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

FIRST SECTION

CASE OF OLUJIĆ v. CROATIA

(Application no. 22330/05)

JUDGMENT

STRASBOURG

5 February 2009

FINAL

05/05/2009

This judgment may be subject to editorial revision.

In the case of Olujić v. Croatia**,**

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

Christos Rozakis, *President,*
Nina Vajić,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 15 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 22330/05) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Croatian national, Mr Krunislav Olujić ("the applicant"), on 6 June 2005.

2. The applicant was represented by Mr B. Hajduković, a lawyer practising in Zagreb. The Croatian Government ("the Government") were represented by their Agent, Mrs Š. Stažnik.

3. On 20 September 2007 the President of the First Section decided to communicate the complaints under Article 6 § 1 of the Convention concerning the lack of fairness and public hearing, the alleged impartiality and the length of the disciplinary proceedings against the applicant to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1952 and lives in Zagreb.

A. Disciplinary proceedings against the applicant

5. The applicant was a judge and the President of the Supreme Court (*Vrhovni sud Republike Hrvatske*). He was also a member of the National Judicial Council (*Državno sudbeno vijeće*, hereinafter the "NJC").

Sometime in 1996 the Government filed a request with the NJC to open disciplinary proceedings against the applicant. They alleged that from January to August 1996 the applicant had conducted sexual relationships with minors and that from 1995 onwards he had used his position to protect the financial activities of two individuals who were known for their criminal activities, and had thus caused damage to the reputation of the judiciary, which amounted to a serious disciplinary offence. For these reasons they proposed that disciplinary proceedings be instituted against the applicant and that a disciplinary sanction be imposed, including that he be permanently removed from office as a judge and as President of the Supreme Court. Furthermore, they asked for the applicant's immediate provisional removal from office during the proceedings.

6. On 21 November 1996 the NJC instituted disciplinary proceedings against the applicant. On 5 December 1996 the applicant filed a motion seeking the withdrawal from the case of three members of the NJC, namely A.P., V.M. and M.H, on the ground that they had shown their bias towards the applicant in interviews published in various national newspapers. The motion was denied on 9 January 1997 as being unfounded. At the hearing held on 9 January 1997 the NJC refused the applicant's request that the hearings before it be public on the ground that the exclusion of the public was necessary for the protection of the interests of the applicant and the judiciary as such without any further reasoning. Further hearings were held on 10, 13 and 14 January 1997. On 14 January 1997 the NJC found that the applicant had committed a disciplinary offence in maintaining contacts and appearing in public with B.Č. and S.Š. despite knowing that they had been convicted of numerous crimes, and of using his position to protect these two individuals' interests and gains from June 1995 to November 1996. The NJC further found the remaining allegations against the applicant unfounded and thus requiring no disciplinary measures. It was decided to remove the applicant from his post as judge and President of the Supreme Court.

7. The applicant's subsequent "request for protection" (*zahtjev za zaštitu*) to the Parliament's Chamber of the Counties (*Županijski dom Sabora Republike Hrvatske*) was dismissed on 19 February 1997. On 21 March 1997 the applicant lodged a constitutional complaint in which he maintained that the proceedings had been unfair and that his right to respect for his correspondence had been infringed.

8. On 17 April 1998 the Constitutional Court quashed the decision of NJC of 14 January 1997 as well as the decision of the Chamber of Counties of 19 February 1997. The Constitutional Court found that the disciplinary proceedings before the NJC had been defective because some of the evidence presented in the proceedings, such as audio recordings of intercepted telephone calls and testimony by a member of the NJC who sat on the Council panel which considered the applicant's case, had not been obtained in accordance with the law. The case was remitted to the NJC.

9. In the resumed proceedings the first hearing was held on 23 September 1998. The applicant filed a motion seeking the withdrawal from the case of four members of the NJC, namely A.P., V.M., M.H., and I.M., alleging that they had failed to show impartiality in statements to the press. The NJC declared inadmissible the request for I.M.'s withdrawal, since he had already withdrawn from the proceedings. The request for the withdrawal of A.P., V.M. and M.H. was dismissed without any further reasoning.

10. The applicant further requested that the proceedings be public. The request was denied. The relevant part of the transcript from the hearing reads as follows:

> "The President of the Council informs those present that the public shall be excluded from the disciplinary proceedings because it has not been decided that the proceedings shall be public pursuant to section 28 paragraphs 1 and 3 of the National Judicial Council Act.
>
> Defence counsel I.K. requests that the disciplinary proceedings be public, justifying the request by the gravity of the case, the general public interest, the importance of the proceedings and the need to protect the defendant's rights.
>
> Defence counsel M.S. supports the request and adds that the right to a public hearing is the basic principle of criminal procedure and that the NJC's decision to exclude the public would be an attack on that right and would breach the fairness of the proceedings. If, however, the Council decides to exclude the public from the proceedings, he requests that the OSCE and UNHCR representatives who are waiting outside the courtroom be allowed to attend the hearings.
>
> Counsel for the Government M.K. leaves the decision to the Council and adds that he is not opposed to the exclusion of the public from these proceedings.
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> ...
>
> The Council announces its
>
> **D E C I S I O N**
>
> The request filed by Dr Krunoslav Olujić that the disciplinary proceedings against him be public shall be dismissed on the grounds of protection of the defendant and of the judiciary as such"

11. Counsel for the Government dropped all charges against the applicant save for those alleging that in the period from June 1995 to the beginning of November 1996 he had continually socialised in public places with two individuals, B.Č. and S.Š., who had a criminal background. Counsel asked the NJC to call five witnesses on behalf of the Government in order to prove their case, without further explanations. The NJC allowed that four of those witnesses be called and also ordered that three further witnesses be called *ex officio*. The applicant and his counsels at that time had not asked that any witnesses be called.

12. The second hearing in the resumed proceedings before the NJC took place on 1 October 1998. The NJC allowed a representative of the UNHCR and a representative of the OSCE to be present at the hearing. All present were warned, under threat of criminal sanctions, that they were obliged to keep secret all that they learned at the hearing.

13. The NJC heard evidence from seven witnesses, including S.Š. and B.Č., all of whom called on behalf of the Government. The evidence showed that the applicant had occasionally been seen in the company of S.Š. in Umag, where the applicant had a flat and was spending some of his holidays, and in the company of B.Č. in Osijek, the applicant's hometown. Both S.Š. and B.Č. stated that they had not been the applicant's friends, that they had no close contacts with the applicant and that they had occasionally been in the same company as the applicant, but always in public places and always in the company of other persons.

