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

SECOND SECTION

CASE OF STOIANOGLO v. REPUBLIC OF MOLDOVA

(Application no . 19371/22)

STOP

Art 6 § 1 (civil) • Access to a court • Absence of judicial review of the automatic suspension, occurring by operation of law, of the functions of a public prosecutor, for more than two years, at the time of the opening of criminal proceedings against him • Art 6 § 1 applicable • Real and serious challenge to a “right” in domestic law • First condition of the *Eskelinen* criterion met, no provision of domestic law allowed the applicant to challenge the measure in question • Domestic legislation subsequently modified having given the Superior Council of Prosecutors the possibility of verifying the advisability of maintaining or not such a measure • Second condition of the *Eskelinen* criterion not met, the impossibility for the applicant to access a court not being justified by objective reasons linked to the interest of the State • Requirement of independence set out in art 6 § 1 applying to judges and courts and not to prosecutors • Clear line between judges and prosecutors cannot be traced to the need for protection against arbitrary interference in their functions by public authorities•

Supervision by an independent judicial body of measures such as dismissal capable of effectively ensuring such protection • Prosecutors expressly placed in the same situation as magistrates regarding their independence by national legislation • Insufficient justification in this case of the simple fear of influence of the suspended Attorney General on the criminal proceedings carried out against him • Attack on the very substance of the right of access to a court

STRASBOURG

October 24, 2023

This judgment will become final under the conditions defined in Article 44 § 2 of the Convention. It may undergo shape adjustments.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Stoianoglo v. Republic of Moldova,

The European Court of Human Rights (second section), sitting in a chamber composed of:

Arnfinn Bårdsen, *president,*
Jovan Ilievski,
Egidijus Kuris,
Pauliine Koskelo,
Frédéric Krenc,
Diana Sarcu,
Davor Derenÿinoviÿ, *juges,*
et de Hasan Bakÿrcÿ, *greffier de section,*

Having regard to the application (no. 19371/22) against the Republic of Moldova lodged with the Court under Article 34 of the Safeguarding Convention by a national of that State, Mr Alexandr Stoianoglo (“the applicant”) of Human Rights and Fundamental Freedoms (“the Convention”) on January 19, 2022,

Having regard to the decision, on the one hand, to bring to the attention of the Moldovan government ("the Government") the complaint of lack of access to a court due to the impossibility alleged by the applicant to challenge his suspension from office and , on the other hand, not to adopt a partial decision regarding the complaint formulated in the same context under Article 13 of the Convention,

Having regard to the decision to reject the Government's request for disqualification against the judge elected in respect of the respondent State (Rule 28 § 2 d, of the Rules),

Considering the observations of the parties,

After having deliberated in private on October 3, 2023,

Renders the following judgment, adopted on this date:

INTRODUCTION

1. The application concerns the impossibility alleged by the applicant, Attorney General, to challenge the measure of suspension of functions which targeted him at the time when criminal proceedings were initiated against him. The person concerned relies on Articles 6 § 1 and 13 of the Convention.

ACTUALLY

2. The applicant was born in 1967 and lives in Chiÿinÿu. He was represented by Me V. Munteanu, lawyer.

3. The Government was represented by its agent, D. Obadÿ.

I. THE APPOINTMENT OF THE APPLICANT AS PROSECUTOR GENERAL

4. Member of the Parliament of the Republic of Moldova from 2009 to 2014, chairman of the Parliamentary Committee on National Security, Defense and Public Order, the applicant was, following a public selection procedure, appointed prosecutor general on November 29, 2019 for a term of seven years.

II. THE COMPLAINT MADE BY DEPUTY LC BEFORE THE SUPERIOR COUNCIL OF PROSECUTORS (“CSP”)

5. On September 30, 2021, LC, deputy and president of the Parliamentary Committee on National Security, Defense and Public Order, submitted a complaint to the CSP relating to facts which he accused the applicant of and which he considered likely to be the origin of several offenses (abuse of power, passive corruption, forgery and excess of functions).

6. At the same time, LC asked the CSP to appoint, in accordance with the provisions of the Code of Criminal Procedure (“CPP”), a prosecutor responsible for investigating the alleged facts (paragraph 21 below).

III. THE OPENING OF PROCEEDINGS AGAINST THE APPLICANT AND THE MEASURE OF SUSPENSION OF FUNCTIONS TAKEN WITH RESPECT TO HIM

7. On October 5, 2021, after hearing MP LC and examining his complaint, the CSP instructed prosecutor VF, from the anti-corruption prosecution, to investigate the alleged facts. The applicant was not heard by the CSP, which pronounced its decision by a majority of votes (among the dissenting opinions was that of the president of the CSP). It was indicated in the decision rendered to this end, in point no. 4 of the operative part, that it could be challenged before the Chiÿinÿu Court of Appeal under Article 191 of the Administrative Code (paragraph 20 below). The same day, as he was going to speak at a press conference he had organized, the applicant was apprehended and placed in detention at the Chiÿinÿu police premises. The applicant was then placed under house arrest and subsequently placed under judicial supervision.

8. On the same date, according to the information provided by the Government in its observations on the admissibility of the application, the VF prosecutor initiated proceedings against the applicant for five alleged offenses relating to abuse of power, passive corruption, of falsehood and excess of functions. As of the same day, as appears from the said observations and an order of October 7, 2021 from the VF prosecutor, the person concerned was automatically suspended from his functions in application of

Article 55-1 of Law No. 3 of February 25, 2016 on the public prosecutor's office, which provided that the public prosecutor targeted by criminal proceedings was automatically suspended from his functions at the time of the opening of criminal proceedings against him (paragraph 17 below).

IV. THE CONTESTATION OF THE CSP'S DECISION

9. On October 5, 2021, the applicant challenged before the Chiÿinÿu Court of Appeal the decision of the CSP instructing the prosecutor VF to investigate the facts alleged by the deputy LC He requested the suspension of the part of the decision designating the prosecutor VF, arguing that the said decision had been adopted in his absence and that the procedure had not been respected. To this end, he argued that it was up to the public prosecutor's office to examine the advisability of initiating proceedings, and not to the CSP, which according to him was not a prosecutorial body.

