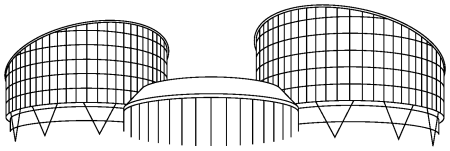

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF HELMUT BLUM v. AUSTRIA

(Application no. 33060/10)

JUDGMENT

STRASBOURG

5 April 2016

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

In the case of Helmut Blum v. Austria,

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

András Sajó, *President,*
Vincent A. De Gaetano,
Boštjan M. Zupančič,
Nona Tsotsoria,
Krzysztof Wojtyczek,
Egidijus Kūris,
Gabriele Kucsko-Stadlmayer, *judges,*
and Francoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 15 March 2016,

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

PROCEDURE

1. The case originated in an application (no. 33060/10) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Austrian national, Mr Helmut Blum ("the applicant"), on 11 June 2010.

2. The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Tichy, Head of the International Law Department at the Federal Ministry for Europe, Integration and Foreign Affairs.

3. The applicant complained in particular concerning the lack of an oral hearing in disciplinary proceedings against him.

4. On 19 December 2013 the application was communicated to the Government.

5. On 5 December 2014 the parties were invited to submit further written observations on the admissibility and merits of the application in the light of the Supreme Court's judgment of 20 May 2014.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background of the case

6. The applicant was born in 1959 and lives in Linz. He has been a lawyer since 1986 and he practises in Linz.

7. In 2006 criminal investigation proceedings were pending before the Linz Regional Court against O.G., a regional politician from Upper Austria, and a Moldovan citizen, T.S., who was in detention pending trial. Both were suspected of human trafficking. O.G. was also suspected of fraud. During the investigation proceedings, T.S. accused O.G. of having accepted money for facilitating the illegal entry or transit of nineteen nationals from Moldova to Austria or through Austria to Italy.

8. E.W., an association of which O.G. was president, commissioned the applicant to represent T.S. in the criminal proceedings. The applicant's fees were covered by this association. Having accepted the mandate the applicant remained in close contact with O.G. and transmitted to him information concerning the criminal investigation proceedings against T.S. He did not represent O.G. in the proceedings.

9. On 17 August 2006 the applicant visited T.S. in prison in order to prepare for the trial on that day. During this visit an affidavit (*Eidesstättige Erklärung*), prepared in advance by the applicant, was signed by T.S. in which she submitted that her former allegations against O.G. had been untrue.

10. On the same day, the Linz Regional Court convicted T.S. of the crimes as charged and sentenced her to fifteen months' imprisonment. T.S. did not retract the statements she had made to the investigating authorities, nor was the affidavit submitted to the court. Instead, the applicant transferred it to the lawyers of O.G.

11. On 21 August 2006 the lawyers of O.G. transferred T.S.'s affidavit to the public prosecutor to be taken into consideration in the proceedings against O.G.

12. On 31 October 2006 and 4 December 2006, in the course of the criminal proceedings against O.G., the judge of the Linz Regional Court reported to the Upper Austrian Bar Association (*Rechtsanwaltskammer*, hereinafter "the Bar Association") that he suspected the applicant of double representation. The judge stated that the applicant had kept close contact with O.G. and had transferred to him information concerning the investigation proceedings regarding T.S. The judge further stated that the applicant had asked T.S. to submit the affidavit, whose contents were untrue but in favour of O.G., to the court.

B. Criminal proceedings against the applicant

13. On 11 July 2007, upon a request by the Linz public prosecutor, the Linz Regional Court instituted a preliminary investigation into allegations of attempting to aid the perpetrator (*versuchte Begünstigung*), false testimony (*Falsche Beweisaussage*) and falsifying evidence (*Fälschung eines Beweismittels*) against the applicant, and informed the Bar Association.

14. On 17 July 2007, 17 August 2007 and 6 September 2007 the Linz public prosecutor requested that the court conduct further preliminary investigations in the case, in particular the questioning of several witnesses and to put the applicant on the stand. The Linz Regional Court took the requested evidence and heard evidence from the applicant.

15. On 24 September 2007, the Linz public prosecutor requested the inclusion of a further file regarding the falsification of evidence in a case not related to that of O.G. The file was included in the preliminary investigation against the applicant and the requested evidence was gathered.

