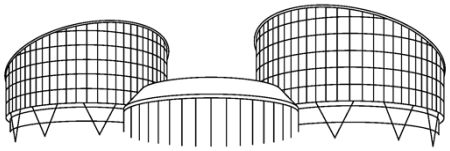

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF CIMPERŠEK v. SLOVENIA

(Application no. 58512/16)

JUDGMENT

Art 10 • Freedom of expression • Refusal to award title of court expert to applicant, who had succeeded in examination, on basis of his blog and complaints criticising State authorities • In determining whether measure amounted to interference with freedom of expression, parallels drawn with case-law on applying concept of "private life" to employment-related scenarios under Art 8 • Essential elements of the decision directly related to the exercise of freedom of expression • Refusal having potentially chilling effects on those wishing to perform function of court expert • Lack of detailed reasons specifying comments considered to be offensive • Lack of effective and adequate judicial review addressing applicant's arguments and balancing competing rights and interests at stake
Art 6 § 1 (civil) • Unjustified refusal to hold an oral hearing

STRASBOURG

30 June 2020

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

In the case of Cimperšek v. Slovenia,

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

Jon Fridrik Kjølbro, *President,*
Valeriu Griţco,
Marko Bošnjak,
Ivana Jelić,
Arnfinn Bårdsen,
Darian Pavli,
Peeter Roosma, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to:

the application against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovenian national, Mr Jernej Cimperšek ("the applicant"), on 5 October 2016;

the decision to give notice to the Slovenian Government ("the Government") of the complaints concerning Article 6 § 1 (absence of an oral hearing) and Article 10 of the Convention and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 2 June 2020,

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

INTRODUCTION

The case concerns the dismissal of an application by the applicant for the title of court expert owing to his lack of personal qualities, essentially because of the content of his blog and his complaints about the work of the Ministry of Justice. The applicant relied on Article 6 § 1 (as regards the absence of an oral hearing before the first-instance court) and Article 10 of the Convention.

THE FACTS

1. The applicant was born in 1960 and lives in Ptuj. He was represented by Ms T. Cimperšek, a lawyer practising in Celje.

2. The Government were represented by their Agent, Ms J. Morela, State Attorney.

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

4. The applicant has been writing an online blog entitled "Politics, the kitchen and chicks" ("*Polit'ka, kuh'na & babe*") since 2013.

I. PROCEEDINGS BEFORE THE MINISTRY OF JUSTICE

5. On 25 April 2013 the applicant, who has a master's degree in construction, applied for the title of "court expert on the assessment of the effects of natural and other disasters".

6. On 27 August 2013 the Minister of Justice ("the Minister") issued a decision, inviting the applicant to take a test in which his professional knowledge would be examined. As regards other criteria, the decision noted that the applicant had submitted all the documents which had been requested.

7. The applicant was subsequently examined by a six-member commission composed of experts in the field. On 19 May 2014 the Minister issued a certificate confirming that the applicant had successfully passed the examination.

8. On 10 and 23 June 2014 the applicant sent letters to the Ministry of Justice ("the Ministry") in which he complained of delays in the proceedings and asked to take the relevant oath (taken by court experts) before the summer holidays.

9. The applicant's taking of the oath was first scheduled for 4 July 2014, but on 30 June 2014 it was rescheduled for 16 July 2014.

10. Subsequently, the applicant sent an email to the Ministry in which he wrote "This is making a fool out of people! This is not how it works in a serious country!" The applicant also sent an email to other candidates who were hoping to become court experts, appraisers and interpreters and were waiting to take the oath, saying "I phoned the State Secretary's Office at the Ministry of Justice on 11 June, but nothing can happen because that B.A. [the name of an employee] is on leave, [so] they said in the Cabinet, but we are not important. I suggest that the rest of you call [that office] and seriously complain; they have completely lost it ..."

11. On 1 July 2014 the applicant's representative sent a complaint to the Ministry expressing dissatisfaction with the delays, this time due to the rescheduling of the oath-taking ceremony, and alleging that the Ministry had acted unlawfully and in breach of the Constitution, and that its conduct was unprofessional and unacceptable.

12. On 4 July 2014 the Minister informed the applicant that on the basis of the content of his blog, the complaint of 1 July 2014 (see paragraph 11 above) and the fact that the applicant had forwarded to other candidates emails in which he had made insulting remarks about the work of the Ministry, he had justifiable doubts as to whether the applicant, as a candidate for the title of court expert, had the required personal qualities as determined by section 87 of the Courts Act (see paragraph 23 below).

