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

FIRST SECTION

DECISION

Application no. 64735/14
Carlo BIAGIOLI
against San Marino

The European Court of Human Rights (First Section), sitting on 13 September 2016 as a Chamber composed of:
Mirjana Lazarova Trajkovska, *President*,
Ledi Bianku,
Linos-Alexandre Sicilianos,
Aleš Pejchal,
Robert Spano,
Armen Harutyunyan,
Pauliine Koskelo, *judges*,
and Abel Campos, *Section Registrar*,
Having regard to the above application lodged on 19 September 2014,
Having deliberated, decides as follows:

## THE FACTS

1. The applicant, Mr Carlo Biagioli, is an Italian national, who was born in 1969 and lives in San Marino. He was represented before the Court by Mrs A. Mascia, a lawyer practising in Verona, Italy.

### A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

### *1. Background of the case*

3. The applicant is the son of the Commander in Chief of the San Marino Police. He was a lawyer and notary by profession before being disbarred (*radiato*) as a result of criminal proceedings which were instituted in 2005 against both father and son for making false declarations in public documents (*reato di falso in atto pubblico)* under Articles 73 and 295 of the Criminal Code on 1 March 2002. It was alleged that they had altered the content of the police daily record (*foglio di servizio*) of 16 June 1999 by adding that they had carried out a check-up on a specific car and person, whereas such a check-up had never been undertaken.

4. By a judgment of 4 April 2012 no. 81/2012, filed in the registry on 11 May 2012, both the applicant and his father were found guilty. The applicant was sentenced to two years and six months' imprisonment and prohibited from holding public office for fifteen months.

5. By judgment no. 154/2012 of 28 September 2012 the Appeal Court upheld the first-instance judgment, reducing, however, the punishment. The applicant was sentenced to two years' imprisonment and prohibited from holding public office for a year. His sentence was suspended for two years.

6. More factual details about the criminal proceedings can be found in *Biagioli v. San Marino*, (dec.), no. 8162/13, 8 July 2014.

### *2. Disciplinary proceedings*

#### **(a) Background to the disciplinary proceedings**

7. In the meantime on 21 August 2005, the San Marino Chamber of Advocates and Notaries (*OAN*) (hereinafter "the CAN") had asked the applicant to submit an explanation as to the facts surrounding the criminal proceedings. By a letter of 5 September 2005, the applicant informed the CAN that no charges had been issued against him and that any impugned conduct had not been in connection with the carrying out of his profession.

8. On 3 April 2007, following the issuance of a bill of indictment against the applicant, the CAN once again asked him for explanations, and the applicant submitted the relevant bill of indictment.

9. Following the delivery of the first-instance judgment, on 12 April 2012 the CAN requested the applicant to provide a copy of the operative part of the judgment. The applicant complied with the request on 18 April 2012, also submitting a copy of his appeal application.

10. On 4 May 2012 the applicant was notified that the CAN was instituting disciplinary proceedings against him in respect of a breach of Article 9 of legislative decree no. 56 of 26 April 1995, as well as Article 45 (1) of law no. 28 of 20 February 1991 (see relevant domestic law below).

**(b) Interlocutory decree**

11. At the hearing of 22 June 2012, as well as in his written submissions, the applicant argued that the disciplinary action against him was time-barred. In any event he requested the suspension of any sanction against him until the judgment finding him guilty had become final.

12. On 5 July 2012, the CAN rejected his argument concerning prescription but suspended the disciplinary proceedings until the criminal proceedings had become final.

13. On 19 July 2012, the applicant challenged that decision before the National Commission of Liberal Professions (*libere professioni*) (*CNLP*), hereinafter "the Commission".

14. On 12 September 2012 the Commission rejected the applicant's challenge concerning prescription on the basis that the decision of 5 July 2012 was not a decision on the merits, namely as to whether or not to apply the disciplinary measure, and thus was not subject to an autonomous challenge. Such a challenge could be raised in the context of an appeal in the event of the CAN ordering a disciplinary measure.

15. On 3 October 2012 the applicant challenged the decision of the Commission.

16. Eventually, by a judgment of 4 March 2013 the Administrative Court rejected the applicant's challenge and upheld the Commission's decision.

**(c) Continuation of the disciplinary proceedings**

17. Following the Court of Appeal judgment of 28 September 2012 in the criminal proceedings against the applicant, on 5 October 2012 the CAN informed the applicant that disciplinary proceedings were to be continued and that he was to appear at a hearing.

18. Hearings in the presence of the applicant and his lawyer took place on 15 and 17 October 2012, and written submissions were also filed. The applicant made submissions concerning, *inter alia*, the invalidity of the CAN owing to its constitution; the generic nature of the accusation; the fact that the impugned conduct had taken place outside the ambit of his professional activities; and the lack of proportionality of the measure. He also reiterated his argument that the disciplinary action was time-barred, and requested the suspension of the measure. Without prejudice to his arguments he claimed that in any event, the sanction should not be anything other than suspension for a month.

