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Standards and safeguards stemming from the right to respect for private life and the right to a fair trial: applicability with respect to administrative-law matters of civil service

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Abstract: The purpose of this study is to determine the key substantial and procedural standards and safeguards stemming from the right to respect for private life and the right to a fair trial enshrined in the Convention on the Protection of Human Rights and Fundamental Freedoms of 1950 that are applicable with respect to matters of civil service governed norms of administrative law. For this, the method of analysis and systematic research of legal rules should be used, as well as generalization and synthesis of requirements for conformity of civil service law with the afore-mentioned rights and fundamental freedoms of civil servants as they are interpreted in the case-law of the European Court of Human Rights. The article shows excerpts from precedent decisions of the European Court of Human Rights indicating scope of applicability and justification of interference with the right to respect for private life in civil service relationships, as well as peculiarities of determination of scope of subject-matter jurisdiction of domestic courts and of legal remedies control in employment-related cases involving civil servants according to the case-law of the European Court of Human Rights that concerns the right to a fair trial.

Keywords: norm of administrative law, civil service, civil service law, legal rule, case-law of the European Court of Human Rights.

Normas e salvaguardas decorrentes do direito ao respeito à vida privada e do direito a um julgamento justo: aplicabilidade com relação a questões de direito administrativo da função pública

Resumo: O objetivo deste estudo é determinar os principais padrões e salvaguardas substanciais e processuais decorrentes do direito ao respeito à vida privada e do direito a um julgamento justo consagrados na Convenção sobre a Proteção dos Direitos Humanos e Liberdades Fundamentais de 1950 que são aplicáveis com relação a questões de normas de direito administrativo regidas pelo serviço público. Para isso, o método de análise e pesquisa sistemática de regras legais deve ser usado, bem como generalização e síntese de requisitos para conformidade do direito do serviço público com os direitos e liberdades fundamentais dos servidores públicos acima mencionados, conforme interpretados na jurisprudência do Tribunal Europeu de Direitos Humanos. O artigo mostra trechos de decisões precedentes do Tribunal Europeu de Direitos Humanos indicando o escopo de aplicabilidade e justificativa da interferência no direito ao respeito à vida privada em relações de serviço público, bem como peculiaridades da determinação do escopo da jurisdição do assunto dos tribunais nacionais e do controle de recursos legais em casos relacionados ao emprego envolvendo servidores públicos de acordo com a jurisprudência do Tribunal Europeu de Direitos Humanos que diz respeito ao direito a um julgamento justo.

Palavras-chave: norma de direito administrativo, função pública, direito da função pública, norma jurídica, jurisprudência do Tribunal Europeu dos Direitos Humanos.

Introdução

It is a commonly held perception that the only difference between civil servants and private sector employees is their peculiar tasks, related to ensuring the proper performance of state functions and granting civil servants in this connection a certain amount of official power. Serving this high purpose, a member of the public service remains an employee expecting the full observance of his rights and fundamental freedoms, related, in particular, to an adequate remuneration, stability of employment and self-realization with reliance on indefinite appointment and guarantees of progressive advancement in the service based on the achievement of professional development indicators, as well as related to opportunity to combine official duties with private life with reasonable and inevitable restrictions accompanying the status of a civil servant. At the same time, civil servants, primarily in managerial positions, face hidden risks and vulnerabilities inherent in the civil service, resulting from its high degree of sensitivity to changes in state policy (especially in its economic and ideological components), as well as from a higher level of susceptibility to abuse connected with management of public resources and the resolution of power management issues with significant personal and financial consequences for society. In order to increase the resilience of civil servants against manifestly ill-founded or disproportionate measures that negatively affect their personal and official situation, the European Court of Human Rights (ECHR) gradually develops its conclusions on ensuring the rights and fundamental freedoms of civil servants. However, even the key part of its case law on these issues is excessively fragmented and not sufficiently researched and systematized in scientific sources to be a convenient guide for decision-makers. Thus, the purpose of this

study is to determine the key substantial and procedural standards and safeguards stemming from the right to respect for private life and the right to a fair trial enshrined in the Convention on the Protection of Human Rights and Fundamental Freedoms (the Convention) of 1950 that are applicable with respect to matters of civil service governed norms of administrative law.

