



Disciplinary proceedings against and sanctions imposed on the applicant, a judge and President of the Bulgarian Union of Judges, violated her right to freedom of expression

In today's **Chamber judgment**¹ in the case of **Miroslava Todorova v. Bulgaria** (application no. 40072/13) the European Court of Human Rights held, by a majority, that there had been:

by five votes to two, **no violation of Article 6 (right to a fair trial)** of the European Convention on Human Rights;

unanimously, **a violation of Article 10 (freedom of expression)** of the Convention, and

unanimously, **a violation of Article 18 (limitation on use of restrictions on rights) read in conjunction with Article 10.**

The case concerned two sets of disciplinary proceedings against the applicant, who had been a judge and the President of the Bulgarian Union of Judges at the relevant time. The Supreme Judicial Council (SJC) ordered a reduction of her salary, followed by her dismissal on the grounds of delays in dealing with her cases.

The Court noted that disciplinary proceedings before the SJC comprised a number of procedural guarantees. Thus the applicant had been aware of the charges against her, and had been able to appear in person before the disciplinary board to present evidence in her defence. The Court observed that the Supreme Administrative Court held jurisdiction to consider any factual matter which it deemed relevant, as well as the legal characterisation of disciplinary offences ascribed to the applicant's acts or omissions. In the present case, therefore, the Supreme Administrative Court had held sufficiently broad jurisdiction, and the procedural shortcomings alleged by the applicant before the SJC had been amenable of rectification, as appropriate, in the framework of the judicial proceedings. As regards the proceedings before the Supreme Administrative Court, the Court found no lack of independence or of impartiality on the part of that court and no infringement of the other aspects of fairness of proceedings, and accordingly found no violation of Article 6.

Bearing in mind the fundamental importance of freedom of expression on matters of public concern such as the functioning of the judiciary and the need to protect judicial independence, the Court considered that the disciplinary proceedings against the applicant and the sanctions imposed on her had amounted to an interference with the exercise of her right to freedom of expression which had not been "necessary in a democratic society" in pursuing the legitimate aims set out in Article 10 of the Convention.

Having regard to all the facts of the case, the Court concluded that the main aim of the disciplinary proceedings against the applicant and of the sanctions imposed on her by the SJC had not been to ensure compliance with the time-limits for concluding cases, but to penalise and intimidate her on account of her criticism of the SJC and the executive.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Principal facts

The applicant, Miroslava Stefanova Todorova, is a Bulgarian national who was born in 1972 and lives in Sofia (Bulgaria). She has been a judge since 1999, and at the material time was in post in the criminal division of Sofia City Court.

In October 2009 Ms Todorova was elected President of the main professional association of judges, the Bulgarian Union of Judges (BUJ). In that capacity she made public statements on many occasions criticising the action of the SJC, particularly in connection with certain appointments of court presidents, as well as the Government's judicial policy. In the last few months of 2009, and then in 2010, the BUJ, through the intermediary of its President, made several public statements denouncing comments made to the press by the then Minister of the Interior.

On 14 September 2010 the President of the Sofia Court of Appeal sent the Inspector General of the SJC a letter setting out a list of pending cases which had produced judgments for which reasons had still not been published over three months after their delivery, which had prevented the court of appeal from examining them. The SJC Inspector General ordered an audit of the criminal division of Sofia City Court.

In November 2010 the BUJ publicly criticised the appointment procedure under which the new President of the Supreme Administrative Court, G.K., had been nominated.

In June 2011, on the occasion of the appointment procedure for the President of Sofia City Court, Ms Todorova and a large number of other judges opposed the candidacy of V.Y., a judge known to be a close friend of the Minister of the Interior, and expressed their preference for a different candidate.

On 26 July 2011, the SJC Inspector General presented the SJC with a proposal to bring disciplinary proceedings against judges with large backlogs of cases. The disciplinary board noted that Ms Todorova had delayed the delivery of judicial decisions or the giving of reasons in 57 cases, which had amounted to "systematic failure to meet deadlines" for the purposes of section 307 (4) (1) of the Judiciary Act. The board proposed that the SJC order a 15% reduction in her salary for two years as a disciplinary sanction. On 19 January 2012 the SJC adopted the proposal by 18 votes in favour and 1 abstention. Ms Todorova appealed to the Supreme Administrative Court against the SJC's decision.