14. Counsel for the Government nominated another witness to give evidence about the applicant's contacts with B.Č. in Osijek. The NJC accepted that proposal. As to the evidence relied on by the applicant, the transcript of the hearing reads:

> "Dr Krunoslav Olujić submits a written list of witnesses to be called on his behalf.
>
> ... [the defence counsel states as follows]:
>
> 'We call witnesses [from the list of evidence] to prove to the Council that in the material period Dr Olujić was indeed occasionally in the company of the persons with the alleged 'criminal background', but that each time, without exception, they were together with a large number of persons. Furthermore, S.Š. was present only in his capacity as the owner of a restaurant and it was natural that as such he was occasionally present in the same company as Dr Olujić. We call further witnesses who were often in the company of Dr Olujić in Osijek when B.Č. would occasionally join them. Our aim is to show the true nature of the allegation [that the applicant] "had socialised" and "had been in the company of ... in public places" ...'
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> ...
>
> The defence counsel also asks that further witnesses, mentioned in the enclosed decision of the Umag Minor-Offences Court, be called
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> ...
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> The Council announces its
>
> D E C I S I O N
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> ...
>
> All proposals of the defendant Dr Olujić are dismissed as unimportant, since the circumstances to which the evidence in question refers have either already been established or are of no importance for the decision."

15. The last hearing in the applicant's case before the NJC was held on 7 October 1998. The NJC allowed a representative of the UNHCR and a

representative of the OSCE and an interpreter to be present at the hearing. All present were again warned, under threat of criminal sanctions, that they were obliged to keep secret all that they learned at the hearing.

16. The NJC heard evidence from a further witness, called on behalf of the Government. It also heard the applicant, who stated that the proceedings against him had been politically motivated because of his opposition to the State's senior officials with regard to the concept of the judiciary. He also stated that on 11 October 1996 he had been asked to resign from the office of President of the Supreme Court and offered a post as an Ambassador, which he had refused. As to the allegations against him, he stated that he had occasionally been in the company of the two individuals concerned but that these meetings had always been in public and in the presence of various other persons, and that the individuals in question had not been his friends. The relevant part of his statement reads:

> "... as a high State official aware of my position and the responsibilities I bear, I cannot and will not accept a demand ... asking me to forsake two persons whom I knew before I was appointed to a position of responsibility in the Republic of Croatia. However, my acquaintanceship and relationship with them, irrespective of their past, never went beyond the boundaries of what was acceptable or would have made them questionable from the legal or moral standpoint."

17. The defence asked that three further witnesses be heard concerning the facts of the case, which was denied.

18. In its decision of 7 October 1998 the NJC established that the applicant had committed a disciplinary offence in that he had maintained contacts and socialised in public places with two individuals who had a criminal background, a behaviour which had harmed the reputation of the judiciary and was contrary to his judicial duty. He was dismissed from the office of judge and from that of President of the Supreme Court. The relevant part of the decision reads:

> "Dr Krunoslav Olujić ... bears disciplinary responsibility
>
> in that he
>
> from June 1995 to the beginning of November 1996, while holding the post of the President and a judge of the Supreme Court of the Republic of Croatia, maintained contacts and appeared in public in Osijek and Umag with B.Č. and S.Š. although he had known that they had been known as delinquents
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> ...
>
> As to the exclusion of the public, the Council held as follows:
>
> "Under section 28 paragraph 3 of the National Judicial Council Act, disciplinary proceedings are in principle secret. Bearing in mind the nature of the disciplinary offence [in question] and the information in the case file, the Council has dismissed the defendant's request that the proceedings be public, in order to protect the defendant's dignity and the dignity of the judiciary as such. Pursuant to Article 294 paragraph 2 of the Code of Criminal Procedure, in conjunction with section 28 paragraph 1 of the National Judicial Council Act, the Council has allowed the

presence of B.Š., employee of the UNHCR [United Nations High Commissioner for Refugees] at the hearings held on 1 and 7 October 1998, A.M.M., counsel for human rights at the OSCE [Organisation for Security and Co-operation in Europe] at the hearing held on 1 October 1998, and R.B., member of the OSCE mission to Croatia and his interpreter M.R. at the hearing held on 7 October 1998."

On 10 November 1998 the Chamber of the Counties upheld the decision.

19. In his subsequent constitutional complaint of 2 December 1998, the applicant complained, *inter alia*, about the exclusion of the public from the disciplinary proceedings against him. He also alleged that three members of the National Judicial Council, namely A.P., V.M. and M.H., had been partial. He further complained that no witness called on behalf of the defence had been heard in the proceedings. On 9 December 2004 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicant's complaint as ill-founded.

B. The statements concerning the applicant's case made in the media by three members of the National Judicial Council

20. On 10 February 1997 an interview with V.M., a member of the NJC, was published in the national daily newspaper "*Večernji list*". It was entitled "Olujić was a partisan candidate, not me", and the relevant parts of the interview read as follows:

"In the case at issue the NJC established that for a long period of time Dr Olujić had had frequent public social contacts with two persons who not only had been convicted of numerous criminal offences, but against whom criminal proceedings are currently pending - in one case for assault on a policeman, and in the other for the trade of 1.5 kg of heroin - and that he had even intervened on their behalf. Dr Olujić was acquitted of all the other charges. All this harangue against the members of the NJC, and Dr Olujić's defence, are focussed on the part [of the charges] of which he was acquitted, so now many persons are unhappy because it does not fit into what [the defence] presented. The [charges] for which Dr Olujić was found liable are clear on the facts. What is disputed is whether this amounts to a serious disciplinary offence and, if it does, which sanction is to be applied.

...

I joined Dr. Olujić's request [for my withdrawal] because I publicly voted against his appointment as President of the Supreme Court, and I was also mentioned as a candidate for the post of President of the Supreme Court ...

... In the case at issue, telephone conversations were not a basis for the conviction because they concerned the part of the [charges] for which Dr. Olujić was acquitted. Therefore, all attempts to present the NJC's decision as contrary to law have failed. All the evidence called by the defence referred to the [charges] of which he was acquitted, and it was therefore dismissed as unnecessary."

21. On 28 March 1997 an interview with A.P., the then president of the National Judicial Council, entitled "Judges are appointed, but also created" was published in the same daily newspaper. The relevant parts of the interview read:

Question: "-The National Judicial Council has lately been mentioned in public mostly in connection with the 'Olujić case'. What is the truth about the former Supreme Court President?

Answer: - The decision has been taken and reasons have been given in it. I don't think that I have to explain a reasoned decision, everything was said in it. For me these proceedings are in the past.

Q: - However, for the sake of the public, which has received conflicting information about this case, could you be more specific?