16. Because of the reform of the Code of Criminal Procedure, which entered into force on 1 January 2008, the investigating judge transmitted the file to the Linz public prosecutor, who took charge of the case.

17. On an unspecified date the Linz public prosecutor decided not to file a formal indictment (*Anklageschrift, Strafantrag*) against the applicant until a final court decision in the case against O.G. had been taken. There is no indication that a formal decision on the postponement was taken on this matter or sent to the applicant.

18. On 4 February 2009 the Linz public prosecutor ordered the suspension of the criminal proceedings against the applicant since the criminal proceedings against O.G. were still pending. Again, it appears that no formal decision was sent to the applicant in this regard.

19. On 5 May 2009 the applicant lodged a request with the Linz public prosecutor for the discontinuation of the investigation proceedings.

20. On 6 July 2009 the criminal proceedings against the applicant were resumed and he was charged with the offence of attempted aiding of the perpetrator and falsifying evidence.

21. The Linz Regional Court summoned the applicant on 17 July 2009 for trial on 22 September 2009. The applicant lodged a request to have more witnesses questioned on 10 September 2009 and submitted a statement.

22. On 22 September 2009 the first hearing in the criminal proceedings against the applicant was held before the Linz Regional Court.

23. The next hearing was held on 24 November 2009. The hearing was adjourned until the final decision in the case of O.G. had been taken.

24. As the criminal proceedings against O.G. were still pending, the Linz Regional Court continued criminal proceedings against the applicant and a further hearing was held on 27 April 2011, with a new judge presiding.

25. On 17 June 2011 the Linz Regional Court acquitted the applicant on all counts.

26. On 8 November 2011 the Linz Court of Appeal dismissed an appeal by the public prosecutor. This judgment was served on the applicant on 30 November 2011.

C. Disciplinary proceedings against the applicant

27. Following the notice of the investigating judge of 31 October 2006 the Disciplinary Prosecutor (*Disziplinaranwalt*) on 13 December 2006 applied to introduce disciplinary proceedings against the applicant on charges of double representation and falsification of evidence.

28. Accordingly, on an unspecified date, the Disciplinary Council of the Bar Association (*Disziplinarrat der Oberösterreichischen Rechtsanwaltskammer*, hereinafter "the Disciplinary Council") initiated disciplinary proceedings against the applicant.

29. On 24 September 2007 the Disciplinary Council held an oral hearing and adjourned the disciplinary proceedings until the criminal proceedings at the Linz Regional Court had become final.

30. On 25 September 2007 the Disciplinary Prosecutor applied for the withdrawal of the applicant's right to represent clients before the Linz courts in criminal cases as an interim measure.

31. The applicant was informed of this application and submitted his written comments on 4 October 2007 and 30 October 2007 in which he opposed the measure.

32. On 17 December 2007 the Disciplinary Council, without holding a hearing, withdrew the applicant's right to represent before the Linz District Court, the Linz Regional Court and the Linz Court of Appeal in criminal law cases as an interim measure by virtue of section 19 of the Disciplinary Act (*Disziplinarstatut für Rechtsanwälte und Rechtsanwaltsanwärter*). It held that because of the accusations against the applicant the imposed interim measure was proportionate.

33. The applicant appealed on 5 February 2008 against this interim measure and complained that the preconditions for it had not been met, that the Disciplinary Council had failed to hear evidence and that it had not held an oral hearing. Furthermore the measure had not been proportionate to the accusations.

34. On 28 August 2008 the Appeals Board (*Oberste Berufungs- und Disziplinarkommission*) dismissed the applicant's appeal without having held an oral hearing. It found that it was the task of the criminal courts to

hear evidence. The applicant had submitted his comments and had therefore been able to sufficiently present his arguments. Moreover, the measure imposed upon the applicant had been proportionate.

35. On 28 October 2008 the applicant lodged a complaint with the Constitutional Court (*Verfassungsgerichtshof*) and again complained about the lack of an oral hearing and that the measure was disproportionate.

36. On 25 November 2008 the applicant lodged a request for information (*Auskunftsbegehren*) with the Disciplinary Board and asked if the interim measure of 17 December 2007 would automatically expire after six months. If not, he asked to have the interim measure withdrawn as the criminal proceedings were still pending. He claimed that it was disproportionate to sustain the interim measure over such a long period of time.

37. On 2 December 2008 the Disciplinary Board replied to the request of 25 November 2008 and informed the applicant, that the interim measure would not expire automatically but would remain in force.

