

No grounds to doubt independence and impartiality of Supreme Administrative Court in action for damages brought against it concerning an alleged violation of European Union law

In today's **Chamber judgment**¹ in the case of [Doynov v. Bulgaria](#) (application no. 27455/22) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned an allegation that the Supreme Administrative Court had lacked independence and impartiality when ruling on an action for damages, brought against that same court, for a serious breach of European Union law.

The Court noted that, where a court was required to examine an action for damages brought against it, section 7 of the State Liability Act – enacted following the Court's judgment in [Mihalkov v. Bulgaria](#) (no. 67719/01) – expressly provided that the court in question had to relinquish jurisdiction, an exception being made for the two supreme courts. Noting also that the applicant had used the remedies provided for by domestic law and had received a reasoned reply to his arguments on each occasion, the Court found that the manner in which his allegations had been examined was not incompatible with Article 6 of the Convention.

With regard to the applicant's fears that the judges were not impartial, given their professional connection with the Supreme Administrative Court, which was the defendant in the applicant's action, the Court began by noting that the judges who had ruled on the applicant's action were not the same as those who had upheld the decision concerning his placement in police custody.

The Court observed that the status of judges in Bulgaria was governed by the Constitution and the law, which contained numerous safeguards to ensure their independence, and that the Supreme Judicial Council, an independent body, was responsible for the self-government of the judiciary. Accordingly, there did not appear to have been any hierarchical or financial link between the judges who had examined the applicant's action and the Supreme Administrative Court (which, as a legal person, had been a party to the proceedings) that could call into question their impartiality. Furthermore, it did not appear that the imposition of a financial penalty by the Supreme Administrative Court was likely to have any impact on that court's budget and thus on the remuneration of its judges, their working conditions or its functioning.

Principal facts

The applicant, Mihail Ivanov Doynov, is a Bulgarian national who was born in 1973 and lives in Burgas (Bulgaria).

On 25 November 2015 he was arrested on suspicion of making a hoax bomb threat in a cultural centre and taken into police custody. He applied to the administrative courts to have the order to place him in custody set aside. His application was rejected in a judgment of the Burgas Administrative Court,

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.

and, on 6 March 2018, the Fifth Division of the Supreme Administrative Court – sitting as a bench of three judges – upheld that judgment. Both courts found that the order placing him in custody had complied with the relevant provisions of the Ministry of the Interior Act and that, when he was arrested, there had been a reasonable suspicion that he had made hoax bomb threats.

On 16 June 2017 Mr Doynov was formally charged. He was convicted in a judgment of the Burgas District Court, which was upheld on appeal. Since he had no previous convictions, the court decided not to impose a criminal penalty, but merely an administrative fine.

On 7 February 2020 Mr Doynov brought an action for damages under section 2c of the State Liability Act in respect of several alleged violations of European Union law.

In response to a request for clarification by the administrative court, Mr Doynov stated that his complaint concerned several violations of his rights under the EU Charter of Fundamental Rights, in particular his right to legal assistance, his right to liberty, including his freedom of expression, his right to a court and to a fair trial, violations allegedly committed in the course of the proceedings before the administrative courts and in the context of the examination of his criminal complaint.

In a judgment of 4 December 2020, the administrative court reiterated that three conditions had to be met for a Member State to be held liable for a breach of EU law, namely: first, the existence of a legal rule intended to confer rights on individuals; secondly, a sufficiently serious breach of the rule in question; and, lastly, the existence of a direct causal link between that breach and the damage sustained. Turning to the circumstances of the case, it held that the provisions of EU law relied on by the applicant were indeed intended to confer rights on individuals, but that no breach of those rules had been established. It accordingly dismissed the applicant's action.

Mr Doynov appealed to the Supreme Court of Cassation. On 1 March 2021 that court held that it lacked jurisdiction to examine the case and referred it to the Supreme Administrative Court.

Initially, the President of the Fifth Section of the Supreme Administrative Court found that the applicant had not paid the requisite court fee and discontinued the proceedings. The applicant appealed against that decision. He requested the withdrawal of all the judges of the Supreme Administrative Court, on the grounds that that court was the defendant in his action. He also noted that the President had been part of the bench which had delivered the judgment of 6 March 2018, the conformity of which with EU law the applicant was contesting.

In a decision of 29 June 2021, the Supreme Administrative Court, sitting as a bench of three judges, quashed the discontinuation decision and ordered that the proceedings should continue.

On 20 October 2021 the Supreme Administrative Court, sitting as a bench of three judges, held a hearing at which Mr Doynov again requested that all the judges of that court withdraw from his case, on the grounds that the court itself was a party to the proceedings. He suggested that his case be heard by the highest court with jurisdiction in civil matters, namely the Supreme Court of Cassation. This request was rejected at the hearing, as the Supreme Administrative Court held that none of the grounds for withdrawal of judges, as set out in Article 22 of the Code of Civil Procedure, had been made out.

In a judgment of 10 February 2022, a three-judge bench of the Supreme Administrative Court dismissed the applicant's appeal. It held that the rule laid down in the State Liability Act, to the effect that a court hearing an action for damages in which it was itself a defendant had to relinquish jurisdiction in favour of the closest court at the same level of jurisdiction, did not apply to the supreme courts, as the highest court of each judicial branch was unique and could not be substituted. The Supreme Administrative Court further considered that there was no obstacle to its acting as a cassation court in proceedings to which it was a party both as a legal person and as a representative of the State, whose liability was engaged. With regard to the circumstances of the case, it considered that the impartiality of the bench called upon to hear the applicant's case was not open to doubt,

given that none of its members had been on the bench which delivered the decision, the conformity of which with EU law was being challenged.