A: - Since you insist, I shall just say that Dr Krunoslav Olujić has committed a disciplinary offence not only by "socialising" with perpetrators of numerous criminal offences, although this in itself is a serious matter for any president of the Supreme Court, but primarily because, while President of the Supreme Court, and aware of these individuals' criminal activity, that is, that they belonged to the international criminal milieu, he used his personal influence and contacts in order to protect their interests and gains. Analysis of the evidence and defence [pleadings] clearly showed that the Government's request to institute proceedings had in no way been politically motivated or a fabricated indictment put forward by the political and partisan elite, as Dr Krunoslav Olujić stated in his defence and alleged before the media, referring to the President of the Republic and the Government. On the contrary, the case is about indecent activities which are incompatible not only with the office of Supreme Court President, which Dr Krunoslav Olujić held for a short period, but with judicial ethics in general.

Q: - And what about the interception of telephone calls?

A: - The interception of telephone conversations concerned legally recorded telephone conversations between the above-mentioned perpetrators of numerous criminal offences, but not at all Dr Olujić's telephone conversations. [Olujić] "was netted" by this operative measure, as one of the witnesses expressed it illustratively. The [National Judicial] Council assessed that evidence, together with all the other evidence, in line with the principle of free assessment of evidence, and it did not significantly influence its decision."

22. On 22 September 1997 another national daily newspaper, "*Slobodna Dalmacija*", published an interview with M.H., a member of the NJC and the then State Attorney. The relevant parts of the interview read:

"With regard to the statements about a lack of independence on my part and my reliance on Mr Šeks [president of Parliament], which were published in the weekly newspaper '*Tjednik*,' in an article by journalist S. P., whose hand was guided by a gentleman whose career in the judiciary ended shamefully, I see them mostly as comical, as I do the author himself. These fabricated and unsupported statements, coming from a man who held a number of highly responsible functions in the Croatian judiciary, where, due to his lack of experience and knowledge, he was a *corpus alienum* (a foreign body), do not really deserve special attention because they belong to the place from which they originate, namely, the coffee-bars."

II. RELEVANT DOMESTIC LAW

23. The relevant part of the Constitutional Act on the Constitutional Court (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official

Gazette no. 13/1991), as in force at the material time, provided that everyone could lodge a constitutional complaint with the Constitutional Court if they considered that a judicial or administrative decision, or a decision of a legal entity invested with public authority, had violated their human rights or fundamental freedoms guaranteed by the Constitution (section 28). If the Constitutional Court allowed a constitutional complaint, it had to quash the impugned decision and remit the case to the competent authority for a new decision (section 30).

24. The relevant provisions of the National Judicial Council Act, as in force at the material time (*Zakon o Državnom sudbenom vijeću*, Official Gazette no. 58/1993) provide:

Section 3

"The candidates for the [post of] President and members of the Council shall be nominated by the Chamber of the Counties of the Croatian Parliament.

Prior to the nomination of candidates, the Chamber of the Counties shall ask the Supreme Court, Minister of Justice, State Attorney, Croatian Bar Association and law faculties to draw up a list of suitable candidates.

..."

Section 4

"The president and the members of the Council shall be elected by the Chamber of Representatives for a period of eight years from the ranks of notable judges, state attorneys, attorneys at law and law university professors having, in principle, at least fifteen years of experience.

The President and seven members of the Council shall be chosen from among the judges, four members from among the state attorneys and their deputies, one member from the attorneys at law and two members from the law professors.

The President and members [of the Council] shall not be members of Parliament."

Section 7

"Before taking up office the President and each member of the Council shall take [the following] oath before the President of Parliament:

'I swear on my honour that I will exercise my functions as the President and member of the National Judicial Council diligently and in accordance with the Constitution and the laws of the Republic of Croatia."

Section 8

"The President and the members of the Council shall enjoy immunity.

The President or members of the Council shall not be held responsible for words spoken or votes cast [in the debates of] the Council.

The President or members of the Council shall not be subjected to arrest or criminal proceedings without the Council's permission.

The President or members of the Council may be detained without the Council's permission only if found perpetrating a criminal offence punishable by a prison term of more than five years. In such cases the body which has detained the President or a member of the Council shall promptly inform the Council.

..."

Section 9

"...

The President or a member of the Council may be dismissed from his or her office before expiration of the term of office [for the following reasons]:

- if he or she resigns;

- if sentenced to imprisonment;

- if he or she permanently loses capacity to exercise his or her functions;

- if he or she accepts citizenship of another State.

The reasons for dismissal of the President or a member of the Council shall be established by the Parliament's Chamber of Counties. The decision on dismissal shall be taken by the Parliament's Chamber of Representatives."

Section 10

"...

An application for establishing permanent inability of a member of the Council to perform his or her function shall be lodged with the Parliament's Chamber of Counties by the President of the Council. Such an application in respect of the President of the Council shall be lodged by at least five members of the Council.

..."

Section 12

"The Council shall have competence in respect of:

- appointments of the presidents of courts, judges and state attorneys and their deputies;

- conduct of the proceedings and decisions on dismissal of presidents of courts and judges and on dismissal of state attorneys and their deputies."

Section 20

"The President of a court or a judge shall be subject of disciplinary liability when he or she commits a grave disciplinary offence.

Grave disciplinary offences are:

...

6. causing harm to the reputation of the judiciary or to judicial duty."

Section 25

"For a grave disciplinary offence one of the following measures may be imposed:

...

3. dismissal from office.

..."

Section 26

"A president of a court or a judge punished for a disciplinary offence shall be entitled to lodge a request for protection against the Council's decision with the Chamber of the Counties within 15 days after the Council's decision is served on him or her.

The Chamber of the Counties shall uphold the decision on dismissal [from office] or quash it and remit the case to the Council for fresh proceedings and decision.

Where [the Council's] decision is quashed the statutory time limits begin anew. There is no judicial review of the decision of the Chamber of the Counties."

Section 28

"Proceedings [before the Council] shall be conducted in accordance with the provisions of the Code of Criminal Procedure, if not otherwise provided in this Act.

... The Council may decide that the disciplinary proceedings shall be public."

Section 40

"Resources for the functioning of the Council are secured in the State budget.

The President of the Council shall coordinate implementation of the financial plan for the resources referred to in paragraph one of this section."

Section 41

"For their functions the President and the members of the Council are entitled to the compensation of costs, expenses and lost earnings, and to remuneration."