10. In this dispute, the applicant also emphasized that he had not been able to read the content of the complaint made by MP LC, that his request to have the meeting postponed for a few hours had been rejected so that he could request the recusal of five members of the CSP, and that he had been refused to respond to the arguments put forward by the author of the complaint. He also presented his arguments in response to the allegations made in his complaint by MP LC, and finally asked the Court of Appeal to find the illegality of the contested decision.

11. On November 2, 2021, the Chiÿinÿu Court of Appeal rejected the challenge as inadmissible. To reach this conclusion, it first ruled that the contested decision did not constitute an individual administrative act within the meaning of the administrative code. She explained that in fact the appointment of the VF prosecutor could only be contested if the suspension of the applicant's duties could not otherwise be appealed. However, she clarified, given that the measure of suspension of functions applied automatically - that is to say without an individual decision being necessary for this purpose - at the time of the opening of the proceedings, it was necessary, for any possible challenge to such a measure, to comply with the law governing criminal procedure. It also ruled that the contested decision only concerned the appointment of a prosecutor responsible for examining the facts giving rise to the criminal complaint and did not concern the admissibility or appropriateness of the proceedings, which questions were within the remit of the courts. jurisdictions responsible for applying the provisions of the CPP. She finally declared that under the administrative code, relations with public authorities acting under criminal law, as was the case in the present case, did not fall within the scope of administrative litigation. It concluded that there was no need to rule on the request for suspension made by the applicant.

12. The applicant appealed against this decision to the Supreme Court of Justice ("the Supreme Court"). Explaining that the contested decision, as

that it suspended his functions and appointed a prosecutor for the purposes of examining the criminal complaint made by the deputy LC, constituted an administrative act which was detrimental to him, he complained of a lack of access to a court and referred to the Court's case law on the subject.

13. By a judgment of December 29, 2021, the Supreme Court rejected the appeal as unfounded and confirmed the judgment of November 2, 2021. After recalling the relevant provisions of the administrative code as well as those which governed the functioning of the CSP, it ruled that the decision to appoint the VF prosecutor to examine the complaint against the applicant did not constitute an individual administrative act. She explained that the CSP had acted as a public authority under the CPP, a circumstance which, according to the Supreme Court, did not place it in relation to the applicant in a relationship capable of being subject to review by the Administrative Litigation. The mention in the decision of October 5, 2021 of a right to challenge by administrative means (paragraph 7 above) would have represented a simple clerical error not conferring on the act in question an administrative character nor constituting a reason for annulment of the contested decision.

14. It appears that on September 26, 2023 the President of the Republic of Moldova signed a decree terminating the functions of Prosecutor General held by the applicant.

THE LEGAL FRAMEWORK AND INTERNAL PRACTICE RELEVANT

I. LA CONSTITUTION

15. The relevant part of the Constitution of the Republic of Moldova read as follows in the version in force at the material time:

Article 124

The floor

"1. The public prosecutor's office is an autonomous public institution within the framework of judicial authority. It contributes to the administration of justice and the defense of the rights, freedoms and legitimate interests of the person, society and the State through criminal and other procedures provided for by law.

2. The powers of the public prosecutor's office are exercised by prosecutors.

3. The powers, organization and functioning of the public prosecutor's office are established by law. »

Article 125

The prosecutors

"1. The Prosecutor General is appointed by the President of the Republic of Moldova, on the proposal of the High Council of Prosecutors, for a non-renewable term of seven years.

2. The Prosecutor General may be dismissed from office by the President of the Republic of Moldova, upon the proposal of the High Prosecutorial Council, under the conditions provided for by law, for objective reasons and following a transparent procedure .

3. The appointment, transfer, promotion and dismissal of prosecutors of lower rank in the judicial hierarchy are carried out by the Prosecutor General on the proposal of the High Council of Prosecutors. »

Article 125-1

"1. The Superior Council of Prosecutors is the guarantor of the independence and impartiality of prosecutors.

2. The High Council of Prosecutors is composed, in accordance with the law, of prosecutors elected from among public prosecutors *(procuraturile)* of all levels as well as representatives of other authorities, public institutions or civil society. Prosecutors constitute an important part of the Superior Council of Prosecutors.

3. The Superior Council of Prosecutors is responsible for appointing prosecutors, their transfer, their promotion and the disciplinary measures taken against them.

4. The organization and functioning of the Superior Council of Prosecutors are established by law. »

II. THE STATUS OF PROSECUTORS IN THE JUDICIAL SYSTEM MOLDOVA

16. The Moldovan public prosecutor's office has undergone numerous reforms. In its current state, as established by the Constitution and by laws no . 3 of February 25, 2016 on the public prosecutor, no. 544-XIII of July 20, 1995 on the status of judges, no. 154 of July 5, 2012 on selection , performance evaluation and career of judges, no . 178 of July 25, 2014 on the disciplinary responsibility of judges and no. 947-XIII of July 19, 1996 on the High Judicial Council, the Moldovan judicial system makes no distinction fundamental between the status of judges and that of prosecutors.

III. THE PUBLIC PROSECUTION ACT

17. Law No. 3 of 25 February 2016 on the Public Prosecutor's Office, as in force at the time the applicant was appointed Prosecutor General, read in its relevant parts as follows:

Article 34

The inviolability of the prosecutor

"(...) 4. Criminal proceedings against a prosecutor may only be initiated by the Attorney General. At the same time (...), the Attorney General refers the matter to the Superior Council of Prosecutors for the purpose of opening disciplinary proceedings.

5. Criminal proceedings against the Attorney General may only be initiated by the prosecutor designated [for this purpose] by the Superior Council of Prosecutors (...). »

Article 55

Suspension of functions

"1. The prosecutor targeted by criminal proceedings may be suspended from his functions by the Attorney General with the written agreement of the Superior Council of Prosecutors. (...)

6. The prosecutor may challenge the decision to suspend functions before the court under the conditions provided for by law. » (...)

Article 77

Meetings of the Superior Council of Prosecutors

"(...) 6. The decisions [of the Superior Council of Prosecutors] must be adopted in a public meeting, by an open vote, by a majority of its members present.

