***Miroslava Todorova v. Bulgaria***

***Meta-Data*:**

* **Case Number**: App. No. 40072/13
* **Date of decision**: October 19, 2021
* **Featured case**: N/A
* **Region**: Europe
* **Country**: Bulgaria
* **Type of expression**: criticism towards the judiciary
* **Judicial Body**: European Court of Human Rights
* **Type of law**: administrative law
* **Main Themes**: freedom of expression of a judge;
* **Outcome**: ECtHR found there is a violation of art. 10 ECHR, as Bulgaria failed to guarantee the freedom of expression of the applicant - President of the judges’ association, in a disciplinary proceedings and sanctions against her in retaliation for her criticism of the Supreme Judicial Council and the executive.
* **Status**: closed.
* **Tags**: criticism towards the judiciary; disciplinary proceedings against a judge for her positions;

***Analysis:***

* **Summary and Outcome**:
* The European Court of Human Rights (ECtHR) decided there is a violation of article 10 ECHR by the Bulgarian authorities in a disciplinary proceedings against Miroslava Todorova, who was a judge at the Sofia City Court in Bulgaria and also president of the Bulgarian Union of Judges (BUJ). Her positions were critical towards the decision of the Supreme Judicial Council (SJC), which chose Vladimira Yaneva, a judge who was known to be a close friend of the Minister of the Interior Affairs at the time, as president of Sofia City Court. Shortly after, two disciplinary proceedings against Miroslava Todorova followed. ECtHR decided that given the existing context, the chain of events and the severity of the sentence imposed by SJC, these measures were related to the public position that the applicant held.
* **Facts**:
* In June 2011, on the occasion of the procedure for nominating the President of the Sofia City Court, Judge Miroslava Todorova and many other judges took a stand against the candidacy of Vladimira Yaneva, a judge who is known to be a close friend of the Minister of the Interior Affairs at the time, and voted in favor of another candidate.
* The nomination of Judge Yaneva by the SJC on June 8, 2011 has been criticized by the BUJ, which calls for a broader reform of the composition of the SJC and the internal procedure for the promotion of magistrates. Two members of the SJC resigned to express their disagreement with the lack of transparency in the procedure for nominating Judge Yaneva.
* The procedure in question received wide media coverage, with many voices criticizing the election of Vladimir Yaneva in the press. Media representatives call in particular for an inspection by the Inspectorate of the SJC for conflicts of interest and delays in the consideration of some cases, which are allegedly due to Judge Yaneva.
* On June 14 2011, the Inspectorate ordered an inspection of the entire criminal division of the Sofia City Court on the compliance with the deadlines for giving reasons for court decisions from January 1, 2010 to June 30, 2011. In her capacity as chairman of the BUJ, Judge Todorova publicly condemned the statements made to the press by the Inspector General.
* Several judges of the Criminal Division protested the scale of the investigation being undertaken, arguing that the press coverage affected only some of them and that a review of the entire Criminal Division should not be carried out only on a tip-off, but should be included in the Inspectorate's annual program .
* The report shows that the judges of the Sofia City Court are far busier than their other colleagues, with Judge Todorova having a large number of delayed cases and suggesting disciplinary punishment, among four other judges, including Judge Vladimira Yaneva. By decision of 1 to 9 in January 2012, Judge Todorova was disciplined with a 15% reduction in salary for a period of two years.
* On 23 January 2012, an interview with Minister of Interior Affairs Mr. Tsvetan Tsvetanov was published in a daily newspaper with the title "Our biggest critic delays a case against the drug mafia" and a subtitle "Does Judge Miroslava Todorova serve organized crime?".
* On 6 February 2012 Judge Todorova initiated before the Sofia Regional Court private criminal proceedings against the Minister for defamation against her, as a representative of the public authorities.
* Three more disciplinary penalties against Judge Todorova followed. As a result, she was disciplinarily dismissed on 12 July 2012. Learning about her penalties from the media, Judge Todorova filed an appeal for annulment of the decision on the punishment before the Supreme Administrative Court. The decision received extensive media coverage and caused serious debate, with a number of Sofia City Court judges signing a declaration stating that they considered the removal from office to constitute settling accounts, in relation to the public positions expressed, rather than actual disciplinary punishment.
* The Minister of Justice himself says that the SJC should reconsider its decision. In the report prepared under the Cooperation and Verification Mechanism of 18 July 2012, the European Commission expresses its concern about the independence of the judiciary in Bulgaria and mentions the removal of Judge Todorova from office as follows:

"Independence has also been called into question after a number of direct political criticisms against various magistrates, with the removal from the judiciary of the President of the Bulgarian Union of Judges, the [SJC] raising concerns in this regard. The Council has not taken any clear action to protect the independence of the judiciary in these cases. The general impression is a failure to respect the separation of state powers, which has direct consequences on the confidence of the population in the judiciary."

