

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

THIRD SECTION

CASE OF NIKOLOV v. BULGARIA

(Applications nos. 13777/18 and 49090/18)

JUDGMENT

STRASBOURG

10 December 2024

This judgment is final but it may be subject to editorial revision.



In the case of Nikolov v. Bulgaria,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Darian Pavli*, President*,
Oddný Mjöll Arnardóttir,
Diana Kovatcheva*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 13777/18 and 49090/18) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Svetlozar Anastasov Nikolov ("the applicant"), respectively on 15 March 2018 and 13 October 2018;

the decision to give notice of the complaints concerning lack of access to a court and lack of a public hearing under Article 6 § 1, as well as about a breach of the right to appeal under Article 2 of Protocol No. 7 to the Bulgarian Government ("the Government") represented by their Agent, Ms I. Stancheva-Chinova, from the Ministry of Justice, and to declare inadmissible the remainder of the applications;

the parties' observations;

Having deliberated in private on 19 November 2024,

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

SUBJECT MATTER OF THE CASE

1. The applications concern two sets of disciplinary proceedings against the applicant, a lawyer in private practice, conducted by the bodies of the Bar – the Disciplinary Tribunal of the Varna Bar ("the lower disciplinary tribunal") and the High Disciplinary Tribunal of the Bar ("the high disciplinary tribunal"). In the first set of proceedings, in a final decision of 15 September 2017, the applicant was found guilty of professional misconduct for having negligently represented a client. Disciplinary sanctions – a suspension of his right to practice for nine months and a fine of 2,300 Bulgarian levs (BGN), approximately 1,150 euros (EUR) – were imposed on him. In the second set of proceedings, in a final decision of 13 April 2018, the high disciplinary tribunal imposed a suspension of his right to practise for twelve months, for having behaved unethically and unruly in an open court hearing and entered into a confrontation with the judge.

THE COURT'S ASSESSMENT

I. JOINDER OF THE APPLICATIONS

2. The Court will examine the applications jointly in a single judgment, due to their similar subject matter.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

A. Access to a court

3. The applicant complained that he had had no access to a court. He claimed that the disciplinary tribunals which had heard the cases against him did not correspond to the characteristics of a "tribunal" under that provision. They lacked structural independence and impartiality, and personal impartiality as they were composed of lawyers practising in the same city as him, had refused his requests for recusal and he could not challenge their decisions before a court.

4. The complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds; it must be declared admissible.

5. The general principles concerning the right of access to a court have been set out in *Grzęda v. Poland* ([GC], no. 43572/18, §§ 342-43, 15 March 2022), and those on the right to a "tribunal established by law" in *Guðmundur Andri Ástráðsson v. Iceland* ([GC], no. 26374/18, §§ 218-34, 1 December 2020).

6. 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, among others, *Müller-Hartburg v. Austria*, no. 47195/06, § 39 with further references, 19 February 2013, which concerned lawyers), as in the present case.

7. A tribunal need not be a court of law integrated within the standard judicial machinery (see *Xhoxhaj v. Albania*, no. 15227/19, § 284, 9 February 2021). Conferring the duty of adjudicating on disciplinary offences on professional disciplinary bodies does not in itself infringe the Convention (see *Frankowicz v. Poland*, no. 53025/99, § 60, 16 December 2008).

8. All but one of the applicant's numerous requests for recusal of the different disciplinary tribunals' members (see paragraph 1 above) were rejected. Although the lower disciplinary tribunal comprised lawyers practising in the applicant's city, that fact alone does not question the members' personal impartiality.

9. It is not necessary to assess whether the lower disciplinary tribunals were a "tribunal" under Article 6 § 1, since the high disciplinary tribunals (see paragraph 1 above), which examined the cases as a final instance, had