38. On 1 December 2009 the Constitutional Court dismissed the applicant's complaint and held that the reasoning of the authorities had been sufficient and therefore the imposed measure was not arbitrary. Furthermore it found that the proceedings had overall been fair. As the preliminary measure imposed on the applicant had not been a "criminal charge" in the sense of Article 6 of the Convention, an oral hearing had not been compulsory.

39. On 9 December 2010 the Bar Association asked for information about the state of the criminal proceedings. A written reply was sent on 14 January 2011.

40. On 17 June 2011, after the applicant had been acquitted on all counts by the Linz Regional Court, he lodged another request with the Bar Association to have the interim measure withdrawn referring to the court's decision.

41. This request was dismissed by the Bar Association as the public prosecutor had appealed against the decision of the Linz Regional Court.

42. The applicant appealed on 18 July 2011 against this decision and complained about the length of time the imposed measure had already been in force.

43. On 14 November 2011 the interim measure imposed on the applicant, prohibiting him from representing clients before the Linz courts in criminal cases was lifted by the Bar Association.

44. On 30 January 2012 he was summoned to a hearing by the Disciplinary Council on 27 February 2012.

45. The applicant filed statements in preparation of the hearing on 8 and 22 February 2012 denying that there was a case of double representation and referring to the decision of the Linz Court of Appeal of 8 November 2011.

46. On 11 March 2013 the Disciplinary Council of the Bar Association found that the applicant had not knowingly organised for T.S. to submit an affidavit that was untrue. However, he had acted in double representation within the meaning of section 10 of the Lawyers Act (*Rechtanwaltsordnung*) in criminal proceedings, as he had acted in the interests of O.G. and the association E.W. as well as in those of T.S., whom he had represented. The Disciplinary Council stated that the fact that the disciplinary proceedings had lasted almost seven years and the fact that the right of the applicant to represent before certain courts in criminal cases had been withdrawn for about four years had to be taken into account. Therefore it found it reasonable to impose a fine of 1,000 euros (EUR) in addition to another disciplinary fine he already had been ordered to pay for another case of violation of the Lawyers Act.

47. The applicant lodged an appeal on points of law and an appeal against the fine.

48. The Supreme Court, acting as the highest court in disciplinary proceedings against lawyers, held a hearing on 20 May 2014 and dismissed the applicant's appeal on points of law, but reduced the additional disciplinary fine to EUR 500. It explicitly mentioned the length of disciplinary proceedings as a violation of the applicant's rights under Article 6 of the Convention and took account of the fact that the applicant's right to represent before the Linz Courts in criminal cases had been withdrawn for four years. The Supreme Court found that a different set of disciplinary proceedings had been already pending when the present incident occurred. Therefore, the applicant should have acted with special caution. A total waiver of the fine would not be adequate in this situation.

49. The Supreme Court's judgment was served on 11 August 2014 on the applicant.

II. RELEVANT DOMESTIC LAW

50. Section 10(1) of the Lawyers Act (*Rechtsanwaltsordung*) provides that a practising lawyer is not obliged to accept a mandate from a party and that he/she can refuse a mandate without giving reasons. Furthermore, he/she has a duty to refuse to represent or to advise if he represents the opponent in the same case or has represented the opponent in a previous case, which is connected to the present case. Furthermore he/she must not represent or advise both parties.

51. Section 1(1) of the Disciplinary Act (*Disziplinarstatut für Rechtsanwälte und Rechtsanwaltsanwärter*), provides as follows:

> "A lawyer who negligently or intentionally breaches his or her professional duties or whose professional or private conduct adversely affects the reputation or standing of the profession shall be deemed to have committed a disciplinary offence."

52. The other relevant sections of the Disciplinary Act in force at the material time read as follows:

"16(1) Disciplinary sanctions shall take the form of:

1. a written reprimand;

2. a fine of up to EUR 45,000;

3. a ban on practising as a lawyer of up to one year or, in the case of trainee lawyers, extension of the period of practical work experience by a maximum of one year;

4. striking off the register

...

(6) In imposing a sanction, particular account should be taken of the degree of culpability and the resulting damage, particularly to members of the public; when determining the amount of the fine, the person's income and financial situation should also be taken into consideration.

...

