Bundesverwaltungsgericht

Judgment of 19 April 2018 - BVerwG 2 C 59.16

ECLI:DE:BVerwG:2018:190418U2C59.16.0

Binding effect of the factual findings made in a foreign criminal judgment on disciplinary proceedings

Headnote

Section 57 (1) BDG also covers final and binding criminal judgments of foreign courts. The binding effect contemplated by section 57 (1) second sentence BDG also ceases to apply in these cases if the findings made by the (foreign) criminal court are manifestly incorrect. This can be the case if the minimum standards required by the rule of law were not adhered to in the criminal proceedings. Such an interpretation is compatible with constitutional law, EU law, and the European Convention on Human Rights.

Sources of law

Federal Disciplinary Act	BDG, Bundesdisziplinargesetz	sections 13, 14, 23, 57 (1), 60 (2), 65 (1), 69, 70
Code of Administrative Court Procedure	VwGO, *Verwaltungsgerichtsordnung*	sections 137, 144
German Criminal Code	StGB, Strafgesetzbuch	section 176a
Charter of Fundamental Rights of the European Union (CFR)		article 50
Convention implementing the Schengen Agreement (CISA)		article 54

European Convention on Human Rights (ECHR) | article 6

Summary of the facts

The proceedings involve the punishment under (German) disciplinary law of the sexual abuse of minors in respect of which a sentence has been passed by a foreign criminal court.

The defendant was born in 1951. He worked as a civil servant for the claimant, the Federal Republic of Germany, up to his forced early retirement in 2000.

In a judgment of a Slovak district court (Bezirksgericht), which became final and binding in 2006, the defendant was sentenced to five years' imprisonment for the sexual abuse of minors in 1999. The criminal judgment was first executed in the Slovak Republic and afterwards in the Federal Republic of Germany.

In disciplinary proceedings involving the same matter, the (German) Administrative Court (*Verwaltungsgericht*) divested the defendant of his entitlement to his civil-servant pension. The appeal on points of fact and law brought against this to the Higher Administrative Court (Verwaltungsgerichtshof) was dismissed. The Court's main reason for the dismissal was that the final and binding judgment of a foreign criminal court that excludes double jeopardy in the Federal Republic in Germany according to the principle ne bis in idem (Strafklageverbrauch) has a binding effect on disciplinary proceedings. The Court was of the opinion that one can generally assume that the criminal provisions and protective procedural rules of an EU Member State meet the minimum standards required by the rule of law. The Court held that the foreign criminal judgment involved here is neither manifestly incorrect nor was it passed in violation of the minimum standards required by the rule of law. The appeal on points of law brought by the civil servant did not meet with success.

Reasons (abridged)

7 (...) There is nothing objectionable about the view taken by the Higher Administrative Court, namely that the factual findings made by foreign courts in final and binding criminal judgments also have a binding effect within the meaning of section 57 (1) of the Federal Disciplinary Act (BDG, Bundesdisziplinargesetz) on disciplinary proceedings as long as these findings are not manifestly incorrect and the criminal proceedings in which they were made observed the minimum standards required by the rule of law. The disciplinary offence committed during off-duty hours in 1999 while still actively employed as a civil servant is disciplinable under disciplinary law pursuant to section 77 (1) second sentence of the Act on Federal Civil Servants (BBG, *Bundesbeamtengesetz*) in the version promulgated on 31 March 1999 (Federal Law Gazette (BGBl., *Bundesgesetzblatt*) I p. 675, BBG old version). Pursuant to section 13 (2) BDG, the decision on the determination of the disciplinary measure results in the defendant, who is now in forced retirement, having to be divested of his entitlement to his civil-servant pension (section 5 (2) no. 2 and section 12 BDG).

8 Section 57 (1) BDG also covers foreign criminal judgments that have become final and binding (1.). This interpretation of section 57 (1) BDG is compatible with constitutional law, EU law, and the European Convention on Human Rights (2.). The Higher Administrative Court, when applying section 57 (1) BDG in the case of the claimant, especially when deciding whether it was possible to distance itself from the factual findings of the criminal judgment, observed these principles in a manner to which no objection can be raised in the proceedings on the appeal on points of law (3.).

9 1. The binding effect of factual findings prescribed by section 57 (1) first sentence BDG also covers the criminal judgments of foreign courts.