7. The decisions of the High Council of Prosecutors must be motivated and signed by all members participating in the meeting, and they must be published (...) on the website of the High Council of Prosecutors (...). »

18. The provisions of Article 55-1 of the Law on the Public Prosecutor's Office were introduced on August 24, 2021 by Law No. 102/2021 (entry into force on September 3, 2021) amending certain provisions of Law No. 3 of February 25, 2016 on the public prosecutor's office. This article reads:

Article 55-1

The suspension of functions of the Attorney General

"The public prosecutor who is the subject of criminal proceedings under the conditions provided for in Article 270 § 7 of the Code of Criminal Procedure is automatically suspended from his duties for the duration of the proceedings. The President of the Republic, on the proposal of the Superior Council of Prosecutors, appoints an *interim* prosecutor general during the period of suspension under the conditions provided for in Article 17 § 16 of this law. »

19. On 6 October 2022, Article 55-1 of the Law on the Public Prosecutor's Office was further amended following the adoption of Law No. 280/2022. This article now reads:

"1. The public prosecutor targeted by criminal proceedings (...) is considered to be legally suspended for 3 days. Before the expiration of this period, the Superior Council of Prosecutors convenes an extraordinary meeting and decides, by a majority of votes of the members present, whether to maintain or lift the suspension. The provisions of article 55 § 4 apply by analogy.

2. When it is not possible to convene an extraordinary meeting of the High Council of Prosecutors, the decision to maintain the suspension of the Prosecutor General or to end it may be taken by the President of the High Council of Prosecutors.
The decision of the president of the High Council of Prosecutors is validated at the following meeting of the High Council of Prosecutors, convened no later than fifteen days after the date of the decision. »

IV. THE ADMINISRATIVE CODE

20. Law No. 116 of July 19, 2018 (the “Administrative Code”), as in force at the material time, read as follows in its relevant parts in the present case:

Article 2

The regulation of administrative reports

“(...) 3. The provisions of this code do not apply:

(...) b) legal relationships [involving] public authorities (...) [and] based on the contraventions code or the penal code. (...) »

Article 17

The injured right

“Aggrieved right means any right or freedom established by law and affected by the activity administrative. »

Article 191

“Jurisdictional competence for actions on the litigation route administrative [belongs to]:

(...)

3. The Chiÿinÿu Court of Appeal, which judges, in the first instance, actions in administrative litigation aimed at decisions of the High Council of the Judiciary, the High Council of Prosecutors (...).

5. The Supreme Court of Justice judges requests for appeal made against judgments of the court of appeal. »

Article 207

Examination of the admissibility of the action in administrative litigation

“(...) 2. The action in administrative litigation is declared inadmissible in particular if:

(...) e) the applicant cannot allege the violation due to the administrative activity a right within the meaning of Article 17 (...). »

V. THE CRIMINAL PROCEDURE CODE

21. The relevant provisions of the Code of Criminal Procedure in this case read as follows in their wording in force at the material time:

Article 262

Referral *(sesizarea)* to the criminal prosecution authority

"1. The criminal prosecution authority may be seized of the commission or the preparation of an offense (...) by:

1) a complaint;

2) a denunciation (...).

5. Examination of requests for investigation *(sesizarilor)* relating to the actions of the Speaker of the Parliament, the President of the Republic of Moldova or the Prime Minister and the examination of offenses committed by them shall be carried out by the Prosecutor General or by a prosecutor designated by him. The examination of requests for investigation concerning offenses committed by the public prosecutor is carried out by a prosecutor designated by the High Council of Prosecutors. The criminal prosecution authority receiving a request for investigation concerning offenses committed by the above-mentioned persons is obliged to transmit it immediately to the public prosecutor or, as the case may be, to the High Council of Prosecutors. »

Article 270

Competence of the prosecutor to exercise criminal prosecution

"(...) 7. Criminal proceedings against the Attorney General are initiated by the prosecutor designated by the Superior Council of Prosecutors. (...) »

Article 313

The complaint against the illegal actions and acts of the criminal prosecution authority or the authority responsible for special investigative activities

"1. Complaints against the actions and acts of the criminal prosecution authority or the authority responsible for special investigative activities may be filed with the investigating judge by the suspect, the accused, the lawyer of the defense, the injured party, other parties to the proceedings or by persons whose rights and legitimate interests have been violated by these authorities, if the person in question does not agree with the result of the examination of his complaint by the prosecutor or if he has not received a response to his complaint from the prosecutor within the legal time limit.

2. The persons referred to in paragraph (1) may contest before the investigating judge:

1) the refusal of the criminal prosecution authority:

a) to receive the complaint or denunciation (...) of an offense;

b) to respond to a request in accordance with the law;

c) initiate criminal proceedings;

d) to release a person detained in violation of articles 165 and 166 of this code;

(e) to release a detained person beyond the period of police custody or period for which detention was authorized;

2) orders relating to the discontinuance of proceedings, dismissal of proceedings or the dropping of charges;

3) any other action affecting the constitutional rights and freedoms of the person.

3. The complaint may be filed with the investigating judge (...) within 10 days from the date on which the person concerned became aware of the result of the examination of the complaint or from the date of expiry of the legal deadline provided for a response.

4. The investigating judge, with the participation of the prosecutor, examines the complaint within 10 days and summons the complainant as well as the persons whose rights and freedoms may be affected if the complaint is upheld. The non-appearance of the person who filed the complaint and/or of the persons whose rights and freedoms may be affected in the event of admission of the complaint does not prevent the examination of the complaint.

this. The prosecutor is required to make the appropriate documents available to the court. During the examination of the complaint, the prosecutor and the complainant, as well as persons whose rights and freedoms may be affected if the complaint is accepted, are obliged to provide the required explanations.

5. If he considers the complaint founded, the investigating judge adopts a decision ordering the prosecutor to remedy the violations of the rights and freedoms of the natural or legal person concerned and, where appropriate, declares the nullity of the act or of the contested action. If he finds that the contested acts or actions were carried out in accordance with the law and that they did not infringe the rights and freedoms of the natural or legal person concerned, the investigating judge issues a rejection decision. .
A copy of the decision is sent to the complainant and the prosecutor.

