

Czech Republic, Nejvyšší správní soud (Supreme Administrative Court), no. 6 As 22/2022-58, supreme instance, 26. 5. 2022, no. 4365/2022 of the Coll.

Member State

 Czech Republic

Topic

Independence, protection from arbitrary transfer

Sector

Judicial Interaction Techniques

Deciding Court Original Language

Nejvyšší správní soud

Deciding Court English translation

Supreme Administrative Court

Registration N

6 As 22/2022-58

Date Decision

22.5.2022

ECLI (if available)

ECLI:CZ:NSS:2022:6.As.22.2022.58

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

Art. 19(1) of the TEU

Art. 47; art. 48 of the EU Charter

Decision of the CJEU from 6. 10. 2021, W. ?, C-487/19

ECtHR Jurisprudence

Decision of the ECtHR from 9. 3. 2021, Bilgen v Turkey, application no. 1571/07

Subject Matter

Reassignment judges between agendas – civil and administrative agendas – consent – public subjective rights of a judge – arbitrary and capricious conduct of the President of the Court

Legal issue(s)

Whether a judge who has been reassigned to a different section (from civil to administrative cases) as a result of a change in the work schedule may seek protection in the administrative justice system – and if so – how and to what extent he or she should be afforded judicial protection.

Request for expedited/PPU procedures

No

Interim Relief

No

National Law Sources

§ 17; § 82 of act no. 150/2002 Coll., Code on the Administrative Justice (soudní řád správní)

Art. 4; art. 82(1); art. 82(2) of the Constitution (Ústava)

Art. 21(4); art. 36(2); art. 38(1) of the (Czech) Charter on Fundamental Rights and Freedoms (Listina základních práv a svobod)

§ 41(1); 41(2); § 67(1) of the act no. 6/2022 Coll., on Courts and Judges (zákon o soudech a soudcích)

Facts of the case

The applicant (and later complainant) was a regional court judge who had long been assigned to a chamber hearing civil cases. In 2020, the President of the Regional Court also assigned the judge to deal with local election complaints and, in 2021, to decide on asylum cases. Later, in 2021, the president removed the judge from civil cases. As a result, the judge only heard administrative cases. The judge then filed a lawsuit asking to be reassigned back to the civil chamber and to prevent the president further changes in the administrative agenda.

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

The Court first noted that the work schedule may affect the rights of judges guaranteed by the Czech constitutional order, which provides citizens with equal access to public functions and the right to perform these functions undisturbed, and guarantees the independence of judges. The work schedule of judges, which is determined by the president of the court, can potentially limit the rights of judges and their independence (whether externally, i.e. against interference from the public, or internally, i.e. from the president of the court) and thus interfere with these rights. An extreme example would be not assigning any cases to a judge with the intention of preventing him

or her from fully performing his or her duties. Similarly, overburdening a judge with the intention of exposing him to disciplinary action or reassigning him or her to another section may compromise their independence and lead to unacceptable coercion.

As the existing case law was to the contrary (i.e. the change in the work schedule cannot affect the rights of judges and as such the change cannot be adjudicated), the Court found that this previous view had been overturned by the ECJ's *W.?* judgment. Although the ECJ's interpretation only affects judges applying European law, in the case of the Czech Republic, European law can potentially be applied by judges dealing with any agenda. Moreover, although the situation in the Czech Republic is less dramatic than in Poland, the court considers it applicable in the present case. At present the court did not find any conflicting views of the Constitutional Court or the ECtHR.

The court then examined the fulfilment of five cumulative conditions required by Czech procedural law for the hearing of this type of action. The work schedule is addressed to judges (condition 1); it concerns generally defined cases (condition 2); it is a specific act of the president of the court and not a decision or measure of a general nature (condition 3); it directly affects the rights of the judge, as it establishes his or her authority and obligation to exercise decision-making activity in a given area of law (condition 4); and the president of the court in this case acts as an administrative authority (condition 5).

Finally, the court examines the legality. The law does not provide for the transfer of judges between different cases, but this does not mean that the president's power is unlimited. The limit in this case is the arbitrary or capricious nature of the transfer, which must therefore be based on an adequate reason, not discriminatory or motivated by an intention to interfere with the judge's independence. Finally, the Court concludes that the complainant's reassignment was not arbitrary and was based on an appropriate reason, namely the shortage of judges in the administrative section.

Relation of the case to the EU Charter

Art. 47 of the EU Charter was cited several times in the decision, mostly while summarising the legal reasoning of the CJEU in *W. ?* judgement.

Relation between the EU Charter and ECHR

The citation of the ECtHR decision from 9. 3. 2021, *Bilgen v Turkey*, application no. 1571/07, is largely ornamental. The SAC notes that the ECtHR has not yet issued a decision on this issue. The decision cited concerns a more serious interference (transfer of a judge to another court). The SAC concludes that its legal opinion does not contradict the cited decision.

Use of Judicial Interaction technique(s)

Consistent interpretation

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

foreign courts)

The SAC overcame its previous decision (from 19. 9. 2012, no. 1 As 48/2012-28, no. 2767/2013 of the Coll.), which prohibited judges assigned to another agenda by the court president to seek protection in front of the administrative courts.

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

The SAC disregarded that opinion of the CC is contrary to the new legal opinion of the SAC – it noted that the CC's opinion was "made outside the main reasons for the decision and without assessing the constitutional conformity of this opinion".

The applicant filed an individual constitutional complaint with the CC - it was declared manifestly unfounded by decision from 24. 1. 2023, no. IV. ÚS 2058/22.

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

The SAC's main reason for citing the ECJ's W.? ruling was to overturn its previous case law without activating an enlarged senate. According to the law, whenever the SAC wants to overturn or unify its previous case law, it must refer the case to the Enlarged Senate, which exists for this specific reason. This procedure is not necessary if the previous case law has been overturned by a more recent decision of a "higher court", i.e. the Constitutional Court, the ECtHR or the ECJ, as was the case here.

Impact on Legislation / Policy

No

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

The Court fully endorsed the ECJ's view that the work schedule affects the rights of judges and must therefore be subject to judicial review. In this respect, the SAC's decision is in line with the ECJ ruling. However, the Court did not make any other findings as these were not necessary.

Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred to by the CJEU in its decision) or the Explanations?

N/A

Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?

No

Did the national court take into account national case law on fundamental rights?

Yes

If the court that issued the preliminary reference is not a last instance court, and the "follow up" was appealed before a higher court, include the information

No preliminary reference by the SAC in this case

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

The SAC overcame its previous decision (from 19. 9. 2012, no. 1 As 48/2012-28, no. 2767/2013 of the Coll.) with the ECJ judgement in W. ?.

Connected national caselaw / templates

There are currently no subsequent decisions.

(Link to) full text

<https://vyhledavac.nssoud.cz/DokumentOriginal/Html/700718>

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