25. Pursuant to Article 430 of the Code of Criminal Procedure (Official Gazette nos. 110/1997, 27/1998, 58/1999, 112/1999, 58/2002, 143/2002 and 62/2003), where the defendant requests an amendment of a final judgment following a finding of a violation of, *inter alia*, the right to a fair trial, by the European Court of Human Rights, the rules governing a retrial shall apply.

THE LAW

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

26. The applicant made the following complaints under Article 6 § 1 of the Convention: that three members of the National Judicial Council had not been impartial; that the exclusion of the public from the proceedings had not been justified; that the disciplinary proceedings against him had been unfair; and that the length of proceedings had exceeded the reasonable time requirement. The relevant part of Article 6 § 1 of the Convention provides:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

A. Admissibility

The parties' arguments

27. The Government argued that Article 6 was not applicable in the present case under either its civil or criminal head. As to the civil aspect, relying on the Court's reasoning in its Harabin decision (*Harabin v. Slovakia* (dec.), no. 62584/00, 9 July 2002), they maintained that the applicant's post as the President of the Supreme Court had involved by its very nature the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State. They further argued that there were no common criteria for the appointment and dismissal of a president of a highest court among the member States. This was a question that interfered with the State's sovereign powers and had therefore to be excluded from the scope of the Convention.

28. As to the criminal aspect, the Government submitted that the proceedings at issue were of a disciplinary nature. As regards their classification in the domestic law, the nature of the offence in question and the nature and level of severity of the sanctions prescribed, they did not

satisfy the criteria to be seen as proceedings involving the determination of a criminal charge against the applicant.

29. The Government further argued that the applicant had not been entitled to access to a court, since section 26 § 3 of the National Judicial Council Act expressly excluded judicial protection in connection with disciplinary proceedings against judges. However, they agreed that the National Judicial Council itself satisfied all criteria to be regarded as a tribunal within the meaning of Article 6 § 1 of the Convention.

30. The applicant made no comments in this respect.

The Court's assessment

31. The Court firstly takes cognisance of the Government's argument concerning the nature of the office as President of the Supreme Court. However, the Court notes that in the proceedings at issue the applicant was not only removed from his office as President of the Supreme Court, but was at the same time dismissed from his post as a judge of the Supreme Court. In these circumstances, for the purposes of determining whether Article 6 applies to the proceedings at issue, the Court considers irrelevant the nature of the applicant's position as the President of the Supreme Court.

32. As to the applicability of Article 6 § 1 of the Convention to the proceedings at issue, the Court first refers to the *Pellegrin v. France* judgment (no. 28541/95, 8 December 1999, §§ 64-71), in which the Court stated that employment disputes between the authorities and public servants whose duties typified the specific activities of the public service, in so far as the latter was acting as the depositary of public authority responsible for protecting the general interests of the State, were not "civil" and were excluded from the scope of Article 6 § 1 of the Convention. The Court noted that the manifest example of such activities was provided by the armed forces and the police. Furthermore, as to the proceedings concerning dismissal of a judge in its Pitkevich decision on admissibility (see *Pitkevich v. Russia* (dec.), no. 47936, 8 February 2001) the Court found that the judiciary, while not being part of the ordinary civil service, was nonetheless part of typical public service. A judge had specific responsibilities in the field of administration of justice, which was a sphere in which States exercised sovereign powers. Consequently, a judge participated directly in the exercise of powers conferred by public law and performed duties designed to safeguard the general interests of the State. The Court concluded that the dispute concerning the dismissal of a judge did not concern her "civil" rights or obligations within the meaning of Article 6 of the Convention.

33. However, in its recent judgment in the Eskelinen case (see *Vilho Eskelinen and Others v. Finland* ([GC], no. 63235/00, 19 April 2007), the Court found that the functional criterion adopted in the *Pellegrin* judgment had not simplified the analysis of the applicability of Article 6 in proceedings to which a civil servant was a party or brought about a greater degree of certainty in this area, as had been intended (§ 55). For these

reasons the Court decided to develop further the functional criterion set out in the *Pellegrin* judgment and adopted the following approach (see *Vilho Eskelinen and Others v. Finland*, cited above, §§ 61 and 62):

> "The Court recognises the State's interest in controlling access to a court when it comes to certain categories of staff. However, it is primarily for the Contracting States, in particular the competent national legislature, not the Court, to identify expressly those areas of public service involving the exercise of the discretionary powers intrinsic to State sovereignty where the interests of the individual must give way. The Court exerts its supervisory role subject to the principle of subsidiarity (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 103, ECHR 2001-V). If a domestic system bars access to a court, the Court will verify that the dispute is indeed such as to justify the application of the exception to the guarantees of Article 6. If it does not, then there is no issue and Article 6 § 1 will apply.
>
> ...
>
> To recapitulate, in order for the respondent State to be able to rely before the Court on the applicant's status as a civil servant in excluding the protection embodied in Article 6, two conditions must be fulfilled. Firstly, the State in its national law must have expressly excluded access to a court for the post or category of staff in question. Secondly, the exclusion must be justified on objective grounds in the State's interest."

34. Thus, the Eskelinen judgment, which intended that a presumption of Article 6 protection should exist, imposes a wider applicability than the Court's previous case-law. It also encompasses cases of dismissal, unless the domestic system excludes access to court in that respect. Article 6 does not apply only to cases where domestic law expressly excludes access to a court for the category of staff in question, and where this exclusion is justified by the State's objective interest.

35. As to the present case, the Court firstly notes that section 26 § 3 of the National Judicial Council Act expressly excludes judicial protection in connection with disciplinary proceedings against judges.

36. However, the scope of this exclusion is not absolute, since it refers only to the exclusion of protection before the ordinary courts. The Court notes that the applicant was able to file a constitutional complaint against the decisions of the National Judicial Council and the Chamber of the Counties. The applicant submitted the same complaints that he is now presenting before the Court to the Constitutional Court, and that court examined the merits of those complaints. Had the Constitutional Court accepted the applicant's complaints it would have quashed the impugned decisions and remitted the case to the National Judicial Council for fresh proceedings.

37. Against this background, the Court considers that the scope of the Constitutional Court's review in the present case, and its powers as to the impugned decisions, appear to provide the applicant with access to a court under the domestic system, in satisfaction of the Eskelinen test. Furthermore, as admitted by the Government, the National Judicial Council itself satisfies the criteria under Article 6 § 1 of the Convention to be regarded as an independent and impartial tribunal established by law. The

Court reiterates that for the purposes of Article 6 § 1 of the Convention a tribunal need not be a court of law integrated with the standard judicial machinery (see *Rolf Gustafson v. Sweden*, 1 July 1997, § 45, *Reports of Judgments and Decisions* 1997-IV) since a tribunal, within the meaning of Article 6 § 1, is characterised in the substantive sense of the term by its judicial function, that is to say, the determining of matters within its competence on the basis of rules of law and after proceedings conducted in a prescribed manner. It must also satisfy a series of requirements – independence, in particular of the executive, impartiality and guarantees afforded by its procedure – several of which appear in the text of Article 6 § 1 itself (see *Zlinsat, spol. s.r.o., v. Bulgaria*, no. 57785/00, § 75, 15 June 2006).