10 a) It cannot be inferred from the wording of section 57 (1) first sentence BDG that the binding effect of factual findings is restricted to German criminal judgments only. Unlike section 41 (1) first sentence BBG, section 24 (1) first sentence of the Act on the Status of Civil Servants (BeamtStG, *Beamtenstatusgesetz*), and section 59 (1) first sentence no. 2 of the Act on Civil Servants' Pensions and Benefits (BeamtVG, Beamtenversorgungsgesetz), the legislature in section 57 (1) first sentence BDG did not restrict the binding effect of factual findings to final and binding judgments of German courts. Instead, it made this binding effect solely dependent on the factual findings of a final and binding judgment made in criminal proceedings, in administrative fine proceedings, or in administrative court proceedings. According to its wording, section 57 (1) first sentence BDG therefore covers the criminal judgments of foreign courts as well as those of German courts.

11 b) According to a historical interpretation and the genesis of the provision, the question of whether a judgment within the meaning of section 57 (1) first sentence BDG has to be a German judgment was never made a subject of discussion. Even the predecessor to section 57 (1) BDG, i.e. section 18 (1) of the Federal Disciplinary Code (BDO, Bundesdisziplinarordnung, BGBl. 1967 I p. 750), which was in force until 31 December 2001, does not allow any inferences to be drawn about the issue of the origin of the criminal judgment. The only thing said about the recast section 57 BDG that was no longer discussed in the further legislative procedure in the grounds of the Federal Government's Draft Legislation on the Reorganisation of Federal Disciplinary Law of 18 August 2000 (Bundesrat printed paper (BR-Drs., *Bundesratsdrucksache*) 467/00 p. 124) was: "With respect to the binding effect of the factual findings of certain judicial decisions on judicial disciplinary proceedings, the provision contains a similar regulation to that contained in section 21 BDG, applicable to administrative disciplinary proceedings. Like section 18 BDO, section 57 (1) first sentence BDG allows the administrative court to distance itself from factual findings. The difference now is that the requirements for this are laid down precisely in the law, mainly to provide the affected civil servant with the necessary legal certainty with respect to the preceding decision."

12 c) For systematic reasons, the factual findings of both German and foreign criminal judgments must be regarded as being covered by the binding effect contemplated by section 57 (1) first sentence BDG. Support for this is found in the comparison already made based on the different wording of section 41 (1) first sentence BBG, section 24 (1) first sentence BeamtStG, and section 59 (1) first sentence no. 2 BeamtVG. Unlike these latter provisions, section 57 BDG does not automatically extend the disciplinary consequences of a criminal judgment to the judicial disciplinary proceedings but leads (if at all) to disciplinary measures whose severity is dependent on the circumstances in the individual case. The binding effect of a criminal judgment according to section 57 (1) first sentence BDG can only operate as the basis for a disciplinary measure if the disciplinary court decides not to make its own (new) review pursuant to section 57 (1) second sentence BDG because the factual findings of the criminal court are not manifestly incorrect. No such corrective is found in section 41 BBG, section 24 BeamtStG, and section 59 BeamtVG.

13 Corroboration for this is also found when section 57 (1) BDG is viewed together with section 14 BDG. While, according to section 57 (1) BDG, the disciplinary court is bound to the factual findings made in a criminal judgment, the binding effect - always to the civil servant's advantage - on the disciplinary authorities under section 14 BDG concerns the legal consequences that have been drawn from the factual findings made in criminal proceedings and still have to be drawn in disciplinary proceedings. This binding effect that follows from section 14 BDG with respect to the legal consequences of the offence exists irrespective of whether German or foreign criminal proceedings or administrative fine proceedings are concerned (Federal Administrative Court (BVerwG, *Bundesverwaltungsgericht*), judgment of 1 September 1981 - 1 D 90.80 - Rulings of the Federal Administrative Court (BVerwGE, *Entscheidungen des Bundesverwaltungsgerichts*) 73, 252 <256> (...)).

14 d) The primary purpose for principally binding disciplinary proceedings to the factual findings made in criminal judgments is to prevent different findings with regard to one and the same set of facts (established jurisprudence, see BVerwG, judgment of 28 February 2013 - 2 C 3.12 - BVerwGE 146, 98 para. 13). It thereby fosters legal certainty, ensures the protection of legitimate expectations and prevents divergent findings with

regard to the same set of facts. The same objectives are reached when the binding effect relates to criminal judgments of foreign courts as well.