Methodology

The method of analysis and systematic research of legal rules should be used, as well as generalization and synthesis of requirements for conformity of civil service law with the afore-mentioned rights and fundamental freedoms of civil servants as they are interpreted in the case-law of the ECHR. The article will highlight excerpts from precedent decisions of the ECHR indicating scope of applicability and justification of interference with the right to respect for private life in civil service relationships, as well as peculiarities of determination of scope of subject-matter jurisdiction of domestic courts and of legal remedies control in employment-related cases involving civil servants according to the case-law of the ECHR that concerns the right to a fair trial.

Results and discussion

Right to respect for private life in civil service relationships: scope of applicability and justification of interference

The evolutionary and dynamic interpretation of rights and fundamental freedoms by the ECHR at the modern stage has led to the expansion of the scope of their application with respect to civil servants, despite the fact that from some points of view members of the public service and governments could be perceived as a part and a whole, and it is generally acknowledged that civil service is the cornerstone of a "democracy capable of defending itself" and, in light of that, nothing precludes the possibility of imposing a certain duty of discretion or restraint on public officials. In particular, at the moment it is a widely accepted opinion that civil service in relations with the state as an employer, like any other labor activity, is a continuation of the private life of a civil servant and is subject to protection under the provisions of the Convention. The article of the Convention enshrining the right to respect for private and family life reads as follows:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others¹.

Reciting its well-established standing on the issue of certain matters of professional life to fall

¹ COUNCIL OF EUROPE. 1950. **Convention for the protection of human rights and fundamental freedoms**. 1950. Rome. In: https://www.echr.coe.int/documents/d/echr/convention_ENG.

within the notion of the private life in the *Fernández Martínez* case the ECHR stated that the private life encompasses the right for an individual to form and develop relationships with other human beings, including relationships of a professional or business nature. It is, after all, in the course of their working lives that the majority of people have a significant opportunity to develop relationships with the outside world. In other words, professional life is part of the zone of interaction between a person and others which, even in a public context, may, under certain circumstances, fall within the scope of “private life”. Moreover, Article 8 deals with the issues of protection of honour and reputation as part of the right to respect for private life².

Being guided by these considerations, as analysis of the respective factsheet by Press Unit of the European Court of Human Rights indicates, within the employment-related scenarios involving Article 8 the ECHR has dealt with different types of cases centering on discharge from military service, dismissal from judicial office, removal from administrative functions in the judiciary, transfers between posts in the public service and restrictions on access to a profession in the private sector³. In the assessment of whether or not an impugned measure within an employment-related dispute between a civil servant and their employer constitutes a private-life issue under Article 8 of the Convention and amounts to an interference with the right to respect for private life, the ECHR determines the nature and degree of seriousness of impact of the impugned measure on applicant’s private life in its broad perception⁴.

Revealing a conceptual paradigm for these assessments, in its *Polyakh and Others* judgment the ECHR set out two different approaches to application of concept of “private life”:

- reason-based approach – reasons for imposing a measure affecting an individual’s professional life were linked to the individual’s private life;
- consequence-based approach – the dismissal, demotion, non-admission to a profession or other similarly unfavourable impugned measures has or may have very serious and concrete repercussions on the individual’s private life, including:
 - impact on the individual’s inner circle (worsening of the material well-being of the applicant and his family etc.), in particular where there are serious material consequences;
 - the individual’s opportunities to establish and develop relationships with others;
 - the impact on the individual’s social and professional reputation⁵.

For instance, as regards reason-based approach, in the case of *Sodan v. Turkey* the ECHR discovered that the decision to transfer the applicant from his senior post within the governor’s office in the capital to an equivalent post in a city which was less important in administrative terms following a report on his conduct pointing out that his wife wore an Islamic veil and that he himself had an introverted

² EUROPEAN COURT OF HUMAN RIGHTS. 12 june 2014. *Fernández Martínez V. Spain*. **APPLICATION NO. 56030/07**. In: <https://hudoc.echr.coe.int/?i=001-145068>.

³ PRESS UNIT OF THE EUROPEAN COURT OF HUMAN RIGHTS. 2023. **Work-related rights**. In: https://www.echr.coe.int/documents/d/echr/fs_work_eng.

