



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

Information Note on the Court's case-law 255

October 2021

Miroslava Todorova v. Bulgaria - 40072/13

Judgment 19.10.2021 [Section IV]

Article 10

Article 10-1

Freedom of expression

Disciplinary proceedings and sanctions against the President of the judges' association in retaliation against her criticism of the Supreme Judicial Council and the executive:
violation

Article 6

Disciplinary proceedings

Article 6-1

Impartial tribunal

Objective impartiality not impaired when assigning the case to a judicial formation, although there was no randomised selection of all its members: *no violation*

Article 18

Restrictions for unauthorised purposes

Disciplinary proceedings and sanctions against the President of the judges' association in retaliation against her criticism of the Supreme Judicial Council and the executive:
violation

Facts – Two sets of disciplinary proceedings were brought against the applicant, a judge who had been President of the main professional association of judges (the BUJ).

As part of those proceedings, the Supreme Judicial Council (SJC) ordered a reduction in her salary, and then her dismissal, on the grounds that there had been delays in dealing with her cases. However, this latter sanction was set aside by the Supreme Administrative Court and the applicant was ultimately sanctioned by a two-year demotion in post.

The applicant alleged that the disciplinary proceedings had been motivated by her statements as President of the BUJ.

Law – Article 6 § 1 (*alleged lack of independence and impartiality*):

The SJC could be considered, within the meaning of the Court's case-law, as a juridical body with full jurisdiction, to which the safeguards provided for in Article 6 were applicable. However, the Court did not consider it necessary to determine whether the proceedings before the SJC had been compatible with Article 6, having regard to its conclusions below concerning the Supreme Administrative Court, which had held sufficiently broad jurisdiction to correct any procedural shortcomings before the SJC.

The applicant did not cast doubt on the subjective impartiality of any of the members of the judicial formations which had ruled in her case. With regard to objective impartiality, the decision to assign the applicant's case to the sixth division of the Supreme Administrative Court had not been intended to influence the outcome of the proceedings and had not affected the independence or impartiality of the formations in question. The apportionment of different types of cases among the divisions, decided by G.K., the President of the Supreme Administrative Court, had affected all appeals lodged against decisions by the SJC. In addition, that decision had been taken several months before the applicant lodged her appeal. As to G.K.'s alleged bias against the applicant on account of the criticism levelled by the BUJ at the time of his appointment, G.K. had not taken part in the formations which had ruled on the applicant's cases. The BUJ's criticism could not result in a situation where all the decisions taken by G.K. in the sole context of his administrative duties were biased. Moreover, the applicant had been able to challenge the decisions given by the sixth division's formations before five-judge benches from other divisions.

With regard to the five-judge benches at the Supreme Administrative Court, the relevant domestic regulations and practice showed that only the judge rapporteur had to be appointed through a randomised computer-generated system. The method of allocating cases within a court fell, in principle, within the State's margin of appreciation. It followed that the failure to appoint all the members of judicial formations through a randomised system could not suffice to conclude that there had been a breach of Article 6.

As to the appointment by G.K. of members of the five-judge formation, the applicant had not alleged that the judges who ruled in her case had been specifically appointed in order to examine her case, or that they had acted on instructions or under pressure from the President of the Supreme Administrative Court. Furthermore, she had not challenged the members of the Supreme Administrative Court on that ground, although that possibility had been open to her. Lastly, the individual judges had not necessarily ruled against the applicant. The Court saw no evidence of a lack of independence and impartiality on the part of the Supreme Administrative Court.

Conclusion: no violation (five votes to two).

Article 8 :

The Court examined whether the impugned sanctions had had serious negative effects for the aspects constituting the applicant's private life, such as to attract the application of Article 8. Firstly, the applicant had adduced no evidence showing that the reduction in salary had seriously affected the "inner circle" of her private life by placing her in a difficult financial situation. In addition, a judge whose dismissal had been set aside was entitled to compensation. The loss of income had therefore proved temporary in her case. Furthermore, the applicant had not been prevented from engaging in other paid work. Although the relationship with her colleagues might have changed to a certain extent, the applicant had not submitted evidence that the impact of the sanctions imposed was so serious as to amount to an interference in the exercise of her right to respect for private life. She 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: the 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. The impugned disciplinary sanctions had not therefore had consequences such as to attain the severity threshold of Article 8.