6. The decision of the investigating judge is irrevocable, with the exception of decisions refusing to initiate proceedings, dropping charges or proceedings, dismissing proceedings or resuming proceedings, which may be the subject of a appeal to the court of appeal within 15 days from the date of the decision [of the investigating judge]. »

VI. THE RELEVANT JURISPRUDENCE OF THE COURT CONSTITUTIONAL

22. By a decision of September 30, 2021, the Constitutional Court rejected, among other things, an exception of unconstitutionality aimed, insofar as it provided for the suspension of *ope legis* functions of the Attorney General, of Article 55-1 of the law on public prosecution. This decision reads as follows in its relevant part in this case:

“72. (...) The public prosecutor is at the top of the hierarchy of public prosecutors. (...) The Court therefore admits that if the Attorney General were not suspended from his functions, the prosecutor designated to prosecute him might not have sufficient autonomy to take the necessary decisions during the trial. 'investigation. (...)

73. (...) The *ope legis* suspension of the mandate of the Prosecutor General subject to prosecution interferes, in the abstract, in a proportionate manner with Articles 20, 26 and 125-1 of the Constitution. The continuation in office of the public prosecutor targeted by criminal proceedings could, in certain cases, deprive the investigation of effectiveness (see the judgment rendered on November 5, 2009 by the European Court of Human Rights in the Kolevi *case v. Bulgaria,* where it found a violation of the right to life due to the impossibility of carrying out an effective investigation into the allegations of murder made against the Prosecutor General by members of the victim's family) .

74. Moreover, in the case of *Kolevi v. Bulgaria,* the Court carried out, in §§ 35-152, a comparative law study on the subject of guarantees regarding the effectiveness of the investigation in cases involving suspicion of higher ranking prosecutors.
The Court noted that several European States (...) provided for regulations relating to the suspension of functions of high-ranking prosecutors targeted by criminal proceedings. »

COUNCIL OF EUROPE DOCUMENTS

23. At its 129th plenary session, held in Venice and online on 10 and 11 December 2021, the Venice Commission adopted Opinion No. 1058/2021 on the amendments of 24 August 2021 to the Law on Public Prosecution (document CDL-AD(2021)047), the relevant passages of which read as follows:

"(...) **G. Suspension of the Prosecutor General (PG) and appointment of a Prosecutor general *ad interim***

1. Automatic suspension of the Attorney General

87. The new article 55-1 provides for the suspension of the PG if criminal proceedings are open against him. This suspension is automatic, as of right.

88. This provision was examined by the Constitutional Court of the Republic of Moldova (CCRM), which found that the suspension of the AG and his deputies did not constitute a violation of the presumption of innocence. According to the CCRM, the suspension of the PG, who is the superior of all prosecutors and investigators, guarantees an independent investigation into cases in which the PG may be involved. In support of its conclusion, the CCRM cites the judgment of the European Court of Human Rights in the case of *Kolevi v. Bulgaria.* In this case, the Court held that Article 2 of the European Convention required that an investigation into an alleged murder involving the then Prosecutor General of Bulgaria should not be carried out by investigators hierarchically subordinate to that same Prosecutor General. . As for the suspension of the AG's deputies, according to the CCRM, they are appointed to their position because of the personal trust placed in them by the AG, so their suspension would serve the same legitimate objective.

89. The Venice Commission agrees that in principle, the suspension of the PG in a case where a criminal case is pending against him is not incompatible with the presumption of innocence, for the reasons explained by the CCRM and also because maintaining the AG in office despite serious allegations against him could undermine public confidence in the prosecution. However, procedural safeguards should be put in place to ensure that the suspension mechanism is not used arbitrarily. The Venice Commission reiterates its previous remark in this regard: the initiation of criminal proceedings and their conduct must be accompanied by adequate procedural guarantees, and the presumption of innocence of the accused must be respected by any official or titular body of a function required to comment on the criminal case.

90. In an opinion on Bulgaria, the Venice Commission warned against automatic suspension of judges: it recommended that the Judicial Chamber of the High Council of the Judiciary "examine the substance of the accusations and decide whether the evidence against the judge are sufficiently convincing [...] and whether they call for a suspension. Otherwise, prosecutors would have "the power to initiate the suspension of judges for a potentially long period based on (relatively) thin evidence," which could endanger judicial independence.

91. As explained to the rapporteurs, the new article 55-1 must be read in conjunction with article 34 § 5 which provides that the opening of criminal proceedings against the PG must be authorized by the CSP, which, in this case , must also appoint a special prosecutor to handle this case. Thus, the PG cannot be

continued – and therefore cannot be suspended – without the involvement of the CSP. The authorities consider that this constitutes a sufficient guarantee of the independence of the PG.

92. However, as is clear from the opinion on Bulgaria, any criminal investigation does not require the automatic suspension of the PG. It would be more appropriate to let the PSC decide, on an *ad hoc* basis and in light of the seriousness of the charges against the AG, whether suspension is necessary. Automatic suspension may be reserved for cases where the PG is suspected of a crime of a certain seriousness, but even in these cases the CSP should be involved to assess whether the preliminary evidence against the PG is reasonably sufficient to open a case . Indeed, the quality and nature of the preliminary evidence collected for the purposes of opening a case is not intended to be sufficient to obtain a conviction. However, the CSP must itself verify that even this preliminary evidence is not clearly fabricated or irrelevant.

93. The Ministry of Justice, in its written comments, stressed that it would be detrimental to the prestige of the public prosecutor's office and to the independence of the investigation to maintain a PG in office while a criminal investigation is underway in against him.
This argument is valid: the Venice Commission is not opposed to the suspension of the PG at the time of opening the criminal case, provided that the PSC is duly involved and can ensure that the charges against the PG are not are not frivolous, politically motivated or too weak, and that the temporary suspension of the AG is necessary to protect the prestige of the prosecution and the independence of any future investigation. No automatic suspension of the PG is admissible, and significant participation of the CSP is necessary to decide on the suspension.

(...)

