

*Grzegorz Borkowski, Civil law judge in Poland, Component Leader in "EU Support for Rule of Law" Project, Skopje; Trier, 15 October 2025*

### Case study 1

Judge X, a senior court judge in Kingdom of Rain, has publicly expressed concern over recent legislative reforms affecting the structure of judicial self-governance. In a professional journal and at a judicial conference, she questioned whether the new rules allowing the Ministry of Justice to nominate half of the Judicial Council members were compatible with the principle of judicial independence under Article 6 of the ECHR.

Several months later, the Judicial Council—now operating under the revised structure—recommended that Judge X not be reappointed as Deputy Chair of her court, citing 'loss of confidence in leadership capacity.' No formal disciplinary proceedings were initiated, and the decision was not accompanied by written reasoning. Judge X remains in her judicial position but without the administrative role she had held for several years.

In response, Judge X filed an appeal to the Supreme Court, claiming that the Council's recommendation was a disguised sanction for her exercise of freedom of expression and a violation of her right to a fair hearing before an independent and impartial tribunal. The government argues that the non-renewal was an administrative matter, not affecting her judicial status, and therefore outside the scope of Article 6 of the ECHR.

#### Key Legal Issues

1. Does Article 6 of the ECHR apply to decisions concerning judicial administrative positions such as court leadership roles?
2. How should national authorities balance judicial independence with legitimate forms of accountability or performance review?
3. To what extent are public comments by judges on judicial reforms protected under Article 10 (freedom of expression)?
4. What procedural guarantees should accompany decisions that may affect a judge's career or standing within the judiciary?



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## Guidance Notes (ECHR Case Law References)

- *\*Baka v. Hungary (2016)\** – The ECtHR found that the premature termination of a Supreme Court president's mandate due to his public criticism of judicial reforms violated both Article 6 and Article 10. The case highlights the importance of protecting judges' freedom to speak on matters of judicial independence.
- *\*Denisov v. Ukraine (2018)\** – The Court clarified that for Article 6 to apply, there must be a 'dispute over a civil right' that is recognized in domestic law. Leadership roles within the judiciary can qualify if their removal affects a judge's professional reputation, remuneration, or authority.
- *\*Guðmundur Andri Ástráðsson v. Iceland (2020)\** – The Court stressed that defects in judicial appointments or governance structures can undermine public confidence in the independence and impartiality of the judiciary, even where the individual judge acts impartially.
- *\*Kudeshkina v. Russia (2009)\** – The Court held that a judge's dismissal following public criticism of judicial administration violated Article 10, reinforcing that judges' speech on institutional integrity is protected when expressed in a moderate and professional tone.

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## Discussion and Reflection

1. Should the removal or non-renewal of administrative roles within courts trigger judicial review under Article 6?
2. How should judicial councils handle potential conflicts between independence and accountability?
3. What lessons from *\*Baka v. Hungary\** and *\*Denisov v. Ukraine\** are most relevant to national practices?
4. How can judges express legitimate concerns about judicial reform without risking disciplinary or administrative consequences?
5. What institutional safeguards can enhance public confidence in the independence of judicial councils?

## Conclusion

This case study illustrates the fine balance between judicial independence and accountability. The ECtHR's case law underscores that independence must be both institutional and personal, safeguarded through transparent appointment and disciplinary procedures. In the Baltic States, where rule-of-law standards are robust, continued vigilance is essential to prevent subtle forms of interference that may erode public trust. Judges must be empowered to engage in public debate on judicial governance while adhering to principles of restraint and impartiality.

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## **Case- study 2**

*Judge Z. was an administrative court judge in Republic of Insomnia, who decided to apply to the Judicial Council for the position of the judge of the Administrative Court of Appeal. Having gone through the selection procedure, she was voted as the best out of 13 other candidates. Nevertheless, the President of State refused to nominate her, without giving any reasoning. Then the administrative court rejected her claim the the President should provide the reasoning for his decision, stating that it is the President's "prerogative" to nominate judges.*

*In the same year, the authorities of the Republic of Insomnia introduced the reform of the legal system by, among others, changing the way that the judicial members of the High Judicial Council (HJC) were elected, by introducing the rule that they are n more elected by their peers, but by the Parliament. The term of office of the current members of the HJC was terminated by law (despite of the fact that it is foreseen in the Constitution). Also, the Special Appeal Chamber (SAC) of the Supreme Court was introduced, which was able to review any judgment issued within the last 30 years. The members of the Special Appeal Chamber were elected by the newly-established High Judicial Council.*

*A year later Judge Z. was assigned to deal with a judgment of the Special Appeal Chamber issued by Judge Hart quashing the judgment of the administrative court in Masovia and ordering it to review the case again (in another bench composition). Judge Z. decided to issue a request for the preliminary reference procedure to the Court of Justice in Luxembourg asking whether the composition of the SAC was in accordance with Art. 47 of the Charter of the Fundamental Rights of the EU, due to wrongful nomination procedure. At the same time, she (acting as the administrative court in Masovia) issued request for the ECtHR under Protocol 16 asking for the advisory opinion on whether the SAC composed of Judge Hart was the Tribunal established by law, in the meaning of Art. 6 of the ECHR.*

*Right afterwards, Judge Z, was faced with disciplinary proceedings stemming from the fact that she requested the preliminary reference procedure to CJEU, and was announced in the public media as a judge trying to overturn the democratically established legal system. She was suspended in her duties by the President of the court for six months resulting in lowering of her salaries by 50% in that period. Furthermore, she was called "the enemy of State" because of taking part in the public protests defending the judicial independence organized by the Themis Judicial Association, and criticizing, both during the protests and in the social media, the way the judicial reform was introduced. Following the protests, the Prime Minister called for vetting of all judges.*



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