⁴ LEHEZA, Yevhen. YEROFIEIENKO, Larysa. KOMASHKO, Volodymyr. ‘Peculiarities of Legal Regulation of Intellectual Property Protection in Ukraine under Martial Law: Administrative and Civil Aspects’. **Revista Justiça Do Direito**, v. 37, n. 3, p. 157-172, 2023. <https://doi.org/10.5335/rjd.v37i3.15233>.

⁵ EUROPEAN COURT OF HUMAN RIGHTS. *Kula V. Turkey*. 19 june 2018. **Application no. 20233/06**. In: <https://hudoc.echr.coe.int/eng/?i=001-184289>.

personality had been motivated by factors specific to his private life (European Court of Human Rights: 2-02-2016).

Referring to examples of application of consequence-based approach, we should note that in the judgment in the case of *Oleksandr Volkov v. Ukraine* the ECHR held that the dismissal of the applicant from the post of judge affected a wide range of his relationships with other persons, including relationships of a professional nature. Likewise, it had an impact on his “inner circle” as the loss of his job must have had tangible consequences for the material well-being of the applicant and his family. Moreover, the reason for the applicant’s dismissal, namely breach of the judicial oath, directly concerned his personal integrity and professional competence⁶. Likewise, in the case of *Ovcharenko and Kolos* the applicants’ dismissal for “breach of oath” did indeed have a serious impact on their inner circle, given the ensuing pecuniary losses, and on their reputation, given that the grounds for the dismissal – “breach of oath” – directly concerned their personal integrity and professional competence. The ECHR was of the view that the impugned measure affected the applicants’ private life to a very significant degree, therefore falling within the scope of Article 8⁷. On the contrary, in its *Denisov* judgment the ECHR found that the explicit reasons for the applicant’s dismissal had been strictly limited to his performance in the public arena, namely his alleged managerial failings, which were said to have undermined the proper functioning of the court. Those reasons related only to the applicant’s administrative tasks in the workplace and had had no connection to his private life. Therefore, there were no private-life issues in the reasons given for his dismissal which necessitated to determine whether, according to the evidence and the substantiated allegations put forward by the applicant, the measure had had serious negative consequences for the aspects constituting his “private life”. In this regard the ECHR noted that: (1) applicant had not provided any evidence to suggest that the reduction in his monthly remuneration had seriously affected the “inner circle” of his private life; (2) dismissal from the position of president had not resulted in his removal from his profession as he had continued to work as an ordinary judge and his opportunities to establish and maintain relationships were not affected substantially; (3) dismissal had been based on the findings of breaches of official duties in the administration of justice, there had been no accusation of intentional misconduct or criminal behaviour. The applicant’s moral values had not been called into question and no reproaches of that nature could be identified in the impugned decisions. Having considered these circumstances, the ECHR concluded that the dismissal had limited negative effects on the applicant’s private life and did not cross the threshold of seriousness for an issue to be raised under Article 8 of the Convention⁸.

In light of the foregoing, one could stress that an employment-related dispute between a civil servant and respective government agency constitutes a private-life issue under Article 8 of the Convention and the respective impugned measure amounts to an interference with the right to respect for private life on condition that the reasons for imposing a measure affecting a career of civil servant stem from their private life or the impugned measure had or may have very serious and concrete repercussions on private

⁶ EUROPEAN COURT OF HUMAN RIGHTS. 9 January 2013. *Oleksandr Volkov V. Ukraine*. **Application no. 21722/11**. In: <https://hudoc.echr.coe.int/?i=001-115871>.

⁷ EUROPEAN COURT OF HUMAN RIGHTS. 12 January 2023. *Ovcharenko And Kolos V. Ukraine*. **Applications nos. 27276/15 and 33692/15**. In: <https://hudoc.echr.coe.int/eng/?i=001-222138>.

⁸ EUROPEAN COURT OF HUMAN RIGHTS. 25 September 2018. *Denisov V. Ukraine*. **Application no. 76639/11**. In: <https://hudoc.echr.coe.int/?i=001-186216>.

life of civil servant, including impact on inner circle, opportunities to establish and develop relationships with others and social and professional reputation of respective individual⁹. Otherwise, if the reasons for the unfavourable measure taken with respect to a civil servant related only to his or her administrative tasks in the workplace and had no connection to his private life, as well as no serious material consequences for a career and professional life of a civil servant (consequences for the material well-being of civil servant and his family were insignificant, removal from profession did not take place, opportunities to establish and maintain relationships were not affected substantially etc.), no issue could be raised under Article 8 of the Convention¹⁰.

