


Hungary, Pest Central District Court, C-564/19 IS case, ordinary, 11 July 2019

Member State

 Hungary

Topic

independence and accountability

Sector

Judicial Interaction Techniques; Judicial Self-Government; Disciplinary proceedings; Use of the Preliminary Reference Procedure

Deciding Court Original Language

Pesti Központi Kerületi Bíróság

Deciding Court English translation

Pest Central District Court

Registration N

1.B.30.263/2018/30.

Date Decision

11 July 2019

ECLI (if available)

ECLI:EU:C:2021:949

EU legal sources and CJEU jurisprudence

Articles 2, 6 and Article 19(1) TEU, Article 267 TFEU, Article 47 of the EU Charter, Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, Directive 2012/13/EU on the right to information in criminal proceedings, Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings

C-619/18, Commission v. Poland, 24 June 2019, ECLI:EU:C:2019:531

C-216/18 PPU, LM, 25 July 2018, ECLI:EU:C:2018:586

Joined Cases C-508/18 and C-82/19 PPU,

ECtHR Jurisprudence

Denisov v. Ukraine (app. no. 76639/11)

Ástráðsson v. Iceland (app. no. 26374/18)

Subject Matter

In a criminal procedure against a Swedish national, the Hungarian judge referred a question to the CJEU about the deficiencies of translation and interpretation in court proceedings provided by Hungarian laws. The judge also asked questions about the problems of the new model of court administration introduced in 2012 in Hungary; and about the low salaries of Hungarian judges. After his request was found unlawful by the Kúria, the court of last instance, and a disciplinary proceeding was opened against him, he added two more questions to his initial request regarding the latter developments and their impact on judicial independence and the right to a fair trial guaranteed by EU law.

Legal issue(s)

problems of central court administration, the powers of the President of the National Judicial Office (NJO), the appointment and competencies of court presidents, low remuneration of judges and discretionary bonuses awarded by court executives, a top court declares a request of a lower court for preliminary ruling unlawful, disciplinary proceedings against judges for referring questions to the CJEU

Request for expedited/PPU procedures

YES - The referring court argued that the reactions to its preliminary request, namely the Kúria decision finding the request unlawful and the disciplinary proceeding initiated against him, can have an extremely serious negative effect, deterring judges from submitting such preliminary requests to the CJEU. However, the CJEU refused to pursue an expedited procedure for the following reasons: 1. the disciplinary proceeding was already withdrawn, 2. the defendant in the main proceeding was not threatened by a measure involving the deprivation of liberty, 3. the referred questions were very complex and sensitive.

Interim Relief

N/A

National Law Sources

Act CLXI of 2011 on the Organization and Administration of Courts; Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Act XC of 2017 on Criminal Procedure and Decrees no. 24/1986. (VI.26.) and 7/1986. (VI.26.)

Facts of the case

IS, a Swedish national, was prosecuted for the misuse of firearms and ammunition. He did not speak Hungarian, the language of the criminal proceeding, and resided abroad during the