Subsequently, having noted that Ms Todorova had been responsible for considerable delays in three cases and that she had given instructions to input incorrect data into the court's electronic register, the disciplinary board proposed that the SJCS impose the heaviest possible disciplinary sanction on her, that is to say dismissal. On 12 July 2012 the SJC decided by a majority of 19 votes to 3 with 2 abstentions, to dismiss her from her functions. The applicant appealed to the Supreme Administrative Court to set aside that decision.

Ms Todorova's appeal against the SJC's decision to reduce her salary as a disciplinary sanction was examined at first instance by a three-judge formation of the Supreme Administrative Court, which decided to set aside the SJC's decision. The SJC appealed on points of law to an extended formation of the Supreme Administrative Court. On 18 December 2012 the Supreme Administrative Court, sitting as a five-judge formation, set aside the judgment and dismissed the appeal. The 15% salary reduction for a two-year period became final and was enforced.

In her appeal against the SJC's decision ordering her dismissal, Ms Todorova had relied on the lack of impartiality of the SJC and the incompatibility of that decision with substantive and procedural law and with the aim of the law. The Supreme Administrative Court dismissed her appeal. Ms Todorova appealed on points of law. By judgment of 16 July 2013 the Supreme Administrative Court, ruling as a five-judge formation, stated that the applicant had been held responsible for the delays noted in

two cases, but ordered the referral of the case file to the SJC for review of the sanction to be imposed. Ms Todorova was reinstated in post on 18 July 2013.

Following the referral by the Supreme Administrative Court, the disciplinary board proposed that the SJC impose on the applicant the sanction of a 25% salary cut for two years. The SJC considered the case on 27 March 2014, and Ms Todorova was sanctioned with a demotion to the lower-level court (Sofia District Court) for a two-year period.

Ms Todorova appealed to the Supreme Administrative Court to set aside that decision and requested a stay of execution of the sanction, submitting that it was in the public interest that she be allowed to complete the examination of her cases pending. A three-judge formation of the Supreme Administrative Court examined the action to set aside the decision, and partly allowed it. The three-judge formation of the Supreme Administrative Court considered that the demotion constituted an appropriate sanction but that its duration should be reduced to one year. The applicant and the SJC appealed on points of law. The Supreme Administrative Court dismissed the applicant's appeal and upheld the two-year demotion sanction.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial), the applicant complained about various aspects of the fairness of the disciplinary proceedings against her. Under Article 8 (right to respect for private life), she maintained that the disciplinary sanctions and the publicity given to the disciplinary proceedings had infringed her right to respect for her private life and her reputation. Relying on Article 10 (freedom of expression), she contended that the disciplinary proceedings against her had amounted to a disguised penalty for her publicly expressed views criticising the work of the SJC and the repeated intervention of the executive in pending cases. Under Article 14 (prohibition of discrimination) taken together with Article 10, she argued that the interference with her right to freedom of expression had been discriminatory. Relying on Article 18 (limitation on use of restrictions on rights), she alleged that the disciplinary proceedings had pursued an ulterior purpose.

The application was lodged with the European Court of Human Rights on 18 June 2013.

Judgment was given by a Chamber of seven judges, composed as follows:

Tim Eicke (the United Kingdom), *President*,
Faris Vehabović (Bosnia and Herzegovina),
Armen Harutyunyan (Armenia),
Gabriele Kucsko-Stadlmayer (Austria),
Pere Pastor Vilanova (Andorra),
Ana Maria Guerra Martins (Portugal) and,
Ekaterina Salkova (Bulgaria), *ad hoc Judge*,

and also Ilse **Freiwirth**, *Section Deputy Registrar*.

Decision of the Court

Article 6

The Court observed that the Supreme Judicial Council (SJC) was a body established by law which, when examining disciplinary cases, had full jurisdiction to appraise the impugned facts and to determine the responsibility of an accused judge, after conducting proceedings as regulated by law. It could therefore be considered, in line with the case-law of the Court, as a judicial body with full jurisdiction to which the safeguards set out in Article 6 were applicable.

