


Administrative Court of Wiesbaden, 6th Chamber, Judgement of 31/08/2020

ECLI:DE:VGWIESB:2020:0831.6K1016.15.WI.00

Member State

 Germany

Topic

Concept of 'court or tribunal', Independence

Deciding Court Original Language

Verwaltungsgericht Wiesbaden

Deciding Court English translation

Administrative Court of Wiesbaden

Registration N

Judgement: 6 K 1016/15.WI

Preliminary Ruling, C-272/19

Date Decision

31/08/2020

ECLI (if available)

Judgement: ECLI:DE:VGWIESB:2020:0831.6K1016.15.WI.00

Preliminary Ruling: ECLI:EU:C:2020:535

EU legal sources and CJEU jurisprudence

- Article 2 TEU
- Article 19 TEU
- Article 267 TFEU
- Article 47 CFR

EU law:

- Regulation (EU) 2016/679 (GDPR)

CJEU judgments in:

- *A. K. and Others* (Independence of the Disciplinary Chamber of the Supreme Court), C-585/18, C-624/18 and C-625/18, ECLI:EU:C:2019:982
- *Banco de Santander*, C-274/14, ECLI:EU:C:2020:17
- *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117
- *Review Simpson v Council and HG v Commission*, C-542/18 RX-II and C-543/18 RX II, EU:C:2020:232

ECtHR Jurisprudence

Not Applicable.

Subject Matter

Delivery of judgement after a request for a preliminary ruling by the Verwaltungsgericht Wiesbaden (Administrative Court of Wiesbaden) which expressed doubt as to its own status as a 'court or tribunal', within the meaning of Article 267 TFEU, read in the light of Article 47 of the Charter. It invited the Court to examine the admissibility of its request for a preliminary ruling, given that being a 'court or tribunal', within the meaning of Article 267, is a condition of that admissibility and, consequently, a prerequisite of the interpretation by the Court of the provision of EU law specified in the first question.

Legal issue(s)

Interpretation of criteria a 'court or tribunal'

The legal issue concerned the admissibility of the preliminary ruling as dependent upon the condition that the Court of Wiesbaden qualifies as a court or tribunal within the meaning of EU law since the national court had doubt regarding its own independence due to different form of connections between the judiciary and the executive.

Request for expedited/PPU procedures

Not Applicable.

Interim Relief

Not Applicable.

National Law Sources

- Article 97 of the Basic Law for the Federal Republic of Germany
 - Paragraph 26 of the German Judiciary Act; 'the DRiG'
 - Articles 126, 127 of the Constitution of Land Hessen
 - Paragraphs 2(B) and 3 of the *Land* Hessen Judiciary Act; 'the HRiG'
 - Paragraph 18 Code of Administrative Procedure
 - Paragraph 30(1) of the Law of *Land* Hessen on the protection of data and freedom of information
 - Annex 2 to the Internal regulation of the Parliament of *Land* Hessen of 16 December 1993
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Facts of the case

The applicant submitted a petition to the Petitions Committee of the Parliament of Land Hessen, he/she applied to that committee, on the basis of Article 15 of Regulation 2016/679, for access to the personal data concerning him, recorded by that committee when dealing with his petition. Since the President of the parliament of Land Hessen decided to reject that application, he brought an action before the administrative court and challenged this decision. In this regard, the *Verwaltungsgericht* Wiesbaden asked the CJEU whether it itself can be considered to be a 'court or tribunal', within the meaning of Article 267 TFEU, read together with Article 47(2) of the Charter, in the light of the criteria set out by the Court in that regard, in particular the criterion pertaining to the independence of the body concerned. In fact, the administrative court is functionally connected to the executive, namely the Ministry of Justice of Wiesbaden. This is because the judges are

appointed and promoted by the Minister of Justice; the appraisal of judges is undertaken by the Ministry of Justice according to the same rules as are applicable to public officials; the personal data and professional contact details of the judges are managed by that ministry, which thus has access to that data, and because to cover temporary staff requirements, public officials can be appointed as temporary judges; as well as because the Minister of Justice prescribes the external and internal organisation of the courts or tribunals, determines the allocation of staff, means of communication and IT facilities of the courts or tribunals and also decides on the work-related travel abroad undertaken by the judges.

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

The final judgement was delivered in light of the preliminary ruling issued by the CJEU, which affirmed that the factors mentioned by the Administrative Court of Wiesbaden in support of the doubts relating to its own independence cannot, in themselves, be sufficient ground for a conclusion that those doubts are well-founded and that that court is not independent, and that therefore the Administrative Court can be considered to constitute a 'court or tribunal', within the meaning of Article 267 TFEU.

The Court ruled that the plaintiff should have had access to its personal data.

The Court affirmed that in its decision of 9 July 2020 (Case C 272/19), the CJEU evidently assumes the independence of the judge as it results from Article 97 (1) of the Basic Law, when it ultimately only refers to the independence of the referring judge, whom it describes as the "President of the Wiesbaden Administrative Court" (para. 49 of the preliminary ruling). The referring judge assumes in this respect that the CJEU is thus referring to the independence of the court as a judicial body - in this case, the referring judge - and not to institutional independence. The CJEU affirms the former, which is why it regards this question for a preliminary ruling as inadmissible and answers the core question.

In this respect, the European Court of Justice must be granted that the single judge called upon to rule - even if "only" as presiding judge - has the necessary imperviousness to outside influence and neutrality with regard to the interests of the parties (para. 59 of the preliminary ruling). This "insensitivity" is already based on the judicial ethos of the presiding judge, but it does not exclude an overall influence of the executive on the court as an organ. This is especially true when the single judge is not the president.