15 Another purpose of section 57 (1) BDG is to take account, in disciplinary proceedings, of the increased guarantee of accuracy of decisions made in criminal proceedings with their special protective mechanisms under the rule of law (BVerwG, decisions of 9 October 2014 - 2 B 60.14 - (...) para. 10 and of 18 September 2017 - 2 B 14.17 - (...) para. 8). This is equally true whether the criminal proceedings are German or foreign as long as they meet the minimum standards required by the rule of law and the factual findings made in the criminal judgments are not manifestly incorrect. Potential deficits in a judicial system do not call for a general restriction of the binding effects pursuant to section 57 (1) first sentence BDG to judgments of German courts alone, but must be corrected according to section 57 (1) second sentence BDG in the individual case. With regard to criminal judgments of a court of a Member States of the European Union, it must regularly be presumed that they meet the minimum standards required by the rule of law (see also 2.b below). As far as procedural guarantees might be violated in individual cases, this can also come under the said correction pursuant to section 57 (1) second sentence BDG.

16 The argument raised against this, to the effect that it is hardly possible in a given case to adequately review whether the foreign criminal proceedings meet the standards required by the rule of law in theory and in practice and to reliably assess whether they are comparable to German standards of criminal proceedings (...), is objectively unfounded in light of the standard of review used for instance by the administrative courts in proceedings involving matters of asylum law and residence law. Whether foreign criminal proceedings also meet the special minimum standards required by the rule of law can be reviewed within the federal territory on the basis of the relevant foreign laws and the foreign criminal files. Additionally, this approach entails far less uncertainty than trying from Germany to investigate in the foreign country all of the relevant circumstances in relation to an offence.

17 2. The result of the interpretation according to non-constitutional law to the effect that the factual findings of German and foreign criminal judgments are binding on disciplinary proceedings pursuant to section 57 (1) BDG is compatible with (a) constitutional law, (b) EU law, and (c) the European Convention on Human Rights.

18 a) Constitutional law does not call for a restrictive interpretation of section 57 (1) first sentence BDG to ensure conformity with the constitution. The Basic Law (GG, *Grundgesetz*) contains no prohibition against a general recognition of a binding effect of the factual findings of foreign judgments on disciplinary proceedings. Neither the principle of the requirement of a specific enactment of a statute (*Vorbehalt des Gesetzes*) nor procedural guarantees under constitutional law demand such a prohibition.

19 Section 57 (1) first sentence BDG satisfies the principle of the requirement of a specific enactment of a statute. The provision is a legal basis for making binding the factual findings of judgments of criminal courts, including foreign criminal courts, that is in conformity with the essential matters doctrine (Wesentlichkeitslehre). There is no support in constitutional law for the occasionally raised argument against the binding effect of foreign judgments on disciplinary proceedings that the legislature would have to regulate this issue (more specifically) (...). The principle of the requirement of a specific enactment of a statue and the essential matters doctrine concern not only the issue of whether a specific matter has to be regulated by law at all but also the issue of how detailed such a regulation has to be made in particular (Federal Constitutional Court (BVerfG, *Bundesverfassungsgericht*), decision of 21 April 2015 - 2 BvR 1322/12 et al. - Rulings of the Federal Constitutional Court (BVerfGE, *Entscheidungen des Bundesverfassungsgerichts*) 139, 19 para. 54 with further references). This is something that can only be assessed with respect to the subject matter and the characteristic features of the regulatory object (BVerfG, decision of 7 March 2017 - 1 BvR 1694/13 et al. - (...) BVerfGE 145, 20 para. 182 with further references). Section 57 (1) first sentence BDG satisfies these requirements. The binding effect of the factual findings of judgments, including foreign judgments, is sufficiently foreseeable to those applying the provision and to those subjected to the provision - as shown by the results of the interpretation according to non-constitutional law (see 1. above).

