

Czech Republic, Evropský soud pro lidská práva (European Court For Human Rights), 23. 6. 2022, app no. 19750/13

Member State

 Czech Republic

Topic

Independence, impartiality

Sector

Disciplinary proceedings

Deciding Court Original Language

Evropský soud pro lidská práva

Deciding Court English translation

European Court for Human Rights

Registration N

Application no. 19750/13

Date Decision

1.6.2023

ECLI (if available)

ECLI:CE:ECHR:2023:0601JUD001975013

National Follow Up Of (when relevant)

No

EU legal sources and CJEU jurisprudence

N/A

ECtHR Jurisprudence

Chamber decision:

Decision of the ECtHR from 10. 2. 1983, Albert and Le Compte v. Belgium

Decision of the ECtHR from 20. 5. 1998, Gautrin and Others v. France

Decision of the ECtHR from 20. 10. 2015, Fazia Ali v. the United Kingdom, no. 40378/10

Decision of the ECtHR from 1. 12. 2020, Guðmundur Andri Ástráðsson v. Iceland, no. 26374/18
Decision of the ECtHR from 9. 3. 2021, Emina?ao?lu v. Turkey, no. 76521/12
Decision of the ECtHR from 10. 6. 2001, Cyprus v. Turkey, no. 25781/94
Decision of the ECtHR from 23. 6. 1081, Le Compte, Van Leuven and De Meyere v. Belgium
Decision of the ECtHR from 24. 11. 1994, Beaumartin v. France
Decision of the ECtHR from 22. 10. 1984, Sramek v. Austria
Decision of the ECtHR from 9. 1. 2013, Oleksandr Volkov v. Ukraine, no. 21722/11
Decision of the ECtHR from 8. 10. 2019, Grace Gatt v. Malta, no. 46466/16
Decision of the ECtHR from 6. 5. 2003, Kleyn and Others v. the Netherlands, nos. 39343/98
Decision of the ECtHR from 22. 6. 1989, Langborger v. Sweden
Decision of the ECtHR from 16. 12. 2003, Cooper v. the United Kingdom, no. 48843/99
Decision of the ECtHR from 28. 5. 2002, Stafford v. the United Kingdom, no. 46295/99
Decision of the ECtHR from 15. 10. 2009, Micallef v. Malta, no. 17056/06
Decision of the ECtHR from 23. 4. 2015, Morice v. France, no. 29369/10
Decision of the ECtHR from 25. 9. 2018, Denisov v. Ukraine, no. 76639/11
Decision of the ECtHR from 21. 7. 2009, Luka v. Romania, no. 34197/02
Decision of the ECtHR from 21. 12. 2000, Wettstein v. Switzerland, no. 33958/96
Decision of the ECtHR from 22. 6. 2004, Pabla Ky v. Finland, no. 47221/99

Grand Chamber decision:

Decision of the ECtHR from 20. 3. 2018, Radomilja and Others v. Croatia, nos. 37685/10 and 22768/12
Decision of the ECtHR from 6. 11. 2018, Ramos Nunes de Carvalho e Sá v. Portugal, nos. 55391/13 and 2 others
Decision of the ECtHR from 17. 7. 2014 Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania, no. 47848/08
Decision of the ECtHR from 20. 3. 2018, Radomilja and Others v. Croatia, nos. 37685/10 and 22768/12
Decision of the ECtHR from 28. 5. 2020, Farzaliyev v. Azerbaijan, no. 29620/07
Decision of the ECtHR from 18. 7. 2019, Rustavi 2 Broadcasting Company Ltd and Others v. Georgia, no. 16812/17
Decision of the ECtHR from 1. 6. 2021, Denis and Irvine v. Belgium, nos. 62819/17 and 63921/17

Subject Matter

Independent and impartial tribunal – application – lay judges – direct competitors of the disciplined defendant – time-limit inadmissibility

Legal issue(s)

The composition of the Disciplinary Chamber, taking into account the fact that the Ministry has power to initiate disciplinary proceedings against some of the lay judges and they were direct competitors of the accused (another bailiffs).

