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

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The scope of the *Conseil d'État*'s review of the penalty of compulsory retirement imposed on an ambassador complied with Article 6 § 1 of the Convention

In today's **Chamber** judgment[1] in the case of Dahan v. France (application no. 32314/14) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 § 1 (right to a fair hearing/right to an impartial tribunal) of the European Convention on Human Rights.

The case concerned a set of disciplinary proceedings brought against Mr Dahan for inappropriate behaviour towards female staff members during his time as an ambassador, culminating in a penalty of compulsory retirement ordered by the President of the Republic. The issue raised before the Court was the observance of the principle of impartiality during the domestic proceedings.

The Court held at the outset that the civil aspect of Article 6 § 1 of the Convention was applicable to the facts of the case. It went on to note that neither the authority responsible for conducting the internal administrative procedure, which entailed the issuing of an opinion by a disciplinary board, nor the authority empowered to impose the penalty, was a judicial body. The Court inferred from this that it was unnecessary to ascertain whether those administrative authorities had taken their decisions in conformity with the requirements of Article 6 § 1 of the Convention. However, the Court had to be satisfied that the applicant had been able to obtain subsequent review by a judicial body with "full jurisdiction" that satisfied the requirements of Article 6 § 1 and carried out a review of the penalty that was sufficient in scope. In that connection it noted that the *Conseil d'État*, departing from its previous case-law in the dispute involving the applicant, had conducted a full review encompassing the proportionality of the compulsory retirement order. As the scope of that review corresponded to that performed by a body with "full jurisdiction" within the meaning of the Court's case-law, the Court held that the applicant's case had been examined in accordance with the requirements of Article 6 § 1 of the Convention.

Principal facts

The applicant, Paul Dahan, is a French national who was born in 1949 and lives in Paris. In 2009 he was appointed as the Permanent Representative of France to the Council of Europe, an ambassadorial position.

In July 2010 Mr Dahan was the subject of a 360-degree performance appraisal (that is, including by his subordinates). The comments on his performance in the post noted that he carried out his functions in the proper manner but that he had "failed to grasp the level of dissatisfaction caused by shortcomings in the running of the mission and especially by his inappropriate conduct towards the opposite sex".

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.

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In August 2010, following a complaint by a female staff member to the Ministry of Foreign and European Affairs, he was summoned by M.R., the Ministry's director-general of administration and modernisation, and was informed of allegations concerning his behaviour towards women.

In September 2010 the Ministry's inspectorate organised a fact-finding visit to Strasbourg. A few days later M.R., in his capacity as director-general of administration, asked Mr Dahan not to resume his duties in Strasbourg and informed him that he was being "assigned to a position within the central administration". The inspection report, dated 17 September 2010, addressed the applicant's conduct towards the female staff of the Permanent Representation, and in particular his behaviour towards one employee under contract, which according to the report had been particularly unrelenting and had had a negative impact on her physical and mental health. The report recommended that the applicant be removed from his post. By a decree of 30 September 2010 the President of the Republic appointed a new Permanent Representative of France to the Council of Europe.

Mr Dahan subsequently applied to the *Conseil d'État* for judicial review of the decree and of his performance appraisal. In November 2010 he was informed by M.R., in his capacity as chair of the joint administrative committee, that disciplinary proceedings were being instituted against him. The applicant was summoned to appear before the committee, meeting as a disciplinary board, on 7 December 2010. On that date the committee, chaired by M.R., issued its opinion, recommending a penalty of compulsory retirement.

Lastly, on 3 February 2011 the President of the Republic issued a decree imposing a penalty of compulsory retirement on the applicant, which was notified to him on 1 March 2011. On 8 March 2011 the Minister ordered the applicant's dismissal from the diplomatic service with effect from 4 March 2011.

In March 2011 the applicant applied to the *Conseil d'État* for judicial review of the decree of 3 February 2011 and the order of 8 March 2011. In July and November 2013 the *Conseil d'État* dismissed all of Mr Dahan's applications, including his application concerning the penalty of compulsory retirement.

Complaints, procedure and composition of the Court

Relying on Article 6 (right to a fair hearing/right to an impartial tribunal), Mr Dahan alleged that the role played by the director-general of administration of the Ministry of Foreign Affairs (M.R.) in the disciplinary proceedings preceding the imposition of the penalty had breached the impartiality requirement.

The application was lodged with the European Court of Human Rights on 16 April 2014.