19. By a decision of 23 October 2012 the CAN disbarred the applicant. It noted that Article 51 of law no. 28 of 20 February 1991 provided that disbarment applied (*importa, di diritto*) in cases of a final finding of guilt under Article 295 of the Criminal Code (relevant to the present case). Thus, the CAN had no room for evaluation, discretion or decision making, save for the determination of whether an irrevocable criminal judgment finding

guilt actually existed. In the present case, that fact had been ascertained and the judgment had been submitted by the applicant himself. It followed that the CAN's finding applying such a sanction was simply declaratory, the legislator having prescribed mandatory disbarment in such cases. It further rejected the applicant's plea concerning prescription in respect of the disciplinary action and his request for suspension of the disciplinary proceedings. It also considered that the disciplinary punishments provided for by law were justified by a general principle, namely that of behaving in line with the duties of correctness, dignity and honour for the profession, even beyond the exercise of the professional activity, in so far as such behaviour may harm the common beliefs of the community. Indeed, the law (Article 39 of legislative decree no. 56 of 1995) could only be interpreted in the sense that actions undertaken outside the scope of one's activity must be subject to disciplinary action if they affected society's values, reflected on the professional reputation of lawyers or notaries, or compromised the image of the forensic and notarial categories. The correctness of this interpretation was evident given that, according to the law, a finding of guilt brought about disbarment mandatorily, as well as from the wording of Article 5 of Decree no. 105 of 2011 concerning the statute of the Chamber of Advocates and Notaries, and the correlation between law no. 28 of 1991 and legislative decree no. 56 of 1995.

20. On 4 October 2012 the applicant challenged this decision.

21. On 16 January 2013 the Commission confirmed the decision of the CAN in its entirety and rejected the applicant's challenges concerning the prescription of the disciplinary action, and the composition and constitution of the CAN. It also rejected his allegations concerning the lack of detail about the accusation, the automatic application of the sanction and the incoherence of the CAN's decision, which had not followed the expert opinion. As for the applicant's complaint that the facts that had led to the accusation had occurred outside his professional duties, as well as the proportionality of the measure, the Commission referred back to the decision of the CAN, which had found that such arguments were irrelevant given the content of Article 51 of law no. 28 of 1991 and its application in the present case.

22. On 18 April 2013 the applicant challenged the Commission's decision before the Administrative Court, reiterating the arguments he had already put forward.

#### (d) Administrative proceedings

23. In his application lodged on 18 April 2013 against the decision of the Commission of 16 January 2003, the applicant raised a number of pleas (in a 100-page document). His pleas concerned issues relating to the law and its application, whether in substance or as a matter of procedure.

24. In his requests dated 24 May and 7 August 2013 the applicant raised two more procedural pleas. In a further request he also challenged the constitutional legitimacy of Articles 30 and 40 of legislative decree no. 56 of 1995 in so far as they did not provide for the possibility of requesting the withdrawal of or abstention by persons sitting on the disciplinary body. He also challenged the legitimacy of Article 51 of law no. 28 of 1991 and Article 39 of legislative decree no. 56 of 1995. The applicant argued that the fact that the legislation provided for an automatic sanction, without the possibility of a progressive application of sanctions depending on the specific case, subject to evaluation by the disciplinary body, was contrary to the principles of reasonableness and proportionality.

*(i) Interlocutory decisions*

25. By a decision of 23 July 2013 the Administrative Court rejected the applicant's pleas concerning the irregularity of the CAN's constitution. In particular, as to the constitutional legitimacy of Articles 30 and 40 of legislative decree no. 56 of 1995, it considered that, in the present case, the applicant's inability to request the withdrawal of a member of the organ had not breached his rights. As to the constitutional legitimacy of Article 51 of law no. 28 of 1991 and Article 39 of legislative decree no. 56 of 1995, the court considered that the automatic application of a sanction would be in breach of constitutional principles only if it were not preceded by disciplinary proceedings. In the present case, the applicant had been subjected to disciplinary proceedings during which he had been able to put forward all his arguments and defend himself before both the CAN and the Commission. Indeed, it transpired from the decision of the CAN that that organ had: verified the existence of the disciplinary breach (by establishing the existence of a final criminal judgment); heard the applicant various times; established the facts and indicated the relevant provisions relating to the breach at issue; allowed the applicant's legal representative full access to the disciplinary file; and allowed the applicant to make written submissions and call witnesses as well as make any oral submissions in his defence. It followed that although the law provided for automatic application of the measure, as happened in the present case, the measure was applied only after disciplinary proceedings had been carried out in compliance with the relevant rules of procedure. In the present case the disciplinary organs had correctly interpreted and applied the law in conformity with the constitutional principles invoked. The applicant's complaint was therefore ill-founded.

26. During the proceedings before the Administrative Court, the applicant's request to suspend the effects of the Commission's decision pending a decision in the administrative proceedings was rejected on 3 May 2013 following an oral hearing. The Administrative Court rejected the request on the grounds that the applicant had not shown what prejudice he

had suffered and bearing in mind the interests of third parties and the crimes of which the applicant had been found guilty by means of a final judgment.

27. The applicant challenged that decision, but the Administrative Appeal Court dismissed his appeal on 5 May 2013.

28. On 7 August 2013 the applicant reiterated his challenges in respect of the constitutionality of Articles 30 and 40 of legislative decree no. 56 of 1995 as well as of Article 51 of law no. 28 of 1991, but this time in the light of the San Marino Fundamental Human Rights Charter and the Convention.

29. An oral hearing took place on 29 August 2013. The decision on the matter was delivered in the main proceedings (see below).

*(ii) The first-instance judgment of the Administrative Court in the main proceedings*

30. By a judgment of 10 October 2013 the Administrative Court dismissed the applicant's claims (by means of a fifty-page judgment).

