



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

Legal summary

October 2023

Pengezov v. Bulgaria - 66292/14

Judgment 10.10.2023 [Section III]

Article 6

Disciplinary proceedings

Article 6-1

Fair hearing

Judge suspended, to maintain public confidence in court system, after being prosecuted for offences presumed to have been committed in performance of former duties:
violation

Article 8

Article 8-1

Respect for private life

Judge suspended, to maintain public confidence in court system, after being prosecuted for offences presumed to have been committed in performance of former duties:
violation

Facts – The applicant was a judge at the Court of Appeal, of which he was President between 2009 and 2014. Between 2004 and 2009 he had been President of the Military Court of Appeal.

In April 2014 the Military Appellate Prosecutor's Office brought charges against the applicant in connection with his handling of public procurement contracts in the performance of his duties at the Military Court of Appeal. The Chief Prosecutor then asked the Supreme Judicial Council ("the SJC") to suspend the applicant from his duties for the duration of the criminal proceedings. In May 2014 the SJC deliberated over that proposal and, in a vote taken by a show of hands, decided that subsection 2 of section 230 of the Judiciary Act should be applied, which provided that the SJC had the power to suspend judges and prosecutors in the event of their indictment on charges unrelated to their judicial duties. After a second vote, taken by secret ballot, the SJC ordered the applicant's temporary suspension.

The applicant's term of office as President of the Court of Appeal having expired, that office was declared vacant in April 2014. In June 2014 the SJC examined and rejected the applicant's application as the sole candidate for the office of President of the Court of Appeal.

In January 2015 the Supreme Administrative Court, to which the applicant had applied to have the SJC's decision set aside, found that the SJC had not overstepped its discretion. The applicant lodged an appeal on points of law, which was dismissed.

Following an August 2016 amendment to the Judiciary Act that eliminated the option of suspending judges for offences unrelated to their judicial duties, as had been provided for in section 230, the applicant requested his reinstatement. The SJC granted that request in November 2016.

In June 2019 the City Court found the applicant guilty of breaches of his professional duties and sentenced him to one year's imprisonment, suspended. In December 2020 the Court of Appeal overturned that judgment and acquitted him. The SJC rejected the applicant's request for his "retroactive" reinstatement for the period from 2014 to 2016, but agreed to pay him the salary withheld during his temporary suspension.

Law – Article 6 § 1:

(1) *Applicability* – The civil limb of Article 6 was applicable to proceedings relating to the suspension of judges in connection with pending disciplinary proceedings. The Court saw no reason to find otherwise in the present case, where the applicant's temporary suspension had been ordered as a result of his prosecution.

The Court observed that the SJC had decided on the applicant's temporary suspension without his having been afforded the opportunity to appear before that body or to submit arguments in his defence, thereby calling into question the compliance of those proceedings with Article 6, assuming that provision was considered to have been applicable at that stage. However, the Court did not deem it necessary to examine further the question whether Article 6 had been applicable at the stage when the SJC had made its decision, or whether the proceedings before that body had complied with that provision. It reiterated that where an administrative body determining disputes over "civil rights and obligations" did not comply with Article 6 § 1 in some respect, 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 did provide the guarantees of that Article. In the present case, the Court therefore examined the applicant's arguments only in so far as they concerned the Supreme Administrative Court's judicial review of the SJC's decision.

(2) *Merits* –

(a) *Concerning the scope of the Supreme Administrative Court's judicial review of the SJC's decision* – The Court referred to the general principles of its case-law regarding the scope of judicial review, as summarised in its *Ramos Nunes de Carvalho e Sá v. Portugal* judgment.

The Court had previously had occasion to examine the scope of the Supreme Administrative Court's judicial review of SJC decisions. It had examined the powers of the Supreme Administrative Court and the scope of its judicial review and had found that the latter satisfied the requirements of Article 6. It came to the same conclusion in the present case.

The decision in question concerned the necessity of suspending the applicant from his duties as a judge and court president following his indictment, in order to maintain public confidence in the court system. This question involved the exercise of the SJC's discretion as an authority bearing specific responsibility under the Constitution for the autonomous management of the judiciary. The Court had previously recognised the importance of the SJC's responsibilities under the Constitution in a key area from the perspective of the rule of law and the separation of powers, as well as the respect its

decisions were due. However, the present case did not concern the appointment or promotion of a judge, which was an area in which it was evident that the authority entrusted with the management of the judiciary was to be afforded broad discretion, but a judge's temporary suspension, which was a decision that could potentially have grave consequences for the life and career of the person concerned. The Court had to be particularly attentive to the protection of members of the judiciary against measures affecting their status or career that could threaten their independence and autonomy.