Request for expedited/PPU procedures

No

Interim Relief

No

National Law Sources

§ 4a; § 5(2); § 8(5)(a) of the act no. 7/2002 Coll., on Proceedings in Matters concerning Judges, Public Prosecutors and Enforcement Officers (zákon o řízení ve věcech soudců, státních zástupců a soudních exekutorů)

Facts of the case

The applicant, a bailiff, was charged with two acts of misconduct, namely the drawing up of a bailiff's report certifying the recognition of a debt by an unauthorised person, and another, unrelated disciplinary offence in respect of which the proceedings were subsequently discontinued. The Disciplinary Chamber which conducted the disciplinary proceedings in respect of the misconducts was composed of a judge of that court as President, a judge of the Supreme Court as Vice-President and four lay assessors: two enforcement officers, a lawyer and a professor of law. The applicant was found guilty and fined approximately EUR 13,500.

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

The following text summarises the arguments used in the judgment of the ECtHR Chamber. Its findings were later overruled by the judgment of the Grand Chamber (judgment of the ECtHR Grand Chamber of 1 June 2023, Grosam v. the Czech Republic, app. no. 19750/13) on the grounds that the applicant had lodged the complaint late.

The ECtHR Chamber found that the application was founded in part as regards the composition of the Disciplinary Chamber. The ECtHR found that the Disciplinary Chamber hearing cases of law enforcement officers was set up asymmetrically. One-third of the members of the Chamber were professional judges, who worked as full-time judges and were appointed to the Disciplinary Chamber by their respective courts, while two-thirds of the members of the Chamber were "lay assessors", members of specially selected legal professions.

The ECtHR chamber found several problems with the two enforcement officers sitting as lay assessors.

The first issue was the transparency of the procedure by which the lay assessors were appointed, in particular the system for nominating persons to the lists from which the lay assessors were drawn. In this regard, the ECtHR observed that the chair of the disciplinary court keeps several lists of lay assessors. The list of lay assessors who were enforcement officers included ten enforcement officers nominated by the President of the Chamber of Enforcement Officers without any predetermined selection criteria or otherwise transparent procedure (the only requirements being three years' service and good moral character). The President of the Chamber of Enforcement Officers was otherwise given full discretion in his selection.

The second issue was the objective impartiality of the enforcement officers acting as lay judges. It considered it significant that the Minister of Justice has wide powers over the enforcement officers (he or she is at the top of the hierarchy and supervises them, their remuneration is based on a regulation issued by the Ministry) and is entitled to take disciplinary action against any enforcement officer and to become a party to the disciplinary proceedings. The ECtHR concluded this part by stating that since the Minister can take disciplinary action against an enforcement officer, as in the present case, there is a risk that at least two (only the lay assessors of

enforcement officers) or even three members of the disciplinary chamber (if a public prosecutor has been drawn by lot to sit in the chamber as a lay assessor) may not be fully impartial towards the enforcement officer whom the Minister of Justice wishes to discipline.

Thirdly, the two lay judges were direct competitors of the applicant, as there is no territorial jurisdiction.

As noted above, the Grand Chamber of the ECHR considered that the applicant's complaint that the disciplinary chamber was not an independent and impartial tribunal, raised in 2015, was submitted more than six months after the end of the disciplinary proceedings against him at the end of 2012, when he was served with the decision of the CC rejecting his constitutional complaint. It therefore did not comply with the six-month rule and was therefore rejected.

Relation of the case to the EU Charter

N/A

Relation between the EU Charter and ECHR

N/A

Use of Judicial Interaction technique(s)

N/A

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

N/A

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

N/A

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

N/A

Impact on Legislation / Policy

The Ministry of Justice proposed in June 2023 changes to the disciplinary proceedings (i. a. introduction of two-instance system, changes in compositions of the disciplinary chambers – but the lay judges should still be present). However, the proposal does not mention the Grosam case in any way, so no official link between the case and the proposed change can be made.

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

The decision taken by ECHR Chamber was not implemented, as the decision was under review by the Grand Chamber. Between Chamber and Grand Chamber decision, one other bailiff was disciplined by the Disciplinary Chamber (decision of the SAC from 12. 4. 2023, no. 14 Kse 1/2022-91).

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?

N/A

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

N/A

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

N/A

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

N/A

Connected national caselaw / templates

N/A

(Link to) full text

[http://hudoc.echr.coe.int/eng#{%22appno%22:\[%2219750/13%22\],%22itemid%22:\[%22001-217806%22\]}](http://hudoc.echr.coe.int/eng#{%22appno%22:[%2219750/13%22],%22itemid%22:[%22001-217806%22]})

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