


Hungary, Supreme Court, Pfv.IV.20.118/2016/ 6. (judicial secondment), supreme court, 12 May 2016

Member State

 Hungary

Topic

Independence and impartiality

Deciding Court Original Language

Kúria

Deciding Court English translation

Curia (Supreme Court)

Registration N

Pfv.IV.20.118/2016/ 6.

Date Decision

12 May 2016

National Follow Up Of (when relevant)

No

EU legal sources and CJEU jurisprudence

No

ECtHR Jurisprudence

Miracle Europe Kft v. Hungary application no. 57774/13, Judgment of 12 January 2016:
<http://hudoc.echr.coe.int/eng?i=001-159926>

Subject Matter

The plaintiff sought damages from two municipalities on the ground that the planned investment failed due to their fault. The Curia rejected the claim for compensation and dismissed the plaintiff procedural objection concerning the second-instance judicial panel which was temporarily seconded to the relevant court to adjudicate on this case.

Legal issue(s)

Rule of law, fair trial, right to a lawful judge, judicial independence and impartiality, secondment of judges

Request for expedited/PPU procedures

No

Interim Relief

No

National Law Sources

Article XXVIII (1) of the Fundamental Law of Hungary

Decision no. 304/2015. (VIII.3.) of the President of the National Office for the Judiciary (OBHE)

Facts of the case

The plaintiff as an investor entered into a planning contract with a municipality in Budapest. According to it, the investor undertook to establish a District Regulatory Plan for future planning to which the consent of the Budapest City Council was needed. The latter did not give its consent, so the applicant claimed pecuniary damages from the municipalities. The compensation claim was dismissed by the lower level courts. In the appeal proceeding, the plaintiff also complained about procedural irregularities as the case on appeal was heard by a judicial panel temporarily seconded to the higher court (regional court of appeal) by the decision of the President of the NOJ, from the court that rendered the first-instance judgment. The plaintiff argued in its procedural objection that the appeal proceeding therefore violated the right to a tribunal established by law and judicial independence stemming from Article XXVIII of the Fundamental Law and from the rules for case allocation regulated by the Act CLXI of 2011 on the Administration and Organization of Courts. The procedural objection was also dismissed by the appeal court.

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

The Curia upheld the decisions of the first and second-instance courts, and dismissed the

compensation claim and the procedural objection of the plaintiff. As to the latter claim, the Curia invoked the right to a fair trial declared by Article XXVIII(1) of the Fundamental Law of Hungary and Article 6 of the ECHR and argued that the reasoning of the ECtHR in the *Miracle* case should be applied not only when cases are transferred to a different court, but also in situations when judges are temporarily seconded to a court for adjudicating on a case or group of cases. Judicial independence and impartiality must prevail also in the case of judicial secondment. The Curia found that the principle of foreseeability, and judicial independence and impartiality were not violated, even though the case allocation scheme of the regional court of appeal did not mention the seconded judicial panel, which would have been of key importance to foresee which cases were heard by which judges. The Curia argued that the decision of the President of the National Office for the Judiciary [304/2015. (VIII.3.)] and the ID numbers of the cases on which the seconded panel adjudicated were available on the website of the Budapest Regional Court of Appeal, and the applicant was aware of it and did not express any concern about the independence and impartiality of the court in the appeal proceeding.

After the final judgment was delivered by the Curia, the plaintiff filed a constitutional complaint against the judgments of ordinary courts. The applicant alleged, *inter alia*, that the judgments violated its right to a fair trial, in particular its right to a lawful judge and the appearance of impartiality, and also its right to seek effective legal remedy as the case on appeal was decided by a judicial panel that was seconded to the appeal court by the administrative decision of the President of the NOJ, from the court which decided on the case at first instance. The Constitutional Court rejected the procedural limb of the complaint. It held that the secondment of the judicial panel was based on statutory provisions and the decision of the NOJ President which was officially published, so the acting judicial panel consisted of “lawful judges”. The cases were assigned to these judges in an automated way, and the case allocation scheme of the appeal court was amended before the case was considered on the merit. Furthermore, as the seconded judges did not adjudicate in their original venue when they heard the relevant case, the decision on appeal was not made by a court which delivered the first instance judgment, so the applicant's right to seek effective legal remedy was not violated either.

Use of Judicial Interaction technique(s)

The Curia referred to the case-law of the ECtHR.

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

The Curia referred to the *Miracle* judgment of the ECtHR in order to answer the question of whether the requirements determined by the Strasbourg court concerning case transfers also apply to the practice of judicial secondment.

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

The Curia presumably aimed to decide on a question of interpretation involving fundamental rights enshrined in the Fundamental Law of Hungary and also in the European Convention on Human Rights. The question was if the Hungarian legal framework for transferring judges/judicial panels was in compliance with the requirement of judicial independence and impartiality and with the right

to a fair trial.

Connected national caselaw / templates

Miracle Europe KFT v. Hungary

(Link to) full text

<https://eakta.birosag.hu/anonimizalt-hatarozatok?azonosito=Pfv.20118/2016/6&birosag=K%C3%BAria>

Author

Zoltan Fleck, Agnes Kovacs

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

1. Metropolitan Court no. P.24.981/2013/63.
 2. Budapest Regional Court of Appeal no. Pf.20.726/2015/9.
 3. Curia no. Pfv.IV.20.118/2016/6.
 4. Constitutional Court no. 3128/2020. (V. 15.) AB
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