


**Hungary, Curia, Mfv.X.10.049/2021/16. (judicial appointment), supreme court, 2 June 2021**

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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Date Decision

2 June 2021

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EU legal sources and CJEU jurisprudence

Article 2 and 19(1) TEU

Article 47 of the EU Charter

Case of C-619/18

Joined Cases of C-585/18, C-624/18 and C-625/18

Case of C-64/16

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Subject Matter

The applicant judge applied for higher judicial offices and even though he was ranked first in two consecutive applications, the President of the NOJ declared the two calls unsuccessful. The applicant filed a lawsuit against the President of the NOJ, but the Curia, after a series of decisions, finally concluded that the Hungarian law did not provide judicial remedy against the President of the NOJ in relation to her decisions on annulments, and the challenged decisions were lawful.

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## Legal issue(s)

Rule of law, access to justice, judicial appointment to higher judicial office, effective judicial protection against the decision of the President of the NOJ on calls for application

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## Request for expedited/PPU procedures

No

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## Interim Relief

No

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## National Law Sources

Act CLXI of 2011 on the Organisation and Administration of the Courts

Act CLXII of 2011 on the Legal Status of Judges

Decision no. 87.E/2017. (II.17.) OBHE and 300.E/2017. (V.19.) OBHE

Decision no. 13/2013. (VI. 17.)

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## Facts of the case

The applicant, a judge of a first instance court adjudicating on criminal cases, applied for higher judicial offices in a regional court of appeal. The local judicial council of the court affected by the calls ranked him first among the candidates in two application procedures, but the President of the National Office for the Judiciary (NOJ) declared both calls unsuccessful on the ground that “due to changes in caseload and organising work following the publication of the calls, there is no need to fill the vacant positions”. In both cases, the NOJ President simply cited the text of the law without providing any individualised and detailed argument for her decisions. Furthermore, at the time of the annulments, there were vacant positions in the same court.

The first instance court found that the decisions of the President of the NOJ were unlawful and she exercised her rights abusively. The appellate court, however, terminated the procedure on the ground that the Hungarian law did not provide legal remedy (the right to access to court) against the respective decisions of the President of the NOJ. It argued that declaring a call unsuccessful was not listed among those decisions of the President of the NOJ that could have been challenged before courts. The Curia, in a review procedure, repealed the second-instance judgment and remitted the case to the appeal court for retrial. In the meantime, the applicant requested the Curia to refer the case to the CJEU for a preliminary ruling on the question of whether Article 2 and 19(1) TEU and Article 47 of the Charter require effective legal protection against and detailed, substantive reasoning for decisions rejecting judicial appointments. The Curia rejected the request on the ground that the questions were either devoid of purpose (as it was not disputed that legal remedy must be provided) or premature (as the first-instance court addressed the question of whether the decisions of the NOJ President were sufficiently reasoned).

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

The Győr Regional Court of Appeal sided with the first-instance court and found that the decisions of the President of the NOJ on annulling the calls were unlawful as she failed to provide sufficient reasons for her decisions. By simply citing the text of the relevant law, she did not meet the statutory requirement that her decisions must be reasoned “to the extent it is necessary”. The court, joining the first-instance court, also invoked the 13/2013. (VI. 17.) decision of the CC which held that the President of the NOJ must provide adequate reasons for her decision on staff matters in order that the right to legal remedy can be fully exercised by the affected parties. The requirement that employers must give clear and reasonable justification for their individual measures can also be derived from the 2012 Labour Act.

The court argued that Hungarian laws must be interpreted in the light of the fundamental principles of the EU law such as the rule of law, effective legal remedy and effective judicial protection stemming from Article 2 and 19(1) of the TEU and Article 47 of the Charter. It held that the principle of effective judicial protection is also grounded in Article 6 and 13 of the ECHR and the shared constitutional tradition of EU Member States. For these reasons, the applicant has the right to turn to courts against the decision of the NOJ President concerning judicial appointments even if the Hungarian law does not explicitly mention this possibility.