13. The applicant, represented by a lawyer, replied to the Minister's letter, arguing that the Ministry had taken his criticism as an insult, and that the decision on his appointment had already been made, so dismissing his

application at that stage would be characteristic of the Ministry's unprofessional work and an authoritarian State. His representative also alleged that the applicant's blog was insignificant, had no intention to offend and was unrelated to his profession.

14. On 21 August 2014 the Minister dismissed the applicant's application for the title of court expert. He referred to the applicant's complaints about the Ministry's work and noted that after the complaint of 1 July 2014 (see paragraph 11 above) had been received, officials had learned of the applicant's blog "Politics, the kitchen and chicks" (see paragraph 4 above) from the Internet. The Minister noted, *inter alia*, "[the applicant] not only writes critical social commentary columns, but also writes offensively about State bodies, visible representatives of political and social life, and certain other persons". Furthermore, he considered that the applicant, in numerous emails, had inappropriately and in an insulting manner requested that the Ministry and its employees organise the relevant oath ceremony before the summer holidays. On the basis of the applicant's blog – of which the Ministry had learned only after it had invited the applicant to take the oath – and his complaints, some of which he had circulated by email, the Minister concluded that the applicant did not have the personal qualities required of a court expert under section 87 of the Courts Act (see paragraph 23 below).

15. The Minister noted that court experts were not only highly professional individuals, but also persons worthy of public trust and the trust of parties to court proceedings, meaning that they had to be personally and morally suitable for the work of a court expert. In this connection, he referred to the importance of the work of court experts in judicial proceedings, where the applicant's conduct and offensive way of addressing State institutions and individuals could have serious consequences for the safeguarding of the reputation of the courts and the State, and were things which, according to the Minister, should not be tolerated. The Minister also rejected as unconvincing the applicant's argument that the blog was only read by his friends and was thus insignificant, since it was publicly available and the Ministry could access it without any difficulties. Moreover, it rejected the argument that the fact that the applicant had a knighthood proved that he was a person with high ethical and moral standards, noting that a truly moral and ethical attitude was primarily shown through one's conduct. In the Minister's opinion, writing an offensive blog and denigrating State institutions and individuals who were in the public eye was not showing such an attitude. A different decision by the Minister on the applicant's application would be contrary to the interpretation of the legal standard on personal qualities.

16. The Minister also emphasised that he could consider whether the applicant fulfilled the conditions for a court expert by taking into account the appointment procedure as a whole, which came to an end only once

candidates took the oath. As regards the applicant's right to freedom of expression, the Minister noted that the dismissal of his application did not limit his freedom of expression, but had resulted from the applicant's failure to satisfy the conditions required to grant him the title of court expert. The applicant did not fulfil the conditions to be a court expert, but he could continue to freely express himself on his publicly accessible online blog.

II. JUDICIAL PROCEEDINGS

17. On 22 September 2014 the applicant lodged a claim with the Administrative Court, disputing the Minister's decision and alleging that the Minister should have accepted his criticism instead of violating his statutory and constitutional rights, including his right to freedom of expression. He also proposed that several witnesses be heard who could testify to the fact that the blog was read only by his friends, and that he was professionally qualified for the position of court expert and had the requisite personal qualities.

18. On 5 March 2015 the applicant filed his pleadings and requested that a hearing be held in his case. He disputed the way in which the Minister had interpreted section 87 of the Courts Act, and argued that the Minister could not assess his personal qualities in their entirety only on the basis of his emails, complaints and blog. Moreover, he disputed that his writing on the blog was in any way relevant to the work of a court expert.

19. On 7 April 2015 the Administrative Court delivered a judgment dismissing the applicant's action. After it had summarised the Minister's decision (see paragraphs 14-16 above) and the applicant's submissions (see paragraphs 17 and 18 above), the court noted that the question in dispute was whether the applicant fulfilled the requirement regarding personal qualities as defined in section 87 of the Courts Act (see paragraph 23 below). In this connection, it held that personal qualities were determined on the basis of facts related to the candidate's personality and work. The court considered that the Minister had correctly established the facts of the case and applied substantive legal provisions. It emphasised that the title of court expert was conferred at the moment a candidate took an oath before the Minister. Therefore, the Minister's decision that the applicant did not have the required personal qualities was not belated. Relying on the reasoning of the contested decision by the Minister, the court concluded that the applicant did not in fact have the requisite personal qualities, and that it was thus unnecessary to examine his remaining arguments, which were irrelevant for a lawful and correct decision. Lastly, it refused to hold a hearing, finding that new facts and evidence were not relevant for the decision as set out in the second indent of section 59(2) of the Administrative Disputes Act (see paragraph 26 below).