31. The court held that as it had already stated in various decisions in the present case, its jurisdiction in the instant case was that provided for under law no. 68 of 28 June 1989, as set out in Article 54 of legislative decree no. 56 of 1995, namely judicial review of administrative action (*giurisdizione di legittimita`*). Thus the impugned acts could only be challenged on the basis that the decision in the disciplinary proceedings was not in accordance with the law, had been delivered by a body that did not have the requisite jurisdiction or had been delivered in abuse of power. It was not for the administrative court to assess the facts or conduct leading to the decisions, which was the responsibility of the disciplinary body in accordance with the law. According to jurisprudence, in disciplinary proceedings against lawyers the establishment of the misconduct leading to the disciplinary breach was the exclusive competence of the disciplinary organs. However, the decision was subject to a control concerning its reasonableness, in judicial review proceedings. This was also confirmed by the disciplinary bodies' statements. Other jurisprudence had confirmed that the factual assessment made by the disciplinary organ would be irreproachable as long as it was backed up by sufficient and appropriate reasons, and that judicial review should not extend to an assessment of the evidence or of the gravity of the offence, or the appropriateness of the sanction imposed. The court further noted that those were administrative proceedings and as such were not subject to the guarantees of criminal proceedings.

32. Bearing in mind the above, the court found that the applicant's complaints were ill-founded. Concerning constitutional legitimacy, the court confirmed the decision it had delivered on 23 July 2013 (see paragraph 25 above) and noted that the applicant had again reiterated those complaints.

*(iii) The appeal proceedings before the Administrative Appeal Court*

33. On 13 November 2013 the applicant appealed against the Administrative Court judgment of 10 October 2013. He once again reiterated his claims concerning constitutional legitimacy (mentioned above) and the lack of adequate reasoning given in this respect by the previous organs. He also challenged the first-instance court's findings in so far as they had repeatedly relied on previous decisions given in his case. They had also relied on Italian jurisprudence without considering the fact that San Marino law was different from Italian law. He further considered that the first-instance court had wrongly interpreted and applied relevant laws in relation to each and every one of his claims.

34. On 11 February 2014 the applicant submitted further written submissions on his grounds of appeal. On 11 February 2014 the parties agreed that no oral pleadings were necessary since the arguments had already been exhaustively made.

35. The applicant's appeal was dismissed and the judgment of the Administrative Court was upheld on appeal on 24 March 2014.

The Administrative Appeal Court noted that the issues of constitutional legitimacy had once again been reiterated. It considered that the CAN and the Commission were disciplinary organs to which Articles 6 and 13 of the Convention, or the equivalent articles of the San Marino (human rights) Declaration did not apply. Furthermore, the Administrative Appeal Court highlighted that the law distinguished between minor crimes and more grave crimes when regulating the application of the various applicable sanctions, including disbarment from a profession. The application of such a serious sanction, which only applied to more serious crimes, in the applicant's case had been wilfully and consciously decided by the legislator, leaving no discretion to the disciplinary Commission. It was worth noting that in San Marino, lawyers also carried out the functions of notaries, and a criminal conviction for making false declarations in public documents was objectively incompatible with the function of a public official which was, by definition, the guarantor of truthfulness and the veracity of documents. Thus, the fact that the law provided an automatic application of the sanction in such cases could not be considered unreasonable or disproportionate, and was thus in conformity with Article 4 of the San Marino Declaration.

36. As to the applicant's complaints concerning the first-instance administrative decision, the court found that the first-instance court had given relevant and sufficient reasons in its decision and that its findings were valid. The mere fact that in some instances that decision had relied on Italian jurisprudence only served to further the reasoning in relation to the arguments raised. As to each of the remaining grounds of appeal, the Administrative Appeal Court entered into each and every one and reached the conclusion that they were all manifestly ill-founded.

*3. Subsequent events*

37. The decision to disbar the second applicant was communicated to the Employment Office, which in turn and in accordance with Articles 12, 13, 49 and 50 of law no. 28 of 1991, namely the legal framework concerning the exercise of the liberal professions, struck him off its list of liberal professionals. That entailed the automatic cancelling of his VAT number (*codice operatore economico*) as from 18 February 2013.

## B. Relevant domestic law

*1. The Criminal Code*

38. Article 295 of the Criminal Code, concerning the offence of making false declarations in public documents, reads as follows:

> "A public official who, in the exercise of his duties, counterfeits or alters a public deed shall be liable to imprisonment and interdiction from public office of the third degree. The same actions carried out by an individual attract a sanction of imprisonment of one lesser degree."

*2. Legislative decree no. 56 of 26 April 1995*

39. Article 9 of legislative decree no. 56 of 26 April 1995, concerning the professional ethics of lawyers and notaries, and in particular their general duties, reads as follows:

> "The conduct of anyone registered with the Chamber of Advocates must be irreprehensible and characterised by the decorum, dignity and morality associated with his functions, even beyond the exercise of his or her profession as a lawyer or notary."