20 Section 57 (1) BDG is also compatible with the general procedural guarantees under constitutional law.

This is because section 57 (1) second sentence BDG obligates the disciplinary court to decide about a renewed examination of those factual findings that are manifestly incorrect. Factual findings are deemed manifestly incorrect within the meaning of section 57 (1) second sentence BDG particularly when the disciplinary court that is bound by them would knowingly have to take a decision on the basis of a set of facts that for reasons based on the rule of law are precluded from being applied, for instance because the findings in relation to an issue relevant for the decision were arrived at in manifest violation of fundamental rules of procedure (BVerwG, decision of 7 November 2014 - 2 B 45.14 - (...) para.13 (...) with further references; judgment of 29 November 2000 - 1 D 13.99 - BVerwGE 112, 243 <245> and decision of 28 September 2011 - 2 WD 18.10 - (...) para. 33 (...)).

21 Therefore, factual findings made in judgments of foreign criminal proceedings are not per se precluded from being applied for reasons based on the rule of law. What is decisive instead is whether the foreign criminal judgment was preceded by an adequate judicial inquiry into the facts. Essential for this is that the subject matter of the dispute was adjudicated on at least once in judicial proceedings carried out in adherence to the guarantees required by the rule of law, regardless of where these criminal proceedings took place, in the federal territory or in a foreign country (see BVerwG, judgment of 6 June 1975 - 4 C 15.73 - BVerwGE 48, 271 <277> on the requirements for a substantive binding effect).

22 In addition, the civil servant had to have been granted the right to be heard in the foreign criminal proceedings. If the civil servant in an attributable manner abstained from exercising the right to be heard in the foreign criminal proceedings despite having been given sufficient opportunity to do so, his right to be heard is "exhausted" or expended. If the civil servant was not given the opportunity to be heard in the foreign criminal proceedings, then the disciplinary court must grant the defendant the right to be heard on the matter. And if it is unclear whether the civil servant, in an attributable manner, abstained from exercising the right to be heard in the foreign criminal proceedings, then the disciplinary court must examine whether the constituent elements for a decision on the distancing from the established factual findings pursuant to section 57 (1) second sentence BDG are fulfilled (see BVerwG, decision of 28 September 2011 - 2 WD 18.10 - (...) para. 11 (...)) and must grant the civil servant the right to be heard on that matter. In addition, the foreign criminal judgment had to have been made in proceedings that satisfied the civil servant's general right to have recourse to the courts, i.e. access to judicial proceedings.

23 b) The binding effect of the factual findings of foreign criminal judgments on judicial disciplinary proceedings that is anchored in section 57 (1) first sentence BDG is compatible with EU law. The EU law principle of ne bis in idem in article 54 of the Convention implementing the Schengen Agreement (CISA) of 19 June 1990 (Federal Law Gazette 1993 II p. 1013) and article 50 of the Charter of Fundamental Rights of the European Union (CFR) of 12 December 2007 (OJ C 303 p. 1) have no significance in this context. The binding effect is instead expression of the principles of "mutual trust" and "mutual recognition" in EU law.

24 According to article 50 CFR, no one shall be liable to be tried or punished again in criminal proceedings for an offence for which he has already been finally acquitted or convicted within the Union in accordance with the law. According to article 54 CISA, a person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party. Nothing can be inferred from article 54 CISA or from article 50 CFR that would suggest that under disciplinary law, a foreign criminal judgment takes the place of a corresponding German criminal judgment. And what definitely cannot be inferred from article 54 CISA and from article 50 CFR is that the factual findings made in a foreign criminal judgment have to be binding in additionally admissible disciplinary proceedings involving the same matter (...).

25 The principle of mutual trust is laid down in articles 2 and 3 of the Treaty on European Union (TEU) and in articles 67 (1) and 82 (1) of the Treaty on the Functioning of the European Union (TFEU). As a legal rule, the principle of mutual trust requires, particularly with regard to the area of freedom, security, and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (Court of Justice of the European Union (CJEU), judgments of 5 April 2016 - C-404/15 and C-659/15 PPU - (...) para. 78, 82 and of 10 November 2016 - C-452/16 PPU - (...) para. 25 et seq.).