the characteristics of a "tribunal" (compare, *mutatis mutandis*, *Pengezov v. Bulgaria*, no. 66292/14, § 38, 10 October 2023). They carried out an adjudicatory function, and had full jurisdiction to examine all questions of fact and law relevant to the dispute before it and determine matters within their competence on the basis of legal rules and following proceedings conducted in a prescribed manner. They delivered final and binding decisions. They were "established by law" – the Bar Act ("the Act"), and their composition was established "in accordance with the law", namely the Act's relevant provisions (section 138(1) of the Act). The lack of random selection of the compositions' members does not change that conclusion (compare *Miroslava Todorova v. Bulgaria*, no. 40072/13, § 120, 19 October 2021). The members were non-professional judges with technical competence (section 128 of the Act). They were elected by the General Assembly of the attorneys in the country (section 113(2) of the Act), were subject to an oath (section 9(1) of the Act) and were required to possess the moral and professional qualities for the lawyers' profession (section 4(1)(5) of the Act): all elements pointing to moral integrity. They could not adjudicate longer than two consecutive mandates (section 115(1) of the Act).

10. The high disciplinary tribunals are independent from the executive, since the Government neither appoints their members nor removes them from office. There are guarantees that the members are independent from the other bodies of the Bar too, as they are directly elected by secret ballot by the General Assembly of registered attorneys (sections 99(1) and 114(1) of the Act) and not subordinate to or subject to instructions from any of the Bar's bodies (contrast *Sramek v. Austria*, no. 8790/79, § 42, 22 October 1984). There is a procedure for their recusal (section 139(3) of the Act) with rather broad grounds (section 137(3) of the Act) – another guarantee for impartiality. The only lawyer from the applicant's city, who had been placed in the high disciplinary tribunal's composition in the first set of proceedings, recused himself at their start and was replaced. Moreover, doubts about judges' impartiality based solely on the rulings' reasons and the cases' outcome are not objectively justified (see *Previti v. Italy* (dec.), no. 45291/06, § 258, 8 December 2009).

11. The high disciplinary tribunals which heard the applicant's cases did not lack structural or personal independence or impartiality.

12. As they met the requirements of a "tribunal", he did have access to a court and there has been no violation of Article 6 § 1.

B. Public hearing

13. The applicant complained of the lack of a public hearing before the disciplinary tribunals, despite his requests.

14. This complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must be declared admissible.

15. The general principles concerning the right to a public hearing were summarised in *Ramos Nunes de Carvalho e Sá v. Portugal* ([GC], nos. 55391/13 and 2 others, §§ 187-92, 6 November 2018), and more recently in *Straume v. Latvia* (no. 59402/14, § 124, 2 June 2022). The right to a public hearing can be infringed even if the non-public character of the proceedings has not appreciably affected their fairness (see *Vasil Vasilev v. Bulgaria*, no. 7610/15, § 105, 16 November 2021).

16. In both sets of disciplinary proceedings, the high disciplinary tribunals – which the Court has found above met the characteristics of a "tribunal" (see paragraph 11 and 12 above) – held hearings; thus the applicant had the opportunity to state his case orally before them.

17. Although he repeatedly requested that the hearings be open to the public, in both sets of proceedings they were closed to the public. That did not stem from an absolute legal provision, but resulted from those tribunals' decisions. The situations examined did not fall among the exceptional circumstances which may justify dispensing with a public hearing (see *Ramos Nunes de Carvalho e Sá*, cited above, § 190). There were contested facts and issues with the applicant's and the interested party's credibility, and the questions raised were neither purely legal nor of limited technical scope or complexity.

18. It is hard to accept the reasoning advanced by the high disciplinary tribunal and the Government concerning the first set of proceedings. That was, first, that the Act listed an exhaustive list of persons entitled to participate in the proceedings and that no other rules mandatorily provided for other participants. No further justification was provided. The second reason was a necessity to protect the private life of all parties or the secrecy of the attorney-client relationship. However, the applicant's client herself (an interested party in those proceedings) had publicly disclosed and discussed her claims on television and in the press; only part of the proceedings could have been closed to the public, not their entirety (compare *Vasil Vasilev*, cited above, § 107-08); or, if a risk of a breach of professional confidentiality or an intrusion on private life had become apparent during the hearings, the tribunal could have ordered that they continue in camera (see *Diennet v. France*, 26 September 1995, § 34, Series A no. 325-A).

19. The high disciplinary tribunal in the second set of proceedings reasoned that the principle of public hearings, while a fundamental institute of the judicial system, was not automatic in disciplinary proceedings. The Act did not explicitly provide for it and Article 6 of the Convention envisaged exceptions from it.

