

Romania, High Court of Cassation and Justice, Panel of 5 judges, File no. 869/1/2017, appeal on points of law, Judgement no. 336/2017 from 13.12.2017

Member State

 Romania

Topic

Independence – Transfers and removal of magistrates, Sanctions, Legal remedies for individual judges against dismissal decisions, Judicial Councils

Deciding Court Original Language

National Court

High Court of Cassation and Justice

Deciding Court English translation

High Court of Cassation and Justice (HCCJ)

Registration N

High Court of Cassation and Justice, File no. 869/1/2017

Application no. 36889/18 - ECtHR

Date Decision

High Court of Cassation and Justice, Judgement no. 336/2017 from 13.12.2017

ECtHR Judgement from 20 October 2020

National Follow Up Of (when relevant)

No. The ECtHR case is a direct follow up of the national case

EU legal sources and CJEU jurisprudence

Not the case

ECtHR Jurisprudence

- Vilho Eskelinen and others v. Finland [GC], no 63235/00, § 62, CEDH 2007-II - set out the criteria for determining the applicability of the guaranteed access to court;
 - Baka v. Hungary ([GC], no 20261/12, 23 June 2016, §§ 105-106 - applies to all types of disputes concerning magistrates;
 - Micallef v. Malte [GC], no 17056/06, § 87, CEDH 2009 - set out the criteria for determining the applicability of the guaranteed access to court;
 - Paluda v. Slovakia, no 33392/12, 23 May 2017 - the guarantees of Article 6 § 1 of the Convention applicable to disciplinary proceedings principle are also applicable to the temporary suspension
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Subject Matter

C.B., judge, was suspended from magistracy for breach of incompatibility rules by training officials of a Ministry part in a trial she judged. Information she appreciated as private were published and the Superior Council of Magistracy refused to protect her professional reputation.

Legal issue(s)

First indicate if it is related to independence, impartiality, accountability, second of which legal profession, then briefly describe the general legal issues concerning one or more of the above topics

The case is related to the independence of judges. Transfers and removal of magistrates, sanctions, legal remedies for individual judges against dismissal decisions and Judicial Councils - are the issues addressed by the analysed case.

Request for expedited/PPU procedures

NO

National Law Sources

Law no.303/2004 on the statute of judges and prosecutors,

Law no.317/2004 on the Superior Council of Magistracy,

Facts of the case

On 31 March 2016 the Judicial Inspection opened a disciplinary investigation against judge C.B.

for breach of incompatibility and interdiction rules by training in 2014 officials of a Ministry part in a trial she judged. On 8 February 2017 the Superior Council of Magistracy (CSM) excluded her from magistracy for incompatibility reasons. On 20 March 2017 C.B. seized the High Court of Cassation and Justice (HCCJ) with appeal on points of law. On 23 March 2017 C.B. received the CSM's decision to suspend her from magistracy, as well as her salary and insurance rights, because of her appeal on points of law.

On 13 December 2017 the HCCJ admits the appeal on points of law, partially quashes the contested decision, concerning the sanction of exclusion from the judiciary and replaces it with the sanction of disciplinary transfer at the Court of Appeal Târgu Mureş for a period of 6 months, starting with 15 January 2018. The suspension ended the same day and C.B. received her remaining salary rights for the suspension period.

Since February 2016, information on C.B. revenues and disciplinary proceedings were repetitively published while her request to defend her professional reputation were rejected by CSM.

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

The HCCJ mentions ECHR norms and jurisprudence to sustain their interpretation and judgement of the case.

The HCCJ highlight the scope of her judgement – limited to incompatibilities and interdiction, not related to conflict of interests or to obligation to abstain from judgement.

The HCCJ rejected C.B.'s argument that the principle of juridical security was not observed with regard to the non-existence of a statute of limitation - a term in which a judge can be sanctioned disciplinarily as the court observed that the law establishes a statute of limitation with regard to the opening of the disciplinary action at CSM.

The court stresses that none of the parties deny the facts – the training activities the judge C.B. performed for the officials in the agriculture ministry for a short period.

The issue at stake is the qualification of those activities as “function” or, as mere “public activities” because any other function excepting the academic ones are forbidden to judges by law and by constitution, while apparent similar public activities were not found by the CSM as being forbidden.

To decide that C.B. was guilty of a disciplinary offence against incompatibility rules of judges the HCCJ argued that only training for the legal professionals are allowed to judges.

Consequently, the HCCJ appreciated the applied sanction of exclusion from magistracy to be too severe and replaced it with the disciplinary transfer at the Court of Appeal Târgu Mureş for a period of 6 months.

