found a violation of the Convention. In such reopened proceedings the domestic courts are required to comply with the provisions of the final judgment of the Court.

D. Rules of the Supreme Court (Official Gazette nos. 13/1998 and 21/2009)

22. Relevant provisions of the Rules of the Supreme Court read as follows:

3) Court divisions
Section 23

"The following judicial divisions are set up within the Supreme Court:

1. Criminal division

2. Civil division

3. Case-law division"

Chapter III

Work of the court
Section 31

"The court exercises its work specified by the Constitution and Law on Courts through:

- chambers;

- session of divisions;

- joint session of divisions;

- plenary session."

2. Court divisions

Organisation and competencies of divisions
Section 37(1)

"Proceedings and decisions in criminal cases fall within the competence of judges of the criminal division."

Section 39(1)

"The division is composed of all judges who deal with cases that fall within the competence of that division, as well as (law clerks) ..."

E. Act on the Council for establishing facts and initiation of proceedings for determination of responsibility of a judge ("the Council", Official Gazette no. 20/2015)

23. In February 2015 the National Parliament adopted a new Act on the Council for establishing facts and initiation of proceedings for determination of responsibility of a judge, which provides for the creation of the Council, a new body which role is to establish, in proceedings regulated with this Act, relevant facts and decide whether it will submit an application for professional misconduct proceedings in respect of a judge (sections 2 and 49). It is composed of nine members (retired judges, prosecutors and lawyers, section 6) elected by all judges in the respondent State, on direct and secret ballot (section 16). It can *inter alia* submit an application to the SJC for initiation of proceedings for determination of responsibility of a judge or president of a court (section 32). The Act will become operational three months after it would enter into force (section 53).

F. Act amending the State Judicial Act (Official Gazette no. 20/2015)

24. In February 2015 the National Parliament also amended the State Judicial Act. Section 16 replaces section 78(1) of the Act (see paragraph 20 above) and provides that the Council, instead of a member of the SJC, the president of the court [of a judge whose dismissal is being sought], the president of the higher court or plenary of the Supreme Court, may initiate professional misconduct proceedings before the SJC. This Act will become operational three months after it would enter into force (section 31).

III. INTERNATIONAL MATERIALS

A. Opinion no. 10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society, Strasbourg, 23-27 November 2007

25. The relevant provisions of the Opinion read as follows:

II. GENERAL MISSION: TO SAFEGUARD THE INDEPENDENCE OF THE JUDICIARY AND THE RULE OF LAW

"8. The Council for the Judiciary is intended to safeguard both the independence of the judicial system and the independence of individual judges. The existence of independent and impartial courts is a structural requirement of a state governed by the rule of law.

V. C. 2. Discipline

62. The question of a judge's responsibility was examined by the CCJE in Opinion No.3(2002). The recent experiences of some States show the need to protect judges from the temptation to broaden the scope of their responsibility in purely jurisdictional matters. The role of the Council for the Judiciary is to show that a judge cannot bear the same responsibilities as a member of another profession: he/she performs a public function and cannot refuse to adjudicate on disputes. Furthermore, if the judge is exposed to legal and disciplinary sanctions against his/her decisions, neither judicial independence nor the democratic balance of powers can be maintained. The Council for the Judiciary should, therefore, unequivocally condemn political projects designed to limit the judges' freedom of decision-making. This does not diminish judges' duty to respect the law.

63. A judge who neglects his/her cases through indolence or who is blatantly incompetent when dealing with them should face disciplinary sanctions. Even in such cases, as indicated by CCJE Opinion No.3(2002), it is important that judges enjoy the protection of a disciplinary proceeding guaranteeing the respect of the principle of independence of the judiciary and carried out before a body free from any political influence, on the basis of clearly defined disciplinary faults: a Head of State, Minister of Justice or any other representative of political authorities cannot take part in the disciplinary body.

64. The Council for the Judiciary is entrusted with ethical issues; it may furthermore address court users' complaints. In order to avoid conflicts of interest, disciplinary procedures in first instance, when not addressed within the jurisdiction of a disciplinary court, should preferably be dealt with by a disciplinary commission composed of a substantial representation of judges elected by their peers, different from the members of the Council for the Judiciary, with provision of an appeal before a superior court."