The Court noted that the disciplinary proceedings before the CSM comprised a number of procedural safeguards. Thus the applicant had been aware of the allegations against her, and had been able to appear in person before the disciplinary board to present evidence in her defence. She had been aware of the board's proposed conclusion and been able to present written observations before the plenary SJC.

Nevertheless, the applicant had complained of the lack of impartiality on the part of some members of the SJC. In the present case the Court did not consider it necessary to determine whether the proceedings before the SJC had been compatible with Article 6 of the Convention as regards their conclusions on the Supreme Administrative Court's compliance with the requirements of that provision and the scope of that court's scrutiny.

The Court observed that the Supreme Administrative Court had held jurisdiction to consider any factual matter which it deemed relevant, as well as the legal characterisation as disciplinary offences ascribed to the applicant's acts or omissions. It would appear therefore that the Supreme Administrative Court had held sufficiently broad jurisdiction, and the procedural shortcomings alleged by the applicant before the SJC had been amenable of rectification, as appropriate, in the framework of the judicial proceedings.

As regards objective impartiality, the Court noted that the applicant's appeal against the SJC's decision to dismiss her had been assigned to the sixth division of the Supreme Administrative Court following a change in the apportionment of different types of cases among the divisions of the Supreme Administrative Court, which had been decided on by the President of that court in March 2012. That change had affected not only the applicant's case but also all appeals lodged against the SJC's decisions. The Court observed that G.K., the President of the Supreme Administrative Court – who the applicant claimed was biased against her on account of the criticism levelled by the BUJ when he had been appointed – had not been included in the formations which had ruled on the applicant's cases. The Court considered that the fact that the applicant had expressed a view as President of the BUJ on the appointment of the President of the Supreme Administrative Court could not be taken to mean that all the decisions he had subsequently taken in the exclusive framework of his administrative functions had been biased. Moreover, the applicant had been able to challenge the decisions given by the formations of the sixth division before five-judge formations from different divisions.

As regards the applicant's criticism concerning the case apportionment system, particularly the fact that only the judge rapporteur had been appointed in a random manner and not the whole trial formation, the Court pointed out that the apportionment of cases within a court was, in principle, a matter for the State's margin of appreciation, and noted that the applicant had not adduced evidence pointing to any lack of impartiality on the part of specific judges having determined her appeals.

The Court noted no lack of independence or impartiality on the part of the Supreme Administrative Court, and found no violation of Article 6 in that regard.

Article 8

The Court reiterated that in the framework of initial disciplinary proceedings the applicant had sustained a 15% reduction in her salary for a two-year period, and later, in the context of a second set of proceedings, the sanction of dismissal, which decision had nevertheless been set aside after the applicant's appeal and replaced with demotion for a period of two years.

The Court observed that whilst the applicant had been deprived of her remuneration for some one year before her dismissal had been set aside by the Supreme Administrative Court, in accordance with domestic law, following such setting aside, she had been able to receive compensation for her loss of salary. Accordingly, the loss of income resulting from the immediate enforcement of the

measure setting aside the dismissal decision had therefore proved temporary. Furthermore, the applicant had not been prevented from engaging in other paid work.

The applicant did not provide any evidence to show that the disciplinary proceedings or the manner in which they had been reported in the media had damaged her professional reputation in such a way as to attain the severity threshold of Article 8 of the Convention. Although the disciplinary proceedings against the applicant had indeed been extensively covered by the media, it would not appear that the publications in question – information from the SJC or various comments published in the press – had been predominantly negative. On the contrary, those publications had reflected both critical and positive opinions, and the publicity surrounding her case had also attracted support for the applicant from legal professionals, journalists and the general public.

Under those circumstances, the Court did not consider that the disciplinary sanctions imposed on the applicant had had an impact on her reputation reaching the level of severity required by Article 8 of the Convention. The complaint therefore had to be rejected.

Article 10

The Court did not overlook the fact that the sanctions had been based formally on grounds of serious breaches of professional duty on the applicant's part, which had been separate from her public pronouncements and whose existence was indisputable. It considered nevertheless that the proceedings against the applicant had been bound up with her public statements. Those proceedings and sanctions could therefore have had a chilling effect on the applicant's exercise of her freedom of expression and on that of all members of the national judiciary.

