

Suda v. the Czech Republic, European Court of Human Rights, App. 1643/06, 28 October 2010

Member State

 Czech Republic

Topic

Rule of law – the right to a fair trial

Deciding Court Original Language

Krajský Soud

Vrchní Soud

Ústavní Soud

Deciding Court English translation

National Courts: Regional Court (Krajský Soud) in Brno;

The high court (Vrchní Soud) of Olomouc;

The Constitutional Court (Ústavní Soud).

Date Decision

28 October 2010 (Final on 28/01/2011)

ECLI (if available)

N/A

National Follow Up Of (when relevant)

See the General Measures in addition to the individual compensation under the Report of the

“II. GENERAL MEASURES

As already acknowledged by the Court in § 15 of the judgment, Section 220k (1) was deleted from the Commercial Code as of 1 July 2008 by new Act no. 125/2008 (Companies and Cooperatives Transformations Act) which does not contain any similar provision providing for arbitrators' jurisdiction established by a contract between third parties in comparable situations. It follows that at present, occurrence of violation of the Convention similar to the present case is no longer possible. Therefore, no further systemic measures to prevent analogous violations in the future are required.”

EU legal sources and CJEU jurisprudence

N/A

ECtHR Jurisprudence

On the right of access to court that extends to arbitration: *Lithgow and Others v. the United Kingdom*, July 8, 1986, § 201, Series A no.102; on the conditions to waive the right to court in favour of arbitration (the waiver should be free, lawful, and equivocal): *R. v. Switzerland*, no. 10881/84, decision of the Commission of 4 March 1987, Decisions and Reports (DR) no 51; *Osmo Suovaniemi and others v. Finland (dec.)*, No 31737/96, 23 February 1999; *Transado - Transportes Fluviais do Sado, SA v. Portugal (dec.)*, no.35943 / 02, December 16, 2003; more on the conditions of a waiver: *Deweert v. Belgium*, February 27, 1980, § 49, Series A no. 35; on necessary guarantees to be observed in mandatory arbitration: *Bramelid and Malmström v. Sweden*, nos. 8588/79 and 8589/79, Commission decision of 12 October 1989, DR no. 29; on references to the national rules on company law: *Kohlhofer and Minarik v. Czech Republic*, nos. 2921/03, 28464/04 and 5344 / 05, 15 October 2009; and in particular the relationship between stakeholders and its impact on market share: *Kind v. Germany (dec.)*, No 44324/98, 30 March 2000.

Subject Matter

The applicant alleged that he was deprived necessary guarantees under national courts when referred to the arbitration tribunal to re-examine the value of his shares. In particular, referring to Article 6 § 1 of the Convention, he claimed that his proceedings would not be public, that there was no procedure for reviewing the merits of the potential decision of the arbitral tribunal and that the applicant would need to bear the costs of the proceedings.

Legal issue(s)

A right to a fair trial.

This case sets forth the conditions to be met in order to waive a right to go to a court in favour of arbitration.

One of the issues concerned the fairness/bias of an arbitral tribunal to potentially re-examine the redemption value of shares of the applicant in view of the previously agreed upon selection procedure for such a tribunal. (Arbitrators were to be chosen from the list of arbitrators registered by the company and in accordance with the procedure developed by the company hence with no involvement of the applicant).

Request for expedited/PPU procedures

N/A

National Law Sources

N/A

Facts of the case

“The applicant, Pavel Suda, is a Czech national who was born in 1968 and lives in Pardubice (Czech Republic). He was a minority shareholder in a public company that was closed by a decision of 2003. A request by the applicant for the redemption value of his shares to be re-examined was dismissed by the ordinary court on the basis of an arbitration clause. Relying on Article 6 § 1 (right to a fair hearing), he complains about his inability – on account of an arbitration clause in a contract signed with third parties – to have his case examined by an ordinary court providing the necessary guarantees, of the non-public nature of any arbitration proceedings and of the procedural costs he has incurred.”

The applicant initiated the following proceedings in the Czech Republic, all aiming at having the procedure for re-examining the redemption value of his shares held invalid: (1) before the Regional Court (Krajský Soud) in Brno (decision of 27 April 2004), (2) before the high court (Vrchní Soud) of Olomouc (decision of 18 October 2004), and finally before the (3) the Constitutional Court (Ústavní Soud) (decision of 23 June 2005). [section on LES CIRCONSTANCES DE L'ESPÈCE]

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

“The ECtHR held that the arrangement for dispute resolution was not in itself sufficiently unambiguous to constitute a waiver of the right to a tribunal, and that, if the parties were compelled

to go to arbitration, the tribunal had to comply with Article 6. The Court found a violation of Article 6 (1) because the arbitration procedure did not fulfil two fundamental requirements: (i) the arbitration clause gave decision-making power to arbitrators on the list of a limited liability company, which was not an arbitration tribunal established by law; and (ii) the arbitration procedure did not allow for a public hearing and the applicant had not in any way waived this right.”

Relation of the case to the EU Charter

N/A

Relation between the EU Charter and ECHR

N/A

Use of Judicial Interaction technique(s)

N/A

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

N/A

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

N/A

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

N/A

Impact on Legislation / Policy

The right to a fair trial and arbitration

This case sets forth the conditions to be met in order to waive a right to go to a court in favour of arbitration.

Similarly in:

Tabbane v. Switzerland, ECtHR, 1 March 2016, App. 41069/12

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

N/A

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

N/A

Connected national caselaw / templates

N/A

(Link to) full text

[https://hudoc.echr.coe.int/eng#{\"itemid\":\[\"001-101333\"\]}](https://hudoc.echr.coe.int/eng#{\) (in French)

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