40. Article 39, concerning sanctions, reads as follows:

> "The Chamber of Advocates and Notaries may institute (*dar corso*) disciplinary proceedings against an advocate or notary registered with the Bar, who, in the exercise of the profession, has by any means tarnished the dignity of the profession and the decorum and independence of the forensic and notarial sector, or has been lacking in the performance of his or her professional duties. Having established responsibility in accordance with the gravity of the violation and applying the principle of progressive application of sanctions (*principio di gradualità*), the Chamber shall apply one of the following sanctions:
>
> (a) - private reprimand (*il richiamo*) to be applied in the case and as provided for in Article 47 of Law no. 28 of 1991
>
> - formal reprimand (*la censura*) to be applied in the case and as provided for in Article 48 of Law no. 28 of 1991
>
> - temporary suspension from the exercise of the profession to be applied in the case and as provided for in Article 49 of Law no. 28 of 1991
>
> - removal from the Bar (*la cancellazione dall'albo*) to be applied in the case and as provided for in Article 50 of Law no. 28 of 1991

- disbarment from the profession (*la radiazione dalla professione*) to be applied in the case and as provided for in Article 51 of Law no. 28 of 1991.

41. Article 54 reads as follows:

"Decisions of ... the Chamber of Advocates and Notaries may be appealed against by means of a challenge (*opposizione*) and an application before the administrative courts as provided for by Law no. 68 of 28 June 1989."

*3. Law no. 28 of 20 February 1991*

42. Under Article 37 of law no. 28 of 20 February 1991 (concerning discipline in the liberal professions – *libere professioni*), decisions of the Chamber of Advocates and Notaries may be challenged before the National Commission of Liberal Professions, and the latter's decisions may be challenged under Article 44 of the same decree (see below).

43. In so far as relevant, the pertinent articles of law no. 28 of 20 February 1991 read as follows:

**Article 43**

"The National Commission of Liberal Professions has the following functions:

N. to decide by administrative means challenges to decisions made by the Chamber of Advocates and Notaries on disciplinary matters".

**Article 44**

"The decisions of the National Commission of Liberal Professions may be challenged before the Administrative Tribunal established by Law no. 68 of 28 June 1989."

**Article 45 (1)**

"Disciplinary action may be taken in respect of any conduct by a professional, both during the exercise of his functions and beyond such exercise, in so far as such conduct may be detrimental to his own professional dignity, as well as to the decorum and independence of the category of professionals to which he belongs."

**Article 46**

The Chamber of Advocates and Notaries, may, if it considers it appropriate in view of the nature and gravity of the impugned conduct, and applying in so far as possible the principle of progressive application of sanctions (*principio di gradualità*), apply the following sanctions

- private reprimand (*il richiamo*)

- formal reprimand (*la censura*)

- temporary suspension from the exercise of a profession

- removal from the Bar (*la cancellazione dall'albo*)

- disbarment from the profession (*la radiazione dalla professione*).

**Article 51**

"The sanction of disbarment from the profession is provided for in cases in which the professional has been punished for committing an offence, by means of a final judgment, to imprisonment, interdiction from public office, or to disbarment from the profession, for a term of more than two years. Disbarment from the profession is mandatory in cases where a guilty verdict has been passed by means of final judgment for the offences referred to in Articles 295, 296, 354, 358 and 361 of the Criminal Code, irrespective of the punishment handed down in the specific case.

**Article 52**

Decisions in respect of the preceding Articles nos. 48, 49, 50 and 51 can be adopted only following disciplinary proceedings.

The rules relevant to each respective profession shall determine the method and form of disciplinary proceedings, ensuring in every case the principle of proportionality of the sanction to the infraction committed, the obligation to notify the accused of the accusation, as well as to the latter's right of defence.

**Article 53**

"... A professional who has been disbarred may be reinstated only if he or she has been rehabilitated and it has been shown that his or her conduct has been irreprehensible."

### *4. Law no. 68 of 28 June 1989*

44. Administrative proceedings are provided for by law no. 68 of 28 June 1989 concerning jurisdiction in administrative matters, the review of legitimacy and administrative sanctions. The relevant provisions, in so far as relevant, read as follows:

**Chapter I – on acts which can be impugned**

**Article 13 (judicial remedies)**

"Whosoever has a direct and immediate interest in respect of an act on the part of the public administration, social security institution or autonomous State agencies or entities which is deemed to be detrimental to his interests may seek a judicial remedy (*può ricorrere in via giurisdizionale*) before a first-instance administrative judge." ...

**Chapter II - on first-instance administrative proceedings**

**Article 15 (Competence)**

"The first-instance administrative judge is competent to decide in the first instance. If the request is upheld, the impugned act is annulled." (The judge may also award costs and give instructions as to the enforcement of the decision.)

**Chapter III – on appeal proceedings ...**

**Article 19 (time-limits and means of appeal)**

"The decisions of the first-instance administrative judge may be appealed against before the administrative appeal judge within thirty days of the notification given by the registry. ... The appeal does not suspend the enforcement of the measure."

45. Other relevant provisions of domestic law can be found in *Biagioli*, (dec.), cited above.

# COMPLAINTS

46. The applicant complained under Article 6 §§ 1 and 2 of the Convention, under its criminal head, that the administrative jurisdictions had applied a sanction automatically without ascertaining his responsibility. Indeed, the administrative courts could not be considered as courts having full jurisdiction, given their limited powers of assessment. As admitted by such courts, they could only assess the legitimacy of the measure taken by the disciplinary bodies. The applicant further argued that this automatic application of the sanction had impinged on his presumption of innocence.

The applicant further invoked Article 4 of Protocol No. 7 to the Convention, complaining that he had been punished twice for the same offence.

Invoking Article 8 of the Convention, the applicant complained that his disbarment from the profession had been unlawful and disproportionate, and thus contrary to Article 8 of the Convention.