38. In order to establish whether a body can be considered independent, regard must be had, *inter alia*, to the manner of appointment of its members and to their term of office, to the existence of guarantees against outside pressures and to the question whether the body presents an appearance of independence (see, *inter alia*, *Langborger v. Sweden*, 22 June 1989, § 32, Series A no. 155, and *Bryan v. the United Kingdom*, 22 November 1995, § 37, Series A no. 335-A). Furthermore, the tribunal in question must have jurisdiction to examine all questions of fact and law relevant to the dispute before it (see *Terra Woningen B.V. v. the Netherlands*, 17 December 1996, § 52, *Reports* 1996-VI; *Chevrol v. France* [GC], no. 49636/99, § 77, ECHR 2003-III; and *I.D. v. Bulgaria*, no. 43578/98, § 45, 28 April 2005).

39. The Court notes that the National Judicial Council is established by law, namely the 1993 National Judicial Council Act with further amendments, all of which were enacted by Parliament in a standard legislative procedure. This Act governs the appointment of the NJC members, their immunities, dismissal, the scope of their functions, the procedures to be followed and all other questions relevant to the functioning of the NJC.

40. As to the NJC's independence, the Court notes that the resources for its functioning are secured in the State Budget and allocated by Parliament. Distribution of these resources is in the hands of the President of the NJC. It is independent of the executive and its members are not bound by any instruction in the exercise of their functions. They are appointed by Parliament for an eight-year term of office and enjoy the same immunities as judges. They are elected from among the members of the judiciary, the State Attorney's Office, the Croatian Bar Association and law professors, and are all to be persons of high standing. They act in their personal capacity and do not take orders in the exercise of their powers, and swear an oath that they will abide by the Constitution and the laws. They can be dismissed by Parliament only for the reasons specifically enumerated in the National Judicial Council Act and in compliance with the procedure prescribed by that Act.

41. As to proceedings before the National Judicial Council, the Court notes that they follow the rules of criminal procedure set out in detail in the

Code of Criminal Procedure; these include, *inter alia*, all the guarantees provided by Article 6 of the Convention and enable the accused to submit his or her defence. When ruling in disciplinary proceedings against judges, the National Judicial Council is empowered to establish the facts of a given case, hold hearings, hear witnesses and assess other evidence and decide on all questions of fact and law.

42. In the applicant's case, the National Judicial Council thus exercised judicial powers in determining his disciplinary responsibility. Against this background, the Court considers that the National Judicial Council is to be regarded as an independent tribunal established by law for the purposes of Article 6 of the Convention and that therefore the disciplinary proceedings against the applicant were conducted before a tribunal for the purposes of Article 6 § 1 of the Convention.

43. It follows that the applicant had access to a court and that Article 6 is applicable both to the disciplinary proceedings against the applicant before the National Judicial Council and the proceedings following from the applicant's constitutional complaint.

Conclusion

44. In conclusion, the Court finds that Article 6 applies under its civil head to the disciplinary proceedings against the applicant, including the proceedings following from his constitutional complaint.

45. The Court finds that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

Scope of the case before the Court

46. The Court notes that the disciplinary proceedings against the applicant were instituted sometime in 1996, on allegations of having conducted sexual relationships with minors and of using his position to protect the financial activities of two individuals known for their criminal activities. On 14 January 1997 the National Judicial Council found it established that the applicant had indeed used his position in an improper way and this decision was upheld by the Parliament's Chamber of Counties on 19 February 1997. However, both these decisions were quashed by the Constitutional Court on 17 April 1998 and the case was sent back to the National Judicial Council for fresh examination.

47. In the resumed proceedings before the National Judicial Council, on 23 September 1998 the allegations against the applicant were reduced to stating that in the period from June 1995 to the beginning of November 1996 he had continually socialised in public places with two individuals, B.Č. and S.Š., who had a criminal background. On 7 October 1998 the

National Judicial Council found this established and this decision was upheld by the Chamber of Counties on 10 November 1998 and the Constitutional Court on 9 December 2004. Due to this the applicant was dismissed from office.

48. Since the initial proceedings were found to be defective and therefore invalidated by the Constitutional Court, the applicant's complaints with regard to their fairness cannot be subject to examination by the Court. It follows that the Court must examine the alleged deficiencies only in respect of various aspects of the fairness of the proceedings conducted after the Constitutional Court's decision of 17 April 1998, when it quashed the decisions hitherto adopted in the disciplinary proceedings against the applicant and remitted the case for fresh examination.

49. As regards the applicant's complaint about the length of proceedings, however, the Court is called to examine the proceedings as a whole.

The parties' arguments

50. The applicant maintained that three members of the National Judicial Council had expressed bias against him in the interviews published in the national newspapers at a time when the disciplinary proceedings against him had not yet been concluded. Although the NJC had already adopted its first decision when the interviews in question were published, that decision had subsequently been quashed by the Constitutional Court and in the resumed proceedings before the NJC all three of the members in question had again participated.

51. He further argued that there had been no good reason to exclude the public from the hearings before the NJC and that no adequate reasoning had been given for that decision. Furthermore, the proceedings had been unfair because none of the witnesses called on his behalf had been admitted to testify before the NJC. Lastly, he argued that the proceedings had also exceeded the reasonable-time requirement.

52. As regards the impartiality of the three members of the NJC, the Government submitted that the proceedings in question concerned a situation where a body decided on the disciplinary liability of one of its own members, in that the applicant, as President of the Supreme Court, had also been a member of the NJC. In these circumstances it was impossible to ensure absolute subjective impartiality since interactions between the applicant and the other members of the NJC had been unavoidable. As to the applicant's allegations regarding the interviews given by the three members of the NJC in national newspapers, the Government argued that the applicant had sought the withdrawal of those members even before publication of the interviews with them. This showed that the applicant's negative attitude towards them was of a personal nature.

53. The Government also maintained that the public was, in principle, excluded from hearings held in disciplinary proceedings against any high-ranking State official. Furthermore, the NJC had decided not to make an

exception from that principle in the proceedings against the applicant, on the ground that the exclusion of the public had been necessary for the protection of the applicant and the judiciary as such; in the Government's view, those reasons were justified and compatible with the requirements of Article 6. In addition, the public had not been completely excluded, since the NJC had allowed representatives of international organisations for the protection of human rights to be present at the oral hearings.