105. The Venice Commission invites the authorities of the Republic of Moldova to consider the return of the AG to the CSP as a de jure member (with a corresponding adjustment of the composition of the CSP, if necessary). In addition, some other amendments are questionable from the point of view of international standards and/or best practices and therefore need to be revised. The Venice Commission specifically makes the following recommendations:

– the perspective that members legitimately have of completing their mandate should not be disrupted without very serious reasons;

– the GP “performance review” procedure should be significantly revised. In particular, the law should clearly describe the nature and main indicators of performance assessment and specify how it differs from disciplinary responsibility. The CSP may be entrusted with the task of defining more specific regulations, but always within the framework established by law. The Evaluation Commission (EC) should not be able to function without members of the prosecution and the law should clearly stipulate that the EC's recommendations are not binding on the CSP;

– the CSP should have the power to decide whether the suspension of the PG in the context of a criminal case brought against him is justified; the suspension of the PG should not automatically end the mandates of his deputies;

– in the event of suspension of the PG or if his position becomes vacant, one of the deputies should be appointed by the CSP as interim PG until the conclusion of the criminal proceedings and/or the election of a new PG . Additional safeguards could be put in place to exclude any influence of the suspended or revoked PG on criminal or other proceedings against him. »

24. The relevant passage from Opinion No. 855/2016 on the law governing the judicial system adopted with respect to Bulgaria by the Venice Commission at its 112th plenary session, held in Venice on 6 and 7 October 2017 (document CDL-AD(2017)018), is worded as follows:

> "(...) 40. The Venice Commission recalls that the reform of the accountability mechanisms linked to the PG does not call for a symmetrical relaxation of the procedures linked to the dismissal of the two chief judges or judicial members of the Supreme Judicial Council. While judges should be independent, this concept is not entirely applicable to prosecutors; it is more accurate to speak of "autonomy" rather than full-fledged "independence" of the public prosecutor. A certain asymmetry of institutions and procedures applicable to the two branches of justice is inevitable (...). »

PLACE

I. ON THE ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

25. The applicant complains that he did not have access to a court to challenge his suspension from duty. He relies on Article 6 § 1 of the Convention, which is worded as follows in its relevant parts in the present case:

> "Everyone has the right to have their case heard fairly (...) by a court (...), which will decide (...) disputes over their civil rights and obligations (...). »

A. On admissibility

1. The parties' observations

26. The Government raises two objections, one of the inapplicability of Article 6 § 1 of the Convention and the other of non-exhaustion of domestic remedies. As regards the first exception, the Government argues that the applicant, in his capacity as a senior civil servant, did not have a civil right within the meaning of Article 6 § 1 in this case. In fact, the suspension of functions of the applicant applied *ope legis* at the time of the initiation of proceedings against him, and domestic law did not provide that this measure could be challenged (paragraph 18 above). According to the Government, such provisions were justified in a case like that of the applicant – a senior civil servant with extensive powers in the supervision of criminal proceedings – by the need to guarantee the autonomy of the prosecutor designated by the CSP for the purpose of carrying out the prosecutions which targeted the person concerned. As for the second exception, the Government explains that in the case of criminal proceedings, the applicant had, in order to challenge the contested decision, not to exercise an administrative appeal as he did, but to comply with the relevant provisions of the code of criminal procedure ("CPP") (paragraph 21 above).

27. The applicant contests both exceptions. As for the compatibility *ratione materiae* of Article 6 § 1 of the Convention, he calls on the Court to apply the case law of *Kövesi v. Romania* (no. 3594/19, §§ 154-158, May 5, 2020), case in which the Court concluded, in the case of a public prosecutor whose mandate had been interrupted before its end, that the lack of access to a court found that the person concerned had violated the rights guaranteed by Article 6 § 1. As regards the exhaustion of domestic remedies, he maintains that he exercised the remedy indicated by the CSP in its decision of October 5, 2021 and that the route suggested by the Government did not constitute an effective remedy.

2. On the applicability of Article 6

a) Relevant principles relating to the applicability of the civil aspect of Article 6 § 1

28. The Court refers to the relevant principles regarding the applicability of the civil aspect of Article 6 § 1 as summarized in the *Grzÿda* cases *c. Poland* ([GC], No. 43572/18, §§ 257-264, 15 March 2022) et *Eminaÿaoÿlu vs. Turkey* (no. 76521/12, §§ 59-63, March 9, 2021). It also recalls that it has already concluded that Article 6 § 1 of the Convention is applicable under its civil aspect in cases relating to temporary measures of suspension of functions taken against magistrates in the context of directed disciplinary proceedings. against them (see, *mutatis mutandis, Paluda v. Slovakia,* no. 33392/12, §§ 29-35, 23 May 2017, *Camelia Bogdan v. Romania,* no. 36889/18, § 70, 20 October 2020 and *Juszczyszyn v. Poland ,* n o 35599/20, §§ 134-137, October 6, 2022).

b) Application of these principles to the present case

29. The Court notes at the outset that in accordance with the relevant provisions of the Constitution, the applicant was invested in 2019 by the CSP with a seven-year mandate (paragraphs 4 and 15 above). The national legislation in force on the date of his appointment clearly provided for the duration of his functions and exhaustively set out the precise reasons for which he could be terminated. It was only in August 2021, that is to say after the applicant was installed as Attorney General, that a legislative amendment introduced the rule of de jure suspension of the functions of the Attorney General to the time of the initiation of criminal proceedings against him (paragraph 18 above). This new legislation having annulled the old rules, it is this which constitutes the very subject of the dispute to which it is a question of knowing whether the guarantees of procedural fairness arising from Article 6 § 1 should apply. In the circumstances of the present case, the question whether there existed a right under domestic law cannot therefore be determined on the basis of the new legislation. It follows from these considerations that there was a real and serious challenge on the part of the applicant to a “right” that he could claim, in a defensible manner,

recognized in domestic law (see, *mutatis mutandis, Grzÿda,* cited above, § 285-286 and *Baka v. Hungary* ([GC], no. 20261/12, § 111, June 23, 2016), for situations of termination of judicial mandates , and *Kövesi,* cited above, §§ 111-116, for the termination of the mandate of Attorney General).