Invoking Article 1 of Protocol No. 1 to the Convention, the applicant complained that his disbarment from the profession had been disproportionate, since his income had been largely reduced once he could no longer practise his profession.

# THE LAW

## A. Article 6

47. The applicant complained, invoking Article 6 §§ 1 and 2 of the Convention under its criminal head, that the administrative jurisdictions had applied a sanction automatically without ascertaining the applicant's responsibility. Indeed, the administrative courts could not be considered as courts having full jurisdiction, given their limited powers of assessment. As admitted by such courts, they could only assess the legitimacy of the measure taken by the disciplinary bodies. The applicant further argued that

this automatic application of the sanction had impinged on his presumption of innocence.

48. The provisions read as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

*1. Applicability of Article 6 § 1*

49. 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, in particular, *König v. Germany*, 28 June 1978, §§ 87-95, Series A no. 27; *Diennet v. France*, 26 September 1995, § 27, Series A no. 325-A; *Philis v. Greece (no. 2)*, 27 June 1997, § 45, *Reports of Judgments and Decisions* 1997-IV; *Gautrin and Others v. France*, 20 May 1998, § 33, *Reports* 1998-III; *W.R. v. Austria*, no. 26602/95, §§ 28-30, 21 December 1999; *Goriany v. Austria*, no. 31356/04, § 21, 10 December 2009; and *Di Giovanni v. Italy*, no. 51160/06, § 36, 9 July 2013).

50. In the present case, the disciplinary authorities and subsequently the administrative courts decided that the applicant was to be disbarred. There can thus be no doubt that the applicant's right to continue to practise as a lawyer was at stake in the disciplinary proceedings. Consequently, Article 6 § 1 applies under its civil head.

51. Given the applicant's arguments, the Court will examine whether the criminal head of Article 6 § 1 also applies to the disciplinary proceedings at issue.

52. First, the Court reiterates that the concept of a "criminal charge" within the meaning of Article 6 § 1 is an autonomous one. The Court's established case-law sets out three criteria, commonly known as the "*Engel* criteria" (see *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22), to be considered in determining whether or not there was a "criminal charge" within the meaning of Article 6 § 1 of the Convention. The first criterion is the legal classification of the offence under national law, the second is the very nature of the offence, and the third is the nature and degree of severity of the penalty that the person concerned risks incurring. The second and third criteria are alternative, and not necessarily cumulative. This, however, does not exclude a cumulative approach where a separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a criminal charge (see, in particular, *Jussila v. Finland* [GC], no. 73053/01, §§ 30-31, ECHR 2006-XIII, and

*Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, § 82, ECHR 2003-X).

53. Under the law in San Marino the wrongdoing under Article 9 of legislative decree no. 56 of 1995 and under Article 45 (1) of law no. 28 of 1991, which hereinafter will be referred to as "professional misconduct", belongs to the sphere of disciplinary law. It is the subject of disciplinary proceedings conducted in accordance with the rule of the relevant professional body, and the relevant decisions of the disciplinary body are subject to appeal before the administrative courts. The matter to which the applicant refers, namely that the sanction was a result of the criminal proceedings, is not entirely correct in so far as the criminal judges did not hand down that sanction. Rather, it was handed down separately in disciplinary proceedings, so such an argument does not alter their classification as disciplinary proceedings.

54. Regarding the nature of the offence, the Court observes that Article 9 of legislative decree no. 56 of 1995 and Article 45 (1) of law no. 28 of 1991 are not addressed to the general public but to the members of a professional group. In particular, the former provision is addressed to members of a professional group possessing a special status, namely lawyers and notaries (see *Müller-Hartburg v. Austria*, no. 47195/06, § 44, 19 February 2013, concerning disciplinary proceedings against lawyers and trainee lawyers; and *Brown v. the United Kingdom* (dec.), no. 38644/97, 24 November 1998, concerning disciplinary proceedings against a solicitor). The same applies to Article 45 (1) when read in conjunction with Article 43 of law no. 28 of 1991 (see relevant domestic law). Although the facts which gave rise to the disciplinary proceedings also constituted a criminal offence, the impugned conduct in the disciplinary proceedings concerned ethical standards, not criminal ones. The fact that an act which can lead to a disciplinary sanction also constitutes a criminal offence is not sufficient to consider a person responsible under disciplinary law as being "charged" with a crime (ibid.; also see *Moullet v. France* (dec.), no. 27521/04, 13 September 2007, concerning disciplinary proceedings against a civil servant; and *Vagenas v. Greece* (dec.), no. 53372/07, 23 August 2011).

55. The Court notes that Article 9 of legislative decree no. 56 of 1995 is designed to ensure that members of the Bar comply with the relevant ethical rules in connection with the conduct required of their profession. The provision aims at respecting the profession's decorum and dignity as well as the morality accompanying such functions. In other words, it is intended to protect the honour and reputation of the profession, as well as maintaining the trust the public places in the legal profession (compare *Müller-Hartburg*, cited above, § 45). The same objectives are sought by means of the relevant provisions of law no. 28 of 1991. Having regard to those elements, the Court finds that the wrongdoing referred to in the two

laws is not criminal but disciplinary in nature (see ibid., and *mutatis mutandis*, *Brown*, (dec.), cited above).

