



Disciplinary proceedings for enforcement officer were unfair

In today's **Chamber** judgment¹ in the case of [Grosam v. the Czech Republic](#) (application no. 19750/13) the European Court of Human Rights held, by 4 votes to 3, that there had been:

a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights.

The case concerned issuing of a fine by the Supreme Administrative Court, sitting as a disciplinary court for enforcement officers, in disciplinary proceedings to an enforcement officer for misconduct, and his subsequent appeal to the Constitutional Court.

The Court found that the disciplinary chamber had not been an “independent and impartial tribunal” because in particular the process for selection of lay assessors had not been transparent and their independence could not have been assured, and the tribunal as a whole had not been objectively impartial as some of the assessors had been Mr Grosam’s direct competitors.

A legal summary of this case will be available in the Court’s database HUDOC ([link](#))

Principal facts

The applicant, Jan Grosam, is a Czech national who was born in 1963 and lives in Prague.

At the relevant time in this case, Mr Grosam worked as an enforcement officer (*soudní exekutor*) in charge of enforcement of, among other things, final civil court decisions and arbitration awards on the State’s behalf. In 2010 a disciplinary action was lodged by the Minister of Justice against Mr Grosam for alleged misconduct with the disciplinary chamber for judges (*kárný senát*) of the Supreme Administrative Court, acting as a disciplinary court.

The Minister of Justice proposed that the applicant be fined at the outset. The applicant argued that his guilt had to be proven as the Code of Criminal Procedure had to apply by default, and no evidence had been provided to that effect. The court found him guilty and fined him 350,000 Czech korunas (about 12,650 euros).

Mr Grosam appealed to the Constitutional Court, arguing that criminal-procedure law had not been followed, in particular presumption of innocence, the duty of the court to gather evidence, and the right of appeal. He furthermore asserted that he had been charged with a criminal offence and the disciplinary court was not a “highest tribunal” within the meaning of the European Convention and its Protocol No. 7.

In September 2012 that appeal was dismissed. The Constitutional Court stated that it did not review compliance with ordinary laws, only with constitutional law, and found that the disciplinary court had provided convincing and logical reasons for its decision. It concluded that “... the applicant’s arguments [did] not lead to the conclusion that the constitutional appeal [was] well-founded.”

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.

Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1, 2 and 3 (d) (right to a fair trial) and Article 2 of Protocol No. 7 to the Convention (right to appeal in criminal matters), the applicant complained, in particular, that the presumption of innocence had not been respected in his case; that the Constitutional Court had not addressed many of his arguments; and that there had been no appeal possible against the Supreme Administrative Court's decision, which he viewed as coming under criminal law, despite the fact that it could not be considered the "highest tribunal" given its composition and the lack of sufficient guarantees as to its expertise and independence as it had been comprised of six members, out of whom only two had been professional judges.

The application was lodged with the European Court of Human Rights on 13 March 2013.

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

Krzysztof **Wojtyczek** (Poland), *President*,

Tim **Eicke** (the United Kingdom),

Pauliine **Koskelo** (Finland),

Gilberto **Felici** (San Marino),

Erik **Wennerström** (Sweden),

Aleš **Pejchal** (the Czech Republic),

Ksenija **Turković** (Croatia),

and also Liv **Tigerstedt**, *Deputy Section Registrar*.

Decision of the Court

[Article 6 regarding the right to a fair trial](#)

The Court ruled that the applicant's complaints fell to be examined under Article 6 and that its civil head was applicable to the proceedings. It next had to be established whether the disciplinary chamber of the Supreme Administrative Court had been an "independent and impartial tribunal established by law". It noted that the applicant challenged neither the technical competence and moral integrity of the professional judges nor their appointment, but the objective impartiality of the non-professional judges and their selection procedure.

As regards the independence of the bench of the chamber, the Court noted that the pre-selection process of lay assessors – assessors had been drawn by lot from lists made of nominations entirely at the discretion of specifically chosen persons (the President of the Chamber of Enforcement Officers the Prosecutor General, the President of the Czech Bar Association and deans of faculties of law of the public universities) – had not been transparent, and there had been a lack of predetermined selection criteria. Moreover, there had been no guarantees against outside pressure and potential close proximity to the Minister of Justice. This had tarnished the appearance of independence.

Concerning the objective impartiality of the chamber, the Court shared the applicant's concern that one third of its members had been his direct competitors.

The Court held that the safeguards of independence of the lay assessors on the bench had been insufficient, calling into question the impartiality of the disciplinary chamber as a whole.

Concerning the Constitutional Court, the European Court noted that that body did not have jurisdiction to review compliance with ordinary law. While it could have found that the procedure had not been Convention compliant, it could not have conducted a full rehearing and could not have remedied the shortcomings of the disciplinary chamber.

As the disciplinary chamber had not met the requirements of an “independent and impartial tribunal” and the Constitutional Court had not been able to examine the case in full, the applicant had been denied a fair trial, in violation of Article 6 § 1 of the Convention.

Other allegations under Article 6

The Court considered that it had examined the main issues of the proceedings before the disciplinary chamber already, and so there was no reason to give a separate ruling on the remaining complaints relating to these proceedings.

It found the complaint concerning the proceedings before the Constitutional Court to be manifestly ill-founded as there was no appearance of any violation of a Convention right.

Article 46 (binding force and enforcement of judgments)

The Court concluded that it fell to the respondent State to take any general measures appropriate to resolving the problems that had led to the Court’s findings and to preventing similar violations from taking place in the future.

However, it stressed that this did *not* impose an obligation to reopen all similar cases that had since become final (*res judicata*) in accordance with Czech law.

Article 41 (just satisfaction)

The Court held that the Czech Republic was to pay the applicant 4,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinions

Judges Eicke, Koskelo and Wennerström expressed a joint dissenting opinion, which is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.