The court ordered the President of the NOJ to decide on the merits of the calls: (1) by appointing the applicant to higher judicial position, or (2) by submitting the proposed change in the ranking of the candidates to the National Judicial Council for approval, or (3) by annulling the application on relevant statutory grounds.

However, the Curia, in an extraordinary review procedure, overturned the major findings of the judgment rendered in the retrial proceeding. The Curia first held that according to the Hungarian law, it was not possible to file a case directly against the President of the NOJ, and EU law could not have been invoked as the legal issue (i. e. who can be sued in case of an annulled application procedure) was an internal one without any EU law relevance. Second, the Curia argued that the challenged decisions were not classified as personnel decisions by Hungarian law, so they were lawful and did not require more detailed reasoning. Third, the Curia stressed that courts had no power to decide on the application procedure on the merit, and the second-instance court could not have ordered the President of the NOJ to decide on the call as the particular legal consequences prescribed by the appeal court had no statutory basis.

The applicant filed a constitutional complaint with the CC claiming that the decision of the Curia was in breach of the Fundamental Law and violated Article 26 which declares that judges must be independent, and also the right to a fair trial and seek legal remedy protected by Article XXVIII(1) and (7).

The case is currently pending before the CC, and as of February 2022 it was found admissible and will be decided on the merit.

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## Relation of the case to the EU Charter

The Győr Regional Court of Appeal referred to the principle of effective judicial protection grounded in Article 47 of the Charter to argue that the applicant must be provided with the right to

seek effective remedy against the President of the NOJ even though legal remedy against this sort of decision is not explicitly stated in the relevant Hungarian law.

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### Relation between the EU Charter and ECHR

The courts argued that the principle of effective judicial protection provided by the EU Charter also stems from Article 6 and 13 of the ECHR.

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### Use of Judicial Interaction technique(s)

Hungarian courts referred to CJEU judgments and judgments of the Hungarian Constitutional Court.

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

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

Hungarian courts cited three judgments of the CJEU (C-619/18., C-64/16., and joined cases of C-585/18, C-624/18 and C-625/18) in order to argue that effective judicial protection is a fundamental principle of EU law and Hungarian law must be interpreted in light of this principle. However, the courts disagreed over the question of what effective judicial protection entails and who can be sued (who can be the respondent) if the application procedure was annulled.

Hungarian courts referred to decisions of the Hungarian CC as well. Decision no. 13/2013. (VI.17.) was cited in order to decide on to what extent decisions of the President of the NOJ must be reasoned.

The Curia in the final judgment cited two decisions of the CC [Decisions no. 16/2021. (V. 13.) and no 11/2020. (VI. 3.)] which state that courts cannot set aside Hungarian law and rely on EU law if the case has no EU law dimension. It was again a dispute between courts if EU law is relevant on the question of the remedies in judicial application procedures.

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

Some of the courts, especially the Győr Regional Court of Appeal used EU law to fill in the legislative gaps in the judicial application procedures regulated by the 2011 Acts and to interpret domestic law in compliance with EU law and fundamental rights.

Decisions of the CC were used for the same purposes.

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## Impact on Legislation / Policy

So far, the case has not had any direct impact on national legislation.

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## Connected national caselaw / templates

IS case - The judge who was the applicant referred questions to the CJEU on judicial independence.

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## Author

Agnes Kovacs

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

1. Budapest Environs Administrative and Labour Court no. 31.M.837/2017/23
  2. Győr Regional Court no. 2.Mf. 20.745/2018/7.
  3. Curia no. Mfv.X.10.251/2019/12.
  4. Győr Regional Court of Appeal no. Mf.V.30.054/2020/13/I.
  5. Curia no. Mfv.X.10.049/2021/16.
  6. Constitutional Court, Case no. IV/03595/2021 - pending
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