proceeding, so Hungarian authorities should have conducted the trial in absentia. In his initial request, the Hungarian judge referred three questions to the CJEU. The first concerned the Hungarian regulation on the interpretation provided in criminal proceedings and the question about its compliance with EU law. The referring judge argued that Hungarian law lacks adequate guarantees of interpretation that are sufficient to safeguard the fairness of the proceeding, including a registry for independent interpreters; therefore, the quality of interpretation could not be verified. These problems raised concerns about the effective enforcement of the accused's right to information and right of defence guaranteed by EU law. Thus, it is questionable if the court can continue the case in absentia. The second and third questions related to the independence of Hungarian judges. The second raised the problems of the central court administration. The referring judge highlighted that while the President of the NJO, appointed by the Parliament, has broad powers, the NJC, the self-governing body elected by judges, is relatively weak regarding its competencies to supervise the NJO President. The referring judge presented the primary deficiencies in this regard: The NJO President (1) often invalidated applications for judges and court executives without meaningful (or any) reasoning, (2) filled vacancies for court executives with temporary appointments, (3) questioned the lawfulness of the NJC's operation and refused any cooperation with it, (4) ignored the NJC's official warnings about the irregularities in court administration, (5) initiated disciplinary proceedings against NJC members, etc. He stressed that the President of the NJO can exert significant influence on judicial careers and the daily work of individual judges through court presidents who are in charge of case allocation, launching disciplinary proceedings, and the professional assessment of judges. He also exposed how these deficiencies in court administration have affected his career, demonstrating the link between the problems and the main procedure. For instance, in 2017, the NJO President invalidated his applications to higher judicial office without justification. A disciplinary procedure was instituted against him on the proposal of the NJO President. As a member of the NJC, he was the target of smear campaigns in the media. He stressed that he works in a court that is presided over by a court executive appointed on a temporary basis by the NJO President. He asked the CJEU whether appointing court presidents in Hungary complies with judicial independence guaranteed by EU law. Furthermore, he asked whether, in such circumstances, the fairness of court proceedings is ensured, considering also that the judge is likely to be exposed to sanctions for his judicial and administrative activities. The third question referred to the CJEU addressed the problem of judicial salaries: the government's failure to increase the remuneration of judges resulted in very low judicial salaries in European comparison and significant differences between judges and prosecutors of the same category. The referring judge also raised concerns about the high bonuses awarded to judges by the NJO President and court presidents in their discretionary powers. The Prosecutor General challenged the initial request for a preliminary ruling before the Supreme Court (Kúria) by an extraordinary appeal submitted "in the interest of the law". The Supreme Court sided with the PG and found the request unlawful on the grounds that the questions were irrelevant to deciding the case: they were somewhat hypothetical, reflecting the subjective opinion of the judge, and had nothing to do with the facts of the case. Afterwards, the president of the Budapest Regional Court initiated a disciplinary procedure against the judge by relying on the findings of the Kúria and claiming that the judge had undermined the authority of the judicial office. This motion was nevertheless withdrawn soon. Then, the judge submitted two supplementary questions to the CJEU. In the fourth question, the referring judge asked whether declaring the preliminary request unlawful by an apex court, in a procedure seeking to harmonise the national jurisprudence, complies with Article 267 TFEU. Furthermore, in light of that, whether the judge should disregard the decision of the Supreme Court or instead continue with the main proceeding. The fifth question related to the disciplinary procedure and whether bringing such a procedure against a judge for requesting the preliminary ruling of the CJEU is in line with judicial independence, stemming from Article 19(1) TEU, Article 47 of the Charter, Article 267 TFEU and

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

Four out of five questions concerned judicial independence. Regarding the second question, the referring judge requested the interpretation of Article 19(1) TEU, Article 47 of the Charter and the case-law of the CJEU in relation to the appointment of court presidents. He asked whether judicial independence can prevail if court presidents, entrusted with significant administrative powers over individual judges, are temporarily mandated by the NJO President in a process where the ordinary application procedure and the power of the self-governing bodies are circumvented. Furthermore, the judge asked whether the right to a fair trial in court proceedings could be guaranteed under these circumstances. He noted that the Parliament appoints the NJO President, so this office is linked to the legislative branch. It is the Parliament that can remove the NJO President from office. The referring judge invoked several decisions of the CJEU to substantiate the claim that the current system of court administration in Hungary (a politically appointed NJO President with extensive powers coupled with a "weak" NJC) and the way the President of the NJO exercise its administrative powers, especially regarding judicial appointments, might be contrary to EU law. In the C-619/18 case (Commission v. Poland), the CJEU defined judicial independence by determining its external and internal dimensions. In the LM case, it was found that disciplinary systems should provide guarantees against using this procedure to exercise political control over adjudication. The referring judge relied on the Opinion of Advocate General Tanchev in the Joined Cases C-585/18, C-624/18 and C-625/18, which were pending before the CJEU when the Hungarian judge decided to refer questions to the CJEU. By citing Tanchev's Opinion, he highlighted the role of judicial councils in guaranteeing the independence of the judiciary, including that of judicial appointment and career advancement from the legislative and the executive branches. Similarly, the Opinion has pointed out that according to the case-law of the ECtHR, political interference with judicial appointments can affect the independence of tribunals and the fairness of court proceedings. The referring judge invoked C-508/18. and C-82/19.PPU case to argue that judicial independence can be compromised if the judiciary is subject to the indirect control of the NJO President, an actor outside the judicial branch. Also, the referring judge cited findings of the Venice Commission, GRECO, the European Semester's report and the European Association of Judges, highlighting the problems of central court administration. He also noted that Article 7(1) procedure was pending against Hungary, with a particular focus on the problems of judicial independence. The third question concerned the problem of the low remuneration of Hungarian judges compared to prosecutors and the discretionary bonuses awarded to judges by the NJO President and court presidents in light of the principle of judicial independence enshrined in Article 19(1) TEU, Article 47 of the Charter and the case-law of the CJEU. The judge also asked whether the right to a fair trial in court proceedings can be guaranteed under such circumstances. By invoking the 'Portuguese judges' case (C-64/16), the judge argued that a salary commensurate with the importance of the judicial office is an essential guarantee of judicial independence, and the long period of underpayment might have the actual effect of a salary decrease within the judiciary. The bonuses awarded within discretionary power can themselves raise the problem of undue influence over the administration of justice and the violation of judicial independence. The CJEU found the second and third questions, related to the general problems of the Hungarian judiciary, inadmissible. The CJEU argued that the necessity requirement is not satisfied: there must be a connecting factor between the provisions of EU law and the dispute in the main proceeding, meaning that the interpretation of the respective provisions of EU law is objectively required for rendering a decision in the main proceeding. But apparently, there is no such connecting factor. The main proceeding is not about the Hungarian judicial system as a whole, even though the problems raised may undermine judicial independence and the independence of