19(1) The Disciplinary Council may adopt interim measures in respect of a lawyer where:

1. criminal proceedings are pending against him or her;

2. the lawyer has been finally convicted of a punishable offence by a court; or

3. the lawyer has been struck off the register as a disciplinary sanction

and the interim measure is necessary in view of the nature and seriousness of the disciplinary proceedings against the lawyer concerned, on account of the potential for serious damage to, in particular, the interests of the public or the standing of the profession.

(2) Before a decision is taken to adopt an interim measure, the lawyer concerned must have been afforded an opportunity to comment on the accusations against him or her and on the conditions required for ordering an interim measure. Derogation may be made from this requirement if a delay would entail danger; however, in this case the lawyer must be given an opportunity to comment immediately after the decision is adopted.

(3) Interim measures shall take the form of:

1. in the case of lawyers ...

(b) withdrawal of the right to act as representatives before certain courts or administrative authorities, or before all courts and administrative authorities ...

(d) a temporary ban on practising as a lawyer ...

(4) Interim measures shall be lifted, amended or replaced where it transpires that the conditions required for ordering them do not apply or no longer apply, or the circumstances have altered substantially. An interim measure ordered in respect of a lawyer entailing a temporary ban on practising on account of pending criminal proceedings against him or her shall cease to be applied after six months at the latest. However, it may be extended by a decision of the Disciplinary Council where it is essential in order to prevent serious damage to the interests of the public; each extension shall also cease to apply after a maximum of six months.

(5) When the disciplinary proceedings are finally terminated any interim measures adopted shall in any event cease to apply, without prejudice to section 72(3) ...

(7) Where a disciplinary sanction is imposed, any interim measures shall be taken into account in the appropriate manner. The period of a temporary ban on practising as a lawyer shall count towards the length of a ban on practising imposed as a disciplinary sanction; the period for which trainee lawyers are temporarily barred from admittance to practical work experience shall count towards the period of any ban on admittance imposed as the result of a disciplinary sanction.

23(1) ...

(2) If criminal proceedings are being conducted relating to the same facts as those underlying the disciplinary offence, no disciplinary decision can be issued prior to the final conclusion of the criminal proceedings conducted because of that offence ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

53. In his application of 8 June 2010 the applicant complained that the length of the disciplinary proceedings as well as the maintenance of the interim measure had been incompatible with the "reasonable time" principle, provided for in Article 6 of the Convention. Furthermore, he complained that the Disciplinary Council had not held an oral hearing before deciding upon the interim measure which had also been a violation of his rights under Article 6.

54. Article 6 reads in its relevant parts as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him everyone is entitled to a fair ... hearing ... within a reasonable time by [a] ... tribunal ..."

55. The Government contested that argument.

A. Alleged violation of Article 6 § 1 of the Convention concerning the lack of an oral hearing in the proceedings concerning the preliminary measure

1. Admissibility

(a) The parties submissions

56. The Government contested that Article 6 applied to the proceedings concerning the interim measure. Referring to the Court's case law in *Müller-Hartburg v. Austria* (no. 47195/06, 19 February 2013) it stated that disciplinary proceedings would give rise to a "dispute over civil rights" but not involve the determination of a "criminal charge" within the meaning of

Article 6 § 1 of the Convention. However, this provision would not be applicable for proceedings for an interim measure. The aim of the preliminary proceedings was not to impose sanctions upon the person concerned but to avoid serious damage especially in regard to the interests of the public and the reputation of the profession. An order for an interim measure did not deal with the alleged offences in themselves but exclusively with the question of whether in view of the nature and seriousness of the alleged disciplinary offence an interim measure was needed to avoid serious damage to the public interest or the reputation of the legal profession and those who need representation before the courts and other authorities. The Disciplinary Council only examined such a measure if the preconditions set out in section 19(1) of the Disciplinary Act had been fulfilled. At this stage, it was not the task of the Disciplinary Council to examine the evidence of the criminal proceedings.

57. The Government further submitted that even the civil head of Article 6 § 1 was not applicable to proceedings for an interim measure; it could not be expected that a client would be represented in criminal proceeding by a practising lawyer who himself was an accused in criminal proceedings before the same court.

58. For his part, the applicant maintained that Article 6 § 1 also applied under its criminal head to the disciplinary proceedings and the proceedings for an interim measure against him. The disciplinary proceedings as well as the proceedings for the preliminary measure had had a punitive character as well as having infringed his right to continue to exercise his profession. Therefore these proceedings should be considered under the criminal as well as under the civil head of Article 6 of the Convention.