54. The Government also argued that the length of the proceedings had complied with the reasonable-time requirement. They submitted that in 1999 almost the entire composition of the Constitutional Court had been changed, which had resulted in the nomination of a new judge rapporteur in the applicant's case. Furthermore, the proceedings had been complex, since they concerned the removal from office of the President of the Supreme Court.

The Court's assessment

55. The Court notes at the outset that the applicant made several different complaints under Article 6 § 1 of the Convention. The Court will proceed with the examination of each of these complaints separately.

Impartiality of the three members of the National Judicial Council

56. In assessing whether the three members of the National Judicial Council, namely M.V., A.P. and M.H., were impartial as required under Article 6 § 1 of the Convention, the Court will consider the following principles as they appear in its settled case-law.

57. First and foremost, it is of fundamental importance in a democratic society that the courts inspire confidence in the public and above all, as far as criminal proceedings are concerned, in the accused (see *Padovani v. Italy*, 26 February 1993, § 27, Series A no. 257-B). To that end Article 6 requires a tribunal falling within its scope to be impartial. Impartiality normally denotes absence of prejudice or bias and its existence can be tested in various ways. The Court has thus distinguished between a subjective approach, that is endeavouring to ascertain the personal conviction or interest of a given judge in a particular case, and an objective approach, that is determining whether he or she offered sufficient guarantees to exclude any legitimate doubt in this respect (see *Piersack v. Belgium*, 1 October 1982, § 30, Series A no. 53, and *Grieves v. the United Kingdom* [GC], no. 57067/00, § 69, ECHR 2003-XII).

58. In applying the subjective test the Court has consistently held that the personal impartiality of a judge must be presumed until there is proof to the contrary (see *Hauschildt v. Denmark*, 24 May 1989, § 47, Series A no. 154). As regards the type of proof required, the Court has, for example, sought to ascertain whether a judge has displayed hostility or ill-will or has arranged to have a case assigned to himself for personal reasons (see *De Cubber*, cited above, § 25). The principle that a tribunal shall be presumed to be free of personal prejudice or partiality is long established in the case-

law of the Court (see, for example, the *Le Compte, Van Leuven and De Meyere v. Belgium* judgment cited above, § 58). Although in some cases it may be difficult to procure evidence with which to rebut the presumption, it must be remembered that the requirement of objective impartiality provides a further important guarantee (see *Pullar v. the United Kingdom*, 10 June 1996, § 32, *Reports* 1996-III). In other words, the Court has recognised the difficulty of establishing a breach of Article 6 on account of subjective partiality and for this reason has in the vast majority of cases raising impartiality issues focused on the objective test. However, there is no watertight division between the two notions, since the conduct of a judge may not only prompt objectively held misgivings as to impartiality from the point of view of the external observer (objective test), but may also go to the issue of his or her personal conviction (subjective test) (see *Kyprianou v. Cyprus* [GC], no. 73797/01, § 119, ECHR 2005-...).

59. The Court has held for instance that the judicial authorities are required to exercise maximum discretion with regard to the cases with which they deal in order to preserve their image as impartial judges. That discretion should dissuade them from making use of the press, even when provoked. It is the higher demands of justice and the elevated nature of judicial office which impose that duty (see *Buscemi v. Italy*, no. 29569/95, § 67, ECHR 1999-VI). Thus, where a court president publicly used expressions which implied that he had already formed an unfavourable view of the applicant's case before presiding over the court that had to decide it, his statements were such as to justify objectively the accused's fears as to his impartiality (see *Buscemi v. Italy*, cited above, § 68). On the other hand, in another case, where a judge engaged in public criticism of the defence and publicly expressed surprise that the accused had pleaded not guilty, the Court approached the matter on the basis of the subjective test (see *Lavents v. Latvia*, no. 58442/00, §§ 118 and 119, 28 November 2002).

60. In applying the objective test the Court also gives importance to situations of a personal character and considers the conduct of the judges in a given case. In terms of the objective test, such conduct may be sufficient to ground legitimate and objectively justified apprehensions as in the above-mentioned *Buscemi* case, but it may also be of such a nature as to raise an issue under the subjective test (as, for example, in the *Lavents* case, cited above) and even disclose personal bias. In this context, therefore, whether a case falls to be dealt with under one test or the other, or both, will depend on the particular facts of the contested conduct.

61. The Court notes that the applicant in the present case challenges the impartiality of three members of the National Judicial Council on the ground that during the disciplinary proceedings against him they gave interviews, published in two different national newspapers, expressing bias against the applicant. The Court shall now proceed by examining separately the allegations of the lack of impartiality of each of the persons concerned.

62. As regards V.M., the Court notes that an interview with him was published in a national daily newspaper on 10 February 1997, when the case

was pending before the Chamber of Counties. At that time the National Judicial Council had already held against the applicant on some of the initial allegations against him. However, since the applicant had lodged a request for protection the case was not finally decided. The Court further notes that in the interview V.M. himself stated that he had joined the applicant's request for his withdrawal from the case, since he had publicly voted against the applicant's appointment as President of the Supreme Court and had himself been mentioned as a potential candidate for that post at the same time as the applicant. He also commented on the results of the proceedings by stating that "the charges for which Dr. Olujić was found liable are clear on the facts." V.M. further expressed negative views on the applicant's defence in the proceedings.

63. The Court places strong emphasis on the fact that V.M. himself considered that he should have withdrawn from the case and gave convincing reasons for that view. Leaving aside the question of V.M.'s subjective impartiality, the Court reiterates that, in respect of the question of objective impartiality 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" (see *De Cubber v. Belgium*, 26 October 1984, § 26, Series A no. 86). The fact that V.M. publicly revealed that he had voted against the applicant's appointment, taken together with the fact that he himself had been a potential candidate for the same post at the time that the applicant was appointed, created, in the Court's view, a situation which was capable of raising legitimate doubts as to V.M.'s impartiality.

64. As regards A.P., the then President of the National Judicial Council, the Court notes that an interview with him was published in the same daily newspaper on 28 March 1997, when the case was pending before the Constitutional Court, and thus had not yet been finally decided. In the interview he stated that the applicant had committed indecent activities, in that he had used his personal influence and contacts in order to protect the interests and gains of two persons with a criminal background. He also commented that the defence's allegations that the case was politically motivated were untrue.