As to the method used to arrive at the impugned decision, domestic law did not provide that the accused judge had to be informed of the Chief Prosecutor's request or be given the opportunity to appear or submit arguments before the SJC. Moreover, the reasons for the SJC's decisions taken by secret ballot were not clearly set out, but had to be inferred from the prosecutor's proposal that the judge be suspended and from the deliberations within the SJC. In the present case, the deliberations had related mainly to whether the suspension should be ordered automatically pursuant to section 230, subsection 1, of the Judiciary Act, or whether the SJC could exercise its discretion in that regard; no proper reasons justifying the applicant's suspension had been mentioned. Since no procedural safeguards had thus been afforded to him at the time that the decision was taken, it had been especially important for the courts to examine all the factual and legal questions relevant to the case before them in order to provide the applicant with an effective judicial review of the decision at issue.

As to the substance of the dispute and of the grounds of appeal, when reviewing an administrative decision that fell within the administrative authorities' discretion, the Supreme Administrative Court was in general not only required to review the lawfulness of that decision in formal terms, but also to verify that the authorities had not thereby overstepped their discretion. To that end, it had to examine compliance with the specific statutory or regulatory requirements, where such requirements were provided for, and with the general principles of administrative procedure. In the case of SJC decisions taken pursuant to section 230, subsection 2, of the Judiciary Act, neither the law nor the SJC's internal guidelines had laid down specific criteria regarding the necessity of suspending a judge who had been indicted. Moreover, the Supreme Administrative Court appeared to afford the SJC a very broad discretion in that regard and confined itself to verifying that the judge concerned had been indicted and that the SJC had given reasons, even if briefly, for its decision.

In the present case, although the Supreme Administrative Court had found in its judgment that the SJC had not overstepped its discretion, that finding appeared to have been based solely on the nature of the charges brought against the applicant. The court did not appear to have undertaken its own assessment of the relevant facts or a proper review of the necessity and proportionality of the suspension, but had merely referred to the SJC's decision, without expressly addressing the relevant arguments adduced by the applicant.

The Supreme Administrative Court had, moreover, declined to review whether the accusations levelled at the applicant were well founded, an approach that had been justified, according to the court and the Government, on grounds of respect for the independence and exclusive jurisdiction of the criminal courts in determining criminal liability in a given case. However, under Bulgarian law, a prosecutor's decision to indict a judge was not subject to independent judicial review. Having regard to the special role of judges in upholding the rule of law and to the very serious consequences that a judge's suspension owing to his or her indictment could have for his or her career and private life, the Court took the view that the absence of any review on the part of the Supreme Administrative Court – which did not have jurisdiction to verify, at a minimum, that the prosecution forming the basis for the suspension had not been arbitrary, wrongful or lacking any basis in fact – risked putting judges at the mercy of wrongful prosecution by the prosecutor's office. Such a situation carried an inherent risk for the independence of

the judiciary. The need to avert such a risk by means of judicial review of the decision to suspend a judge had been emphasised by the Venice Commission in its [opinion on section 230](#). The Supreme Administrative Court had not devoted any attention to the applicant's argument to that effect.

It followed from the foregoing considerations that, on account of his prosecution, the applicant had been suspended from his duties as a judge, indefinitely and without pay, by a decision of the SJC that had not been accompanied by adequate procedural safeguards and that had only given brief reasons as to the necessity of such a measure; moreover, a judge's indictment by a prosecutor was not subject to independent judicial review. The Supreme Administrative Court's review of the SJC's decision had been limited, it had not undertaken its own examination of the facts and it had refused to review the justification for the indictment. In the Court's view, although none of these facts – the absence of procedural safeguards and proper reasons for the SJC's decision, the limited review carried out by the Supreme Administrative Court and the absence of judicial review of the indictment – could, on its own, result in a finding of a violation of Article 6 of the Convention, their cumulative effect appeared problematic in the circumstances of the case, regard being had to the measure in issue, which concerned the applicant's suspension from his duties as a judge.

Thus, although it had examined the requirements for the lawfulness of the SJC's decision in formal terms, the scope of the Supreme Administrative Court's review in the present case had not been sufficient with regard to the purpose of the impugned decision and the arguments raised by the applicant.

Conclusion: violation (unanimously).

(b) *Whether the Supreme Administrative Court had respected the guarantees of independence and impartiality* – As in its *Donev v. Bulgaria* judgment, the Court did not consider that the SJC's disciplinary, budgetary and administrative powers warranted the conclusion that the judges of the Supreme Administrative Court lacked independence and impartiality, regard being had to the institutional safeguards provided for by domestic law, the absence of serious structural deficiencies in the composition of the SJC and the absence of material evidence pointing to bias on the part of the judges who had sat in the present case. Moreover, since the applicant had not called into question the personal impartiality of the judges who had heard his case, his concerns as to the independence and impartiality of the Supreme Administrative Court could not be held to be objectively justified.