56. Turning to the nature and degree of severity of the sanction which the applicant risked incurring, the Court notes that the sanction of disbarment, like temporary suspension of the right to practise, or striking off the register, as well as compulsory retirement, are typical disciplinary sanctions (see, *mutatis mutandis*, *Moullet*, (dec.), cited above). Although this is a severe sanction as it affects first and foremost a lawyer's civil right to continue exercising his or her profession, its aim is to restore the confidence of the public by showing that in cases of serious professional misconduct, the relevant disciplinary body will prohibit the lawyer or notary concerned from practicing. Finally, although not crucial to this finding, the Court notes that being disbarred does not necessarily have permanent effect. Pursuant to Article 53 of law no. 28 of 1991 (see Relevant domestic law above) a professional who has been disbarred may be reinstated if he or she has been rehabilitated and it has been shown that his or her conduct has been irreprehensible. In sum, the nature and severity of the sanctions the applicant risked incurring and the sanction actually imposed were not such as to render the charges "criminal" in nature. Consequently, the disciplinary proceedings against the applicant did not involve the determination of a "criminal charge" within the meaning of Article 6 § 1 of the Convention.

57. Having regard to the considerations set out above, the Court concludes that Article 6 § 1 of the Convention applies under its civil head to the disciplinary proceedings at issue, whereas it does not apply to these proceedings under its criminal head.

*2. Access to a court*

**(a) General principles**

58. As to the merits of the complaint, the Court reiterates that even where an adjudicatory body determining disputes over "civil rights and obligations" does not comply with Article 6 § 1 in some respect, no violation of the Convention can be found if the proceedings before that body are "subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 § 1" (see *Albert and Le Compte v. Belgium*, 10 February 1983, § 29, Series A no. 58 and *Fazia Ali v. the United Kingdom*, no. 40378/10, § 75, 20 October 2015).

59. The Convention organs have acknowledged in their case-law that the requirement that a court or tribunal should have "full jurisdiction" will be satisfied where it is found that the judicial body in question has exercised "sufficient jurisdiction" or provided "sufficient review" in the proceedings before it (see, amongst many authorities, *Zumtobel v. Austria*, 21 September 1993, §§ 31-32, Series A no. 268-A; *Bryan v. the United Kingdom*, 22 November 1995, §§ 43-47, Series A no. 335-A; *Müller and Others*

*v. Austria* (dec.), no. 26507/95, 23 November 1999; and *Crompton v. the United Kingdom*, no. 42509/05, §§ 71 and 79, 27 October 2009).

60. In adopting this approach, the Convention organs have had regard to the fact that it is often the case in relation to administrative-law appeals in the member States of the Council of Europe that the scope of judicial review over the facts of a case is limited and that it is in the nature of review proceedings that the reviewing authority reviews the previous proceedings, rather than taking factual decisions.

61. In assessing the sufficiency of judicial review available to an applicant, the Court will have regard to the powers of the judicial body in question (see, for example, *Gradinger v. Austria*, 23 October 1995, § 44 Series A no. 328-C; *Bryan*, §§ 44-45, cited above; *Potocka and Others v. Poland*, no. 33776/96, § 55, ECHR 2001-X; and *Kingsley v. the United Kingdom* [GC], no. 35605/97, § 32, ECHR 2002-IV), and to such factors as (a) the subject matter of the decision appealed against, in particular, whether or not it concerned a specialised issue requiring professional knowledge or experience and whether it involved the exercise of administrative discretion and if, so, to what extent; (b) the manner in which that decision was arrived at, in particular, the procedural guarantees available in the proceedings before the adjudicatory body; and (c) the content of the dispute, including the desired and actual grounds of appeal (see, *inter alia*, *Sigma Radio Television Ltd v. Cyprus*, nos. 32181/04 and 35122/05, §§ 152-54, 21 July 2011 and references cited therein; and, more recently, *Galina Kostova v. Bulgaria*, no. 36181/05, § 59, 12 November 2013 and *Fazia Ali*, cited above, § 78).

62. The Court has held in a number of cases, where the court in question did not have full jurisdiction as such but had examined the issues raised before it concerning the adjudicatory body's decision, that the judicial review in the case was sufficient and that the proceedings complied with Article 6 § 1 of the Convention. This has been the case, for example, where upon judicial review the applicants' submissions on their merits or grounds of appeal were examined point by point, without the court having to decline jurisdiction in replying to them or in ascertaining various facts (see, *inter alia*, *Zumtobel*, § 32, cited above; *Fischer v. Austria*, 26 April 1995, § 34, Series A no. 312; and *Bryan*, § 47, *Müller* and *Potocka*, §§ 56-58, cited above; see also the Commission decisions in *Kristavcnik – Reutterer v. Austria*, no. 22475/93, 10 September 1993; *ISKCON and 8 others v. the United Kingdom*, no. 20490/92, 8 March 1994; *Stefan v. the United Kingdom*, no. 29419/95, 9 December 1997; *Wickramsinghe v. the United Kingdom*, 9 December 1997 no. 31503/96; and *X. v. the United Kingdom*, no. 28530/95, 19 January 1998). Similarly, in the case of *Crompton* (cited above, §§ 78-80) the Court held that there had been no violation of Article 6 § 1 as the High Court had examined the central issue in the case before it.

**(b) Application to the present case**

63. The Court notes that the applicant has complained that he did not have access to a court with full jurisdiction to determine his claims.