20. Subsequently, the applicant lodged an appeal on points of law. On 16 September 2015 the Supreme Court rejected it, finding that he had failed to demonstrate an important legal issue or very significant consequences resulting from the impugned judgment.

21. On 23 November 2015 the applicant lodged a petition for constitutional review of section 73 of the Administrative Disputes Act (see paragraph 26 below) and a constitutional complaint, reiterating his previous complaints.

22. On 19 April 2016 the Constitutional Court rejected the applicant's petition for constitutional review on the grounds that he lacked a relevant legal interest, and decided not to accept his constitutional complaint for consideration.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

23. In accordance with section 87 of the Courts Act as in force at the relevant time (Official Gazette no. 76/07 with relevant amendments), a court expert must fulfil the following conditions. He or she:

(i) must have citizenship of Slovenia or a Member State of the European Union or the European Economic Area, and a good command of the Slovenian language;
(ii) must have legal capacity to act;
(iii) must have the required personal qualities;
(iv) should not have a criminal conviction for certain specified criminal offences;
(v) must have a university degree, appropriate knowledge and practical experience in the particular field of expertise;
(vi) must have at least six years of experience working in the particular field of expertise; and
(vii) should not carry out activities which are incompatible with the position of court expert.

Anyone who has behaved or behaves in such a manner where it is possible to justifiably conclude, on the basis of his or her behaviour, that he or she will not perform the work of an expert honestly and with due diligence, shall not be considered to have the required personal qualities to carry out the work of an expert.

24. On 5 July 2018 the Act on Court Experts, Certified Appraisers and Court Interpreters (Official Gazette no. 22/18) entered into force. Section 16(2) of the Act defines personal aptitude in the following terms:

> "Anyone whose work or behaviour does not justifiably indicate that he or she will perform the work of a court expert ... honestly and diligently, or does not justifiably indicate that he or she will protect the reputation and trustworthiness of court experts ... does not have the personal qualities ... of a court expert ..."

25. Court experts shall be appointed from the day when they take the oath before the Minister of Justice (section 88(1) of the Courts Act).

26. The relevant provisions of the Administrative Disputes Act (Official Gazette no. 105/06 with relevant amendments) are set out in the case of *Mirovni Inštitut v. Slovenia*, no. 32303/13, §§ 18-23, 13 March 2018.

27. On 18 May 2017 the Constitutional Court delivered decision no. U-I-84/15, in which it held that court experts were considered to be assistants to the courts when giving their findings and opinions at a court's request. It held that court expert status under the Courts Act was conferred on individuals for the purpose of establishing lists of persons, so that judges could swiftly and effectively designate an expert to give findings and opinions in a particular case. However, while the Courts Act regulated the acquisition of court expert status, it did not determine the right to be a court expert or the right to use court expert status as a special title. It was in the legislature's discretion to regulate (or not regulate) the status of court experts.

THE LAW

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

28. The applicant complained that the absence of a hearing in the proceedings before the first-instance court had been in breach of Article 6 § 1 of the Convention, the relevant part of which provides:

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

A. Admissibility

1. No significant disadvantage

(a) Submissions by the parties

29. Relying on the Constitutional Court's decision not to accept the constitutional complaint lodged by the applicant for consideration, the Government argued that the applicant had suffered no significant disadvantage.

30. The applicant submitted that he had suffered disadvantages at the domestic level, such as loss of income and damage to his reputation, and that respect for human rights required that his case be examined on the merits.

(b) The Court's assessment

31. The Court notes that the question of whether the applicant has suffered any significant disadvantage represents the main element of the

criterion set forth in Article 35 § 3 (b) of the Convention (see *Adrian Mihai Ionescu v. Romania* (dec.), no. 36659/04, § 39, 1 June 2010, and *Korolev v. Russia* (dec.), no. 25551/05, 1 July 2010). The Court has held that the absence of any significant disadvantage can be based on criteria such as the financial impact of the matter in dispute or the importance of the case for the applicant (see *Konstantin Stefanov v. Bulgaria*, no. 35399/05, § 44, 27 October 2015).

