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

Press Release
issued by the Registrar of the Court

ECHR 164 (2023)
01.06.2023

Grand Chamber declares inadmissible case concerning disciplinary proceedings against an enforcement officer

In its **Grand Chamber** judgment in the case of Grosam v. the Czech Republic (application no. 19750/13) the European Court of Human Rights has, unanimously, declared the application inadmissible. The judgment is final.

The case concerned the issuing of a fine by the disciplinary chamber of the Supreme Administrative Court, in proceedings against an enforcement officer for professional misconduct, and his subsequent appeal to the Constitutional Court.

The Grand Chamber examined Mr Grosam's complaint under **Article 2 of Protocol No. 7 (right of appeal in criminal matters)** of the European Convention on Human Rights concerning the fact that domestic law excluded appeals against decisions of the disciplinary chamber of the Supreme Administrative Court.

His complaint that that court was not an "independent and impartial tribunal" within the meaning of **Article 6 § 1 (right to a fair trial)** of the European Convention was made after notice of the application had been given to the respondent Government, that is in November 2015.

The Grand Chamber found that the applicant's latter complaint had therefore been lodged more than six months after the final domestic judicial decision in his case, that is in September 2012 when his constitutional complaint had been dismissed. It had as a result been lodged outside the time-limit set down in the European Convention and was declared inadmissible.

The Grand Chamber also declared inadmissible the applicant's remaining complaints – falling within the scope of the case as referred to the Grand Chamber – relating to the fairness of the proceedings before the disciplinary court under Article 6 § 1 of the Convention (manifestly ill-founded), and his original complaint under Article 2 of Protocol No. 7 to the Convention regarding the right to appeal (not applicable).

A legal summary of this case will be available in the Court's database HUDOC (link).

Principal facts

The applicant, Jan Grosam, is a Czech national who was born in 1963 and lives in Prague.

In 2010 the Minister of Justice brought a disciplinary action against Mr Grosam, an enforcement officer (*soudní exekutor*), for alleged misconduct with the disciplinary chamber of the Supreme Administrative Court.

In June 2012 the court found him guilty of a serious breach of his professional duties for drawing up a record attesting to the recognition of a debt by the finance director of a company, despite the latter not being authorised to act alone on behalf of the company. He was fined 350,000 Czech korunas (about 13,554 euros at the time).

Mr Grosam then lodged a complaint with the Constitutional Court, arguing that criminal-procedure law had not been followed, in particular that his presumption of innocence had not been respected, that the court had failed in its the duty to gather evidence, and that he had not had a possibility to appeal even though the disciplinary chamber was not a "highest tribunal" within the meaning of Article 2 of Protocol No. 7.

In September 2012 his constitutional complaint was dismissed. The Constitutional Court stated that it did not review compliance with ordinary laws, only with constitutional law, and found that the disciplinary chamber had provided convincing and logical reasons for its decision.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 13 March 2013.

Mr Grosam raised complaints with regard to the fairness of the disciplinary proceedings against him, under Article 6 §§ 1, 2 and 3 (d) (right to a fair trial/presumption of innocence/right to obtain attendance and examination of witnesses) of the European Convention and Article 2 of Protocol No. 7 (right to appeal in criminal matters) to the Convention.

In a judgment of 23 June 2022 a Chamber of the Court – having recharacterised the applicant's complaint – held, by four votes to three, that there had been a violation of Article 6 § 1 (right to a fair trial) because the disciplinary chamber had not met the requirements of an "independent and impartial tribunal". It also held, by a majority, that there was no need to examine the remaining complaints under Article 6 § 1 relating to the fairness of the proceedings before the Supreme Administrative Court, and, unanimously, declared the remaining complaints (those concerning the presumption of innocence and the fairness of the proceedings before the Constitutional Court) inadmissible.

On 22 September 2022 the Government requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 14 November 2022 the panel of the Grand Chamber accepted that request. On 3 January 2023 the President of the Court decided not to hold a hearing in the case.