26 The principle of the mutual recognition of foreign criminal judgments is regarded by the Court of Justice of the European Union as a codified principle of primary law derived from articles 67 (3) and 82 (1) TFEU. According to article 67 (3) TFEU, one of the ways the Union endeavours to ensure a high level of security is through the mutual recognition of judgments in criminal matters. According to article 82 (1) TFEU, the judicial cooperation in criminal matters in the Union shall be based expressly on the principle of mutual recognition of judgments and judicial decisions. The Court of Justice of the European Union also bases the principle of mutual recognition on the principle of mutual trust (see for example CJEU, judgments of 30 May 2013 - C-168/13 PPU - (...) para. 50, of 5 April 2016 - C-404/15 and C-659/15 PPU - (...) para. 77, and of 1 June 2016 - C-241/15 - (...) para. 33).

27 Admittedly, the principles of mutual trust and mutual recognition do not expressly prescribe in terms of EU law that the factual findings made in final and binding judgments of the criminal courts of the other Member States are binding under (German) disciplinary law within the meaning of section 57 (1) first sentence BDG. In this respect, it lacks secondary EU legislation that deals with disciplinary law. These principles are not only not an obstacle to such a binding effect, but also - to the contrary - principally suggest such a binding effect that is subject to the observance of the minimum standards required by the rule of law.

28 c) And lastly, the binding effect of the factual findings made in foreign criminal judgments on German disciplinary proceedings pursuant to section 57 (1) BDG is compatible with the European Convention on Human Rights (article 6 ECHR).

29 From article 6 (1) ECHR there follows a general right to have recourse to the courts, a right to a fair trial, which includes the right to be heard, and a guarantee of the lawful judge. Article 6 (3) (a) ECHR also grants the accused in criminal proceedings the right to be informed promptly, in a language which he understands, and in detail, of the nature and cause of the accusation against him. Lengthy, written translations are not fundamentally required for this (see European Court of Human Rights (ECtHR), judgment of 19 December 1989 - Application no. 9783/82 - (...) para. 79-81). The right pursuant to article 6 (3) (a) ECHR basically entails the right to be provided with a translation of the indictment in a language the accused understands. This generally has to be done prior to the trial (Federal Court of Justice (BGH, *Bundesgerichtshof*), decision of 10 July 2017 - 3 StR 262/14 - (...) and judgment of 23 December 2015 - 2 StR 457/14 - (...)). Furthermore, article 6 (3) (e) ECHR grants the accused the right to have the free assistance of an interpreter if he cannot understand or speak the language used in court. This applies not only to oral statements but also to everything related to the subject matter of the proceedings, provided that translations are required for the defence in a fair trial. The accused must especially be able to understand the charges made against him and be able to present to the court his view of the facts (see ECtHR, judgment of 19 December 1989 - Application no. 9783/82 - (...) para. 74).

30 The rights to an interpreter and the translation rights of a German civil servant charged in foreign criminal proceedings are affected as little by section 57 (1) first sentence BDG as are his rights to access to a criminal court, to a fair trial, and to be heard.

31 According to article 6 (3) (d) ECHR, the accused in criminal proceedings has the right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. The right to examine witnesses also entails the right to do this in the presence of the judges deciding on the matter. Changes made to the formation of the court generally means that witnesses will have to be examined again (ECtHR, judgment of 10 February 2005 - Application no. 10075/02 - (...) para. 38). The latter also entails observance of the principle of immediacy which is an important aspect of the guaranteed right to a fair trial. This is because the judge's direct impression of a witness is exceptionally important for assessing credibility (...). Restricting an accused's possibility to examine a witness will only be considered compatible with article 6 ECHR if it is justified by objective reasons, if the proceedings as a whole were fair, and if in doing so the rights of the defence were taken into account (...). These rights of the accused are also not being abstractly restricted or even affected by the provision of disciplinary law - section 57 (1) first sentence BDG - that is the subject matter of the dispute.

32 3. The decision of the Higher Administrative Court to refrain in the defendant's case from making use of

the possibility provided by section 57 (1) second sentence BDG to distance itself from the factual findings made in the final and binding Slovak criminal judgment is unobjectionable. This is because these findings were not made in violation of the minimum standards required by the rule of law. In particular, the Higher Administrative Court in the judicial disciplinary proceedings did fulfil its duty to conduct an inquiry into the facts. Nor are the findings made in the criminal proceedings for other reasons manifestly incorrect. This follows from the case-related decisive considerations set out below, which the Senate does not regard as an abstractly drawn minimum threshold of the standards required by the rule of law.