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

Síofra **O'Leary** (Ireland), *President*,
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
Lado **Chanturia** (Georgia),
Arnfinn **Bårdsen** (Norway),
Mattias **Guyomar** (France),
Kateřina **Šimáčková** (the Czech Republic),

and also Victor **Soloveytchik**, *Section Registrar.*

Decision of the Court

Article 6

The Court applied the criteria established in *Vilho Eskelinen and Others*[2] and noted that domestic law did not bar an ambassador seeking to challenge his or her compulsory retirement from access to a court. The civil aspect of Article 6 § 1 of the Convention was therefore applicable in the present case.

The Court went on to reiterate its settled case-law as set out in *Ramos Nunes de Carvalho e Sá*[3] according to which, where an administrative body determining disputes over "civil rights and obligations" did not fully satisfy the requirements of Article 6 § 1 of the Convention, no violation of the Convention could be found if the proceedings before that body were subject to subsequent review by a judicial body that had full jurisdiction and provided the guarantees of Article 6 § 1.

Consequently, the Court held that it was not necessary to determine in the present case whether the administrative authorities responsible for conducting the disciplinary proceedings satisfied the requirements of Article 6 § 1 of the Convention. Regardless of the arrangements governing administrative proceedings laid down by the applicable legislation and applied in the present case in the context of the implementation of the legislation and the various functions performed successively by M.R. in his capacity as director-general of administration in the Ministry of Foreign Affairs, the Court deemed it unnecessary to ascertain whether the disciplinary board had issued its opinion in conformity with the requirements of Article 6 § 1 of the Convention.

However, the Court had to be satisfied that the applicant had enjoyed the right to a court and to obtain a determination of the dispute by a court. It therefore had to ascertain whether the applicant had been able to obtain subsequent review by a judicial body with "full jurisdiction" that satisfied the requirements of Article 6 § 1 of the Convention and carried out a review that was sufficient in scope.

As the applicant did not dispute the fact that the judicial proceedings before the *Conseil d'État* had complied with the requirements of Article 6 § 1, the Court focused its examination on the scope of the review carried out by that body. In that connection it noted that the *Conseil d'État*, departing from its previous case-law in the dispute concerning the applicant, had conducted a full review encompassing the proportionality of the order for the applicant's compulsory retirement. Hence, the penalty imposed on the applicant had been subjected to what was termed a "complete" judicial review (also known as a "standard" review) by the *Conseil d'État* that could have resulted, if appropriate, in the penalty in question being set aside. The scope of that review corresponded to that performed by a body with "full jurisdiction" within the meaning of the Court's case-law. As to the merits, the scrutiny performed by the *Conseil d'État* in the present case had encompassed the accuracy of the facts, their legal classification and the proportionality of the penalty.

The Court reiterated that in the specific context of disciplinary proceedings, issues of fact were just as crucial as the legal issues for the outcome of a dispute concerning "civil rights and obligations". In the present case it noted that the *Conseil d'État* had taken care to ascertain that the penalty had not been imposed "on the basis of inaccurate facts" and that the applicant's alleged misconduct had justified a penalty in view of "the documents in the file and the large number of witness statements obtained during the disciplinary proceedings". It was clear from the reasons for its decision that the *Conseil d'État* had assessed the accuracy of the facts so as to be satisfied that the penalty imposed had been justified in law. The Court further observed that the *Conseil d'État* had held a hearing at which the applicant's lawyer had been given an opportunity to speak and to revisit the facts and the

[2] *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-II.
[3] *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 132, 6 November 2018.

applicant's version of events. It also noted that the decision had expressly listed the acts giving rise to the penalty in question.

Furthermore, the penalty imposed on the applicant had been the subject of a full review as to proportionality that assessed the severity of the penalty in relation to the alleged acts. That review had thus enabled the demands of administrative efficiency to be weighed against the applicant's interests. The *Conseil d'État* had taken into account the applicant's history and performance in the post and the seriousness of the acts of which he was accused, as well as his position in the hierarchy, before finding that the decision by the administrative authorities to dismiss him had not been disproportionate. Thus, the scrutiny performed by the *Conseil d'État*, exercising full jurisdiction, in response to the applicant's application for judicial review had been sufficient in scope.

The Court therefore found that the applicant's case had been examined in conformity with the requirements of Article 6 § 1 of the Convention and that there had been no violation of that provision.

The judgment is available only in French.

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