Conclusion: no violation (unanimously).

Article 8:

(1) *Applicability* – The criteria to be taken into consideration in determining whether Article 8 of the Convention was applicable to an employment-related dispute had been established in the *Denisov v. Ukraine* [GC] judgment.

In the present case, the applicant's suspension had not been justified on the basis of considerations having to do with his private life but by the fact that, in the relevant domestic authorities' view, the continued performance of his duties in spite of his having been indicted might be damaging to the image of the justice system. In accordance with its case-law, the Court therefore proceeded to examine whether that measure had had sufficiently serious consequences for constituent aspects of the applicant's private life to trigger the application of Article 8.

First, as to the measure's consequences for the applicant's "inner circle", even though the pecuniary element of the dispute did not automatically bring the issue within the

scope of Article 8, the withholding of his pay, given its duration, had necessarily affected his private life. In addition, he had retained the status of judge for the duration of his suspension and had thus been ineligible for almost every form of gainful activity in the public or private sector owing to disqualifications relating to that status.

While it was true that domestic law provided that, in the event of acquittal, a suspended judge could obtain payment of the salary withheld during his or her suspension and that the applicant had indeed received the corresponding back pay in 2021, that eventuality nevertheless depended on the outcome and duration of the criminal proceedings. In the present case, it had only materialised some seven years following the applicant's suspension from his duties.

As to opportunities to establish and maintain relationships with others, the applicant's suspension had prevented him, for a relatively long period of time, from performing his duties as a judge, advancing in his career, and pursuing his ambitions in terms of professional and personal development. In particular, because his suspension had coincided with the expiry of his term of office as President of the Court of Appeal, he had not been able to seek reappointment to that office.

Lastly, the SJC's decision to suspend the applicant on the grounds that, on account of the accusations against him, maintaining him in his post was likely to affect the justice system's reputation for integrity suggested that that measure could also have adversely affected his professional reputation.

Thus, having regard to the nature and duration of the measure imposed on the applicant and to the negative consequences for various aspects of his private life, the Court considered that the requisite threshold of severity for Article 8 of the Convention to come into play had been attained.

Conclusion: Article 8 applicable in its "private life" aspect.

(2) *Merits* – The applicant's suspension from his duties had constituted an interference with his right to respect for his private life that had been "in accordance with the law". It had pursued the legitimate aims of preventing disorder and protecting the rights and freedoms of others. It remained to be determined whether the impugned measure had been "necessary in a democratic society".

As to the quality of the decision-making process in the present case, the Court had already found, under Article 6, that the applicant had not been afforded any procedural safeguards at the stage where the SJC had taken its decision and that the scope of the Supreme Administrative Court's review had not been sufficient with regard to the purpose of the decision in question and the arguments raised by the applicant.

Moreover, the disputed measure had had serious repercussions on the applicant's private and professional life. In particular, his suspension had lasted two and a half years, during which he had been deprived of his salary and had been unable, owing to disqualifications relating to the office of judge, to engage in other professional activities. Furthermore, at the time when the applicant's suspension had been decided by the SJC in May 2014, domestic law had not provided for any time-limit on such a measure or any means of challenging its continued justification before an independent authority. The fact that criminal proceedings were ongoing had constituted a sufficient condition for maintaining the suspension of the judge in question. It could not be denied, however, that criminal proceedings could last a very long time, as had indeed been the case here, since the applicant had been acquitted some seven years after the prosecution had been brought and, in such cases, the negative consequences for the suspended judge's private life were significant and could only worsen with the passage of time. In the present case, having regard to the length of the criminal proceedings and the absence of

legal remedies for requesting that the suspension be lifted, the applicant had been left in a state of uncertainty as to the duration of his suspension. Such a situation also carried an inherent risk for the accused judge's independence, which the Court had to take into account as well.

In view of the foregoing considerations as a whole, the applicant's suspension from his duties had not been accompanied by adequate safeguards against abuse and had not been justified on relevant and sufficient grounds. Accordingly, and despite the margin of appreciation enjoyed by the domestic authorities in that sphere, the measure imposed on the applicant had not been proportionate to the legitimate aim pursued.

Conclusion: violation (unanimously).

Article 41: EUR 4,500 in respect of non-pecuniary damage.

(See also *Tsanova-Gecheva v. Bulgaria*, 43800/12, 15 September 2015, [Legal Summary](#); *Denisov v. Ukraine* [GC], 76639/11, 25 September 2018, [Legal Summary](#); *Ramos Nunes de Carvalho e Sá v. Portugal*, 55391/13 et al, 6 November 2018, [Legal Summary](#); *Miroslava Todorova v. Bulgaria*, 40072/13, 19 October 2021, [Legal Summary](#); *Donev v. Bulgaria*, [72437/11](#), 26 October 2021)

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