B. Magna Carta of Judges (Fundamental Principles), Consultative Council of European Judges, Strasbourg, 17 November 2010 CCJE (2010)3 Final

26. The relevant provisions of the Magna Carta of Judges read as follows:

Guarantees of independence

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

Body in charge of guaranteeing independence

"13. To ensure independence of judges, each State shall create a Council for the Judiciary or another specific body, itself independent from legislative and executive powers, endowed with broad competences for all questions concerning their status as well as the organisation, the functioning and the image of judicial institutions. The Council shall be composed either of judges exclusively or of a substantial majority of judges elected by their peers. The Council for the Judiciary shall be accountable for its activities and decisions."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

A. The issue of impartiality and independence of the SJC

27. The applicant complained under Article 6 of the Convention that the SJC was not an "independent and impartial tribunal" since the President of the SJC, who had been member of the Commission in his case, as well as the President of the Supreme Court, whose request had set in motion the impugned proceedings, had subsequently taken part in the SJC's decision dismissing him. In this respect, he also alleged that the President of the Supreme Court, owing to his prior involvement in approving the judicial opinion of the criminal division of the Supreme Court (see paragraph 9 above), had a preconceived idea about the merits of the issue, namely his dismissal. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

1. Admissibility

28. The Government did not raise any objection as to the admissibility of these complaints.

29. Notwithstanding the absence of any objection by the Government regarding the admissibility of the complaints under this head, the Court would like to address the issue of applicability of Article 6 of the Convention. It notes that the applicant's case was considered by the SJC, which determined all the questions of fact and law after holding a hearing and assessing the evidence. A plenary meeting of the SJC adopted a decision on the applicant's dismissal, which was reviewed by the Appeal Panel, a body composed of judges performing a judicial function. In such circumstances, the Court considers that Article 6 applies to the impugned proceedings under its civil head (see similarly *Olujić v. Croatia*, no. 22330/05, §§ 31-45, 5 February 2009 and *Oleksandr Volkov v. Ukraine,* no. 21722/11, § 91, ECHR 2013).

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

2. Merits

(a) The parties' submissions

31. The applicant submitted that judge J.V., the then President of the Supreme Court, who had set in motion the impugned proceedings and put before the Commission arguments in support of his request, had ultimately taken part in the SJC's decision to dismiss him. That had led to a situation where the same member of the SJC had both "pressed charges and dismissed a judge". Such a dual role had led to an accumulation and collision of powers incompatible with the principle of a fair trial. Despite the fact that the above considerations concerned only one member of the SJC, his participation in the SJC's final decision to dismiss him had "contaminated" the whole proceedings.

32. The Government explained the proceedings before the SJC, in particular the role of the Commission, which considered the facts and merits of the cases. The President of the Supreme Court who had sought the initiation of the impugned proceedings had not been a member of the Commission. The latter had held hearings at which it had heard evidence and the parties' arguments. It had then drawn up a report on the case with a recommendation for a decision (*предлог за донесување одлука*), which was forwarded to the plenary of the SJC. The Commission had not held a "preliminary inquiry", but was to be considered a panel within the SJC.

33. They further submitted that the Supreme Court's President's membership of the panel that decided in the criminal case *Ксж.бр. 537/2010* (see paragraph 8 above) did not mean that the SJC that had decided on the applicant's dismissal was necessarily partial.

(b) The Court's consideration

34. The Court recalls that the concepts of independence and objective impartiality are closely linked, and, depending on the circumstances, may require joint examination (see *Sacilor-Lormines v. France*, no. 65411/01, § 62, ECHR 2006-XIII). However, having regard to the facts of the present case, the Court finds it appropriate to examine the complaints under this head through the prism of the alleged lack of impartiality of the SJC in view of the role of Judge J.V. in the impugned proceedings.

(i) General principles

35. The Court recalls that as a rule, impartiality denotes the absence of prejudice or bias. According to the Court's settled case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined according to: (i) a subjective test, where regard must be had to the personal conviction and behaviour of a particular judge – that is, whether the judge held any personal prejudice or bias in a given case; and (ii) an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see, among other authorities, *Fey v. Austria*, 24 February 1993, §§ 28 and 30, Series A no. 255, and *Wettstein v. Switzerland*, no. 33958/96, § 42, ECHR 2000-XII).

36. However, there is no watertight division between subjective and objective impartiality, as the conduct of a judge may not only prompt objectively held misgivings as to his or her impartiality from the point of view of the external observer (the objective test) but may also raise the issue of his or her personal conviction (the subjective test) (see *Kyprianou v. Cyprus* [GC], no. 73797/01, § 119, ECHR 2005-XIII). Thus, in some cases where it may be difficult to procure evidence with which to rebut the presumption of the judge's subjective impartiality, the requirement of objective impartiality provides a further important guarantee (see *Pullar v. the United Kingdom*, 10 June 1996, § 32, *Reports* 1996-III).

