



Bundesverwaltungsgericht

Press release

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Divestiture of entitlement to civil-servant pension following foreign criminal judgment

Factual findings made in a final and binding criminal judgment are binding on disciplinary proceedings involving the same matter, even when the judgment stems from a foreign criminal court. As is the case with German criminal judgments, this does not apply if the factual findings are manifestly incorrect. This was decided by the Federal Administrative Court (BVerwG, *Bundesverwaltungsgericht*) in Leipzig today.

The defendant - a retired civil servant - challenged the divestiture of his entitlement to his civil-servant pension. On the basis of a final and binding judgment of a Slovak court, he was convicted of the sexual abuse of minors and sentenced to five years' imprisonment. 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 Administrative Court (*Verwaltungsgericht*) divested the defendant of his entitlement to his civil-servant pension. The appeal on points of fact and law against this judgment was dismissed by the Higher Administrative Court (*Verwaltungsgerichtshof*).

The Federal Administrative Court dismissed the appeal on points of law of the retired civil servant and held in essence:

The factual findings made in a final and binding foreign criminal judgment principally have a binding effect on disciplinary proceedings involving the same set of facts. However, the disciplinary court must itself conduct an inquiry into such facts if the factual findings of the criminal court are manifestly incorrect, for example because they were arrived at in violation of the minimum standards required by the rule of law. This follows from the interpretation of the relevant provision - here section 57 (1) of the Federal Disciplinary Act (BDG, *Bundesdisziplinargesetz*) - in observance of the procedural guarantees prescribed by the Basic Law (GG, *Grundgesetz*), the European Convention on Human Rights, and EU law (particularly the requirement of a specific enactment of a statute, the right to be heard and a fair trial). In this regard, one can generally assume that the procedural guarantees of an EU Member State meet the minimum standards required by the rule of law.

In the case at hand, the factual findings made in the Slovak criminal judgment are not manifestly incorrect. The core requirements for a fair trial - such as being provided with the services of an interpreter, adequate inquiry into the facts, including by a medical expert to determine criminal capacity, and the right to examine the witnesses for the prosecution before the criminal court - were satisfied by the Slovak criminal court.

BVerwG 2 C 59.16 - Judgment of 19 April 2018