32. Turning to the present case, the Court notes that the applicant claimed to have suffered significant loss of income and damage to his reputation due to the dismissal of his application (see paragraph 30 above). The Court cannot assume that the effect of the impugned decision on his income and reputation was insignificant. The Government provided nothing to show that the impact of the matter had been such as to indicate an absence of any significant disadvantage. They merely referred to the Constitutional Court's decision not to accept the applicant's constitutional complaint for consideration (see paragraphs 22 and 29 above). However, that decision contains no explanation as to the financial or other impact that the contested decision had on the applicant. The Government's preliminary objection must accordingly be dismissed.

2. Applicability of Article 6

(a) Submissions by the parties

33. The Government submitted that although being appointed a court expert was a privilege rather than a right (see paragraph 27 above), Article 6 guarantees had applied to the proceedings at issue. In the context of Slovenia's legal order, the Government considered that, in principle, this involved a civil matter – payment for performance of a certain public function.

34. The applicant maintained that Article 6 was applicable in the present case, as he had had the right to have his application for the title of court expert examined in fair proceedings.

(b) The Court's assessment

35. The Court refers to the principles pertaining to the application of Article 6 § 1 of the Convention set out in *Regner v. the Czech Republic* ([GC], no. 35289/11, §§ 99-112, ECHR 2017 (extracts)) and reiterated in *Prebil v. Slovenia* (no. 29278/16, §§ 32-33, 19 March 2019). The Court further notes that it has previously found Article 6 § 1 of the Convention applicable to disputes concerning the recruitment or appointment of civil servants and judges, where the domestic law allowed access to a court to challenge relevant decisions (see *Juričić v. Croatia*, no. 58222/09, §§ 56-58, 26 July 2011).

36. As regards the present case, the Court notes that in the Slovenian legal system there is no right to acquire the title of court expert (see paragraph 27 above). It is, however, undisputed by the parties that the applicant, as a candidate for the title of court expert, had the right to a lawful procedure for the examination of his application. Furthermore, the Court notes that Slovenian law allows decisions of the Minister on the acquisition of the title of court expert to be challenged before the judicial authorities, and that the applicant contested the impugned decision before the Administrative Court (see paragraph 17 above; see also *Juričić*, cited above, § 56). Lastly, the Court takes note of the Government's submission that the case involved a civil matter. In particular, the applicant would have been able to exercise a paid public function had he acquired the title court expert (see paragraph 33 above).

37. Having regard to the above considerations, the Court finds that Article 6 applies to the present case under its civil limb.

3. Conclusion as to the admissibility of the complaint

38. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

39. The applicant maintained that the facts relied on by the Minister had not led to the conclusion that he would not be able to carry out the work of an expert professionally. The first-instance court had arbitrarily concluded that the facts he had put forward in his submissions and the proposed evidence had not been relevant for the decision. In particular, the applicant maintained that assessing the letters of recommendation written by reputable individuals and hearing a number of witnesses who had been professionally and personally connected to him could have challenged the Minister's conclusion regarding his personal qualities.

40. Assuming that Article 6 of the Convention was applicable, the Government relied on the Administrative Court's arguments for rejecting the applicant's request for a hearing (see paragraph 19 above), and maintained that holding a hearing had not been necessary in the present case. They also argued that the applicant's request for a hearing (see paragraph 18 above) had been unsubstantiated.

2. The Court's assessment

41. The Court reiterates that, in proceedings before a court of first and only instance, the right to a "public hearing" entails an entitlement to an "oral hearing" under Article 6 § 1 unless there are exceptional circumstances that justify dispensing with such a hearing (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 188, 6 November 2018). The Court has accepted exceptional circumstances in cases where the proceedings concerned exclusively legal or highly technical questions (ibid., § 190). There may be proceedings in which an oral hearing may not be required: for example, where there are no issues of credibility or contested facts which necessitate a hearing and the courts may fairly and reasonably decide the case on the basis of the parties' submissions and other written materials (ibid.).

42. Turning to the circumstances of the present case, the Court observes that it is undisputed between the parties that no hearing took place before the Administrative Court, the Supreme Court or the Constitutional Court. The Administrative Court acted as the first and only level of court with full jurisdiction, that is to say jurisdiction that was not limited to matters of law, but also extended to factual issues (see paragraph 26 above). The Court further observes that the Administrative Court made no reference to any evidence other than the Minister's decision itself, and refused to grant a hearing, despite the applicant's request for one (see paragraph 16 above).