Proceeding with the research, it is to be noted that it is common knowledge that in the determination of whether or not an interference with the right to respect for private life was justified, the ECHR assesses whether the impugned measure was consistent with the requirements of Article 8 paragraph 2, namely:

- in accordance with the law – provisions of domestic law serving as a basis for an interference are: (1) sufficiently foreseeable in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which the authorities are entitled to resort to measures affecting their rights; (2) accompanied by specific procedural safeguards to provide legal protection against arbitrary interference;
- in pursuit of a legitimate aim – a limitation of the right or fundamental freedom pursues an aim that can be linked to one of those listed in Article 8 § 2 of Convention (national security, public safety or the economic wellbeing of the country, prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others);
- necessary in a democratic society – an impugned measure answers a pressing social need and, in particular, if it is proportionate to the legitimate aim pursued (premises on relevant and sufficient reasons making it not manifestly without reasonable foundation, bearing in mind leeway given to national government to introduce general measures of economic or social strategy)¹¹.

Illustrating these standards and safeguards with opinions of the ECHR concerning application of these provisions for assessment of unfavourable measures imposed on civil servants constituting an interference in their private life within the meaning of Article 8 of Convention, first of all, due attention is to be paid to circumstances, under which it was concluded that impugned measure was not in **accordance with the law**.

⁹ KORNIENKO, Maksym, DESYATNIK, Anatolii DIDKIVSKA, Galina LEHEZA, Yevhen and TITARENKO Oleksiy. 'Peculiarities of Investigating Criminal Offenses Related to Illegal Turnover of Narcotic Drugs, Psychotropic Substances, Their Analogues or Precursors: Criminal Law Aspect'. *Khazanah Hukum*, v. 5, n. 3, p. 205-2015, 2023. <https://doi.org/10.15575/kh.v5i3.31742>.

¹⁰ LEHEZA, Yevhen Oleksandrovysh. FILATOV, Viktor. VARAVA, Volodymyr, HALUNKO, Vira. KARTSYHIN Dmytro. 'Scientific and Practical Analysis of Administrative Jurisdiction in the Light of Adoption of the New Code of Administrative Procedure of Ukraine'. *Journal of Legal, Ethical and Regulatory*, v. 22, n. 5, p. 1-8, 2019. <https://dspace.oduvs.edu.ua/items/8756f8b6-59a2-4d6b-920c-b68d55efae0e>.

¹¹ VOLOBUIEVA, Olena, LEHEZA, Yevhen. PERVII, Vita. PLOKHUTA, Yevhenii. PICHKO, Roman. Criminal and Administrative Legal Characteristics of Offenses in the Field of Countering Drug Trafficking: Insights from Ukraine. *Yustisia Jurnal Hukum*, v. 12, n. 3, p. 262-277, 2023. <https://doi.org/10.20961/yustisia.v12i3.79443>.

The most indicative in this context is the reasoning of the ECHR regarding what conditions the legal basis for dismissing a civil servant for breach of oath must meet in order to conform to the substantive and procedural aspects making it possible for this measure to be in accordance with the law.

In the judgment in the case of *Oleksandr Volkov v. Ukraine* the ECHR recognized that in the context of disciplinary law, there should be a reasonable approach in assessing statutory precision, as it is a matter of objective necessity that the actus reus of such offences should be worded in general language. It follows that a description of an offence in a statute, based on a list of specific behaviours but aimed at general and uncountable application, does not provide a guarantee for addressing properly the matter of the foreseeability of the law. The other factors affecting the quality of legal regulation and the adequacy of the legal protection against arbitrariness should be identified and examined. Among these factors of particular importance according to the ECHR is existence of specific and consistent interpretational practice concerning the legal provision in issue to constitute a factor leading to the conclusion that the provision was foreseeable as to its effects. Nevertheless, circumstances of the *Oleksandr Volkov* case indicated that absence of any guidelines and practice establishing a consistent and restrictive interpretation of the offence of “breach of oath” and the lack of appropriate legal safeguards resulted in the relevant provisions of domestic law being unforeseeable as to their effects. Against this background, it could well be assumed that almost any misbehaviour by a judge occurring at any time during his or her career could be interpreted, if desired by a disciplinary body, as a sufficient factual basis for a disciplinary charge of “breach of oath” and lead to his or her removal from office. Moreover, domestic law did not set out an appropriate scale of sanctions for disciplinary offences and did not develop rules ensuring their application in accordance with the principle of proportionality¹².