65. The Court considers that the fact that the President of the National Judicial Council publicly used expressions which implied that he had already formed an unfavourable view of the applicant's case before that case had been finally decided and criticised statements by the defence appears clearly incompatible with his further participation in the resumed proceedings after the Constitutional Court had quashed the NJC's initial decision. The statements made by the President of the NJC were such as to objectively justify the applicant's fears as to his impartiality (see *Buscemi v. Italy*, no. 29569/95, § 68, ECHR 1999-VI).

66. As regards M.H., the Court notes that an interview with him was published in another national daily newspaper on 22 September 1997, when the case was pending before the Constitutional Court, and thus had not yet been finally concluded. In the interview he stated that he viewed the

applicant and his statements about his (M.H.'s) lack of independence as comical. He described the applicant as a person lacking experience and knowledge, and as a *corpus alienum* (a foreign body) in the Croatian judiciary.

67. The Court considers that the expressions used by M.H. clearly showed his bias against the applicant and that therefore his further participation in the proceedings after the publication of the interview at issue was incompatible with the requirement of impartiality under Article 6 § 1 of the Convention.

68. In conclusion, there has been a violation of Article 6 § 1 of the Convention on account of the lack of impartiality of the President and two other members of the National Judicial Council.

Right to a public hearing

69. The Court firstly observes that as a rule, pursuant to Section 28 § 2 of the National Judicial Council Act, the public is excluded from disciplinary proceedings conducted before the National Judicial Council, unless the Council itself decides otherwise. In this connection the Court observes at the outset that it is not its task to rule on national law and practice *in abstracto*. Instead it must confine itself to an examination of the concrete facts of the cases before it (see, for example, *Findlay v. the United Kingdom*, 25 February 1997, § 67, *Reports* 1997-1).

70. The Court recalls that Article 6 § 1 of the Convention provides that, in the determination of civil rights and obligations, "everyone is entitled to a fair and public hearing". The public character of proceedings protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 § 1, a fair hearing, the guarantee of which is one of the foundations of a democratic society (see *Sutter v. Switzerland*, 22 February 1984, § 26, Series A no. 74).

71. Article 6 § 1 does not, however, prohibit courts from deciding, in the light of the special features of the case submitted to them, to derogate from this principle: in accordance with the actual wording of this provision, "... the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice"; holding proceedings, whether wholly or partly, in camera, must be strictly required by the circumstances of the case (see, *Diennet v. France*, 26 September 1995, § 34, Series A no. 325-A, and *Martinie v. France* [GC], no. 58675/00, § 40, ECHR 2006-...).

72. Moreover, the Court has held that exceptional circumstances relating to the nature of the issues to be decided by the court in the proceedings

concerned, may justify dispensing with a public hearing (see *Martinie v. France*, cited above, § 41).

73. As to the present case, the Court notes that, contrary to the applicant's request of 23 September 1998, the public was excluded from the proceedings conducted before the National Judicial Council on the ground of protection of the applicant's dignity and the dignity of the judiciary as such. The Court observes also that the exclusion of the public was not absolute since at the hearings held on 1 and 7 October 1998 one representative of the UNHCR and one representative of the OSCE were present. However, these persons were warned, under threat of criminal sanctions, that they were obliged to keep secret all they learned at these hearings. Furthermore, the general public and the press were entirely and expressly excluded from the hearing. Thus, the presence of the UNHCR and OSCE representatives at two hearings held before the National Judicial Council had no effect on the general exclusion of the public from the proceedings before the National Judicial Council.

74. The Court notes that the NJC excluded the public from the hearing on the ground that such a measure was necessary, given the nature of the information in the case-file, for protection of the applicant's dignity and the dignity of the judiciary as such. It did not, however, further elaborate on either of these points. As regards the first of these grounds, namely, the protection of the applicant's dignity, the Court notes firstly that the applicant himself asked that the proceedings be public and thus showed that he himself did not consider that his dignity required protection through the exclusion of the public.

75. As to the nature of the proceedings at issue, which sometimes may, as stated above, justify dispensing with a public hearing, the Court notes that the applicant repeated his request that the hearings before the NJC be public on 23 September 1998, at a stage when the allegations against the applicant consisted of assertions that he had socialised with two persons who had a criminal background. In this connection the Court notes that the facts of the case against the applicant had in any event been widely discussed in the national media, as is shown, *inter alia*, in the interviews with the three members of the NJC, published before the case was finally decided. It was obvious that the case aroused considerable public interest and that controversial facts were presented in the media. Given that the proceedings in question concerned such a prominent public figure as the President of the Supreme Court and that public allegations had already been made suggesting that the case against him was politically motivated, it was evident that it was in the interest of the applicant as well as that of the general public that the proceedings before the NJC be susceptible to public scrutiny. In these circumstances the Court cannot accept the reasons relied on by the NJC for excluding the public as justified under Article 6 § 1 of the Convention.

76. Lastly, the Court notes that the public's lack of access to the proceedings before the NJC was not rectified either in the proceedings

before the Parliament's Chamber of Counties or before the Constitutional Court, since these bodies did not hold public hearings either.

It follows that there has been a violation of Article 6 § 1 of the Convention on account of the exclusion of the public from the disciplinary proceedings against the applicant.

Equality of arms

77. The applicant alleged that not a single witness called on behalf of the defence was heard in the proceedings before the National Judicial Council. The Court reiterates that while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *Schenk v. Switzerland*, 12 July 1988, §§ 45-46, Series A no. 140, and *Garcia Ruiz v. Spain* [GC] no. 30544/96, ECHR 1999-I, § 28). Similarly, it is in the first place for the national authorities, and notably the courts, to interpret domestic law and the Court will not substitute its own interpretation for theirs in the absence of arbitrariness. This principle applies, *inter alia*, to the application of procedural rules concerning the nomination of witnesses by parties (see *Tamminen v. Finland*, no. 40847/98, § 38, 15 June 2004). In this connection, the Court further reiterates that it is not within its province to substitute its own assessment of the facts for that of the national courts. However, under the Court's case-law, the requirements of fairness of the proceedings include the way in which the evidence is taken and submitted. The Court's task is to ascertain whether the proceedings in their entirety, including the way in which evidence was taken and submitted, were fair within the meaning of Article 6 § 1 (see, *inter alia*, *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 31, Series A no. 274).

78. The Court considers that as regards disciplinary proceedings against a judge, equality of arms implies that the judge whose office is at stake must be afforded a reasonable opportunity to present his or her case - including his or her evidence - under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* the authorities bringing those proceedings against a judge, namely, in the present case, the Government. It is left to the national authorities to ensure in each individual case that the requirements of a fair hearing are met (see, *mutatis mutandis*, see, *mutatis mutandis*, *Dombo Beheer*, cited above, § 33).