(b) The Court's findings

59. The Court has examined the question of whether Article 6 § 1 of the Convention applies under its criminal head to disciplinary proceedings in a previous case concerning disciplinary proceedings against a practising lawyer under the same provisions as in the present case (see *Müller-Hartburg v. Austria*, cited above, §§ 42). In this judgment it came to the conclusion that such disciplinary proceedings did not involve the determination of a "criminal charge" within the meaning of Article 6 § 1. As all arguments brought up by the applicant in his current application have already been considered by the Court in its judgment mentioned above, the Court will not examine the case under the criminal head of Article 6 § 1 of the Convention.

60. Nonetheless, the Court has consistently held that disciplinary proceedings, in which the right to continue to exercise a profession is at stake give rise to "contestations" (disputes) over civil rights within the meaning of Article 6 § 1 (see *König v. Germany*, 28 June 1978, §§ 87-95, Series A no. 27; *W.R. v. Austria*, no. 26602/95, §§ 25-31,

21 December 1999; *Malek v. Austria*, no. 60553/00, § 39, 12 June 2003; and *Goriany v. Austria*, no. 31356/04, § 21, 10 December 2009). Since the applicant's right to continue to practise as a lawyer was at stake in the disciplinary proceedings against him, the Court considers that Article 6 §1 is applicable under its civil head.

61. As regards the question of applicability of Article 6 § 1 under its civil head to proceedings for interim injunctions, the Court has abandoned the approach of automatically characterising injunction proceedings as not determining of civil rights or obligations. Since then, the applicability of Article 6 in injunction proceedings that determine civil rights or obligations depends on whether certain conditions are fulfilled. Firstly, the right at stake in both the main and the injunction proceedings should be "civil" within the autonomous meaning of the notion under Article 6 of the Convention. Secondly, the nature of the interim measure, its object and purpose as well as its effects on the right in question should be scrutinised. Whenever an interim measure can be considered effectively to determine the civil right or obligation at stake, notwithstanding the length of time it is in force, Article 6 will be applicable. However, the Court accepts that in exceptional cases - where, for example, the effectiveness of the measure sought depends upon a rapid decision-making process – it may not be possible immediately to comply with all of the requirements of Article 6. Thus, in such specific cases, while the independence and impartiality of the tribunal or the judge concerned is an indispensable and inalienable safeguard in proceedings, other procedural safeguards may apply only to the extent compatible with the nature and purpose of the interim proceedings at issue. It will fall to the Government to establish that, in view of the purpose of the proceedings at issue in a given case, one or more specific procedural safeguards could not be applied without unduly prejudicing the attainment of the objectives sought by the interim measure (see *Micallef v. Malta* [GC], no. 17056/06, §§ 84-86, ECHR 2009).

62. As regards the argument raised by the applicant, the Court reiterates that the length of time the interim measure is or was in force is not decisive when examining if Article 6 will be applicable in the given case (see again *Micallef v. Malta* [GC], cited above, § 85).

63. In the present case, the provisions for interim measures under the Disciplinary Act provided, *inter alia*, for the withdrawal of the right to act as a representative before certain or all courts or administrative authorities as well as a temporary ban on practising as a lawyer. In the main proceedings, the disciplinary authorities may take measures ranging from a written reprimand to striking off the register (which means a ban on practising as a lawyer for a minimum of three years). The Court considers that in both the main and the injunction proceedings civil rights within the meaning of Article 6 were at stake. Therefore, the first criterion is met.

64. As regards the nature of the interim measure, its object and purpose, the Court notes that the Bar Association was entrusted with law enforcement duties in this regard. The Court further accepts the Government's argument that the measure aimed to protect public interests and the reputation of the legal profession and therefore the administration of justice itself. In this respect, regard being had to the key role of lawyers in this field, it is legitimate to expect lawyers to contribute to the proper administration of justice, and thus to maintain public confidence therein. However, for members of the public to have confidence in the administration of justice they must have confidence in the ability of the legal profession to provide effective representation (see *Morice v. France* [GC], no. 29369/10, §§ 132, 133, 23 April 2015; *Nikula v. Finland*, no. 31611/96, § 45, ECHR 2002 II; and *Steur v. the Netherlands*, no. 39657/98, § 36, ECHR 2003 XI). Therefore, the Court acknowledges that situations can arise in which it can be justified to take interim measures to protect public interests and the reputation of a legal profession. For instance, when a practising lawyer is accused in criminal proceedings a need for an interim measure can exist to ensure that this lawyer does not represent clients before courts or authorities or at least before the same courts or authorities which deal with the lawyer's criminal case itself.