37. In this respect, even appearances may be of a certain importance or, in other words, "justice must not only be done, it must also be seen to be done". What is at stake is the confidence which the courts in a democratic society must inspire in the public (see *De Cubber v. Belgium*, 26 October 1984, § 26, Series A no. 86).

(ii) Application to the present case

38. The Court notes that under Amendment XXVIII of the Constitution (see paragraph 19 above), the SJC was composed of fifteen members, of which the President of the Supreme Court and the Minister of Justice were *ex officio* members; eight members were elected by judges from among their peers and five members were elected by Parliament. Professional

misconduct proceedings before the SJC were regulated in detail by the Act, according to which a finding by the SJC of professional misconduct by a judge could lead only to removal of that judge from office. This is the case because dismissal was the only available measure in cases of professional misconduct, in contrast to disciplinary proceedings, for which other measures were available (see sections 73, 77 and 93 of the Act, paragraph 20 above).

39. Section 78(1) of the Act (see paragraph 20 above) provided that any member of the SJC could ask the SJC to establish that there had been professional misconduct on the part of a judge. Such a request could be made also by the president of the higher court. In the present case, judge J.V., who was the President of the Supreme Court at the time and *ex officio* member of the SJC, requested the impugned proceedings regarding the applicant, the President of Skopje Court of Appeal at the time.

40. This request was submitted after the criminal division of the Supreme Court, which was competent to discuss procedural and substantive issues related to criminal cases (see section 37(1) of the Rules of the Supreme Court, see paragraph 22 above), had established unanimously that "there was professional misconduct by two judges" in the criminal case *Ксж.бр.537/2010* adjudicated by the three-judge panel of Skopje Court of Appeal, which included the applicant (see paragraph 9 above). Although the criminal division did not set out the names of the judges whom it believed that had violated the law, it is obvious that that opinion included the applicant. The SJC confirmed that the conclusion of the criminal division of the Supreme Court had concerned the applicant (see paragraph 16 above). Judge J.V. participated in the criminal division and voted in favour of its findings.

41. In such circumstances, the Court considers that the applicant had legitimate grounds for fearing that judge J.V. was already personally convinced that he should be dismissed for professional misconduct before that issue came before the SJC (see *Werner v. Poland*, no. 26760/95, § 41, 15 November 2001).

42. The Court further notes that the plenary of the SJC, which included judge J.V., declared the latter's request admissible. It further set up an *ad hoc* Commission, as an internal body of the SJC that conducted the impugned proceedings. The Commission was composed, as specified under section 80(3) of the Act (see paragraph 20 above), of five members of the SJC. Judge J.V. was not a member of the Commission. In accordance with section 87 of the Act, on 19 April 2011 the Commission held a hearing at which it considered relevant evidence and heard arguments and concluding remarks by both the applicant and judge J.V. The latter was also given the opportunity to question the applicant (see paragraphs 14 and 15 above). Both the applicant and judge J.V. signed the record of the hearing. On the

basis of all available material, the Commission drew up a report which it forwarded to the plenary of the SJC for consideration.

43. Having regard to the procedural rules described above, the Court considers that in the present case against the applicant, judge J.V. had rights as a party to the impugned proceedings. His request set in motion the proceedings, to which he submitted evidence and arguments in support of the allegations of professional misconduct on the applicant's part. Accordingly, he had acted as "prosecutor" in respect of the applicant, the "defendant" in the impugned proceedings.

44. Relying on the Commission's report, the Supreme Court's decision delivered in the criminal case *Ксж.бр.537/2010* and the conclusion of the criminal division of the Supreme Court (see paragraph 16 above), the plenary of the SJC dismissed the applicant for professional misconduct. Judge J.V., as an *ex officio* member of the SJC, took part in that decision. Both the applicant and judge J.V. were to be served with a transcript of the decision (see section 95(3) of the Act, paragraph 20 above).

45. In such circumstances, the Court considers that the system in which judge J.V., as member of the SJC who had sought the impugned proceedings subsequently took part in the decision to remove the applicant from office, casts objective doubt on his impartiality when deciding on the merits of the applicant's case (see *Oleksandr Volkov*, cited above, § 115).

46. In view of the above the Court finds it established that Judge J.V.'s role in the proceedings failed both the subjective and objective impartiality test. Furthermore, the fact that Judge J.V. was only one of fifteen members of the SJC cannot, in the circumstances, lead to any other result (see *Fazlı Aslaner v. Turkey*, no. 36073/04, 4 March 2014). Accordingly, there has been a violation of Article 6 § 1 of the Convention on account of lack of requisite impartiality of the SJC that examined the applicant's case.