20. The Court finds that the tribunal made no attempt to confine the measure of excluding the public to what was strictly necessary. No specific

objective appears to have been pursued either. If, as the Government claimed, the purpose had been to avert the highly likely disturbance of public order in the hearing room, preventing the public from attending because of such a hypothetical possibility does not appear justified, since the tribunal could have sanctioned such instances if and when those occurred.

21. There has been a violation of Article 6 § 1 of the Convention on the account of lack of public hearing.

III. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 7 TO THE CONVENTION

22. The applicant complained that he had had no right to appeal against the disciplinary tribunals' decisions.

23. The concept of "criminal offence" in Article 2 § 1 of Protocol No. 7 corresponds to that of "criminal charge" in Article 6 § 1 (see *Grosam v. the Czech Republic* [GC], no. 19750/13, § 111, 1 June 2023).

24. To interpret the concept of "criminal offence" the Court has used the "Engel criteria" developed in *Engel and Others v. the Netherlands* (8 June 1976, § 82, Series A no. 22) in relation to Article 6 § 1. Those comprise the legal classification of the offence under national law, the very nature of the offence, and the severity of the penalty that the person concerned risked incurring (see *Gestur Jónsson and Ragnar Halldór Hall v. Iceland* [GC], nos. 68273/14 and 68271/14,§§ 75-82, 22 December 2020).

25. The legal provisions applied in the applicant's case, under the Act and the Code of Attorneys' Professional Conduct, belong to the sphere of disciplinary law (compare *Müller-Hartburg*, cited above, § 43, and *Biagioli v. San Marino* (dec.), no. 64735/14, § 53, 13 September 2016). The proceedings were not conducted by the public prosecutor and criminal courts, but by disciplinary authorities. The applicable rules were not of a general character but were directed at a particular professional group. Deprivation of liberty was never at stake for the applicant. Although the maximum amount of fine which he risked incurring (eight minimum monthly wages under section 133(1)(2) of the Act) could be regarded as punitive, it was not in itself sufficient to qualify the measure as criminal (compare *Müller-Hartburg*, cited above, §§ 46-47). The sanction of striking the applicant off the register of lawyers as a temporary suspension of the right to practise is a typical disciplinary sanction, which does not have a permanent effect and does not render the charges "criminal" in nature. Its aim is to restore the public's confidence in cases of serious professional misconduct (see *Biagioli*, cited above, § 56).

26. Consequently, the disciplinary proceedings did not involve the determination of a "criminal charge" under Article 6 § 1 and that provision does not apply to these proceedings under its criminal head (compare, *mutatis mutandis*, *Ramos Nunes de Carvalho e Sá*, §§ 124-28, and *Grosam*,

§§ 118-22, both cited above). Accordingly, Article 2 § 1 of Protocol No. 7 does not apply to those proceedings.

27. This complaint is incompatible *ratione materiae* with the Convention and must be rejected pursuant to Article 35 §§ 3 (a) and 4.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. The applicant claimed BGN 200,000 (approximately EUR 102,260) for non-pecuniary damage. He also claimed BGN 311,942 (approximately EUR 159,500) for pecuniary damage. He further claimed BGN 6,000 for legal costs before the Court and BGN 9,420 for costs and expenses incurred in the domestic disciplinary proceedings against him (approximately EUR 7,880 in total).

29. The Government were of the opinion that the applicant's claims were arbitrary and, in any event, excessive.

30. With regard to the applicant's claim in respect of pecuniary damage, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. As far as non-pecuniary damage is concerned, in view of the nature of the violation found, this finding is sufficient to compensate the applicant for any non-pecuniary damage sustained as a result of the violation of his right to a public hearing under Article 6 § 1. As to costs and expenses, it is reasonable to award the applicant EUR 500 under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaints concerning access to a court and lack of a public hearing admissible and the remainder of the applications inadmissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention as a result of lack of public hearings and no violation as regards alleged lack of access to a court;

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

5. *Holds*
   (a) that the respondent State is to pay the applicant within three months EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into Bulgarian levs at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 December 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova	Darian Pavli
Deputy Registrar	President