As regards the requirement for competent authorities to subordinate measures of influence on the career of a civil servant with an interference in his private life with a private-life connotation to pursuit of a legitimate aim set forth in the Convention, the case of *Erményi v. Hungary* is of particular interest¹³.

The case concerned the termination of the applicant’s mandate as Vice-President of the Supreme Court within the full-scale reorganisation of the justice system, which had allegedly rendered the impugned measure inevitable. However, the Hungarian government did not demonstrate any link between the dismissal and the legitimate aims, since changes in the competences of the supreme judicial body did not appear to be of such a fundamental nature that they could or should have prompted the premature termination of its President’s mandate .

Describing the provision Article 8 of the Convention, according to which, in the context of this research, to be regarded as **necessary in a democratic society**” detriments imposed on the civil servant should meet the strict requirement of a “pressing social need” and be proportionate to the legitimate aim pursued, one could refer to the case of *Xhoxhaj*, in which it was stated that dismissal from office is a grave – if not the most serious – disciplinary sanction that can be imposed on an individual. The imposition of such a measure, which negatively affects an individual’s private life, requires the consideration of solid

¹² LEHEZA, Yevhen. PISOTSKA, Karina. DUBENKO, Oleksandr. DAKHNO, Oleksandr. SOTSKYI, Artur. The Essence of the Principles of Ukrainian Law in Modern Jurisprudence. *Revista Jurídica Portucalense*, v. 32, p. 342-363, dec. 2022. DOI: [https://doi.org/10.34625/issn.2183-2705\(32\)2022.ic-15](https://doi.org/10.34625/issn.2183-2705(32)2022.ic-15).

¹³ EUROPEAN COURT OF HUMAN RIGHTS. 22 november 2016. *Erményi V. Hungary*. **Application No. 22254/14**. In: <https://hudoc.echr.coe.int/?i=001-168782>.

evidence relating to the individual's ethics, integrity and professional competence. These requirements were satisfied in this case as the ECHR asserted that applicant's dismissal from judicial office entailed a lifetime ban on re-entering the justice system was justified by serious ethical violations – by a serious failure on the part of the applicant to disclose the origin of money in her foreign bank accounts, there having been no evidence of any bank transfers, and her partner's failure to disclose in due time a large amount of cash, in breach of the statutory provisions¹⁴. Likewise, in its *Adomaitis v. Lithuania* judgment the ECHR found that the use of the materials obtained during the criminal intelligence investigation in the disciplinary proceedings against the applicant as a director of a prison was not a disproportionate interference with the right to privacy, given the fact that it restricted to acts of a corrupt nature and the reliability of the collected information and proportionality of their use could be contested¹⁵.

Having regard to the above considerations, it could be concluded that imposition of sanctions or other unfavourable measures interfering with right to respect for private life of civil servants could be justified provided that applicable domestic law satisfies the requirements of foreseeability through statutory precision and specific and consistent interpretational practice, as well as through provision of appropriate protection against arbitrariness. On those grounds, the retention in disciplinary provisions of the offence of “breach of oath”, giving rise to removal of civil servant from office and other ramifications of exceptional severity, is debatable owing to the fact that by its nature “breach of oath” could encompass any misbehaviour by a civil servant, unless there are rigid rules of its interpretation. Moreover, to be deemed lawful the infringement upon the right to respect for private life of civil servants the impugned dismissal, demotion, adverse transfer and other unfavourable measure must pursue one or several legitimate aims that Article 8 of the Convention enumerates. In addition, employment-related and amounting to an interference with the right to respect for private life detriments imposed on the civil servant should meet the strict requirement of a “pressing social need” and be proportionate to the legitimate aim pursued¹⁶.