65. Nonetheless, the Court notes that a withdrawal of the right to represent before certain or all courts or authorities has a significant effect on the practicing lawyer's reputation and business as his or her practice depends on long-standing ties to his or her clients.

66. Therefore, the interim measure to withdraw the right to represent before certain authorities and courts has to be considered to determine effectively the civil right at stake.

67. It follows that Article 6 § 1 is applicable to the present proceedings concerning the interim measure and the Government's objection must therefore be dismissed in this regard. The Court finds also that the applicant's complaint concerning the lack of an oral hearing in the proceedings concerning the interim measure is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

68. The applicant complained that the Disciplinary Council and the Appeals Board did not hold an oral hearing before ordering the withdrawal of his right to represent before the Linz courts that are competent in criminal matters. Therefore, it violated his rights under Article 6.

69. The Government contested this and stated that in the present case a hearing had not been required as the facts on which the Disciplinary Council had based its order had been uncontested as the pending criminal

proceedings were a matter of fact. Furthermore, the Disciplinary Council was able to fairly and reasonably decide the case on the basis of the parties' submissions. The applicant defended his case by making submissions on 4 and 30 October 2007 without any restrictions, and the Disciplinary Council examined the arguments brought forward by the applicant. Moreover, it already held an oral hearing on the merits of the case on 24 September 2007 in which the applicant took the opportunity to present his case. The matters discussed in this hearing were in fact the same which had led to the preliminary proceedings. Therefore, there was no need for a further hearing.

70. It is the Court's constant case-law that an oral and public hearing constitutes a fundamental principle enshrined in Article 6 § 1, but the obligation to hold a hearing is not absolute (see, amongst many other authorities, *Juričić v. Croatia*, no. 58222/09, § 87, 26 July 2011, and *Jussila v. Finland* [GC], no. 73053/01, § 73053/01, ECHR 2006 XIV). There may be proceedings in which an oral hearing may not be required: for example where there are no issues of credibility or contested facts which necessitate a hearing and the courts may fairly and reasonably decide the case on the basis of the parties' submissions and other written materials (see, amongst many other authorities, *Döry v. Sweden*, no. 28394/95, § 37, 12 November 2002; *Pursiheimo v. Finland* (dec.), no. 57795/00, 25 November 2003; and *Şahin Karakoç v. Turkey*, no. 19462/04, § 36, 29 April 2008). The Court has further accepted that a hearing need not be held in exceptional circumstances, such as in cases where proceedings concerned exclusively legal or highly technical questions (see *Jurisic and Collegium Mehrerau v. Austria*, no. 62539/00, § 65, 27 July 2006; *Schuler-Zgraggen v. Switzerland*, 24 June 1993, § 58, Series A no. 263; and *Mehmet Emin Şimşek v. Turkey*, no. 5488/05, § 29-31, 28 February 2012). Moreover, the fact that the proceedings are of considerable personal significance to an applicant is not decisive for the necessity of a hearing. Nevertheless, refusing to hold an oral hearing may be justified only in rare cases (see *Grande Stevens and Others v. Italy*, nos. 18640/10, 18647/10, 18663/10, 18668/10 and 18698/10, § 121, 4 March 2014). The Court concludes that this case-law under Article 6 § 1, established in cases dealing with main proceedings, should, in principle, also be applied to proceedings concerning an interim measure.

71. The Court further notes that it is in the nature of proceedings for interim measures that decisions in general have to be taken immediately. In a case of urgency, if public or private interests are at stake, an oral hearing could lead to delays and thereby frustrate the effort to seek protection, thus justifying provisional measures.

72. In the present case, the Court observes that the applicant's testimony had already been heard on the disciplinary charges in a hearing on 24 September 2007 conducted during the disciplinary proceedings. Nonetheless, in order to take the decision on the interim measure, the

Disciplinary Council had not only to examine the nature and seriousness of the disciplinary charges but also if there had been a risk of serious damage to, in particular, the interests of the public or the standing of the profession which made it necessary to issue an interim measure. Moreover, the Disciplinary Council had to decide which one of the interim measures mentioned in section 19(3) of the Disciplinary Act would constitute a fair balance to the interests involved. In choosing interim measures from the catalogue outlined in section 19(3), and in particular in considering the question of whether representation before which authorities should be restricted, discretion was granted to the Disciplinary Council. Therefore, the Court considers that not only legal or highly technical questions had to be taken into consideration when deciding upon the interim measure.