33 a) In the claimant's criminal proceedings in which the final and binding judgment of the Slovak District Court was passed, the minimum standards required by the rule of law were adhered to. Nothing substantial was submitted nor was there anything apparent that would indicate that the factual findings on which the judgment was based were manifestly incorrect. The defendant had sufficient opportunity in the Slovak criminal proceedings to state his position on the matter (right to be heard). The testimony he gave there was heard and was taken into account, as is evident from the findings of the Higher Administrative Court regarding the Slovak criminal proceedings and especially from the minutes of the oral hearing of the District Court of 24 October 2005. The defendant otherwise refrained from testifying, including in the disciplinary court proceedings before the Administrative Court, and in the oral hearing before the Higher Administrative Court, he said that he wanted to testify but not about the convicted offences to which the binding factual findings of the Criminal Court relate.

34 Effective legal protection against the judgment of the Slovak District Court was available to the defendant. This is evident, *inter alia*, from the fact that he brought before the County Court (Kreisgericht) a successful and another, unsuccessful, appellate proceeding. The binding effect of the District Court's factual findings on the later disciplinary proceedings is not excluded by the defendant not foreseeing such an effect. The foreseeability of the split up recourse to the courts and burden of appeal to the preceding decision (only) has to ensure protection for civil servants who do not understand the significance of preceding decisions also for disciplinary proceedings, regard them as unlawful but less important and therefore accept them (BVerwG, judgment of 21 April 2016 - 2 C 13.15 - BVerwGE 155, 35 para. 24 et seq.).

35 The defendant did not, however, accept the first judgment of the District Court but instead made full use of legal recourse that was available against it. The significance of the criminal judgment for the disciplinary proceedings was, above all, foreseeable from the very beginning. Because of the numerous different statutory provisions connected to decisions in criminal proceedings (see sections 14, 21 (2), 22, 36, 57, 71 (1) no. 8, sections 71 (2) and 72 (1) BDG), a civil servant would have to know that these proceedings could have an effect on the punishment of disciplinary offences under disciplinary law and that he therefore would have to adequately defend himself already in the criminal proceedings in order to avoid being disadvantaged in the disciplinary proceedings (BVerwG, judgment of 21 April 2016 - 2 C 13.15 - BVerwGE 155, 35 para. 25). He also cannot assume that foreign criminal proceedings have no significance under disciplinary law. This is generally true, but it certainly applies when the criminal offence, including one committed in a foreign country, is punishable in the Federal Republic of Germany as a felony (section 12 (1) of the German Criminal Code (StGB, Strafgesetzbuch)) or as an aggravation (section 12 (3) first variant StGB), such as the one involved in the disciplinary proceedings against the defendant (here under German law according to section 176a StGB - aggravated child abuse).

36 The criminal judgment of the District Court, which has now become final and binding, also satisfies the requirements of fair criminal proceedings (article 6 ECHR, article 19 (4) GG). This first applies to the issue raised by the defendant regarding a timely and adequate provision of translations and interpreting services in the Slovak criminal proceedings (article 6 (3) (e) ECHR). The defendant, admittedly, testified in the County Court proceedings that he first learned of the charges against him from the bill of accusation, which had been translated into German (...). The County Court reasonably and in a logically consistent manner assessed this testimony of the defendant as "misleading" because the first time he was questioned, a decision on the charges against him had been translated for him and the accused at that time stated: "I have understood the offence that I am charged with and that was translated for me." (...).

37 The translation errors, which the defendant alleged additionally in the disciplinary proceedings, did not concern his notification of the charges against him but rather the translation of Dr O.'s expert report at trial

and an exploratory session held with the expert Dr O. and himself. According to the findings of the Higher Administrative Court in the appeal judgment on points of fact and law, an interpreter had been appointed in the criminal proceedings of the defendant at the time he was prosecuted before the court. Furthermore, both the defendant and his defence counsel were also aware of the contents of the expert reports at least at the time of the trial on 21 March 2005, because the experts Dr A. and Dr O. were questioned in the trial and also answered questions posed by the defendant and his defence counsel. Afterwards, in the second appeal on points of fact and law to the County Court, the defendant made no complaint of any missing translation of the expert reports and even referred in some cases to the expert reports. At the end of the trial before the District Court on 24 October 2005, the defendant and his defence counsel also made no further applications to take evidence and in particular did not allege translation errors in the expert reports already introduced in the proceedings (...).