30. Turning next to the question of whether the right claimed by the applicant is of a “civil” character within the independent meaning of Article 6 § 1 of the Convention, the Court is prepared to accept that the first of the conditions *Eskelinen (Vilho Eskelinen and Others v. Finland,* [GC], no. 63235/00, § 62, ECHR 2007-II, paragraph 50 below) can be considered satisfied when, even in the absence of an express provision to To this end, it has been unambiguously demonstrated that domestic law excludes access to a court for the type of dispute concerned. It therefore considers first of all that this condition is met when domestic law contains an explicit exclusion of the right of access to a court, then that it can also be met when the exclusion in question is of an implicit nature, in particular when it arises from a systemic interpretation of the applicable legal framework or the body of legislation as a whole *(Grzÿda,* § 292).

31. The Government, for their part, maintained that the domestic legal system excluded any appeal against the suspension of functions and explained that the applicant had to take criminal action to challenge the decision taken by the VF prosecutor to initiate proceedings against him (paragraphs 47-50 below). This is the thesis supported by the domestic courts, which explained that the mention in the CSP's decision of an administrative appeal was the result of a material error and consequently rejected the administrative challenge filed as not falling within their jurisdiction. by the applicant (paragraphs 11-13 above). The applicant, for his part, contests the Government's reasoning (paragraph 27 above).

32. The Court observes that under the decision of the CSP of October 5, 2021, a prosecutor (VF) was appointed to investigate the facts alleged by the deputy LC (paragraph 7 above). It notes that criminal proceedings were initiated on the same day and that the applicant was automatically suspended from his duties (paragraphs 8 and 18 above) and then, dissatisfied with the way in which the CSP's decision had been taken as well as the effects it had produced, duly took, without success, the avenue of appeal indicated by the CSP (paragraphs 7 and 9-10 above). In this respect, the Court notes that the applicant did not have the opportunity to be heard by the CSP (paragraph 7 above).

33. The Court notes that it appears from the reasoning of the domestic courts which interpreted the national legislation in administrative matters (paragraph 20 above) that the challenge lodged by the applicant did not represent an effective remedy allowing the control of the legality of the CSP's decision and his suspension from office (paragraphs 11-13 above). It also notes that under the domestic law in force at the material time, the suspension of the functions of the

Attorney General operated automatically, by operation of law, at the time of the initiation of criminal proceedings against him (paragraphs 18 and 22 above), and that no provision of domestic law – that invoked by the Government the support of his objection of non-exhaustion of domestic remedies any more than any other – did not allow the applicant to challenge such a measure (paragraphs 15-22 above).

34. On this last point, the Court observes that the route provided for in Article 313 of the CCP governing the complaint against the illegal actions and acts of the criminal prosecution authority and the authority responsible for special investigative activities does not did not represent an effective remedy within the meaning of Article 35 § 1 of the Convention. It also observes that the CSP is not a body covered by article 313 of the CPP. Indeed, the remedy in question offers the suspect the possibility of submitting a complaint to the investigating judge against the actions and acts of the criminal prosecution authority or against the measures indicated in paragraph 2 of the same article (paragraph 21 above), while the applicant wished to contest the suspension of his functions, a measure which took place automatically, by operation of law, and which is not referred to in article 313 of the CCP. Moreover, the Court notes that the domestic legislation was subsequently amended and that the CSP now has the possibility of verifying whether or not such a measure should be maintained (paragraph 19 above), which confirms the authorities' desire to provide for monitoring of the automatic measure of suspension of the functions of the Prosecutor General and corresponds to the proposals made by the Venice Commission in this regard (paragraph 23 above).

35. The Court therefore considers that the first of the *Eskelinen* conditions is met. mentioned above. It recalls that the two conditions in question are cumulative *(Grzÿda,* cited above, § 291 *in fine).*

36. The Court must now determine whether, in the present case, the applicant's inability to access a court was, as the Government maintains, justified by objective reasons linked to the interest of the 'State.

37. Before proceeding with this analysis, the Court wishes to recall that, in the case of judges, having regard to the particular role of the judiciary in society, the eminent place occupied by the judiciary in a democratic society and the The increasing importance attached to the separation of powers and the need to preserve the independence of justice, it pays particular attention when measures are taken with regard to judges in office (Baka cited above, § 164, *and* references cited therein and *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 196, November 6, 2018). It would be illusory to believe that judges can enforce the rule of law and give effect to the Convention if they are deprived by domestic law of the guarantees provided by the Convention on questions directly affecting their independence and impartiality *(Bilgen v. Turkey,* no. 1571/07, § 79, March 9, 2021, *Grzÿda,* cited above, § 264, and the

references cited there). Thus, in the context of the second *Eskelinen condition,* when reference is made to the "special trust and loyalty" required of judges, this is loyalty to the rule of law and democracy, and not to holders of public power *(Bilgen,* cited above, § 79).

38. Certainly, in principle, the above findings are only valid in the case of judges, whose status is not in every respect similar to that of prosecutors. The Court notes in this regard that the requirement of independence set out in Article 6 § 1 of the Convention applies to judges and courts and not to prosecutors *(Thiam v. France,* no. 80018/12, §§ 70 -71, October 18, 2018). However, the Court has already noted that when it comes to the need for protection against arbitrary interference in their functions by public authorities, in particular whether the lack of access to independent monitoring was justified by objective reasons linked to the interest of the State, a clear line between judges and prosecutors cannot be drawn *(Eminaÿaoÿlu,* cited above, §§ 75-80). Thus, all members of the judiciary, whether magistrates or prosecutors, should benefit – just like other citizens – from protection against arbitrariness likely to emanate from the legislative and executive powers; however, only supervision by an independent judicial body of measures such as revocation can effectively ensure such protection (see, *mutatis mutandis, Kövesi,* cited above, § 124, and *Bilgen,* cited above, § 79). Moreover, what is crucial for the present case, it appears from the Court's case-law that it is particularly difficult to accept that the limitations concerning a prosecutor's access to an independent tribunal are justified by objective grounds. linked to the interest of the State, while the legislation of this Member State expressly places prosecutors in the same situation as magistrates as regards their independence *(Eminaÿaoÿlu,* cited above, §§ 36, 75-80; *Kövesi,* cited above, § 124).