The order to set aside the dismissal had also been subject to immediate enforcement for a period of about one year, during which the applicant had been removed from office. The Court considered that the dismissal ordered by the SJC and the immediate enforcement of that sanction had incontrovertibly had a chilling effect on the applicant and also on other judges, deterring them from voicing critical opinions on the action of the SJCS, or more generally on issues relating to judicial independence. The Court considered that the domestic authorities had failed to accompany their decisions with relevant and sufficient reasons to explain why the disciplinary proceedings and the sanctions imposed on the applicant had been necessary and proportionate to the legitimate aims pursued in the instant case.

Bearing in mind the fundamental importance of freedom of expression on matter of public concern such as the functioning of the justice system or the need to protect judicial independence, the Court considered that the disciplinary proceedings against the applicant and the sanctions imposed on her had amounted to an interference in the exercise of her right to freedom of expression which had not been "necessary in a democratic society" in order to achieve the legitimate aims pursued by Article 10 of the Convention.

This finding should not, however, be interpreted as ruling out the possibility of prosecuting a judge for breaches of his professional duty resulting from exercising his freedom of expression, provided that such action could not be suspected of constituting retaliation for the exercise of that fundamental right. In order to dispel any suspicion in this connection, the domestic authorities had to be able to establish that the proceedings in question had exclusively pursued one or more of the legitimate aims set out in the second paragraph of Article 10.

In the present case the Court found a violation of Article 10 of the Convention.

Article 14 read in conjunction with Article 10

The Court observed that the applicant's complaint essentially reprised the issues which it had already examined above under Article 10. It consequently held that no separate issue arose under Article 14 and that it was not necessary to formulate any separate finding under that provision.

Article 18

The Court first of all observed that it considered that the complaint put forward by the applicant under Article 18 of the Convention concerned a fundamental aspect of the present case.

The Court had already noted that the disciplinary measures imposed on the applicant had been directly linked to her public statements. The Court further observed that there had been controversy between the applicant's association of judges and the executive. In particular, the Minister of the Interior had made statements to the press personally targeting the applicant and criticising her work as a judge.

The Court considered those facts sufficient to conclude that the disciplinary proceedings and the sanctions imposed by the SJC on the applicant had also pursued an aim not covered by the Convention: punishing her for her pronouncements as President of the BUJ.

The Court observed that the SJC had come down particularly hard on the applicant, particularly by initially ordering her dismissal. The exceptional severity and the disproportionate nature of that sanction had been noted by broad sections of the legal and judicial community in Bulgaria, by the Minister of Justice herself, by the media, the NGOs and also the international organisations. It should also be noted here that in the framework of both sets of disciplinary proceedings, the SJC had taken account of the delays having led to the time-barring of the applicant's disciplinary liability, and that error had had to be corrected by the Supreme Administrative Court and had, in particular, been used to justify the setting aside of the applicant's dismissal.

The Court pointed out that the applicant, in carrying out her activities within the BUJ, had been exercising her right of association and freedom of expression, and that there had been nothing to suggest that those activities had been unlawful or incompatible with the judicial code of ethics.

In the light of the foregoing considerations, it was alarming to note an apparent intention to use disciplinary procedure to retaliate against the applicant for her views.

In conclusion, having regard to all the facts of the case, the Court considered that, regardless of the fact that the applicant's dismissal had ultimately been set aside by the Supreme Administrative Court, the main aim of the disciplinary proceedings against the applicant and of the sanctions imposed on her by the SJC had been, not to ensure compliance with the time-limits for concluding cases, but to penalise and intimidate her on account of her criticism of the SJC and the executive.

There had therefore been a violation of Article 18 of the Convention read in conjunction with Article 10.

Just satisfaction (Article 41)

The Court held that Bulgaria was to pay the applicant 1,340 euros (EUR) in respect of costs and expenses.

Separate opinion

Judges **Harutyunyan** and **Salkova** expressed a joint partly dissenting opinion. This opinion is annexed to the judgment.

The judgment is available only in French.

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Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Denis Lambert (tel : + 33 3 90 21 41 09)

Tracey Turner-Tretz (tel : + 33 3 88 41 35 30)

Inci Ertekin (tel : + 33 3 90 21 55 30)

Neil Connolly (tel : + 33 3 90 21 48 05)

Jane Swift (tel : + 33 3 88 41 29 04)

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