the referring judge to implement EU law. But this connection is not enough to meet the necessity criterion. Also, the referred questions are not about the interpretation of procedural provisions of EU law or needed to resolve procedural questions of national law before a decision on the substance of the dispute is made. The fourth and fifth question was found admissible by the CJEU. Regarding the fourth question, the referring judge argued that even though the Kúria judgment is purely declarative and does not set aside the initial request, it can generally deter lower courts from turning to the CJEU under Article 267 TFEU. This is also because the decision was delivered on the basis of an appeal "in the interest of the law" which seeks to harmonise national case-law. Furthermore, the judge was uncertain about how to proceed with the underlying criminal case, whether he should resume the suspended proceeding as a consequence of the Kúria judgment or should disregard the Kúria decision if it is found to be in breach of EU law, namely of Article 267 TFEU. On the question of admissibility, the CJEU argued that although the Kúria decision did not have any effect on the validity of the initial request, the referring judge must have considered whether to continue the main proceeding or ignore the Kúria judgment for its being incompatible with EU law. The CJEU stressed that the decision of the Kúria was published as a decision of principle which aims to secure uniformity in the interpretation of national law. Also, the judge can be uncertain if the fact of disregarding the Kúria decision can make his judgment on the merits of the case contestable on appeal. Therefore, the question was not irrelevant. On substance, the CJEU argued that by reviewing the legality of the initial request, the Kúria actually examined the admissibility of the questions referred to the CJEU, which is incompatible with Article 267 TFEU as this review belongs to the exclusive competence of the latter court. Also, even though the Kúria judgment had no direct consequences to the validity of the request, it could undermine the authority of the decision rendered by the CJEU and the judgment made in light of the CJEU's responses in the main proceeding. The Kúria judgment could deter national courts from turning to the CJEU, thereby threatening the effectiveness of EU law and judicial cooperation under Article 267 and restricting the effective judicial protection of individual rights derived from EU law. The CJEU added that the primacy of EU law ensures the unity and effectiveness of EU law, and national laws, including those of constitutional status, cannot undermine this principle. If national laws prevent the implementation of Article 267 TFEU, courts should not wait until these laws are set aside by legislative or constitutional means; instead, they should set them aside. This also means that the primacy of EU law requires lower courts to disregard those decisions of national supreme courts that are prejudicial to the prerogatives of lower courts granted by Article 267 TFEU and, consequently, hinder the implementation of judicial cooperation under the preliminary ruling mechanism. Also, the possibility that the CJEU may find questions of the preliminary request inadmissible cannot provide grounds for maintaining the supreme court's decision. Regarding the fifth question, the referring judge argued that it must have been the content of the preliminary reference that triggered the disciplinary procedure. For him, the main concern was that under similar circumstances, other judges could be exposed to similar proceedings. The judge invoked Article 19(1) TEU, Article 47 of the Charter and the case-law of the CJEU in general read in light of Article 267 TFEU to argue that judicial independence would preclude such practice. On the admissibility of the fifth question, the CJEU argued that this case must be distinguished from the *Miasto ?owicz* case, as the referring judge must decide whether he can continue the main proceeding without the fear of the disciplinary proceeding being reopened against him. Deciding on this procedural question is necessary for resolving the criminal case independently, without external interference. Consequently, this question is closely connected to the fourth question by creating a procedural obstacle for the judge to continue the main proceeding and decide on the substance of the criminal dispute. On the substance of the fifth question, the CJEU examined it only in light of Article 267 TFEU, excluding connections with Article 19(1) TEU and Article 47 of the Charter that the referring judge also invoked. The CJEU argued that the question concerns a procedural difficulty in the context of Article 267 TFEU procedure. Consequently, judicial

independence was also interpreted in light of this EU provision as essential to the proper working of judicial cooperation under the preliminary ruling procedure. The CJEU stressed that it has already been found in previous cases that commencing disciplinary procedure for referring questions to the CJEU cannot be permitted under EU law, as it can (1) deter all national courts from using the Article 267 TFEU procedure, and (2) jeopardise the uniform application of EU law.