Conclusion: inadmissible (incompatible *ratione materiae*).

Article 10 :

The reasons given by the SJC and then by the Supreme Administrative Court to justify the disciplinary sanctions imposed on the applicant related to a failure to comply with her professional obligations, in particular to delays in processing cases, and not to any opinions she had expressed.

However, the SJC Inspector General had informed the press that the audit which gave rise to the first set of disciplinary proceedings had been a response to criticism by judges, including the BUJ, of the appointment of the new president of the Sofia City Court.

More generally, the critical views expressed by the BUJ and other organisations appeared to have provoked a hostile reaction from the SJC and the Government. The Minister of the Interior had made personal attacks on the applicant. The Supreme Administrative Court found that the BUJ and other NGOs, through numerous critical statements, had exerted pressure on the SJC, which it had perceived as a form of warfare.

Moreover, the SJC had been particularly harsh towards the applicant in imposing the most serious sanction, namely dismissal from the judiciary, a penalty which the administrative court subsequently found to be disproportionate and which was accordingly set aside.

Although the proceedings brought against the applicant were part of the measures taken by the authorities against all the judges in the criminal division of the Sofia City Court to ensure compliance with procedural deadlines and thus ensure the proper functioning of the justice system, it was nevertheless the case that, given the context, the chain of events and the gravity of the sanction imposed by the SJC, these measures had also been bound up with her public statements. These penalties had therefore represented an interference with the applicant's right to freedom of expression.

The impugned measures had been prescribed by law and pursued the legitimate aims of guaranteeing the proper functioning of the criminal justice with a view to "maintain the authority of the judiciary" and preventing crime.

At the relevant time the applicant had been President of the BUJ. Her role and her duty consisted primarily in defending the professional interests of the members of that organisation, *inter alia* by making public pronouncements about the functioning of the judicial system, the need for its reform or the imperative of maintaining judicial independence.

In this capacity, the applicant had frequently taken critical positions with regard to the way in which the SJC and the Government were managing and organising the justice system, matters which were undeniably in the public interest. Her statements were part of a wide public debate, ongoing at the relevant time, concerning reform of the judicial system and the efficiency and independence of the judiciary. It followed that the applicant's pronouncements clearly fell within the context of a debate on matters of great public interest, in her capacity as President of the main professional body representing judges. Her freedom of expression ought therefore to have been granted a high degree of protection and benefited from strict scrutiny of any interference, with a

correspondingly narrow margin of appreciation being afforded to the authorities. In addition, in the present case, there was nothing to suggest that there had been no factual basis for the applicant's statements or that they had gone beyond acceptable criticism from a strictly professional perspective.

With regard to the severity of the penalties imposed, the applicant had been subject to an initial sanction of a two-year reduction in salary, and had then been dismissed, and this penalty had been replaced by a two-year demotion. These 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. However, the proceedings against the applicant had been bound up with her public statements. The sanction initially imposed on the applicant, namely dismissal, had been a particularly severe one and had been perceived by third parties as a breach of the applicant's freedom of expression and as a violation of judicial independence. Irrespective of the possibility available to the applicant of obtaining compensation after this measure had been set aside by the Supreme Administrative Court, her dismissal and the immediate enforcement of that sanction for about one year had incontrovertibly had a chilling effect on the applicant and on other judges, deterring them from expressing critical views about the actions of the SJC or, more generally, about matters relating to judicial independence.

With regard to the existence of adequate procedural safeguards, the applicant had been able to present arguments in her defence before both the SJC and the Supreme Administrative Court. However, in its assessment of the applicant's responsibility and the sanctions to be imposed, the Supreme Administrative Court had had no regard to the applicant's functions within the BUJ and her argument that the audits and disciplinary proceedings had been initiated by the SJC as a reprimand for her critical statements. Nor had that court taken into consideration the dissuasive effect of the sanctions imposed on the applicant, in particular the decision to dismiss her, which had been implemented for a year.