C.B. asked the ECtHR to rule on the violation of the right to a fair trial, article 6 para.1 and on the violation of the right to private life, article 8 of the ECHR. On C.B. views, article 6 para 1 of the ECHR was violated because 1). the principle of juridical security was not observed with regard to the non-existence of a statute of limitation - a term in which a judge can be sanctioned disciplinarily, 2). The CSM and the HCCJ lacked independence and impartiality and because 3). C.B. didn't have access to a court to complain against the CSM's decision to suspend her from

magistracy. C.B. 's right to respect for her private life was presumably violated 1). because of her suspension from functions and 2) because of the information communicated to the press and CSM refused to defend her professional reputation.

The ECtHR rejected C.B.'s argument that the principle of juridical security was not observed with regard to the non-existence of a statute of limitation - a term in which a judge can be sanctioned disciplinarily as the court observed that the law establishes a statute of limitation with regard to the opening of the disciplinary action at CSM.

On C.B. argument of lack of independence and impartiality of the CSM and the HCCJ, the ECtHR admitted the exception of non-exhaustion of the internal remedies as C.B. didn't raise this argument in front of the CSM or the HCCJ.

After C.B's case, the Romanian law changed and allowed for a judicial complaint on the merits of the suspension from function of judge. In C.B.'s case though, the Romanian legislation expressly regulated the suspension from function in case the judge decided to complain to the HCCJ against the CSM decision to exclude her from magistracy while the CSM and the HCCJ practice was to evaluate suspension decision only on procedural grounds. This is why the ECtHR decided that C.B. lacked access to a court to evaluate on the merits the decision to suspend her from function.

The ECtHR rejected the allegation of violation of the right to private life because of the suspension from function on the reason of the short duration of this suspension and because the measure and it's repercussions didn't reach the level of gravity needed to put in question the right protected by article 8 of the Convention.

The ECtHR rejected also the article 8 claims based on the argument of communication to the press of information considered private and on CSM refusal to defend C.B.'s professional reputation for non-exhaustion of internal remedies as the Court appreciated the civil action for tort to be an effective remedy C.B. didn't try to use.

Relation of the case to the EU Charter

The EU Charter was not invoked.

Relation between the EU Charter and ECHR

The High Court of Cassation and Justice invoked the ECHR jurisprudence

- To argue on the qualities of the law - clarity, accessibility and predictability - and, consequently, on the restrictive interpretation of exceptions from the general incompatibility of the function of judge with any other public or private function
 - To reject the claim of violation of the principle of juridical security
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Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

The HCCJ cites two decisions of the Romanian Constitutional Court to argue on the role of the statute of limitation norms and on legislator's freedom to impose supplementary obligations to those performing activities of a certain importance and nature.

The HCCJ cites one opinion of the Consultative Council of the European Judges to highlight the wide spread of prescriptions of interdictions of activities imposed to magistrates.

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

Please mention if the national court makes a simple citation and engages with an assessment of other national judgments or European courts, also whether there was constitutionality review involved; shortly describe the interaction between the ordinary and appellate/supreme court, if applicable.

The High Court of Cassation and Justice, in her judgement, partially quashed the CSM's decision.

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

Please indicate what was (presumably) the scope pursued by the national court when using judicial interaction techniques, namely whether they wanted to solve a conflict of norms, conflicts of judicial interpretation involving fundamental rights enshrined in the EU Charter, fill in legislative gaps, institutional conflict, etc.

Presumably, the purpose of the national court when using vertical internal judicial interaction techniques, with the lower courts, was to solve a conflict of judicial interpretation involving fundamental rights enshrined in the ECHR.

Impact on Legislation / Policy

The modification of 11.10.2018 of article 52 of the Law 317/2004 on the CSM by Law 234/2018 could have been triggered by this case or by similar cases.

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

Not the case

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

Not the case

(Link to) full text

Author

Roxana Prisacariu, Union of the Romanian Bar Associations

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

1. File no. 14/J/2016 registered at the Superior Council of Magistracy – Section for judges in disciplinary matters. Judgement no. 1/J din 8.02.2017 – admits the disciplinary action of the Judiciary Inspection and orders the exclusion of C.B. from magistracy
 2. File no. 869/1/2017 registered at 20.03.2017 at the High Court of Cassation and Justice – Panel of 5 judges - appeal on points of law. Judgement no. 336/2017 from 13.12.2017– admits appeal on points of law, partially quashes the contested decision, concerning the sanction of exclusion from the judiciary and replaces it with the sanction of disciplinary transfer at the Court of Appeal Târgu Mureş for a period of 6 months, starting with January 15, 2018
 3. ECHR Case of Camelia Bogdan v. Romania (Application no. 36889/18) Judgement from 20 October 2020
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