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

Press Release
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The Court declares inadmissible an application from a former high-ranking police officer concerning the disciplinary proceedings against him, finding his complaint under Article 6 § 1 manifestly ill-founded

In its decision in the case of Thierry v. France (application no. 37058/19) the European Court of Human Rights unanimously declared the application **inadmissible**, after rejecting the complaint of a violation of Article 6 § 1 of the Convention as manifestly ill-founded. The decision is final.

The case concerned a set of disciplinary proceedings against the applicant, who at the time was a high-ranking police officer in charge of the Central Office for the Prevention of Drug Trafficking (OCRTIS), resulting in the suspension of his authorisation to serve as a senior police officer.

The applicant contended that the procedure followed had breached the requirements of a fair trial. The Court noted, firstly, that the Senior Police Officers' Appeals Board, to which the applicant had applied seeking the setting-aside of the decision by the principal public prosecutor at the Paris Court of Appeal revoking his authorisation, was empowered not just to set aside the sanctions under challenge but also to vary them. Secondly, its review encompassed the accuracy of the facts, their legal classification and the proportionality of the sanction.

In the present case the Court noted that the Appeals Board had conducted a full review of the merits of the sanction imposed, including with regard to its proportionality.

The Court further noted that the Appeals Board had taken into account the applicant's service record as well as the seriousness of the charges against him and his position in the hierarchy. It concluded that the scope of the Board's review was consistent with that of a review by a judicial body with "full jurisdiction" for the purposes of the Court's case-law.

On the basis of all these considerations, the Court found that the applicant's appeal against the disciplinary measure imposed on him had resulted in a review by the Appeals Board that was sufficient in scope and followed a procedure which was neither alleged nor found to have been in breach of the requirements of a fair trial. The Court therefore rejected the complaint under Article 6 § 1 of the Convention as manifestly ill-founded.

Principal facts

The applicant, François Thierry, is a French national who was born in 1968 and lives in Paris.

On 24 August 2017 Mr Thierry was placed under formal investigation on charges of aiding and abetting the possession, transport, buying, offering to supply or selling of drugs, and aiding and abetting the export of drugs as part of an organised gang, for having organised deliveries of several tonnes of drugs in 2015 through a police informer. The drugs escaped detection by the OCRTIS and were subsequently distributed in France and in other countries.

On 29 August 2017 the applicant was summoned by the principal public prosecutor at the Paris Court of Appeal to a hearing concerning the revocation of his authorisation to serve as a senior police officer, in the context of disciplinary proceedings instituted under Article R. 15-6 of the Code of Criminal Procedure.

On 17 September 2017 the principal public prosecutor gave a press interview.

On 20 and 21 September 2017 the principal public prosecutor heard evidence from Mr Thierry, who was assisted by two lawyers. On 5 October 2017 she issued an order revoking the applicant's authorisation to serve as a senior police officer.

Mr Thierry requested the principal public prosecutor to reconsider her decision. On 7 November 2017 the prosecutor rejected the request on the grounds that she had not found any valid reason to reconsider.

Mr Thierry lodged an application with the Senior Police Officers' Appeals Board seeking the setting-aside of the decision revoking his authorisation. On 7 March 2018, assisted by two lawyers, he gave evidence to the Board. On 4 April 2018 the Board varied the decision revoking his authorisation to serve as a senior police officer and instead suspended his authorisation for two years.

Mr Thierry appealed on points of law against the decision of 4 April 2018. The Criminal Division of the Court of Cassation dismissed the appeal.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 5 July 2019.

Relying on Article 6 § 1 (right to a fair hearing), the applicant alleged that, owing to their status, principal public prosecutors did not satisfy the requirement of independence; that there had been a breach of the impartiality requirement due to the fact that the principal public prosecutor in the proceedings concerning him – which he regarded as criminal rather than disciplinary – had combined the functions of prosecution, investigation and judgment; that, in giving a press interview while the proceedings were ongoing, the principal public prosecutor had failed in her duty of impartiality; and, lastly, that the principle of equality of arms and the adversarial principle had been infringed in that the principal public prosecutor had not adduced certain items of evidence in her possession from the criminal proceedings being conducted in parallel. Relying on Article 6 § 2 (presumption of innocence), the applicant alleged a breach of his right to be presumed innocent in that the disciplinary proceedings had been instituted on the basis of evidence from the criminal proceedings against him, which were still pending at the time the application was lodged

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

Georges **Ravarani** (Luxembourg), *President*,
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),
María **Elósegui** (Spain),
Mattias **Guyomar** (France),
Kateřina **Šimáčková** (the Czech Republic),
Mykola **Gnatovskyy** (Ukraine),

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

Decision of the Court

Applying its findings in the case of Vilho Eskelinen and Others v. Finland, the Court noted that domestic law did not preclude senior police officers from having access to a court in order to challenge the revocation or suspension of their authorisation to serve. The Court therefore held that the civil limb of Article 6 § 1 was applicable.

Article 6 § 1

The Court noted that the applicant's complaints related solely to the first stage of the disciplinary proceedings, which had been conducted before the principal public prosecutor.

As to whether the judicial review had been sufficient the Court stressed, firstly, that the Appeals Board was empowered not just to set aside the sanctions under challenge but also to vary them (Article R. 15-14 of the Code of Criminal Procedure). Secondly, it noted that the Board's review concerned the accuracy of the facts, their legal classification and the proportionality of the sanction.

In that connection the Court reiterated that issues of fact were of crucial importance for the outcome of disciplinary proceedings relating to civil rights and obligations.

With regard to the review of the merits of the sanction the Court observed in the present case that the Appeals Board had conducted a full review encompassing the proportionality of the sanction imposed. Having assessed the substance of the complaints it had also found the sanction to be disproportionate and had varied the decision to revoke the applicant's authorisation, replacing it with a two-year suspension of authorisation, after dismissing some of the complaints against the applicant upheld by the principal public prosecutor.

The Court also noted that the Appeals Board had taken into account the applicant's service record as well as the seriousness of the charges against him and his position in the hierarchy. The scope of that review was consistent with that of a review by a judicial body with "full jurisdiction" for the purposes of the Court's case-law.

It followed from the above that the applicant's appeal against the disciplinary measure imposed on him had resulted in a review by the Appeals Board that was sufficient in scope and followed a procedure which was neither alleged nor found to have been in breach of the right to a fair trial.

Furthermore, the Court observed that the Board had been made up of three judges of the Court of Cassation; that a hearing had been held during which the applicant and his lawyers had been able to make oral submissions and raise factual issues; that the principle of equality of arms and the adversarial principle had been complied with even at that stage as the applicant had been made aware of the evidence adduced and had an opportunity to reply; and, lastly, that the Board had ruled on his appeal in a decision giving factual and legal reasons. The Court also observed that the decisions of the Appeals Board were open to appeal on points of law. In the present case, with regard to the subsequent review of the applicant's case in the context of his appeal on points of law, the Court noted that the Court of Cassation had examined the lawfulness of the Appeals Board's decision.

This part of the application was therefore manifestly ill-founded and had to be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

Article 6 § 2

The Court noted that the applicant had not raised this complaint either before the Appeals Board or in support of his appeal on points of law. It followed that this part of the application was inadmissible for failure to exhaust domestic remedies.

The decision is available only in French.

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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.