73. The Court further notes that the Linz Regional Court had already instituted a preliminary criminal investigation against the applicant on 11 July 2007; the Disciplinary Council called a hearing for 24 September 2007. There, the applicant gave evidence, but interim measures as well as their necessity had not been an issue. Only on 25 September 2007, based on the results of the hearing, did the Disciplinary Prosecutor apply for the interim measure. The applicant was invited to submit comments, which the latter did on 4 and 30 October 2007; the Disciplinary Council took the decision on 17 December 2007. From this conduct of the authorities, no urgency can be established. The Government has neither shown reasons why there was no need for interim measures before 25 September 2007 nor that the circumstances changed afterwards making an interim measure so urgent that the Disciplinary Council had to refrain from holding an oral hearing. Consequently, it has not been shown that the effectiveness of the interim measure imposed on the applicant depended on a rapid decision-making process.

74. In conclusion, the applicant's right to an oral hearing was violated when the Disciplinary Council granted an interim measure and ignored his request for an oral hearing.

75. Accordingly, there has been a violation of Article 6 § 1 concerning the lack of an oral hearing.

B. Alleged violation of Article 6 § 1 of the Convention concerning the length of the disciplinary proceedings and the maintenance of the preliminary measure

76. The Government asked the Court to declare this complaint inadmissible for several reasons:

77. The disciplinary proceedings would have been closely connected to the criminal proceedings against the applicant which themselves had been connected to the criminal proceedings against O.G. The applicant could have lodged a request under section 91 (*Fristsetzungsantrag*) of the Courts

Act (*Gerichtsorganisationsgesetz*) within the criminal proceedings against him. In failing to do so, he did not exhaust all domestic remedies.

78. Furthermore, the applicant could have raised the question of the appropriateness of the length of proceedings in his complaint with the Constitutional Court and, since he had failed to do so, he had not exhausted the domestic remedies.

79. The Government lastly asked the Court to declare the complaint inadmissible because the applicant had lost his status as a victim as required by Article 34 of the Convention. In its judgment of 20 May 2014 the Supreme Court had reduced the additional disciplinary penalty by half, explicitly mentioning that the length of the disciplinary proceedings and the length of the maintenance of the interim measure constituted a violation of the applicant's rights under Article 6 of the Convention.

80. The applicant contested the Governments' arguments.

81. The Court observes that the period to be taken into consideration began on 13 December 2006, when the disciplinary prosecutor asked for the institution of disciplinary proceedings (see *Goriany v. Austria*, no. 31356/04, § 25, 10 December 2009, and *Müller-Hartburg v. Austria*, cited above, § 56), and ended on 11 August 2014, when the Supreme Court's judgment was served on the applicant. It thus lasted seven years and seven months through three levels of jurisdiction.

82. The Court finds that the facts of the present case merit an examination of the question of whether the applicant can still be considered a victim of the alleged violation of the Convention. The Court reiterates that it falls first to the national authorities to redress any violation of the Convention. However, a decision or measure favourable to the applicant is not, in principle, sufficient to deprive him of his status as a victim, unless the national authorities have acknowledged in a sufficiently clear way and then afforded redress for the breach of the Convention (see *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 179-180, ECHR 2006-V; and *Mitterbauer v. Austria* (dec.), no. 2027/06, 12 February 2009). Whether such redress is appropriate and sufficient to remedy a breach of a Convention right at national level depends on all the circumstances of the case, having regard in particular to the nature of the Convention issue at stake (see *Gäfgen v. Germany* [GC], no. 22978/05, § 116, ECHR 2010). Furthermore, as regards the duration of criminal proceedings, a possible form of redress can be the reduction of a sentence in an express and measurable manner (see *Scordino*, cited above, § 186).

83. As concerns the first requirement – namely the acknowledgment by the domestic authorities of a violation of the Convention – the Court observes that the Supreme Court considered the lengthy duration of the proceedings to be a mitigating factor when setting the fine to be paid by the applicant (see, *mutatis mutandis*, *Karg v. Austria* (dec.), no. 29749/04,

6 May 2008). The Court also notes that the Supreme Court explicitly acknowledged the unreasonably long duration of the maintenance of the interim order. With regard to the second requirement, the Court observes that the Supreme Court reduced the applicant's additional fine from EUR 1,000 to EUR 500 – a reduction of a half. As a further factor to be taken into account, the Court notes that the interim order was immediately lifted by the Bar Association when the public prosecutor's appeal in the criminal proceedings against the applicant was dismissed by the Linz Court of Appeal in November 2011.