The right to a fair trial and the limits of judicial control in employment-related cases involving civil servants

Protection of civil servants from ill-founded and disproportionate interference is also ensured by guaranteeing their right to a judicial review of the adverse decision concerning critical aspects of their service according to the principles and requirements of civil limb of Article 6 § 1 of the Convention, which reads as follows:

1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the

¹⁴ EUROPEAN COURT OF HUMAN RIGHTS. 9 february 2021. *Xhoxhaj V. Albania*. **Application No. 15227/19**. In: <https://hudoc.echr.coe.int/?i=001-208053>.

¹⁵ EUROPEAN COURT OF HUMAN RIGHTS. 18 january 2022. *Adomaitis V. Lithuania*. **Application No. 14833/18**. In: <https://hudoc.echr.coe.int/?i=001-215168>.

¹⁶ LEHEZA, Yevhen, SHCHERBYNA, Bogdan. LEHEZA, Yulia. PUSHKINA, Olena. MARCHENKO. Olesia. ‘Features of Applying the Right to Suspension or Complete/ Partial Refusal to Fulfill a Duty in Case of Non-Fulfilment of the Counter Duty by the Other Party According to the Civil Legislation of Ukraine’. **Revista Jurídica Portucalense**, no. Sp, p. 340-358, 2023. [https://doi.org/10.34625/issn.2183-2705\(ne\)2023.ic-17](https://doi.org/10.34625/issn.2183-2705(ne)2023.ic-17).

interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice¹⁷.

According to developments in the case-law of the ECHR, represented in the judgment in the case of *Denisov v. Ukraine* the “civil” limb has been substantially extended in relation to public-employment disputes in view of non-discrimination considerations in relation to civil servants as compared to private employees. The ECHR is of opinion that public-law dispute may bring the civil limb into play if the private-law aspects predominate over the public-law ones in view of the direct consequences for a civil pecuniary or non-pecuniary right. Such direct consequences for civil rights exist in “ordinary labour disputes” involving members of the public service, including judges. Ordinary labour dispute affects (1) the scope of the work which the applicant was required to perform as an employee and (2) his remuneration as part of his employment relationship. Thus, Article 6 has been applied to employment disputes involving, for instance, judges who were dismissed or suspended from judicial office, civil servants who were transferred to another office or post against their will, resulting in a decrease in salary.

Bearing in mind well-established notion that principles and standards of fair trial are applicable to public-employment disputes over the scope of professional duties of members of the public service, their remuneration and other private-law aspects of working conditions, it is to be noted that among these principles and standards of particular interest is institutional requirement of empowering courts with full jurisdiction over the matters in dispute.

As indicated in *Ramos Nunes de Carvalho e Sá* in its case-law the ECHR stressed on the autonomous definition of the requirement of «full jurisdiction». First, the court must have jurisdiction to consider all questions of fact and law relevant to the dispute before it. Second, such a “full jurisdiction” implies that the court has exercised sufficient jurisdiction or provided sufficient review in the proceedings before it¹⁸.

However, in its *Sigma Radio Television Ltd v. Cyprus* judgment the ECHR reiterated that it recognizes that in the legal systems of the various member States, there are some specialised areas of the law (for instance, in the sphere of town and country planning) where the courts have limited jurisdiction as to the facts. Particular emphasis on the respect which must be accorded to decisions taken by the administrative authorities on grounds of expediency and which often involve specialised areas of law¹⁹.

Nevertheless, in the case of *Bryan v. the United Kingdom* the ECHR emphasized that even if the impugned administrative decision resulted from the exercise of administrative discretion in a specialised area of law, the court must have the power to assess, whether the decision conforms to classic grounds of unlawfulness under English law (going to such issues as fairness, procedural propriety, independence and impartiality) as well as whether it been made by reference to irrelevant factors or without regard to relevant

¹⁷ EUROPEAN COURT OF HUMAN RIGHTS. 21 July 2011. *Sigma Radio Television Ltd v. Cyprus*. **Applications nos. 32181/04 and 35122/05**. In: <https://hudoc.echr.coe.int/eng/?i=001-105766>.

¹⁸ VOLOBUIEVA, Olena, LEHEZA, Yevhen. PERVII, Vita. PLOKHUTA, Yevhenii. PICHKO, Roman. Criminal and Administrative Legal Characteristics of Offenses in the Field of Countering Drug Trafficking: Insights from Ukraine. **Yustisia Jurnal Hukum**, v. 12, n. 3, p. 262–77, 2023. <https://doi.org/10.20961/yustisia.v12i3.79443>.