The three-judge formation at the Supreme Administrative Court had, however, acknowledged that the disciplinary proceedings against the applicant could have been the consequence of her pronouncements as President of the BUJ, and had considered it necessary to reduce the sanction imposed, but that decision had been set aside by the five-judge bench in that same court, which had confirmed the penalty imposed by the SJC. The Supreme Administrative Court had therefore ignored the conclusions reached by the three-judge formation and had not assessed the matter in a Convention-compliant manner. Thus, 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 present case. These measures had not been "necessary in a democratic society".

This finding did not rule out the possibility of prosecuting judges for breaches of their professional duty following the exercise of their 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.

Conclusion: violation (unanimously).

Article 18 taken together with Article 10:

The Court had found under Article 10 that, in so far as the disciplinary proceedings and the sanctions imposed on the applicant by the SJC had been applied on account of her failure to comply with her professional obligations as a judge, these measures pursued a legitimate aim, and they were also directly linked to her public pronouncements.

Furthermore, the disciplinary proceedings had begun in a context of heated public debate, and there had been controversy between the BUJ and the executive.

Those factors were sufficient to conclude that the measures also pursued an objective that was not prescribed by the Convention, namely that of penalising the applicant for the public stances she had taken as President of the BUJ. The measures thus pursued a plurality of purposes and the Court had to examine whether the ulterior purpose was predominant within the meaning of its case-law. The Court had to take account of all the circumstances of the case.

With regard to the manner in which the events had unfolded: the applicant and her organisation had first expressed strong criticism of the SJC; audits had then been conducted, some of them following reports by judges targeted by those criticisms, and disciplinary proceedings had been brought against the applicant; in certain instances, the disciplinary shortcomings identified concerned delays which had occurred well before the beginning of the audits. This chain of events tended to indicate that the main reason for these audits had been a wish to penalise the applicant, rather than a legitimate wish to correct excessive delays in judicial proceedings.

The clearly hostile opinions expressed towards the BUJ and other NGOs at a meeting of the SJC concerning judges' disciplinary liability, held a few days after the decision to dismiss the applicant, showed that this motive was predominant among at least some of the members of the SJC.

The exceptional severity and the disproportionate nature of the SJC's order that the applicant be dismissed 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. In this connection, it was also noteworthy that in the framework of both sets of disciplinary proceedings, the SJC had taken account of delays in respect of which the applicant's disciplinary liability was time-barred; 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.

However, in carrying out her activities within the BUJ, the applicant had been exercising her right of association and freedom of expression, and there had been nothing to suggest that those activities had been unlawful or incompatible with the judicial code of ethics. In particular, the critical positions expressed by the BUJ were aimed at ensuring greater transparency and limiting interventions by the executive in judicial promotions, with a view to strengthening the independence of the judiciary, the importance of which the Court had frequently emphasised in its case-law. In the light of those considerations, the intention to use disciplinary procedure to retaliate against the applicant for her views seemed particularly alarming.

Moreover, the judicial review of the SJC's decision had not corrected that situation. The applicant had nonetheless argued in her appeals that the disciplinary proceedings had been exclusively motivated by political considerations and were in fact intended to punish her pronouncements as President of the BUJ. A three-judge bench of the Supreme Administrative Court had even made the same findings and had taken account of this in concluding that the sanction imposed on the applicant ought to be reduced. In its final judgment, however, the five-judge bench at the Supreme Administrative Court had merely examined the lawfulness of the SJC's decision under the national disciplinary

legislation. It had thus ignored the applicant's argument and had drawn no practical consequence regarding her disciplinary liability, or the severity of the sanction imposed.

Having regard to all the facts of the case, and regardless of the fact that the applicant's dismissal had ultimately been set aside by the Supreme Administrative Court, the predominant purpose 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 rather to penalise and intimidate the applicant on account of her criticism of the SJC and the executive.

Conclusion: violation (unanimously).

Article 41: no claim lodged for compensation.

(See also *Merabishvili v. Georgia* [GC], 72508/13, 28 November 2017, [Legal summary](#); *Kövesi v. Romania*, 3594/19, 5 May 2020, [Legal summary](#); *Azizov and Novruzlu v. Azerbaijan*, 65583/13 and 70106/13, 18 February 2021, [Legal summary](#))

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