39. The Court considers that the automatic suspension of the functions of a prosecutor general subject to prosecution cannot, in the absence of any form of judicial review, be justified by objective reasons linked to the interest of the State (see, *mutatis mutandis, Kövesi,* cited above, § 124). Indeed, the simple fear – in principle completely justified in itself – that the suspended prosecutor general could exercise influence on the criminal proceedings carried out against him is not enough to justify the absence of any form of control of any nature whatsoever, for more than two years, of the disputed measure (see, *mutatis mutandis, Camelia Bogdan,* cited above, § 76). In Moldovan law, although it is true that prosecutors exercise their functions autonomously and judges independently (paragraph 15 above), the national judicial system nevertheless makes no fundamental distinction between the status of one and the other (paragraph 16 above; see, *mutatis mutandis, Eminaÿaoÿlu,* cited above, § 76, *Kövesi,* cited above, § 124 and, under Article 10 of the Convention, *Stancu and Others v. Romania,* no. 22953/

§§ 113 and 115, October 18, 2022 and see also, *a contrario, Thiam v. France,* no. 80018/12, §§ 70-71, October 18, 2018).

40. Having regard to the above, the Court considers that the second *Eskelinen* criterion is not satisfied in the present case, and it therefore concludes that Article 6 § 1 under its civil aspect is applicable in the present case. It follows that the objection of inapplicability of Article 6 § 1 raised by the Government must be rejected.

3. On the exhaustion of domestic remedies

41. In light of all the foregoing considerations (paragraphs 33-34 above), the Court concludes that the applicant did not have, at the material time, any means to have the measure which targeted him reviewed. effective remedy within the meaning of Article 35 § 1 of the Convention. It follows that the objection of non-exhaustion of domestic remedies raised by the Government in this regard cannot be upheld.

42. Noting that this complaint is not manifestly ill-founded or inadmissible for any other reason referred to in Article 35 of the Convention, the Court declares it admissible.

B. On the merits

1. Theses of the parties

a) The applicant

43. The applicant claims to have unsuccessfully exercised the appeal indicated by the CSP in its decision of October 5, 2021 to contest the appointment of the VF prosecutor and request the lifting of his suspension of functions. According to him, prosecutors must benefit from the same guarantees as judges in terms of access to a court. He argues that the present case is similar to the aforementioned *Kövesi* case . He explains that domestic law does not clearly provide for the method of designation by the CSP of the prosecutor responsible for proceedings against the Attorney General. Finally, he considers that he was justified in expecting that the domestic courts would examine his challenge.

44. He insists on the dual circumstance that, on the one hand, the avenue of appeal that he used was expressly indicated in the operative part of the CSP decision of October 5, 2021 and that, on the other hand, the CPP does not does not provide for an appeal against the appointment of a prosecutor under the conditions of Article 34 of the Law on the Public Prosecutor's Office (paragraph 18 above). According to him, the legal basis indicated by the Government in support of the exception of non-exhaustion that it raises, in particular Article 313 of the CCP, is unrelated to the circumstances of the case. In fact, he explains, the provision in question provides for the possibility of filing a challenge

against the outcome of a criminal complaint or against the inactivity of the prosecutor, and therefore concerns another stage of the procedure (paragraph 21 above).

45. The applicant considers in short that the national legislation excluded any appeal against the decision of the CSP appointing the VF prosecutor for the purposes of investigating the facts at the origin of the complaint made by the LC deputy, and, implicitly, suspension of its functions. It also refers to the recommendations of the Venice Commission, which called for the PSC to be given the possibility to decide in each case whether the suspension of the functions of the Prosecutor General is justified (paragraph 23 above).

46. Consequently, the applicant invites the Court to reason in the present case as it did in the aforementioned *Kövesi* case (§§ 154-158), that is to say, to find that Article 6 § 1 of the Convention is applicable and there has been a violation of his right of access to a court.

b) The Government

47. The Government firstly emphasizes that the procedure closed by the judgment of December 29, 2021 of the Supreme Court concerned not the suspension of the applicant's functions, but the designation by the CSP of the VF prosecutor for the purposes of investigate the facts denounced by MP LC

48. Concerning the mention, in the operative part of the decision of October 5, 2021, of the possibility of a challenge through administrative litigation, the Government admits, just like the domestic courts, that it was the result of a technical error , the contested decision not constituting an administrative act within the meaning of the Administrative Code (paragraph 20 above). Indeed, if the decisions of the CSP can in principle be the subject of an administrative challenge, the decision in question was adopted by virtue of the powers conferred on the CSP in the field of criminal procedure (paragraph 21 below). above). The Government indicates that domestic law authorized the CSP to appoint a prosecutor under the conditions of article 55-1 of the law on the public prosecutor's office without seeking the opinion of the public prosecutor in this regard, just as the latter could appoint a prosecutor for the purposes of investigating acts possibly committed by the spokesperson of parliament, by the President of the Republic or by the Prime Minister. He considers that the simple designation by the CSP of the VF prosecutor did not affect the rights of the applicant, given that such a decision was not, according to him, intended to examine the admissibility of the complaint filed by the LC deputy or the merits of the opening of criminal proceedings against the alleged author of the facts he denounced therein.

49. Referring to the opinions expressed in the present case by the Chiÿinÿu Court of Appeal, the Supreme Court and the CSP, the Government maintained that the applicant could challenge the appointment of the VF prosecutor not by way of an appeal administrative, but by filing a complaint with the investigating judge on the basis of article 313 of the CCP to protest against the proceedings against him (paragraph 21 above).

50. As for the suspension of the applicant's functions, the Government points out that it applied *ope legis* since proceedings were initiated against the person concerned (paragraph 18 above). He reiterates the arguments on which he relied to claim incompatibility *ratione materiae*
and underlines that the two criteria established by the Court in the *Vilho Eskelinen case,* cited above, § 62, to judge whether a State can validly invoke the civil servant status of an applicant in order to exempt him from the protection of Article 6 were fulfilled in this case. It refers, on the one hand, to the existence of an express provision of national law providing for the holder of the function performed by the person concerned an exception to the right of access to a court and, on the other hand, the justification of such a derogation by objective reasons linked to the interest of the State.