The Court affirmed that it may be left open in this respect whether the court called upon to rule is an independent and impartial court within the meaning of Article 276 TFEU in conjunction with Article 47 (2) of the Charter. Finally, the Court concluded that at the very least, the judge called upon to rule considers himself/herself to be independent from the parties to the proceedings within the meaning of Article 97 (1) of the Basic Law, in accordance with the narrow interpretation of the CJEU.

Relation of the case to the EU Charter

The EU Charter was invoked as the relevant parameter for establishing whether the Court qualified as a court or tribunal. Indeed, the Administrative Court evaluated the compatibility of the

national system and the connection to the executive with EU law in light of Article 47(2) of the Charter. In doing so, the Court elaborated on Articles 47 CFR and Articles 267 TFEU, as well as implicitly taking into consideration the relevant case-law.

Relation between the EU Charter and ECHR

The Administrative Court of Wiesbaden heavily relied on Art.47(2) of the Charter but omitted to use ECtHR's jurisprudence or the Convention to substantiate its reasoning. This is in line with the CJEU's preliminary ruling, which mentioned its own case-law only.

Use of Judicial Interaction technique(s)

The Administrative Court of Wiesbaden evaluated its own independence light of Article 47 CFR and found it to be compliant with EU law. The Court found it necessary to send a request for a preliminary ruling because it held that the connection to the executive could potentially endanger its own status as a 'court or tribunal' within the meaning of EU law.

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

The Administrative Court of Wiesbaden did not use decisions of other courts to support its ruling. Therefore, there was no horizontal judicial interaction.

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

The Administrative Court of Wiesbaden engages in external vertical judicial interaction with the CJEU.

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

The Administrative Court of Wiesbaden implicitly, although heavily relied on the CJEU's case law mentioned by the latter in the preliminary ruling to affirm its own independence and the compatibility of its judicial body with EU law. The purpose was to inquire whether the appointment and promotion by the Minister of Justice, as well as the latter's powers to, *inter alia*, manage and access the judges' personal data and prescribe the external and internal organisation of the courts or tribunals, thereby determining the allocation of staff, is in line with the guarantees of judicial independence and impartiality mandated by EU law. The CJEU firstly clarified that in accordance with settled case-law, in order to determine whether a body making a reference is a 'court or tribunal' within the meaning of Article 267 TFEU, which is a question governed by EU law alone, and therefore to determine whether the request for a preliminary ruling is admissible, a number of factors are taken into consideration, such as whether the body is established by law, whether it is

permanent, whether its jurisdiction is compulsory, whether its procedure is *inter partes*, whether it applies rules of law and whether it is independent (*Banco de Santander*, C-274/14, EU:C:2020:17).

In finding that the Administrative Court of Wiesbaden qualifies as a court or tribunal within the meaning of Art.267 TFEU, the CJEU recalled that the independence of the judges of the MS is of fundamental importance for the EU legal order in various respects. It is informed, first, by the principle of the rule of law, which is one of the values on which, under Article 2 TEU, the Union is founded, and which are common to the MS, and by Article 19 TEU, which gives concrete expression to that value and entrusts shared responsibility for ensuring judicial review within the EU legal order to national courts or tribunals (*Associação Sindical dos Juízes Portugueses*, C-64/16). Second, that independence is a necessary condition if individuals are to be guaranteed, within the scope of EU law, the fundamental right to an independent and impartial tribunal laid down in Article 47 of the Charter, which is of cardinal importance as a guarantee of the protection of all the rights that individuals derive from EU law (*Review Simpson v Council and HG v Commission*, C-542/18 RX-II and C-543/18 RX II). Last, that independence is essential to the proper working of the judicial cooperation system embodied by the preliminary ruling mechanism under Article 267 TFEU, in that that mechanism may be activated only by a body responsible for applying EU law, which satisfies, inter alia, that criterion of independence (*Banco de Santander*, C-274/14).

The Court's reasoning (which the Administrative Court of Wiesbaden defined as "narrow") was that the judiciary has an autonomous status within the public service, as ensured by the guarantee of irremovability laid down in Paragraph 97 of the Basic Law for the Federal Republic of Germany and by the fact that there exist civil service courts with jurisdiction over judges for the judicial protection of judges, and by the appointment procedure, in which the Judicial Appointments Committee plays a crucial role. The CJEU added in relation to the conditions governing the appointment of the judge sitting in the referring court, that the mere fact that the legislative authorities play a part in the process for appointing a judge does not give rise to a relationship of subordination to those authorities or to doubts as to the judge's impartiality, if, once appointed, he or she is not subject to any pressure and does not receive any instruction in performing the duties of his or her office (*A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982). On this basis, the Administrative Court of Wiesbaden concluded, as confirmed by the preliminary ruling, that the doubts that it expresses in relation to its own independence cannot, in themselves, constitute sufficient ground for a conclusion that those doubts are well-founded and that that court is not independent, notwithstanding all the other rules laid down by the legal order of which that administrative tribunal forms part and designed to ensure its independence.

Impact on Legislation / Policy

No impact on national legislation/policy.

Notes on the national implementation of the preliminary ruling by the referring court

Not applicable

Impact on national case law from the same Member State or other Member States

Not applicable

Connected national caselaw / templates

Not applicable

Other

Request for a preliminary ruling by the Administrative Court of Wiesbaden:

<http://curia.europa.eu/juris/showPdf.jsf?text=&docid=219871&pageIndex=0&doclang=EN&mode=req&dir=>

(Link to) full text

<https://www.juris.de/perma?d=KORE205462020>

<https://eur-lex.europa.eu/legal-content/ENG/TXT/PDF/?uri=celex:62019CJ0272>