64. As to the subject matter of the decision appealed against, the Court notes that the decision challenged before the administrative courts was taken by the CAN and confirmed by the Commission, both of which are disciplinary organs. The Court observes that while on certain occasions disciplinary proceedings may require professional knowledge or experience, in the present case the disciplinary organs had responsibility, in the main, for making findings of fact. In the present case, those organs enjoyed no discretion whatsoever in determining which sanction applied, since the legislator had already made that mandatory upon it being established that the individual concerned was guilty of the relevant crime (see, *mutatis mutandis, Galina Kostova*, cited above, § 61, and contrast *Crompton*, cited above, § 76).

65. In connection with the manner in which the decisions were arrived at, the Court observes that a number of procedural guarantees were available to the applicant in the disciplinary proceedings: he was given details of the accusation against him and the decision was arrived at after a hearing had been held; he was represented by counsel, and had the opportunity (of which he availed himself) to make written and/or oral submissions. Furthermore, it was open to the applicant to make a wide range of complaints in the context of both those proceedings and the administrative proceedings. The Court observes that the applicant reiterated his complaints in front of each body, including in interlocutory requests, and that each of his allegations, including those concerning objective partiality and the breach of the principles of natural justice and of proportionality, were subject to review by the administrative courts which, like the previous organs, rejected his arguments.

66. Lastly, with regard to the content of the dispute, in the present case the dispute between the parties did not centre on a question of fact determined by the disciplinary organs which the administrative courts had no jurisdiction to revisit (see *Sigma Radio Television Ltd,* cited above, § 166; and, by contrast, *Tsfayo v. the United Kingdom,* no. 60860/00, 14 November 2006). The applicant raised a multitude of issues in relation to his case before the disciplinary organs (the CAN followed by the Commission), which he then reiterated before the administrative courts (see paragraph 23 above). However, the entirety of the pleadings concerned issues relating to the law and its application, whether in substance or as a matter of procedure. None of the applicant's complaints related to the establishment of the facts. Indeed, the finding of fact made by those bodies, which was limited to ascertaining whether a criminal judgment against the applicant existed, was not disputed by the parties during the domestic proceedings; nor does the applicant dispute it before this Court. The Court

notes that it is not its task to decide *in abstracto* that the administrative courts would not have examined those issues if raised or that they would have declined jurisdiction to deal with them (see, *mutatis mutandis*, *Sigma Radio Television Ltd*, cited above, § 168).

67. The Court notes that issues raised by the applicant, all of which concerned points of law, were entered into and determined by the administrative courts in adversarial proceedings both at first instance and on appeal, in relevant detail. Indeed, the administrative courts gave clear reasons for the dismissal of the applicant's points (see paragraphs 31 and 35 above). In reaching their own conclusions, they shared those already found by the disciplinary organs and thus reiterated the findings of those organs. They therefore considered that the decisions by the disciplinary organs concerning those complaints had been lawful and reasonable. They also considered that the sanction imposed by law was reasonable (see paragraph 35). Despite the remark made by the first-instance Administrative Court concerning its limited jurisdiction (see paragraph 31 above), which was not reiterated by the Court of Administrative Appeal, those courts entered into all the matters raised by the applicant and did not refuse to deal with any of the issues raised (see *Sigma Radio Television Ltd*, cited above, § 165).

68. Furthermore, the Court observes that had the administrative courts found in favour of the applicant, they could have annulled the impugned decision (see paragraph 44 above) (see *Kingsley* [GC], cited above, § 32, and *Sigma Radio Television Ltd*, cited above, § 159).

69. Having regard to all the above, the Court finds that the scope of the review of the administrative courts in the circumstances of the present case was sufficient to comply with Article 6 of the Convention.

70. It follows that the complaint must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

*3. Article 6 § 2*

71. According to the Court's case-law, the presumption of innocence is infringed if a judicial decision concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court regards the accused as guilty. While the principle of the presumption of innocence enshrined in paragraph 2 of Article 6 is one of the elements of the fair criminal trial that is required by paragraph 1 of that Article, it is not merely a procedural safeguard in criminal proceedings. Its scope is more extensive and requires that no representative of the State or a public authority should declare a person guilty of an offence before their guilt has been established by a "court" (see, amongst other authorities, the judgments *Allenet de Ribemont v. France*, no. 15175/89, 10 February 1995, §§ 35-36; *Daktaras*

*v. Lithuania*, no. 42095/98, §§ 41-42, ECHR 2000-X; *Lavents v. Latvia*, no. 58442/00, § 126, 28 November 2002; *Butkevicius v. Lithuania*, no. 48297/99, §§ 50-52, ECHR 2002-II and the partial decision in *Moullet*, (dec.), cited above).

72. The Court has already found that the administrative disciplinary proceedings in the instant case did not give rise to a "criminal charge" against the applicant within the meaning of Article 6 § 1 of the Convention (see paragraph 57 above). However, even assuming that Article 6 § 2 was applicable in the present case (see *Allen v. the United Kingdom* [GC], § 93, no. 25424/09, ECHR 2013, for further general principles on the application of the provision), the provision safeguards the right to be "presumed innocent until proved guilty according to law". In the present case the applicant had been found guilty by a decision of 28 September 2012 of the Criminal Appeal Court. In consequence, there was no longer any doubt about his guilt during the subsequent disciplinary proceedings.

73. It follows that the complaint must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

### B. Article 4 of Protocol No. 7

74. The applicant complained that following his findings of guilt, he had been punished by a disciplinary sanction which had been applied to him automatically. In his view, the disciplinary sanction was criminal in nature and was based on the same facts that had given rise to his criminal punishment. Thus he considered that there had been a violation of the *ne bis in idem* principle, as guaranteed by Article 4 of Protocol No. 7.