51. The Government explained that the national legislation did not provide for the possibility for the applicant, in his capacity as a senior civil servant, to challenge his suspension from office. Referring to the decision of the Constitutional Court in this regard (paragraph 22 above), he recalls that the disputed suspension of functions was justified by the position of Attorney General held by the applicant, which conferred on him extensive powers. regarding the supervision of criminal proceedings, which reduced the degree of autonomy and independence of the prosecutor responsible for the criminal proceedings against the person concerned. The Government adds that the Venice Commission, in the opinion it adopted on this point, did not consider it necessary to provide for the possibility for the Attorney General to challenge such a measure (paragraph 23 below). above). These arguments would justify, according to the Government, that the right of access to a court be waived in this case. Finally, the Government considers that a distinction should be made between the standards applicable to judges and those applicable to prosecutors, and it refers in this regard to the opinion adopted by the Venice Commission on the law governing the judicial system in Bulgaria (paragraph 24 above).

2. Assessment of the Court

52. The Court recalls that the right of access to a court is not absolute. It may be subject to limitations, provided that these do not restrict or reduce the access of litigants to the judge in a manner or to an extent such that its very substance is affected. Furthermore, these limitations are only compatible with Article 6 § 1 if they pursue a legitimate aim and if there is a reasonable relationship of proportionality between the means employed and the aim pursued (Baka, cited above, § 120, *and* the case law cited there).

53. The Court notes, along with the Government, the Constitutional Court and the Venice Commission, that the suspension measure, in itself, could in principle be justified by the applicant's status as Attorney General, which conferred on him extensive powers to control cases. criminal investigations, and that the application of such a measure against a public prosecutor does not pose, in

itself, of a problem under the Convention (paragraphs 51 and 22-23 above).

54. However, the Court recalls – as also raised by the Venice Commission (paragraph 23 above) – that procedural guarantees should be put in place to ensure that the suspension mechanism is not used inappropriately. arbitrary manner. In this context, the Court also notes the growing importance of procedural fairness in cases involving the dismissal of prosecutors, including the intervention of an authority independent of the executive and legislature with regard to decisions affecting the appointment and dismissal of prosecutors *(Kövesi,* cited above, § 156).

55. In the present case, the Court can only note that the applicant did not benefit from any form of judicial protection in relation to the measure of suspension of functions which targeted him, which deprived him for more than two years of the possibility of exercising his functions as Attorney General and receiving the corresponding salaries (see, *mutatis mutandis, Paluda,* §§ 52-53 and *Camelia Bogdan,* § 75, cited above, paragraph 35 above).

56. In these circumstances, the Court considers that the respondent State has infringed the very substance of the applicant's right to access a court (see, *mutatis mutandis, Paluda,* § 46-55, *Camelia Bogdan,* §§ 71-79 and *Kovesi* §§ 156-158, all cited above).

57. There has therefore been a violation of Article 6 § 1 of the Convention.

II. ON THE ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

58. Invoking Article 13 of the Convention, the applicant alleges that he did not have access to any effective remedy at the domestic level enabling him to challenge the measure of suspension from duty which targeted him. Article 13 reads as follows:

> “Any person whose rights and freedoms recognized in the (...) Convention have been violated has the right to the granting of an effective remedy before a national authority, even if the violation was committed by persons acting in the exercise of their official functions. »

59. The Court observes that the complaint raised by the applicant under Article 13 is in substance identical to that which he formulated under Article 6 § 1. It recalls that Article 6 constitutes a *lex specialis* in relation to Article 13, the requirements of the latter being included in the more stringent requirements of the former (see, for example, *Kudÿa v. Poland* [GC], o 30210/96 § 146, ECHR 2000 -XI, and *Baka,* § 181 and n *Grzÿda,* §§ 351-353, cited above). Consequently, it concludes that there is no need to examine separately either the admissibility or the merits of the complaint of violation of Article 13 of the Convention.

III. ON THE APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. Under Article 41 of the Convention:

> "If the Court declares that there has been a violation of the Convention or its Protocols, and if the domestic law of the High Contracting Party only imperfectly allows the consequences of this violation to be erased, the Court grants the party injured party, if applicable, just satisfaction. »

A. Too bad

61. The applicant requests 20,000 euros (EUR) for the non-pecuniary damage he considers to have suffered due to the significant media coverage of the case at national level. He specifies that his reputation was damaged due to the impossibility of contesting the decision of the CSP of October 5, 2021.

62. The Government is of the opinion that the media coverage of the case is not attributable to the national authorities, that the applicant has not justified his request for compensation for the moral damage he claims to have suffered and that in any event the amount requested is excessive in the light of the Court's case law.

63. The Court awards EUR 3,600 for non-pecuniary damage, plus any amount may be due on this amount as tax.

B. Fees and expenses

64. The applicant claims EUR 3,600 for costs and expenses which he claims to have incurred in the context of the proceedings before the Court, for which he states that he used two lawyers.

65. The Government invites the Court, having regard to the fact that the applicant has not provided any legal assistance contract justifying the costs and expenses requested, to apply the case law of *Filat v. Republic of Moldova* (no. 72114/17, § 17, January 31, 2023). He specifies that the applicant was represented before the Court by only one lawyer, considers that the amount requested is excessive and adds that the request for just satisfaction was not submitted within the time limits set by the Court.

66. As for the request for just satisfaction and the criticism of lateness made in this regard by the Government, the Court notes that on December 13, 2022, the president of the section decided, under Article 38 § 1 of the Rules of the Court, to add the request to the file. On the other hand, it cannot, taking into account the documents in its possession and its case law, accept the applicant's request for costs and expenses, insofar as it is not based on any relevant supporting evidence (Article 60 § 2 of the regulations).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint of lack of access to a court admissible;

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

3. *Holds* that there is no need to examine separately either the admissibility or the merits of the complaint of violation of Article 13 of the Convention;

4. *This,*

a) that the respondent State must pay to the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,600 (three thousand and six one hundred euros), plus any amount that may be due on this sum as tax, for moral damage, to be converted into the currency of the defendant State at the rate applicable on the date of settlement;

b) that from the expiry of the said period and until payment, this amount will be increased by simple interest at a rate equal to that of the marginal lending facility of the European Central Bank applicable during this period, increased by three percentage points;

5. *Rejects* the request for just satisfaction for the remainder.

Done in French, then communicated in writing on October 24, 2023, in application of article 77 §§ 2 and 3 of the regulation.

Hasan Bakÿrcÿ Clerk	Arnfinn Bårdsen President