38 In the obtaining of the medical expert reports in the Slovak criminal proceedings, no violation of the principle of a fair trial can be discerned. In the criminal proceedings against the defendant, the District Court requested evidence in the form of expert reports. On the basis of the findings of the Higher Administrative Court, there is no reason why the District Court should have been obligated after this to obtain additional expert reports or to have the expert report of Dr O. revised.

39 This specifically applies in relation to the defendant's complaint about the length of the exploratory session with Dr O. and of the translation by the interpreter attendant at the session. The District Court did find that the experts appointed to the criminal proceedings had enough time to responsibly carry out the examination of the accused and to answer the questions posed by the investigator (...). This is corroborated by the statements of the expert Dr O., who testified that also in light of the course of the conversation with the defendant, his "personality can be characterised with relative reliability" (...). According to the findings of the Higher Administrative Court, based on the testimony of the experts in the trial at the District Court on 21 March 2005, the information provided by the defendant was sufficient for preparing the expert reports and no further examinations were and no additional time was needed.

40 According to the findings of the Higher Administrative Court, a further exploration of the defendant had not been possible largely due to the defendant's lack of willingness to cooperate and not for any such things as the experts not having taken enough time. The expert Dr O. testified that the defendant did not answer several questions in relation to his person, his former marriage, the reasons for his divorce, his sexual practices, and the offence. The defendant largely refused to provide any information about himself and his life and said nothing about the criminal offences. The defendant also said nothing in the appeal proceedings on points of fact and law before the Criminal Court about the offences he was charged with.

41 No translation errors on the part of the interpreter in the exploratory session with Dr O. and the defendant are discernible. The Higher Administrative Court reasonably doubted the defendant's submissions on this in the disciplinary appeal proceedings on points of fact and law. Neither in the Slovak criminal proceedings nor in the disciplinary proceedings had the defendant heretofore alleged any incompetency on the part of the interpreter. Furthermore, the expert Dr O. made no mention of any failure to understand what was said in his expert report; nor are any such communication difficulties apparent in the statements of the defendant reproduced in the expert report. The defendant's statements documented in Dr O.'s expert report are also widely the same as those in S.' and A.'s expert reports, for which the defendant was questioned in the German language.

42 Also the accused's right guaranteed by article 6 (3) (d) ECHR - i.e. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him - was safeguarded in the Slovak criminal proceedings at issue here. As evidenced by the minutes of the oral hearing of the District Court, the defendant himself was able to question the witnesses against him and at the end of the hearing made no applications to supplement the examination of the witnesses.

43 The questioning of the witnesses in the oral hearing of the District Court on 24 October 2005 also took place in the presence of those judges who later reached the criminal judgment. Although the examined witnesses at times made reference to statements they had made in an earlier hearing of the District Court

but this earlier hearing had been presided over by the same judges. The fact that the earlier hearing first resulted in a judgment of the District Court (of 13 April 2005) that was later overturned by the County Court (by ruling of 14 June 2005) is irrelevant with respect to the right to a fair trial. Spirit and purpose of the principle of immediacy and of the right to examine witnesses in the presence of those judges who reached the judgment were satisfied in the defendant's case. In the defendant's criminal proceedings, these had been satisfied because the County Court, after overturning the judgment of 13 April 2005, referred the matter back to the District Court, which was presided over by the same judges who had been concerned with the matter in the overturned judgment of 13 April 2005. Moreover, the defendant and his defence counsel could have examined the witnesses on the contents of their earlier testimonies as well. And at the end of the hearing, they made no further applications for supplemental examination. The criminal offences committed by the defendant prior to 1999, which are the subject matter of the disciplinary proceedings, were not, in the opinion of the Higher Administrative Court, a necessary part of the issues that had to be referred back to the District Court, because the County Court in the appeal proceedings had left untouched the District Court's findings in respect to these.