¹⁹ EUROPEAN COURT OF HUMAN RIGHTS. 21 July 2011. *Sigma Radio Television Ltd v. Cyprus*. **Applications nos. 32181/04 and 35122/05**. In: <https://hudoc.echr.coe.int/eng/?i=001-105766>.

factors; or if the evidence relied on by the decision-maker was not capable of supporting a finding of fact; or if the decision was based on an inference from facts which was perverse or irrational in the sense that no competent decision-maker properly directing himself would have drawn such an inference. Furthermore, if a ground of appeal is upheld, the reviewing court must have the power to quash the impugned decision, and either take a fresh decision or remit the case to the same body or a different body.

Moreover, the ECHR is of the view that administrative decision had to be appropriate to the subject-matter of the dispute. Therefore, in the case of *Ramos Nunes de Carvalho e Sá* the ECHR distinguished disputes stemming from an exercise of administrative discretion from disciplinary disputes, since a disciplinary penalty differs from that of an administrative decision that does not entail such a punitive element. The accusations against the applicant were liable to result in her removal from office or suspension from duty, that is to say, in very serious penalties which carried a significant degree of stigma²⁰.

Therefore, the judicial review carried out must be appropriate to the subject-matter of the dispute (European Court of Human Rights: 6-11-2018). For instance, in the judgment in the case of *Kula v. Türkiye* the ECHR disapproved that fact that the administrative court confined itself to ascertaining the facts concerning the applicant's disciplinary offence, not taking the trouble to examine the necessity of that sanction in the circumstances of the case in the light of specific rights of the applicant. Conversely, it was concluded that the domestic courts should have conducted a broader assessment going beyond a mere review of formal compliance with provisions of disciplinary regulations²¹.

Conclusions

Imposition of sanctions or other unfavourable measures interfering with right to respect for private life of civil servants could be justified provided that applicable domestic law satisfies the requirements of foreseeability through statutory precision and specific and consistent interpretational practice, as well as through provision of appropriate protection against arbitrariness. On those grounds, the retention in disciplinary provisions of the offence of "breach of oath", giving rise to removal of civil servant from office and other ramifications of exceptional severity, is debatable owing to the fact that by its nature "breach of oath" could encompass any misbehaviour by a civil servant, unless there are rigid rules of its interpretation. Moreover, to be deemed lawful the infringement upon the right to respect for private life of civil servants the impugned dismissal, demotion, adverse transfer and other unfavourable measure must pursue one or several legitimate aims that Article 8 of the Convention enumerates. In addition, employment-related and amounting to an interference with the right to respect for private life detriments imposed on the civil servant should meet the strict requirement of a "pressing social need" and be proportionate to the legitimate aim pursued.

Whereas substantive protection against the most of detriments that could be imposed on civil servants is provided by affording them standards and safeguards following from Article 8 of the Convention, procedural fairness and remediation in cases involving members of the public service is

²⁰ SAMIKSHA, Mehra. 'AI is set to reform justice delivery in India'. INDIAai. **Blog Post**, 6 April. 2021. Available at: <https://indiaai.gov.in/article/ai-is-set-to-reform-justice-delivery-in-india>

²¹ EUROPEAN COURT OF HUMAN RIGHTS. *Kula V. Turkey*. 19 June 2018. **Application no. 20233/06**. In: <https://hudoc.echr.coe.int/eng?i=001-184289>.

achieved through fulfillment of principles and requirements of Article 6 of the Convention, which are applicable to public-employment disputes over the scope of professional duties of members of the public service, their remuneration and other private-law aspects of working conditions. Of particular importance is institutional requirement of empowering courts with full jurisdiction over these matters, including all questions of fact and law relevant to the dispute. If the impugned measure was taken within the domain of administrative discretion and involves grounds of expediency, specialised areas of law or issues of technical nature, the court should still assess it in terms of fairness, procedural propriety, independence and impartiality, being well-founded on all relevant factors and convincing evidence, not irrational and perverse to the extent that no competent decision-maker properly directing himself would have drawn such an inference. Moreover, if the issue in question is lawfulness of a disciplinary penalty, the domestic court is to examine the proportionality of that sanction without any limitations relating to administrative discretion or other factors.

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