As to the merits of the applicant's claim, the Supreme Administrative Court reiterated that Article 51 of the EU Charter of Fundamental Rights required the domestic authorities to comply with its provisions only where the application of EU law was in issue, and held that this had not been the case here. It found that the applicant's placement in police custody, ordered in accordance with the provisions in the Ministry of the Interior Act on the suspected commission of a criminal offence, did not concern an area in which the European Union had jurisdiction. It concluded that, in those circumstances, the applicant had no grounds for seeking to establish the State's liability for breaches of EU law and, in consequence, upheld the Administrative Court's judgment.

As the appeal had been dismissed, the applicant was ordered to pay the Supreme Administrative Court 100 Bulgarian levs ((BGN) – 51 euros (EUR)) in respect of the costs of in-house legal representation, pursuant to section 10 of the State Liability Act.

Complaints, procedure and composition of the Court

Relying on Articles 6 (right to a fair hearing) and 13 (right to an effective remedy), the applicant complained that the Supreme Administrative Court lacked independence and impartiality and, in consequence, that the proceedings concerning the action for damages for an alleged breach of EU law had been ineffective.

The application was lodged with the European Court of Human Rights on 25 May 2022.

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

Ioannis **Ktistakis** (Greece), *President*,
Peeter **Roosma** (Estonia),
Lətif **Hüseynov** (Azerbaijan),
Darian **Pavli** (Albania),
Diana **Kovatcheva** (Bulgaria),
Úna **Ní Raifeartaigh** (Ireland),
Mateja **Đurović** (Serbia),

and also Milan **Blaško**, *Section Registrar*.

Decision of the Court

Article 6 § 1

The Court noted at the outset that the applicant was contesting the fact that the Supreme Administrative Court had examined an action in which it had been a defendant, and which sought to establish that same court's liability for a manifest breach of EU law. The Court considered that in these circumstances the judges' professional connection with one of the parties to the dispute could have given rise to doubts on the part of the applicant as to their impartiality and independence *vis-à-vis* the other party to the dispute.

It was therefore necessary to ascertain whether the applicant's doubts in that regard could be considered objectively justified in the present case.

The Court observed, first, that Bulgarian law contained procedural rules designed to guarantee the impartiality of judges. Article 22 of the Code of Civil Procedure provided that a judge was under a duty to withdraw, on his or her own initiative or at the parties' request, if there was any doubt as to his or

her impartiality. Moreover, a court's lack of impartiality was grounds for a higher court to quash its judgments.

Where, more specifically, a court was required to examine an action for damages brought against it, section 7 of the State Liability Act – enacted following the Court's judgment in [Mihalkov v. Bulgaria](#) (no. 67719/01) – expressly provided that the court in question had to relinquish jurisdiction, with an exception being made for the two supreme courts.

The Court further observed that the applicant had used the remedies provided for by domestic law and had received a reasoned reply to his arguments on each occasion.

It noted that the applicant's argument challenging the impartiality of the judges hearing his case made no reference to concrete and specific evidence demonstrating the existence of personal bias on the part of the judges concerned. Moreover, in so far as the applicant's request concerned all the judges of the Supreme Administrative Court, it had not been possible, under the domestic procedural rules, to submit it to a higher court or to other judges of the same court who had not dealt with it previously. His request had therefore entailed a risk of paralysing the respondent State's judicial system.

In the light of these observations, the Court found that the manner in which the applicant's allegations had been examined did not appear to be incompatible with Article 6 of the Convention.

With regard to the applicant's fears as to the judges' impartiality, in view of their professional connection with the Supreme Administrative Court, that is, the defendant in the applicant's action, the Court began by noting that the judges who had ruled on the applicant's action were not the same as those who had upheld the decision concerning his placement in police custody. Equally, it did not appear from the case file that the judges on the bench had played any role in the defence presented by the Supreme Administrative Court, the latter having been represented in the proceedings by a lawyer employed by that body.

With regard to the relevant judges' professional connection with the Supreme Administrative Court, the Court observed that the status of judges in Bulgaria was governed by the Constitution and the law, which provided numerous safeguards to ensure their independence. The Supreme Judicial Council, an independent body responsible for the self-government of the judiciary, decided, among other tasks, on the appointment or promotion of judges, set their remuneration and exercised disciplinary power over them. Accordingly, it did not appear that there had been any hierarchical or financial link between the judges who had examined the applicant's action and the Supreme Administrative Court (which, as a legal person, had been a party to the proceedings) that could call into question their impartiality.

In addition, since the budgetary rules on the payment of compensation by the courts had been changed since the [Mihalkov v. Bulgaria](#) judgment, it did not appear that the imposition of a financial penalty by the Supreme Administrative Court was likely to have any impact on that court's budget and thus on the remuneration of its judges, their working conditions or its functioning.

Similarly, the automatic statutory order requiring the applicant to pay the Supreme Administrative Court a symbolic sum of BGN 100 (EUR 51) in respect of the costs of that court's in-house legal representation could not be regarded as evidence of bias on the part of the judges such as to justify the applicant's fears.

Having regard to all the above considerations, the Court found that the applicant's misgivings as to the independence and impartiality of the judges of the Supreme Administrative Court had not been objectively justified.

It followed that there had been no violation of Article 6 § 1 of the Convention.

The judgment 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.