Relation of the case to the EU Charter

The referring judge invoked Article 47 of the Charter regarding the proper interpretation of judicial independence in EU law, raised by the second, third and fifth questions. Accordingly, Article 47 was always cited together with the second subparagraph of Article 19(1) TEU and the case-law of the CJEU in relation to the problems of (1) the temporary appointments of court presidents by the NOJ President, (2) the low judicial salaries, and (3) also of instituting a disciplinary proceeding against a judge for referring questions to the CJEU for preliminary ruling. In the second and third questions, the judge asked whether the problems about judicial independence have a bearing on the fairness of court proceedings. However, Article 47 of the Charter was not used by the CJEU to answer the fifth question on substance, while the second and third questions were found inadmissible.

Relation between the EU Charter and ECHR

The initial request for the preliminary ruling mentioned the Denisov and Ástráðsson judgments of the ECtHR only indirectly by referring to the opinion of Advocate General Tanchev in joined cases C?585/18, C?624/18 and C?625/18, which were pending before the CJEU when the Hungarian judge decided to turn to the CJEU. The referring judge highlighted from Tanchev's opinion that the respective ECtHR cases had shown that political interference with judicial appointments has an impact on the independence of tribunals and the fairness of the trials.

Use of Judicial Interaction technique(s)

preliminary reference, consistent interpretation, disapplication of national law in favour of EU law

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

No

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

The Hungarian judge used the preliminary ruling procedure and turned to the CJEU. In his request, he cited many CJEU judgments to argue that the model of court administration, the discretionary appointment of court presidents, and the low salaries of Hungarian judges fail to comply with the standards of judicial independence stemming from EU law.

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

The Hungarian judge referred questions to the CJEU to ask for a review of the Hungarian court administration system in light of EU standards. Thus, the preliminary request sought a consistent interpretation of the statutory laws on court administration with the EU standards of judicial independence. In his supplementary request, he also intended to disregard national law, particularly a decision of the top court (Kúria) finding his preliminary request unlawful.

Impact on Legislation / Policy

After the CJEU delivered its judgment in November 2021, the Kúria stressed in a press release that as long as it does not decide otherwise, its decision on the preliminary request in the IS case (Bt.III.838/2019/11) is final and its interpretation is binding. It was only in 2023 that the government amended the relevant provisions of the Criminal Procedure Code in order to eliminate the possibility of challenging court decisions referring questions to the CJEU for a preliminary ruling (See Articles 63-64 of Act X of 2023). This amendment was required by one of the Super Milestones determined by the EU in the Recovery and Resilience Plan for Hungary (Supermilestone: Removing obstacles to references for preliminary rulings to the Court of Justice of the European Union). As a result, the Kúria can no longer review lower courts' requests for preliminary rulings and declare them unlawful on the ground that the referred questions are irrelevant. However, according to the Hungarian legal framework, the judgment of the Kúria declaring unlawful the reference for a preliminary ruling in the IS case has a precedential force applicable to all branches of law. This means that lower courts are obliged to follow the judgment that serves the uniform application of law in ordinary courts. Consequently, the judgment's main arguments can continue to discourage lower courts from referring questions of EU law to the CJEU, as the unlawfulness of a reference can be determined based on the precedential decision. Also, Act X of 2023 restricted the right of judges to refer cases to the CJEU as the relevant provision of the Criminal Procedure Code now states that a court can request a preliminary ruling of the CJEU "if it finds that such a ruling is necessary with respect to any legal act or legislation of the European Union applicable to the criminal proceeding". The 2023 judicial reform, on which the EU made Hungary's access to EU funds conditional, strengthened the role of the NJC to counterbalance the powers of the President of the NJO.

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

In the main proceeding, the Pest Central District Court delivered the final decision in February 2023, in which the defendant was granted probation. No information is yet available publicly about the decision.

Author

Ágnes Kovács, Eötvös Loránd University (ELTE)