75. The Court reiterates however that this provision must be understood as prohibiting the prosecution or trial of a second "offence" in so far as it arises from identical facts or facts which are substantially the same (see *Sergey Zolotukhin v. Russia* [GC], no. 14939/03, § 82, ECHR 2009). The Court has already held that the administrative disciplinary proceedings in the instant case did not give rise to a "criminal charge" against the applicant within the meaning of Article 6 § 1 of the Convention (see paragraph 57 above) (see, *a contrario*, *Grande Stevens and Others v. Italy*, nos. 18640/10, 18647/10, 18663/10, 18668/10 and 18698/10, § 222, 4 March 2014). It follows that the provision is not applicable to the present case.

76. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention and must be rejected pursuant to Article 35 §§ 3 (a) and 4.

### C. Article 8 and Article 1 of Protocol No. 1

77. Invoking Article 8 and Article 1 of Protocol No. 1 to the Convention, the applicant complained that his disbarment from the profession had been unlawful and disproportionate, particularly given that it had been adopted by organs which were not Convention compatible (as evidenced by his other complaints lodged in this application). In particular, he had been unable to defend himself in respect of his responsibility before the administrative courts, which, under domestic law, could not enter into the merits of his conduct and had solely applied the mandatory measure. He stressed that his income had been largely reduced once he could no longer practise his profession.

78. The applicant submitted that in his letter to the Court of 1 July 2013 in the context of his application no. 8162/13, he had stated that he was not complaining under Article 1 of Protocol No. 1 at that stage. In the present application he claimed that in the context of application no. 8162/13 he had subsequently informed the Court solely for information purposes that the administrative proceedings had come to an end. In the present application he argued that it was only following the judgment of 24 March 2014 that he had been able to understand the consequences of the violation, and it was therefore for the Court to re-examine his complaint afresh.

79. The Court notes that in his application no. 8162/13 (particularly in the letter of 1 July 2013, see *Biagioli*, (dec), cited above, § 99), the applicant made relevant arguments concerning his property rights, citing explicitly Article 1 of Protocol No. 1 and the excessive burden resulting from the relevant decisions, which at that stage were not yet final. Although in a letter of 24 April 2014 he stated that the disciplinary proceedings were not, "at that stage, a subject matter of the application already presented to the Court", at the same time he informed the Court that the administrative proceedings which had been pending had come to an end by a judgment of 24 March 2014 which he himself had submitted to the Court. It follows that the applicant was well aware of the judgment and its consequences and that the Court made an examination of that complaint (irrespective of the ambiguous way in which it had been raised or not raised) having received the relevant information and submissions.

80. The Court, in application no. 8162/13, rejected the applicant's complaint under Article 1 of Protocol No. 1 for the following reasons:

> "102. The Court notes that, as repeatedly held by the domestic courts, the disbarment of the second applicant was in accordance with the law, namely Article 51 of Law no. 28 of 20 February 1991. The Court considers that the measure pursued the legitimate aim of protecting the public by ensuring the integrity of those carrying out the legal profession and also the proper administration of justice.
>
> 103. As to the proportionality of that measure the Court notes that the second applicant had not been disbarred as a result of a minor disciplinary offence. His disbarment was a result of his having been found guilty of a criminal offence, namely

> making false declarations in public documents, for which he was sentenced to two years' imprisonment. The Court considers such a situation to be serious and incompatible with the expectations arising from the second applicant's profession as a lawyer and a notary, not only because of the criminal element but particularly because of the relation between the offence at issue and the mentioned professions. Against this background, the Court considers that in providing for the impugned sanction (applied by the relevant organs), which was established by the legislator and not subject to individual discretion, the respondent State did not overstep its margin of appreciation and, regard being had to the legitimate aim pursued, did not fail to strike a 'fair balance' between the second applicant's interests and the general interest in ensuring the protection of the community and the proper administration of justice."

81. The Court notes that, even assuming that the complaint is not inadmissible pursuant to Article 35 §§ 2 (b) of the Convention, as being substantially the same as that examined under application no. 8162/13, the complaint is in any event inadmissible for the reasons announced in that decision (quoted above). Furthermore, in so far as it can be considered that the applicant is raising an additional argument in connection with the procedural guarantees afforded to him in those proceedings, as explained in his other complaints before the Court, the Court has already held that all the applicant's above complaints under the Convention are inadmissible as manifestly ill-founded, and in particular that the domestic courts entered into each and every complaint raised by the applicant (see paragraph 67 above).

82. It follows that the complaint under Article 1 of Protocol No. 1 must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

83. In so far as the complaint is raised under Article 8, the Court notes that the complaint is based on the same premises and arguments raised under Article 1 of Protocol No. 1. For the same reasons as those mentioned above, the Court finds that in the present case, in applying the measure prescribed by law in accordance with the relevant domestic procedures, the respondent State did not overstep its margin of appreciation and, regard being had to the legitimate aim pursued, did not fail to strike a "fair balance" between the applicant's interests and the general interest in ensuring the protection of the community and the proper administration of justice.

84. It follows that the complaint under Article 8 must also be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously.

*Declares* the application inadmissible.

Done in English and notified in writing on 6 October 2016.

Abel Campos
Registrar

Mirjana Lazarova Trajkovska
President