Nikolova and Vandova v. Bulgaria

(application no. 20688/04)

Judgment 17.12.2013 [Section IV]

Article 6

Disciplinary proceedings

Article 6-1

Public hearing

Lack of public hearing owing to classification of some of the documentary evidence as "secret": *violation*

Facts: Following the prosecution of the first applicant, disciplinary proceedings were started against her and she was dismissed in February 2002 under an order issued by the Minister of the Interior. She lodged an application with the Supreme Administrative Court for judicial review of the order for her dismissal and instructed a lawyer, the second applicant, to represent her. The Ministry of the Interior forwarded to the Supreme Administrative Court the documents relating to the applicant's dismissal but requested that the case be considered *in camera* on the grounds that some of the documents were classified. Following this request, the Supreme Administrative Court case file was classified as "secret". In June 2003 the Supreme Administrative Court upheld the decision to dismiss the applicant, who appealed unsuccessfully. As the file had been classified, the first applicant was unable at first to obtain a copy of the judgments, which were not published on the Supreme Administrative Court's website. She was given permission to consult the text of the judgments at the court's registry. The case was declassified on 6 July 2009 on expiry of the statutory five-year period.

Law: Article 6 § 1

(a) *Lack of a public hearing*

(i) *Applicability* – In view of the nature of the acts that were the subject of the proceedings for the applicant's dismissal, namely breaches of discipline, their classification in domestic law and the sanction which the applicant had risked incurring and which had been imposed, the

proceedings in question did not relate to a "criminal charge" falling within the scope of Article 6 in its criminal aspect. The civil limb of Article 6 § 1 was applicable to proceedings concerning a genuine and serious dispute over civil rights which could be said, at least on arguable grounds, to be recognised under domestic law. The result of the proceedings had to be directly decisive for the right in question. Disputes between the State and its civil servants fell in principle within the scope of Article 6 except where the State in its national law had expressly excluded access to a court for the post or category of staff in question and the exclusion was justified on objective grounds in the State's interest. In the instant case, far from excluding access to a court for the post or category in question, domestic law made express provision for judicial review of the decision to dismiss an Interior Ministry official; furthermore, the appeal lodged by the applicant had actually been examined by the Supreme Administrative Court. It followed that Article 6 was applicable in its civil aspect.

(ii) *Merits* – The proceedings concerning the first applicant had been conducted *in camera* in spite of her objections. The lack of a public hearing had stemmed from a specific decision taken by the court at the request of one of the parties, the Ministry of the Interior, on the ground that some of the documents produced by the latter had been classified and were marked "secret". The authorities could be said in principle to have a legitimate interest in keeping the documents confidential. However, before excluding the public from a particular set of proceedings, courts had to consider whether such exclusion was necessary in the specific circumstances in order to protect a public interest, and had to confine the measure to what was strictly necessary in order to attain the objective pursued.

The Supreme Administrative Court had based its decision on the mere fact that the case file had contained classified documents. It had not considered whether the documents in question were linked to the subject matter of the proceedings and were therefore indispensable, nor had it contemplated taking measures to counterbalance the effects of the lack of a public hearing, for instance by restricting access to certain documents only or holding some but not all of the sessions in camera, to the extent necessary to preserve the confidentiality of the documents in

question. That situation appeared to have resulted from the automatic application of the rules on the classification of court proceedings where even one of the documents in the file was classified. Under domestic law, the court with jurisdiction was not required to give detailed and specific reasons for excluding the public in the case concerned. In those circumstances, it did not appear to have been strictly necessary to exclude the public in order to preserve the confidentiality of the documents in question.

Lastly, with regard to the nature of the proceedings – a factor which might in certain cases justify the lack of any hearing or of a public hearing – the matters under discussion in the proceedings at issue, namely the disciplinary sanction imposed on a police official for acts connected to corruption charges, had not been of a highly technical nature and had not required a hearing open to public scrutiny.

Conclusion: violation (unanimously).

(b) *Lack of publicity of the judgments*: Owing to the classification of the first applicant's case as secret, not only had the Supreme Administrative Court examined the case in camera, the judgments had also not been delivered in public and had not been available at the registry of the court or on its Internet site, nor had the first applicant herself been able to obtain a copy. The file had not been declassified until after the expiry of the statutory time-limit in July 2009, that is to say, more than five years after the final judgment of the Supreme Administrative Court had been delivered. The restrictions on publication of the judgment had resulted from the automatic classification of the entire file as secret, without the domestic courts having conducted an assessment of the necessity and proportionality of such a measure in the specific case.

Conclusion: violation (unanimously).