* On August 2, the Supreme Administrative Court annulled the decision of the SJC, which reduced the salary of Judge Todorova, as a disciplinary punishment. A number of procedural actions, appeals and reviews followed, until the reinstatement of Judge Todorova and a subsequent demotion in her position for a period of two years followed.
* **Decision Overview**:
* Judge Todorova's right to express an opinion and her right to criticize the work of the judiciary and in particular the policy of the SJC collide sharply with the SJC's attempt to silence Judge Todorova, but not in the context of the established and valid limit of the right to expression, namely to maintain the authority and impartiality of the judiciary, but through various disciplinary attempts that aim to discredit her. The numerous penalties and subsequent decisions have a "chilling effect" on the right to expression not only of Judge Todorova herself, but also of the critical voices in the judiciary in general. The ECtHR found that the sanctions imposed were sufficiently related to the public criticism made by Judge Todorova (§173).
* The Court considered that, in the present case, the national authorities failed to provide, in their decisions, relevant and sufficient reasons to show that the disciplinary proceedings and the penalties imposed on the applicant were necessary and proportionate to the legitimate objectives pursued by them. Thus, in order to assess whether the restrictions imposed on Judge Todorova are "necessary in a democratic society", the Court took into account her specific role, public statements and criticism, public positions, the type and nature of the penalties and procedural guarantees from which she has benefited.
* According to the ECtHR, freedom of expression must enjoy a high level of protection and any interference with the exercise of that freedom must be subject to strict control, which goes hand in hand with a limited margin of appreciation on the part of the State authorities. Furthermore, there is nothing in the present case to indicate that the applicant's statements were completely devoid of factual basis or went beyond the scope of acceptable criticism of a strictly professional nature. Although the Court does not ignore the fact that the penalties imposed on Judge Todorova are formally motivated by serious professional misconduct other than her public positions, these penalties are directly related to the positions expressed by her.
* In this respect, the ECtHR states that in the appeal to the Bulgarian court, in its decision of 4 January 2013, despite some legal grounds put forward by Judge Todorova in connection with the penalties imposed for her public positions, the Bulgarian court ignores her role in the BUJ, her public functions and the opinions expressed by her. The ECtHR stated that the Supreme Administrative Court also failed to take into account the deterrent effect of the penalties imposed on the applicant, in particular the removal from office, imposed on her and applied for a period of one year. And although the Supreme Administrative Court, in a Chamber of three judges, debated the matter, latter the five-member Chamber of the Supreme Administrative Court then overturned the previous decision of the three-member Chamber and upheld the sentence against Judge Todorova. The ECtHR concluded, that the High Court disregarded the findings made by the Chamber of three judges and did not analyze the issue in a manner consistent with the European Convention of Human Rights. That is why Judge Todorova's right of expression is disproportionately restricted.
* An important clarification made by the ECtHR is that such a conclusion does not in itself exclude the possibility of disciplinary sanctions being imposed on the magistrate when they fail to perform their professional duties, but it is the responsibility of the national authorities in the face of the SJC and then for the competent courts to establish beyond dispute that such a restriction is aimed at any of the legitimate objectives of the Convention.
* In fact, a central issue in the case of *Miroslava Todorova v. Bulgaria* is the violation by the Bulgarian authorities of Article 18 in conjunction with Article 10 of the Convention. Article 18 states: " The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."
* The ECtHR found that the disciplinary proceedings and the penalties imposed by the SJC on Judge Todorova also pursued an objective not provided for in the Convention, namely to be sanctioned for the positions she had taken as President of the BUJ. In order to silence Judge Todorova and her criticisms, which actually undermined the prestige of specific magistrates and the judiciary itself, the SJC decides to punish her using disciplinary measures related to the delay of cases
* The ECtHR concludes that Judge Todorova's activities in the BUJ constitute an exercise of her freedoms of association and expression and that there is nothing to indicate that these activities contravene the law or the ethical rules of the magistrates. In particular, the critical positions expressed by the organization, represented by her, were intended to provide more transparency and to limit the interference of the executive in the promotion of magistrates in order to strengthen the independence of the judiciary. According to the ECtHR, in view of these elements, the desire to use disciplinary proceedings as a form of repression for the position expressed by Judge Todorova seems particularly worrying.

***Direction:***

* **Outcome**: Expands Expression
  + The decision expands expression by deciding that the Bulgarian court did not apply the three part test properly and has limited judge Todorova freedom of expression in violation of art. 10 ECHR.

***Perspective***:

* **Related International and/or regional laws**:

[ECHR, art. 10](https://www.echr.coe.int/Documents/Convention_ENG.pdf);

* **National law or jurisprudence**:
* Bulgarian Constitution art. 39;
* Judiciary System Act art. 307-328;

***Significance***:

The decision establishes a binding or persuasive precedent within its jurisdiction.

* **Related Cases**: Self-generated
* **Date updated**: N/A

***Docs***:

* **Official Case Documents**:

**Examples:**

Judgment (in French): https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-212376%22]}

Press Release issued by ECtHR:

<https://hudoc.echr.coe.int/fre#{%22display%22:[2],%22tabview%22:[%22related%22],%22itemid%22:[%22002-13441%22]}>

* **Reports, Analysis, and News Articles**:
  + Please list any titles and URLS of interesting articles or analyses about the case that might be of interest to readers: <https://strasbourgobservers.com/2021/12/08/miroslava-todorova-v-bulgaria-bulgaria-joins-list-of-serious-rule-of-law-offenders/>
  + <https://eulawlive.com/disciplinary-proceedings-against-bulgarian-judge-miroslava-todorova-breached-freedom-of-expression-ecthr-rules/>
  + <https://bnr.bg/en/post/101543725/judge-miroslava-todorova-wins-lawsuit-against-bulgaria-at-the-european-court-of-human-rights>