B. Remaining complaints under Article 6 § 1 of the Convention

47. The applicant further complained that he did not have a fair hearing in that the impugned proceedings did not fulfil some of the guarantees specified in Article 6 § 1 of the Convention, namely that the SJC had refused to examine witnesses in his defence; that he was denied the right to attend the hearing before the Appeal Panel; and that sufficient reasons were not given for his dismissal.

48. Having regard to the above considerations and the conclusion that there was an infringement of the applicant's right to a hearing by an "independent and impartial tribunal" under Article 6 § 1 of the Convention, the Court declares these complaints admissible but considers that it is not necessary to examine them separately (see *Oleksandr Volkov*, cited above, § 159; *Harabin v. Slovakia*, no. 58688/11, § 143, 20 November 2012; and

Nikolov v. the former Yugoslav Republic of Macedonia, no. 41195/02, § 29, 20 December 2007).

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

49. The applicant also invoked Articles 5, 9, 10, 13, 14 and 17 of the Convention.

50. The Court has examined these complaints. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

51. Accordingly, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

52. Lastly, the applicant also complained of a lack of independence and impartiality of the bodies that had decided his case given the public statements about him made by the Prime Minister, Minister of Justice, members of the SJC and other high-level politicians. In so far this aspect of the application is not covered by the above findings under Article 6 of the Convention, the Court notes that it was submitted on 12 September 2013 whereas the final decision in the case was rendered on 13 September 2011 (see paragraph 18 above). It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed 34,924 euros (EUR) in respect of pecuniary damage. This figure concerned the difference in income to which he would have been entitled as judge. He also claimed reimbursement of the subscription fee and other related costs for his admission, after his dismissal, to the Macedonian Bar. Lastly, he sought EUR 500,000 in respect of non-pecuniary damage for the violation of his honour and reputation and for mental distress and deterioration of his health.

55. The Government contested these claims and submitted that they were unsubstantiated. They further alleged that there had been no causal link between the pecuniary damage claimed and the alleged violations.

56. The Court observes that an award of just satisfaction can only be based on the fact that the applicant did not have the benefit of all the guarantees of Article 6 § 1 of the Convention. However, the Court cannot speculate as to what the outcome of proceedings compatible with Article 6 § 1 of the Convention would have been had the violations not been found. In the present case the Court sees no causal link between the breach of Article 6 § 1 of the Convention and the alleged pecuniary damage. There is, therefore, no ground for an award under this head (see *HIT d.d. Nova Gorica v. Slovenia*, no. 50996/08, § 49, 5 June 2014; *Bajaldžiev v. the former Yugoslav Republic of Macedonia*, no. 4650/06, § 52, 25 October 2011; and *Mežnarić v. Croatia*, no. 71615/01, § 43, 15 July 2005).

57. On the other hand, the Court considers that the applicant must have suffered distress and anxiety on account of the violations found. Ruling on an equitable basis, as required by Article 41 of the Convention, it awards the applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

58. The Court further reiterates that a judgment in which it finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and make all feasible reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach occurred (see *Harabin,* cited above, § 177).

59. In the event of a violation of Article 6 of the Convention, the applicant should as far as possible be put in the position he or she would have been in had the requirements of this provision not been disregarded. The most appropriate form of redress in cases like the present one would be the reopening of the proceedings, if requested. The Court notes, in this respect, that the Civil Proceedings Act provides for the possibility of proceedings being reopened where the Court concludes in a judgment that a court's decision or proceedings prior to it were in breach of the fundamental human rights or freedoms of the party (see paragraph 21 above).

B. Costs and expenses

60. The applicant claimed the equivalent to EUR 980 for the legal fees for his legal representation before the domestic authorities. In support, he provided a payment slip. As regards the costs and expenses incurred before

the Court, he claimed EUR 250 for postal, copying and translation costs. He provided copies of payment slips and receipts.

61. The Government contested these claims as "insufficiently proved".

62. 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 (see *Editions Plon* v. France, no. 58148/00, § 64, ECHR 2004-IV). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the full sum, EUR 1,230, claimed by the applicant, plus any tax that may be chargeable to him.

C. Default interest

63. 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. *Declares* the complaints that the SJC was not "an independent and impartial tribunal" and that the applicant did not have a fair trial admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in that the applicant's case was not examined by an impartial tribunal;

3. *Holds* that there is no need to examine the remaining complaints under Article 6 § 1 of the Convention;

4. *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 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; and

      (ii) EUR 1,230 (one thousand two hundred and thirty euros), plus any tax that may be chargeable to him, 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;

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

Done in English, and notified in writing on 30 April 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro
Registrar	President