


**Hungary, Curia, Mfv. I. 10.204/2013/12. (forced retirement) supreme court, 2013**

Member State

 Hungary

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Topic

Independence

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Deciding Court Original Language

Kúria

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Deciding Court English translation

Curia (Supreme Court)

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Registration N

Mfv. I. 10.204/2013/12.

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Date Decision

10 July 2013

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National Follow Up Of (when relevant)

No

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EU legal sources and CJEU jurisprudence

No

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ECtHR Jurisprudence

No

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Subject Matter

The plaintiff challenged her dismissal from judicial service and sought to be reinstated in her office

and senior judicial position. The Hungarian courts found the dismissal of the judge unlawful and the Curia held that courts cannot reinstate judges in their judicial office directly by their judgment as the appointment and dismissal of judges belong to the power of the President of the Republic. Furthermore, the Curia pointed out that only the judicial service but not senior judicial positions can be restored as a result of judicial decisions that declare the dismissal unlawful.

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### Legal issue(s)

Independence of judges, unlawful termination of the judicial mandate, early retirement of judges, removal from senior position

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### Request for expedited/PPU procedures

No

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### National Law Sources

- Fundamental Law of Hungary
    - Article 9(3)k
    - Article 26(1) and (2)
    - Article XII(1)
    - Article XV(2)
  
  - Act CLXII of 2011 on the Legal Status and Remuneration of Judges
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### Facts of the case

The plaintiff was appointed to judicial office in 1989, and in 2011 she was appointed as president of a regional court for a fixed 6-year term. However, in 2012, the President of the Republic dismissed the judge from her office based on the Transitional Provisions of the 2011 Fundamental law and 2011 Act on the legal status of judges which reduced the compulsory retirement age of judges from 70 to 62. The plaintiff filed a lawsuit claiming that the termination of her office was unlawful and sought reinstatement in her judicial office and senior position. The plaintiff also claimed her salary arrears.

The first instance court found the termination of the judicial mandate unlawful and ordered the respondent to take the necessary measures for the reinstatement of the judge in her judicial office, however, rejected the judge's claim to be reinstated in her senior leadership position. The appeal court agreed with the first instance court that the dismissal of the judge was unlawful, repealed the decision of the President of the Republic and ordered the reinstatement of the judge not only in her

judicial office but also in her senior position.

The Curia, in the extraordinary review procedure, repealed the second instance judgment and upheld the decision of the court of first instance.

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

The Curia argued that courts can decide only on the lawfulness of the termination of the judicial mandate but have no power to repeal the decision of the President of the Republic on the dismissal of the judge. According to the Fundamental Law and the 2011 Act on the Legal Status and Remuneration of Judges, judges can be appointed to a judicial office and dismissed from it by the decision of the President of the Republic. The Constitutional Court in its decision no. 33/2012. (VII. 17) held that judges forced into early retirement could not be reinstated in their office by the force of the judgment of the Constitutional Court, and their legal status must be settled according to the law on the status of judges. Furthermore, the relevant laws do not contain rules on the consequences of the unlawful termination of leadership positions. As a result, courts could not decide on reinstating the judge in her former senior position.

The Curia also held that the Constitutional Court had already pointed out that different employment relationships can justify different rules regarding the consequences of the unlawful termination of the employment relationship, so the fact that the laws on judicial service, compared to laws on other employment relationships, do not regulate the reinstatement of judges in leadership positions does not result in any discrimination and in violation of the right to work. Consequently, there is no need to turn to the Constitutional Court and challenge the constitutionality of the rules on judicial service on that basis.

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### Use of Judicial Interaction technique(s)

Hungarian courts engaged with the assessment of decisions of the Hungarian Constitutional Court.

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

#### INTERNAL:

Hungarian courts referred to the judgment no. 33/2012. (VII. 17.) of the Constitutional Court which found the laws on the new compulsory retirement age of judges introduced by the 2011 Fundamental Law unconstitutional and invalidated these rules with retrospective effect as of the date of their entry into force.

The Curia relied on two further decisions of the Constitutional Court [ decisions no. 4/1993 (II.12.) and no. 198/B/1998] which held that it is not unconstitutional if different rules prevail in different employment relationships as these relationships are different in nature.

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

Decisions of the Constitutional Court were used by ordinary courts to argue for the illegal removal

of judges and also to fill the gaps in the legislation also in terms of the consequences of illegal removal from judicial office.

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### Impact on Legislation / Policy

As a response to the decision no. 33/2012 (VII. 17) of the Constitutional Court which found the newly introduced retirement age of judges unconstitutional, the Parliament adopted Act XX of 2013. According to this law, judges affected by the compulsory retirement scheme had 30 days to request their reinstatement into their judicial office, or request a stand-by post. Those judges who did not apply for reinstatement were entitled to a lump-sum compensation. Professional leadership positions (head of panels posts) were restored, while judges could only be reinstated in their fixed-term administrative leadership positions (e.g. as court presidents) only in case these positions were still vacant. However, these senior offices were mostly filled by the time the Act XX of 2013 entered into force.

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(Link to) full text

<https://eakta.birosag.hu/anonimizalt-hatarozatok?azonosito=Mfv.10204/2013/12&birosag=K%C3%BAria>

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### Author

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

1. Decision no. 6.M.500/2012/12. of the Gy r Labour Court
  2. Decision no. 2.Mf.20.013/2013/8. of the Gy r Regional Court
  3. Decision no. Mfv.I.10.204/2013/12 of the Curia
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