84. In conclusion, the Court is satisfied that the domestic authorities sufficiently acknowledged the unreasonable length of the proceedings conducted against the applicant and afforded him redress in an appropriately express and measurable manner. The applicant can therefore no longer claim to be a victim of the alleged violation for the purposes of Article 34 of the Convention.

85. In view of the above-mentioned conclusion, the Court does not find it necessary to examine the Government's further objections.

86. The complaint under Article 6 § 1 of the Convention concerning the length of the disciplinary proceedings must be declared inadmissible (see *Gäfgen v. Germany* [GC], cited above § 115).

C. Other complaints

87. In his letter of 3 October 2013 the applicant raised additional complaints. He alleged that the length of the criminal proceedings had also been incompatible with the "reasonable time" principle, provided in Article 6 of the Convention.

88. In another letter of 10 June 2014 he complained that section 19(1) of the Disciplinary Act infringed his rights under Article 6 § 2 of the Convention, as criminal proceedings under the Code of Criminal Proceedings would automatically lead to interim measures. Furthermore, his right to effective defence had been violated as the Disciplinary Council had only granted a period of four days to comment on the allegations.

89. The Court observes that the applicant complained of the unreasonable length of the criminal proceedings for the first time in his letter of 3 October 2013. These proceedings had ended on 30 November 2011 when the judgment of the Linz Court of Appeal of 8 November 2011 was served on the applicant. The Court reiterates that it "may only deal with [a] matter ... within a period of six months [of] the date on which the final decision was taken". This complaint was therefore introduced out of time.

90. In regard to the further complaints of the applicant concerning the disciplinary proceedings raised for the first time in the letter of 10 June 2014, the Court notes that they deal with questions which could

have been raised in the proceedings before the Constitutional Court. As the applicant has failed to do so, he has not exhausted all domestic remedies.

91. It follows that both complaints have to be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

92. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

93. The applicant claimed a total of EUR 500,000 in respect of pecuniary damage because the interim measure had banned him from representing in criminal cases before the Linz courts for forty-six months and he had lost clients even after the lifting of the interim measure. Moreover he claimed EUR 60,000 in respect of non-pecuniary damage as his reputation had been damaged and the psychological burden was immense.

94. The Government questioned the basis for the calculations of the applicant in respect of the claim of pecuniary damage. It further contended that the finding of a violation constituted sufficient reparation in respect of any non-pecuniary damage suffered.

95. The Court reiterates that it cannot speculate as to what the outcome of the proceedings would have been had they been in conformity with Article 6 of the Convention. Accordingly, it dismisses the claim for just satisfaction for pecuniary loss. Further, the Court considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage the applicant may have sustained in the present case (see *Becker v. Austria*, no. 19844/08, § 50, 11 June 2015; *Meftah and Others v. France* [GC], nos. 32911/96, 35237/97 and 34595/97, § 56, ECHR 2002-VII; *Brugger v. Austria*, no. 76293/01, § 31, 26 January 2006, with further references).

B. Costs and expenses

96. The applicant also claimed EUR 15,035.94, including VAT, for the costs and expenses incurred before the domestic courts and EUR 6,672.52, including VAT, for those incurred before the Court.

97. The Government questioned the necessity and appropriateness of the applicant's claim.

98. The Court observes that the applicant has chosen to present his own case before the national authorities as well as before the Court. Referring to its case-law, the Court finds that no award can be made with respect to the claim for cost and expenses in this case (see *Philis v. Greece (no. 1)*, 27 August 1991, § 77-78, Series A no. 209; *Brincat v. Italy*, 26 November 1992, § 29, Series A no. 249-A; and *Malek v. Austria*, no. 60553/00, § 55, 12 June 2003).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the lack of an oral hearing in the proceedings before the Disciplinary Council concerning the interim measure admissible;

2. *Declares* the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the lack of an oral hearing in the proceedings before the Disciplinary Council concerning the interim measure;

4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

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

Done in English, and notified in writing on 5 April 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	András Sajó
Registrar	President