


Hungary, Gy?r Regional Court of Appeal, *Mf.V.30.054/2020/13/I. (Vasvari case)*, appellate, 2 February 2021

Member State

 Hungary

Topic

Rule of law (fair trial, access to justice)

Deciding Court Original Language

Gy?ri Ítéltábla

Deciding Court English translation

Gy?r Regional Court of Appeal

Date Decision

2 February 2021

EU legal sources and CJEU jurisprudence

Article 2 and 19(1) TEU

Article 47 of the EU Charter

Case of C-619/18

Joined Cases of C-585/18, C-624/18 and C-625/18

Case of C-64/16

Subject Matter

The applicant judge applied for higher judicial positions and even though he was ranked first in two consecutive applications, the President of the NJO declared the two calls unsuccessful. The Gy?r

Regional Court of Appeal found these decisions on annulment unlawful as the President of the NJO failed to provide adequate reasons for them.

Legal issue(s)

Rule of law, access to justice, judicial appointment to higher position, effective judicial protection against the decision of the President of the NJO on calls for application

Request for expedited/PPU procedures

No

Interim Relief

No

National Law Sources

Act CLXI of 2011 on the Organization and Administration of the Courts

Act CLXII of 2011 on the Legal Status of Judges

Decision no. 87.E/2017. (II.17.) OBHE and 300.E/2017. (V.19.) OBHE

Facts of the case

The plaintiff, a judge of a first instance court adjudicating on criminal cases, applied for higher judicial positions in a regional court of appeal. The local judicial council of the court affected by the calls ranked him first among the candidates in two application procedures, but the President of the NJO declared both calls unsuccessful on the ground that *“due to changes in caseload and organising work following the publication of the calls, there is no need to fill the vacant positions”*. In both cases, the NJO President simply cited the text of the law without providing any individualized and detailed argument for her decisions. Furthermore, at the time of the annulments, there were vacant positions in the same court. The first instance court found that the decisions of the President of the NJO were unlawful and she exercised her right concerning the application procedure abusively. The appellate court, however, terminated the procedure on the ground that the 2011 law did not provide legal remedy (the right to access to court) against the respective decisions of the NJO President. It argued that declaring a call unsuccessful was not listed among those decisions of the President of the NJO that could have been challenged before courts. The Supreme Court, in a review procedure, repealed the second-instance judgment and remitted the case to the appeal court for retrial. The applicant requested the Supreme Court to refer the case to the CJEU for a preliminary ruling on the question of whether, in the light of EU law, the right to effective legal protection by an independent and impartial court and the right to a reasoned

judgment should have been provided against decisions rejecting judicial appointments. The Supreme Court rejected the applicant request for a preliminary ruling on the ground that the questions were either devoid of purpose (as it was not disputed that the judicial review of the decision of the President of the NJO must have been guaranteed) or premature (as the first-instance court addressed the question of whether the decisions of the NJO President were sufficiently reasoned).

Reasoning (role of the Charter or other EU, ECHR related legal basis)

The Győr Regional Court of Appeal sided with the first-instance court and found that the decisions of the President of the NJO on annulling the calls were unlawful as she failed to provide sufficient reasons for her decisions. By simply citing the text of the relevant law, she did not meet the statutory requirement that her decisions must be reasoned “*to the extent it is necessary*”. The court, joining the first-instance court, also invoked the 13/2013. (VI. 17.) decision of the CC which held that the President of the NJO must provide adequate reasons for her decision on staff matters in order that the right to legal remedy can be fully exercised by the affected parties. The requirement that employers must give clear and reasonable justification for their individual measures can also be derived from the 2012 Labour Act.

The court argued that Hungarian laws must be interpreted in the light of the fundamental principles of the EU law such as the rule of law, effective legal remedy and effective judicial protection stemming from Article 2 and 19(1) of the TEU and Article 47 of the Charter. It held that the principle of effective judicial protection is also grounded in Article 6 and 13 of the ECHR and the shared constitutional tradition of EU Member States. For these reasons, the plaintiff has the right to turn to courts against the decision of the NJO President concerning judicial appointments even if the Hungarian law does not explicitly mention this possibility.

The court ordered the President of the NJO to decide on the merit on the calls for application that were previously declared unsuccessful by Decisions no. 87.E/2017. (II.17.) OBHE and 300.E/2017. (V.19.) OBHE: either (1) by appointing the plaintiff to higher judicial position, or (2) by submitting the proposed change in the ranking of the candidates to the National Judicial Council for approval, or (3) by declaring the application unsuccessful on relevant grounds.

Relation of the case to the EU Charter

The Győr Regional Court of Appeal referred to the principle of effective judicial protection grounded in Article 47 of the Charter to argue that the applicant must be provided with the right to seek judicial remedy against the decision of the President of the NJO even though the right to legal remedy against this sort of decision is not explicitly stated in the relevant Hungarian law.

Relation between the EU Charter and ECHR

The court found that the principle of effective judicial protection provided by the EU Charter also stems from Article 6 and 13 of the ECHR.

Use of Judicial Interaction technique(s)

Hungarian laws must be interpreted in compliance with EU law.

Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

No

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

The Hungarian court cited three judgments of the CJEU (C-619/18., C-64/16., and joined cases of C-585/18, C-624/18 and C-625/18) in order to argue that effective judicial protection is a fundamental principle of EU law and Hungarian law must be interpreted in the light of this principle.

Strategic use of judicial interaction technique (purpose aimed by the national court)

The Hungarian courts (both the Supreme Court in the review procedure and then the Győr Regional Court of Appeal in the retrial) used EU law to fill in legislative gaps in the judicial application procedures regulated by the 2011 Acts and interpret the domestic law in compliance with it.

Impact on Legislation / Policy

So far, the case has not had any direct impact on national legislation.

(Link to) full text

Uploaded as a pdf file called *Vasvari case* in the Database.

Author

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History of the case: (please note the chronological order of the summarised/referred national judgments.)

1. Budapest Environs Administrative and Labour Court no. 31.M.837/2017/23

2. Supreme Court no. Kpkf. II. 38.140/2018/2.
 3. Győr Regional Court no. 2.Mf. 20.745/2018/7.
 4. Supreme Court no. Mfv.X.10.251/2019/12.
 5. Győr Regional Court of Appeal no. Mf.V.30.054/2020/13/I.
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