43. In this regard, the Court notes that the Administrative Court acknowledged that the issue in dispute was whether the applicant fulfilled the requirement regarding personal qualities, which was determined on the basis of facts related to a candidate's personality and work. In this connection, the Court observes that, as appears from the applicant's submissions to the Administrative Court, his claims were capable of raising issues of both fact and law in relation to the Minister's decision of 21 August 2014 (see paragraph 14 above). In particular, the applicant claimed that the assessment of his personal qualities should not be limited to an assessment of his emails, complaints and blog, and requested that the court hear witnesses who knew him personally and professionally and could testify to his moral character and the fact that the blog was read only by his friends (see paragraphs 17 and 18 above). Moreover, the applicant challenged the causal link between his writing on the blog and the quality of his work as a court expert. The applicant's request for a hearing was thus related to concrete evidence which he asked the court to take into consideration, namely the evidence of certain witnesses in respect of facts which were relevant for the assessment of his personal aptitude.

44. The Court therefore accepts that the issues pending before the Administrative Court related to facts that can be said to have been relevant for the outcome of the proceedings, and which were disputed between the parties.

45. The Court is well aware that the domestic law does not always require that a hearing be held before the Administrative Court. However, this is permissible only in a limited number of situations (see paragraph 26 above). In this regard, the Court observes that the Administrative Court refused the applicant's request for a hearing by essentially referring to the second indent of section 59(2) of the Administrative Disputes Act setting out the rule that new evidence and facts were not relevant for the decision in question, without providing any further explanation (see paragraph 16 above). In the absence of any explanation as to which facts and evidence the Administrative Court considered new, and why it found them irrelevant, it is difficult for the Court to ascertain how that court's reasons for dismissing the applicant's request for a hearing were interpreted against the factual background of the case (see, *mutatis mutandis*, *Mirovni Inštitut v. Slovenia*, no. 32303/13, § 44, 13 March 2018).

46. In view of the foregoing considerations, the Court concludes that there has been a violation of Article 6 § 1 of the Convention on account of the lack of an oral hearing in the proceedings before the Administrative Court.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

47. The applicant complained that the dismissal of his application for the title of court expert on account of the views he had expressed in his blog had violated Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

48. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicant

49. The applicant maintained that the dismissal of his application on the grounds that he did not have the requisite personal qualities had unlawfully deprived him of his acquired rights. He believed that he had been sanctioned for expressing his critical opinion by writing a blog and complaining about the work of the Ministry. He submitted, in particular, that his application had been dismissed solely because the Ministry had felt offended by his criticism.

50. As regards the content of his blog, the applicant argued that the controversial blog entries had been taken out of context and wrongly interpreted as insults to the State authorities, rather than criticism of politicians expressed in a satirical and cynical manner. The rest of the entries had focused on recipes, travelling and his socialising with his friends. Moreover, the blog had been read by twenty-one to seventy-nine people, which meant that the posts' influence had been negligible.

51. Lastly, the applicant submitted that he had not enjoyed the relevant procedural guarantees in the process.

(b) The Government

52. The Government argued that the dismissal of the applicant's application for the title of court expert had not amounted to an interference with his freedom of expression within the meaning of Article 10 § 1 of the Convention. Relying on domestic law provisions (see paragraph 25 above), they submitted that the applicant had only been a candidate and had not actually been granted the title of court expert. In their view, the present proceedings concerned issues of access to public service, and not the right to freedom of expression. The applicant's application had been dismissed solely because he had failed to fulfil one of the conditions under section 87 of the Courts Act for being granted the title of court expert (see paragraph 23 above), in particular the condition regarding a candidate's personal qualities. In their opinion, if a candidate criticised and insulted the work of a potential future client, then this raised reasonable doubts about that candidate's ability to produce fair, impartial and conscientious work. The Government also emphasised that the applicant had been writing his Internet blog since 2013 and had continued to do so after the dismissal of the application.

53. The Government submitted that, assuming that there had been an interference, the condition as regards a person's suitability for the relevant position had been clearly defined in the legislation in force at the relevant

time (see paragraph 23 above), and its application in the present case had pursued the legitimate aim of ensuring and protecting morals, protecting the rights of other people (parties in judicial proceedings), and protecting the reputation, authority and impartiality of the judiciary. The applicant could have formulated his criticism of State authorities and the State's functioning without resorting to the insulting expressions which he had used in his blog. The title of the applicant's blog – in particular, the humiliating term "chicks" – and the blog's content had been disrespectful to women. The primary role of court experts was to assist the judiciary, and the grounds on which the Minister had dismissed the applicant's application were indispensable for securing morals and the reputation of court experts and protecting the authority and impartiality of the judiciary. Lastly, the Government maintained that the applicant had had sufficient procedural guarantees to challenge the Minister's decision.