The judgment was given by the Grand Chamber of 17 judges, composed as follows:

Síofra **O'Leary** (Ireland), *President*,
Georges **Ravarani** (Luxembourg),
Marko **Bošnjak** (Slovenia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Pere **Pastor Vilanova** (Andorra),
Arnfinn **Bårdsen** (Norway),
Branko **Lubarda** (Serbia),
Mārtiņš **Mits** (Latvia),
Jovan **Ilievski** (North Macedonia),
Péter **Paczolay** (Hungary),
Lado **Chanturia** (Georgia),
María **Elósegui** (Spain),
Darian **Pavli** (Albania),
Ioannis **Ktistakis** (Greece),
Frédéric **Krenc** (Belgium),
Mykola **Gnatovskyy** (Ukraine),
Pavel **Simon** (the Czech Republic), ad hoc *Judge*,

and also Søren **Prebensen**, *Deputy Grand Chamber Registrar.*

Decision of the Court

Scope of the case

The Grand Chamber noted that the issue in dispute regarding the scope of the case had been whether the applicant's complaint under Article 2 of Protocol No. 7 could – in line with the Chamber's approach – be recharacterised and examined under Article 6 § 1 as a complaint about an independent and impartial tribunal.

However, the Grand Chamber found that the applicant had not raised the latter complaint in his application to the Court. His initial complaint under Article 2 of Protocol No. 7 concerned the fact that domestic law had excluded appeals against decisions of the disciplinary chamber of the Supreme Administrative Court.

Indeed, by posing a question concerning compliance with the requirement of a "tribunal established by law" under Article 6 § 1, the Chamber had extended of its own motion the scope of the case beyond the one initially referred to it by the applicant in his application. The Chamber thereby exceeded the powers conferred on the Court by Articles 32 and 34 of the Convention.

The applicant had eventually raised the complaint to the effect that the disciplinary court was not an independent and impartial tribunal. However, he had done so in November 2015, after the Chamber had given notice of the application to the respondent Government, which was more than six months after the final domestic judicial decision in his case, that is to say the Constitutional Court's decision to dismiss his constitutional complaint, had been served on him in September 2012.

It followed that the applicant's complaint regarding an independent and impartial tribunal was inadmissible because it had been lodged outside the time-limit set down in Article 35 § 1 of the Convention (applications must arrive with the Court no more than four months – at the time of the applicant lodging his application six months – after the final decision in a case before the national authorities; see press release of 01.02.2022), and had to be rejected.

The Court went on to examine the applicant's remaining complaints which fell within the scope of the case as referred to the Grand Chamber. Those included the applicant's complaints under Article 6 § 1 of the Convention relating to the fairness of the proceedings before the disciplinary court, and his original complaint under Article 2 of Protocol No. 7 to the Convention regarding the right to appeal.

Article 6 § 1

Firstly, the Court found that Article 6 § 1 of the Convention applied under its civil but not under its criminal head to the disciplinary proceedings at issue.

The applicant's complaints relating to the fairness of the disciplinary proceedings focused on a document proving that the finance director of the debtor company had been authorised to sign the enforcement officer's record. He argued that he had been found guilty only because he had not been able to back up his defence with a copy of that document, complaining in particular that the disciplinary court should have explicitly asked him to provide a copy at the hearing on his case and should have obtained testimony from the persons who had participated in signing it.

The Grand Chamber, on the other hand, found that the way in which the disciplinary court had distributed the burden of proof and assessed the evidence had been neither arbitrary nor manifestly unreasonable. Furthermore, although the applicant's representative had indicated in his closing argument before the disciplinary court that the applicant could potentially provide supplementary evidence, he had made no concrete proposal in that regard or seized the opportunity to call witnesses to the signing of the document.

The Grand Chamber therefore found those complaints inadmissible as manifestly ill-founded and rejected them.

Article 2 of Protocol No. 7

Given the finding that Article 6 was not applicable under its criminal head to the disciplinary proceedings in question, the Court found that Article 2 of Protocol No. 7 was not applicable either. The applicant's complaint under that Article was therefore also rejected as inadmissible.

The judgment is available in English and French.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter @ECHR_CEDH.

Press contacts
echrpress@echr.coe.int | tel: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)
Denis Lambert (tel.: + 33 3 90 21 41 09)
Inci Ertekin (tel.: + 33 3 90 21 55 30)
Neil Connolly (tel.: + 33 3 90 21 48 05)
Jane Swift (tel.: + 33 3 88 41 29 04)

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.