44 In such a situation, the fact that the testimony of (victim-)witnesses was not repeated in full is also in line with the case-law of the European Court of Human Rights, which holds that courts of appeal are not fundamentally obligated to examine witnesses again (see (...) ECtHR, judgment of 18 May 2004 - Application no. 56651/00, Destrehem/France -, (...)). The decision on whether to hear (additional) testimonial evidence is a matter for the national courts, whose discretionary powers in relation to this are not restricted by article 6 (1) and (3) (d) ECHR (see CJEU, judgment of 28 June 2005 - C-189/02 P et al. - para. 69 et seq. with further references). If not even appellate courts are obligated pursuant to article 6 ECHR to hear (victim-)witnesses again regarding facts that these witnesses already testified to at first instance but have discretion in this regard, then, in the criminal proceedings against the defendant, this would certainly have to apply to the District Court in its heretofore function of a first-instance trial court that, with the very same judges, had already made its own impression of the witnesses and their testimonies to which the witnesses in the new hearing (i.e. after it was referred back) were simply referring without repeating in full.

45 b) If a party to the proceedings - here the defendant - claims that the binding factual findings are manifestly incorrect within the meaning of section 57 (1) second sentence BDG, the administrative courts are only authorised pursuant to this provision to examine the submissions further and ultimately to decide to distance itself from the factual findings if such submissions have been adequately substantiated. General allegations or the mere impugning of such do not suffice. Factual circumstances must be stated from which the manifest incorrectness can be derived (BVerwG, decisions of 26 August 2010 - 2 B 43.10 - (...) para. 6 and of 30 August 2017 - 2 B 34.17 - (...) para. 15). Although the defendant has submitted that in his opinion certain aspects of the Slovak criminal proceedings manifestly violated fundamental procedural rules, these submissions were - as stated - adequately examined by the Higher Administrative Court.

46 If a disciplinary court is bound by the findings made in a foreign criminal judgment, then it must specifically ascertain the contents of the minutes of the trial at the foreign criminal court and the contents of foreign criminal procedure law (BVerwG, decision of 28 September 2011 - 2 WD 18.10 - (...)). The Higher Administrative Court did inform itself accordingly of the minutes of the trial at the District Court and inquired into the criminal procedure law of Slovakia to the extent needed for the defendant's complaint of the witness examinations in the hearing on 24 October 2005. In the result, the Court did not find any manifest violation of fundamental rules of procedure. This does not give rise to any objections within the scope of the appeal on points of law.

47 4. By sexually abusing children, the defendant breached his duty to conduct himself in a respectable and trustworthy manner while on and off duty as a civil servant (section 54 third sentence BBG (old version)). By committing the criminal offence, the defendant committed a disciplinary offence during off-duty hours. This is disciplinable under disciplinary law within the meaning of section 77 (1) second sentence BBG (old version) because in light of the circumstances of the individual case, it is something that is to a special degree capable of damaging respect and trustworthiness in a manner significant to the civil servant's office or to the reputation of the civil service.

48 In cases involving the punishment of disciplinary offences under disciplinary law, the Senate has abandoned the former category of "guideline" or "standard categorisation" (on this, see BVerwG, judgment of 25 March 2010 - 2 C 83.08 - BVerwGE 136, 173 para. 18). The Senate is of the opinion that disciplinary measures are to be oriented along the same lines as the statutorily prescribed sentencing range for crimes. The Senate first pronounced this in cases involving the disciplinary punishment of off-duty possession of child pornography (see BVerwG, judgment of 18 June 2015 - 2 C 9.14 - BVerwGE 152, 228 para. 31 et seq.) and then in cases involving crimes against the employer's property while on duty (BVerwG, judgment of 10 December 2015 - 2 C 6.14 - BVerwGE 154, 10 para. 19). This has now become the standard approach taken in the jurisprudence of the Senate. Orienting the extent of the loss of trust along the same lines of the statutorily prescribed sentencing range for crimes ensures a reasonable and uniform punishment of disciplinary offences.

49 Based on the sentencing range prescribed by sections 176 and 176a StGB, the orientation framework for a possible disciplinary measure in this case extends as far as to a termination of the employment as a civil-servant, i.e. as far as to a divestiture of entitlement to the civil-servant pension pursuant to section 12 BDG. The decision on the determination of the disciplinary measure pursuant to section 13 BDG results, by application of this framework, in the defendant being divested of his entitlement to his civil-servant pension because the defendant, through the disciplinary offence committed by him, has irrevocably lost the trust of his employer and of the public in general (section 13 (2) first sentence BDG).

50 (...)