2. The Court's assessment

(a) Whether there was an interference

54. As regards the applicant's argument that the dismissal of his application unlawfully deprived him of his acquired rights, the Court observes that his application for the title of court expert was dismissed before he took the relevant oath. The Court takes note of the wording of section 88(1) of the Courts Act, and the Minister's and the Administrative Court's interpretation of this provision. It shares the Government's view that the applicant never acquired the title of court expert. Therefore, contrary to what the applicant seemed to imply in his application to the Court, the domestic authorities did not revoke his title, but refused to award it to him while the recruitment procedure for court experts was ongoing (compare and contrast *Vogt v. Germany*, 26 September 1995, § 44, Series A no. 323, and *Lombardi Vallauri v. Italy*, no. 39128/05, § 38, 20 October 2009).

55. The Court further notes that court experts assist the courts (see paragraph 27 above), and in that regard they form part of the public service in the administration of justice. In the light of this and the Government's objection (see paragraph 52 above), the Court must firstly ascertain whether the disputed measure (the dismissal of the applicant's application) amounted to an interference with the exercise of his freedom of expression – in the form of a "formality, condition, restriction or penalty" – or whether it lay within the sphere of the right of access to the public service, a right not secured in the Convention or its Protocols. In order to answer this question, the scope of the measure must be determined by putting it in the context of the facts of the case and the relevant legislation (for a recapitulation of the relevant case-law, see *Baka v. Hungary* [GC], no. 20261/12, §§ 140-143, 23 June 2016; see also *Wille v. Liechtenstein* [GC], no. 28396/95, §§ 41-43,

ECHR 1999-VII; *Harabin v. Slovakia* (dec.), no. 62584/00, 29 June 2004; and *Kudeshkina v. Russia*, no. 29492/05, § 79, 26 February 2009).

56. The Court reiterates that the refusal to appoint a person as a public servant cannot, as such, provide the basis for a complaint under the Convention (see *Emel Boyraz v. Turkey*, no. 61960/08, § 41, 2 December 2014; *Vogt,* cited above,, § 43,; and *Otto v. Germany* (dec.), no. 27574/02, 24 November 2005). However, it considers that the issue to be examined in the present case is not whether the applicant had a right to be recruited for public service. The applicant did not complain about the domestic authorities' refusal to appoint him as a court expert as such, but argued that the impugned decision had constituted a reprimand for the exercise of his freedom of expression as guaranteed by Article 10.

57. It follows from the Court's case-law that while the Contracting States did not wish to commit themselves to recognising, in the Convention or its Protocols, a right of access to public service, they are nonetheless bound not to impede that access on grounds protected by the Convention, by virtue of Article 1 of the Convention. In this connection, the Court finds it appropriate to draw parallels with its case-law on applying the concept of "private life" to employment-related scenarios under Article 8, including restrictions on access to employment in the public service. Under Article 8, complaints concerning the exercise of professional functions have been found to fall within the ambit of "private life" when factors relating to private life were regarded as qualifying criteria for the function in question, and when the impugned measure was based on reasons encroaching upon the individual's freedom of choice in the sphere of private life (see *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 71, ECHR 1999-VI; *Özpınar v. Turkey*, no. 20999/04, §§ 47-48, 19 October 2010; *Fernández Martínez v. Spain* [GC], no. 56030/07, §§ 111-113, ECHR 2014 (extracts); *Sodan v. Turkey*, no. 18650/05, §§ 47-49, 2 February 2016; and *Yılmaz v. Turkey*, no. 36607/06, § 41, 4 June 2019).

58. Noting that the applicant was arguably denied the title of court expert because of statements which he had made in the exercise of his rights under Article 10 of the Convention, the Court observes the following relevant elements: before the Minister refused his application on 21 August 2014, the applicant had succeeded in the examination to become a court expert and had been invited to take the oath in July 2014; and the Minister based the impugned decision exclusively on the content of the applicant's blog and the emails in which he had criticised the Ministry's postponement of the oath ceremony (see paragraph 14 above). It follows that the essential elements of the decision related to the exercise of freedom of expression (see *Kudeshkina*, cited above, § 79, and *Hajibeyli and Aliyev v. Azerbaijan*, nos. 6477/08 and 10414/08, § 53, 19 April 2018, as regards a refusal to admit somebody to a Bar association; compare and contrast *Harabin*, cited above), even if that exercise was qualified by the Minister as proof of the