79. In order to decide whether the applicant in the instant case was afforded the opportunity to present his case without being placed at a disadvantage vis-à-vis the Government, and whether the proceedings were conducted fairly, the Court will first examine what constituted the basis of the applicant's dismissal (see, *mutatis mutandis*, *Destrehem v. France*, cited above, § 43).

80. In this connection the Court observes that in the disciplinary proceedings against the applicant the Government alleged that he had maintained continuous contacts in public with two individuals who had a

criminal background, S.Š. and B.Č. These allegations might have affected the applicant's reputation not only with regard to his position as a judge and President of the Supreme Court but also in any professional sphere, given that he is a lawyer. Therefore, it was necessary that in the disciplinary proceedings at issue the applicant was afforded ample opportunity to state his case and present his evidence.

81. The Court notes that the applicant asserted that his contacts with two individuals concerned had been very sporadic and that he had sometimes found himself in their company, always in public places and always in the company of various other persons. This line of defence was intended to demonstrate that the applicant had not maintained any close contacts with these two individuals but that they sometimes frequented the same public places. The witnesses put forward by the applicant were to substantiate this line of defence. In the Court's view the explanations given by the applicant as regards the allegations against him and the importance of the nominated witnesses were relevant to his case and likely to contribute to the aims of his defence.

82. As to the reasons given by the domestic courts for not admitting the evidence adduced by the applicant, the Court notes that, even though a domestic court has a certain margin of appreciation when choosing arguments in a particular case and admitting evidence in support of the parties' submissions, an authority is obliged to justify its activities by giving reasons for its decisions (see *Suominen v. Finland*, no. 37801/97, § 36, 1 July 2003).

83. In the instant case the NJC justified its refusal to hear evidence from any of the witnesses called on behalf of the applicant by stating that the circumstances referred to in the evidence relied on by the applicant had already been established or they were not important for the case. However, the Court notes that both the applicant and the two individuals concerned denied having any close contacts and concurringly stated that they had been in each others' company only occasionally and always with other persons. In the Court's view the reasons relied on by the NJC for refusing to accept any of the witnesses called on behalf of the applicant for the purpose of substantiating his line of defence were not sufficient for the reasons set out in paragraph 81 above.

84. The Court observes further that, although it is not its task to examine whether the court's refusal to admit the evidence submitted by the applicant was well-founded, in its assessment of compliance of the procedure in question with the principle of equality of arms, which is a feature of the wider concept of a fair trial (see *Ekbatani v. Sweden*, 26 May 1988, § 30, Series A no. 134), significant importance is attached to appearances and to the increased sensitivity of the public to the fair administration of justice (see *Borgers v. Belgium*, 30 October 1991, § 24, Series A no. 214-B). In this connection the Court notes that the NJC admitted all the proposals to hear evidence from the witnesses nominated by the counsel for the Government and none of the proposals submitted by the applicant.

85. It is not the Court's function to express an opinion on the relevance of the evidence or, more generally, on whether the allegations against the applicant were well-founded. However, it is for the Court to ascertain whether the proceedings in their entirety, including the way in which the evidence was taken, were fair (see *Asch v. Austria*, cited above, § 26). In the circumstance of the present case, the Court finds that the national authorities' refusal to examine any of the defence witnesses led to a limitation of the applicant's ability to present his case in a manner incompatible with the guarantees of a fair trial enshrined in Article 6 (see, *mutatis mutandis*, *Vidal v. Belgium*, cited above, § 34).

There has therefore been a violation of Article 6 § 1 as regards the principle of equality of arms.

Length of proceedings

86. The applicant complained that the length of proceedings, and in particular those before the Constitutional Court, had exceeded the reasonable time requirement.

87. The Government contested that argument, stressing the special role of the Constitutional Court.

88. The Court reiterates that the reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and that of the competent authorities, and the importance of what was at stake for the applicant in the litigation (see *Süßmann v. Germany*, 16 September 1996, § 48, *Reports* 1996-IV, and *Gast and Popp v. Germany*, no 29357/95, § 70, ECHR 2000). In this connection the Court notes that the proceedings commenced sometime in 1996 and ended with the Constitutional Court's decision of 9 December 2004. While the initial proceedings, together with the Constitutional Court's decision of 14 April 1998 quashing the impugned decisions, was speedily decided, the same cannot be said of the length of the second phase of proceedings.

89. In that second stage the National Judicial Council and the Chamber of Counties proceeded speedily and concluded the case on 10 November 1998. However, the second examination of the case before the Constitutional Court lasted from 2 December 1998, when the applicant brought his second constitutional complaint, until 9 December 2004, thus exceeding six years.

90. Although the Court accepts that its role of guardian of the Constitution occasionally makes it particularly necessary for a Constitutional Court to take into account considerations other than the mere chronological order in which cases are entered on the list, such as the nature of a case and its importance in political and social terms, the Court finds that a period exceeding six years to decide on the applicant's case, in particular in view of what was at stake for the applicant, namely his dismissal, appears excessive.

91. Accordingly, the Court considers that in the present case there has been a violation of Article 6 § 1 of the Convention on account of the length of proceedings.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

92. The applicant complained that he had no effective remedy for his complaints under Article 6 of the Convention. He relied on Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

93. 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 considers that this complaint does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. 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

95. The applicant claimed 200,000 euros (EUR) in respect of non-pecuniary damage. He explained that the unfounded accusations against him in the disciplinary proceedings at issue, namely that he had had sexual relationships with minors and had used his position to secure the gains of criminals, accusations which had been continuously repeated in the media, had harmed his dignity and reputation and created an extremely negative image of him, which had caused him severe mental suffering. Furthermore, the stress caused by the proceedings led to his hospitalisation for cardiac difficulties and high-blood pressure.

96. The Government deemed the sum claimed unfounded and excessive.

97. The Court, accepting that the violations found have caused the applicant non-pecuniary damage which cannot be made good by the mere finding of a violation nor by the possibility open to the applicant under national law to seek a fresh trial (Article 430 of the Croatian Code of Criminal Procedure), awards him 5,000 euros (EUR) in that respect, plus any tax that may be chargeable to the applicant.

B. Costs and expenses

98. The applicant made no claim in respect of costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

99. The Court considers it appropriate that the default interest 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 under Article 6 § 1 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the lack of objective impartiality of three members of the National Judicial Council;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the unjustified exclusion of the public from the proceedings before the National Judicial Council;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the principle of the equality of arms;

5. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of proceedings.

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, EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 5 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President