

Gautrin and Others v. France - 21257/93, 21258/93, 21259/93 et al.

Judgment 20.5.1998

Article 6

Administrative proceedings

Article 6-1

Impartial tribunal

Public hearing

No public hearing before Ile-de-France regional council and disciplinary section of National Council of ordre des médecins and lack of impartiality of those bodies:
violation

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I. ARTICLE 6 § 1 OF THE CONVENTION

A. Applicability

Disciplinary proceedings in which what was at stake was right to continue to practise medicine as a private practitioner gave rise to "*contestations* (disputes) over civil rights".

B. Compliance

1. Publicity

(a) Government's preliminary objection (failure to exhaust domestic remedies)

Objection based on failure to appeal on points of law to *Conseil d'Etat* – appeal would not have been an "adequate" and "effective" remedy in case before Court as Decree no. 48-1671 of 26 October 1948 expressly precluded holding in public hearings before professional disciplinary bodies and it was *Conseil d'Etat's* settled case-law that provisions of Article 6 § 1 were inapplicable to proceedings before them.

Conclusion: objection dismissed (unanimously).

(b) Merits of complaint

Recapitulation of Court's case-law.

It was not suggested that circumstances existed to permit dispensing with a public hearing – fact that hearing before *Conseil d'Etat* would have been in public was irrelevant.

Conclusion: violation (unanimously).

2. Impartiality

(a) Government's preliminary objections (failure to exhaust domestic remedies)

(i) Failure to exercise right of challenge

Remedy not "effective": complaint not of bias on part of any individual member of disciplinary bodies in question, but of "objective" bias of those bodies; right to challenge could only be exercised in respect of individual members, impossible to challenge all members of the disciplinary section of the National Council of the *ordre des médecins*.

(ii) Failure to appeal on points of law

Objection had been raised before Commission: Government not estopped.

Remedy not "adequate": if *Conseil d'Etat* had quashed decision of disciplinary section of National Council of *ordre*, it would not have been bound to rule on merits of case – if it had remitted the case, it could only have done so to same body without there being any requirement that it be differently constituted; it would have been only after a second appeal on points of law that *Conseil d'Etat* would have been required to decide case finally.

Conclusion: objections dismissed (unanimously).

(b) Merits of complaint

Conferring duty of adjudicating on disciplinary offences on professional disciplinary bodies did not in itself infringe Convention – it was nevertheless necessary that either professional disciplinary bodies themselves complied with requirements of Article 6 § 1 or that they were subject to subsequent review by a judicial body that had full jurisdiction and did provide the guarantees of that Article.

There were two tests for assessing whether a tribunal was impartial. First consisted in seeking to determine personal conviction of a particular judge in a given case. Second – which was only one applicable in case before Court – consisted in ascertaining whether judge offered sufficient guarantees: Court verified whether applicants' fears were objectively justified.

There was a worrying connection between competitors of SOS Médecins and professional disciplinary bodies – composition of latter tended to justify applicants' fears.

Conclusion: violation (unanimously).

II. ARTICLE 50 OF THE CONVENTION

A. Damages

Pecuniary damage: Court could not speculate as to conclusions disciplinary bodies would have reached if breaches found had not occurred.

Non-pecuniary damage: judgment constituted sufficient just satisfaction.

B. Costs and expenses

Partial reimbursement ordered.

C. Other claims

Court had no jurisdiction.

Conclusion: respondent State to pay applicants specified sums (unanimously).

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