applicant not being a suitable candidate for the position of court expert (see *Kayasu v. Turkey*, nos. 64119/00 and 76292/01, § 80, 13 November 2008). The Court cannot accept the Government's argument that, in dismissing the application, the Minister took account of what the applicant had expressed merely in order to establish whether he fulfilled the requirements for the title of court expert (compare and contrast *Harabin*, cited above), since the disadvantage which the applicant suffered was directly related to his exercise of core elements of this right (see the similar reasoning employed by the Court under Article 8 of the Convention, paragraph 57 above). The dismissal also had a potentially chilling effect on the exercise of freedom of expression of those wishing to perform the function of court experts. Whether such a measure and the related chilling effect were in fact justified is a question to be answered in relation to the merits of the case. Accordingly, the measure complained of essentially related to freedom of expression, and not access to public service.

59. Having regard to the above, the Court considers that the refusal of the applicant's application for the title of court expert constituted an interference with the exercise of his right to freedom of expression as guaranteed by Article 10 § 1 of the Convention.

(b) Whether the interference was justified

60. Such an interference gives rise to a breach of Article 10 unless it can be shown that it was "prescribed by law", pursued one or more legitimate aims as defined in paragraph 2, and was "necessary in a democratic society" for achievement of those aims.

(i) "Prescribed by law" and legitimate aim

61. The Court notes that the applicant's application for the title of court expert was dismissed on the basis of section 87 of the Court Act, which listed the requirement as regards personal qualities as one of the conditions for being granted the title of court expert (see paragraphs 14 and 23 above). It further notes that it has previously found similar domestic legal provisions to be sufficiently foreseeable for the purposes of the Convention (see *Fernández Martínez*, cited above, §§ 117-121; *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 126, 17 May 2016; *Travaš v. Croatia*, no. 75581/13, §§ 78-85, 4 October 2016; and *Karapetyan and Others v. Armenia*, no. 59001/08, §§ 37-43, 17 November 2016). However, as the impugned interference breached Article 10 for other reasons (see paragraph 69 below), the Court will not delve further into the question of whether the interference was "prescribed by law" within the meaning of Article 10 § 2 of the Convention. At any rate, this issue was not in dispute between the parties.

62. Moreover, the Court accepts that the decision not to award the applicant the title court expert was aimed at maintaining the authority and impartiality of the judiciary, which is a legitimate aim within the meaning of paragraph 2 of Article 10 (see *Kayasu*, cited above, § 87).

(ii) "Necessary in a democratic society"

63. In assessing whether the impugned decision was "necessary in a democratic society", the Court will consider the circumstances of the case as a whole and examine these in the light of the principles established in its case-law (see, among other authorities, *Baka*, cited above, §§ 158-161). In this connection, it reiterates that public officials serving in the judiciary should show restraint in exercising their freedom of expression in all cases where the authority and impartiality of the judiciary are likely to be called into question (see *Wille*, cited above, § 64; *Kayasu*, cited above, § 92; *Kudeshkina*, cited above, § 86; and *Baka*, cited above, § 164).

64. Moreover, the Court reiterates that the margin of appreciation enjoyed by Contracting States in assessing the need for their interference goes hand in hand with European supervision. When the exercise of the rights and freedoms guaranteed in paragraph 1 of Article 10 is at stake, the supervision must be strict because of the importance of the rights in question. Therefore, the necessity of any restriction must be convincingly established (see *Lombardi Vallauri*, cited above, § 45, and *Radio ABC v. Austria*, 20 October 1997, § 30, *Reports of Judgments and Decisions* 1997-VI).

65. In assessing the existence of such a necessity, the fairness of proceedings and the procedural guarantees afforded to the applicant are important factors to be taken into account (see, *mutatis mutandis*, *Castells v. Spain*, 23 April 1992, §§ 47-48, Series A no. 236; *Association Ekin v. France*, no. 39288/98, § 61, ECHR 2001-VIII; and *Kudeshkina*, cited above, § 83). The Court has already found that the absence of an effective judicial review may support the finding of a violation of Article 10 (see *Lombardi Vallauri*, cited above §§ 45-56, 20 October 2009, and *Saygılı and Seyman v. Turkey*, no. 51041/99, §§ 24-25, 27 June 2006).

66. Turning to the present case, the Court notes that the Minister based his decision on the dismissal of the applicant's application for the title of court expert on the applicant's emails and blog, both of which the Minister considered to be offensive (see paragraph 14 above). In this regard, the Court observes that the Minister did not rely on any particular blog post or email passage, nor did he in any other way specify the language used by the applicant in the blog and emails which he considered to be offensive. The absence of such reasoning in the Minister's decision is particularly noteworthy, given that only days prior to that decision the Minister had considered that there was no obstacle to the applicant's appointment as a court expert (see paragraph 9 above). As regards the applicant's right to

freedom of expression, the Minister considered that the dismissal of the applicant's application did not limit that right (see paragraph 16 above).

67. Furthermore, the Court observes that the Administrative Court also remained silent on the applicant's right to freedom of expression, and did not address the applicant's arguments made in that regard (see paragraph 19 above). In particular, it in no way balanced the applicant's right to freedom of expression under Article 10 of the Convention against the public interest allegedly pursued by the impugned decision (compare and contrast *Simić v. Bosnia and Herzegovina* (dec.), no. 75255/10, 15 November 2016). Relying exclusively on the reasoning of the Minister's contested decision, the court upheld the conclusion that the applicant did not have the requisite personal qualities and that it was thus unnecessary to examine his remaining arguments. Having regard to the above and the considerations that led it to find a violation of Article 6 § 1 of the Convention (see paragraphs 42-46 above), the Court considers that the impugned interference with the applicant's exercise of his right to freedom of expression under Article 10 of the Convention was not accompanied by an effective and adequate judicial review (see, *mutatis mutandis*, *Lombardi Vallauri*, cited above, § 54).

68. The Court accepts that the behaviour of a candidate for the title of court expert can be such as to give rise to reasonable doubts as to whether the candidate will perform the work of an expert impartially and diligently. However, in the absence of a detailed statement of reasons in the Minister's decision and the Administrative Court's judgment as to why the applicant's exercise of his right to free expression was offensive and as such incompatible with the work of a court expert, the Court cannot subscribe to the Government's argument that dismissing the applicant's application was indispensable for securing morals and the reputation of court experts and protecting the authority and impartiality of the judiciary.

69. The foregoing considerations, in particular the fact that neither the Minister nor the Administrative Court undertook any assessment of whether a fair balance was struck between the competing interests at stake, and that the Court was thereby prevented from effectively exercising its scrutiny as to whether the domestic authorities had implemented the standards established in its case-law on the balancing of such interests, are sufficient for the Court to conclude that, in the circumstances of the present case, the interference with the applicant's freedom of expression was not "necessary in a democratic society" (see *Kula v. Turkey*, no. 20233/06, § 51, 19 June 2018, and *Skudayeva v. Russia*, no. 24014/07, § 38, 5 March 2019; see also paragraphs 64 and 65 above).

70. There has accordingly been a violation of Article 10 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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."

C. Damage

72. The applicant claimed 156,347.31 euros (EUR) in respect of pecuniary damage, an amount comprising loss of future income and payments for the court expert examination. He also claimed EUR 30,000 in respect of non-pecuniary damage, an amount consisting of EUR 20,000 for the Article 6 violation and EUR 10,000 for the Article 10 violation.

73. The Government disputed the existence of any causal link between the alleged violations and the pecuniary damage supposedly suffered by the applicant. They submitted that as of 2015 no domestic court had requested a court expert in the applicant's area of expertise. They further pointed out that there were no restrictions on candidates whose applications for the title of court expert had been rejected reapplying, and that in any event the applicant could still be sworn in by the courts on an *ad hoc* basis and continue to work as a top expert. With respect to the claim in respect of non-pecuniary damage, the Government submitted that it was unsubstantiated and excessive.

74. The Court finds that the applicant's claim in respect of pecuniary damage is unfounded; it therefore rejects this claim. On the other hand, it awards the applicant EUR 15,600 in respect of non-pecuniary damage, plus any tax that may be chargeable.

D. Costs and expenses

75. The applicant also claimed EUR 1,739 for the costs and expenses incurred in the proceedings before the domestic courts, and EUR 4,570 for those incurred before the Court.

76. The Government submitted that the applicant's claim in respect of costs and expenses was unsubstantiated and excessive.

77. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,812 covering costs under all heads, plus any tax that may be chargeable to the applicant.

E. Default interest

78. 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 application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 10 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:
      (i) EUR 15,600 (fifteen thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,812 (two thousand eight hundred and twelve euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 30 June 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Jon Fridrik Kjølbro
Deputy Registrar	President