

Czech Republic, Nejvyšší správní soud (Supreme Administrative Court), 11 Kss 18/2011-251, ordinary, 18. 1. 2012

Member State

 Czech Republic

Topic

Accountability

Sector

Disciplinary proceedings; Judicial Self-Government; Predictive Justice

Deciding Court Original Language

Nejvyšší správní soud

Deciding Court English translation

Supreme Administrative Court

Registration N

11 Kss 18/2011-251

Date Decision

18/01/2012

ECLI (if available)

ECLI:CZ:NSS:2012:11.Kss.18.2011.251

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

N/A

ECtHR Jurisprudence

N/A

Subject Matter

Disciplinary proceedings – vicepresident of a court – case assignment – allocation rules – verbal instruction not to assign matters contrary to the allocation rules

Legal issue(s)

Did the vice-president of the court violate the allocation rules and the law when he orally instructed the administrative staff not to allocate new cases to his division?

Request for expedited/PPU procedures

N/A

Interim Relief

N/A

National Law Sources

§ 87(1); 88(2)(b); 121(3) of the Act no. 6/2002 Coll., on Courts and Judges (zákon o soudech a soudcích)

Facts of the case

The vice-president of a regional court faced allegations of disciplinary misconduct based on several actions that appeared to violate court rules and principles of transparency in case allocation.

Firstly, he was accused of having allowed a certain bankruptcy petition to be assigned directly to his own division, even though this assignment was contrary to the court's 2010 assignment rules. Second, between January and February 2010, he allowed his division to receive almost no case assignments. This selective distribution was again in breach of the 2010 allocation rules. Third, the vice president allegedly failed to inform the president of the court of the operational status of the ISIR system, which was designed to automate the assignment of cases. Fourthly, he proposed an amendment to the assignment rules which would limit the number of bankruptcy cases assigned to his division to ten per month, unless the president or vice-president (himself) decided otherwise.

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

The disciplinary court took the claims one by one and reached following conclusions.

The court found that the second allegation was a disciplinary conduct. The core issue was that, between 18 January and 22 February 2010, the vice president orally directed the administrative staff to suspend the assignment of cases to his department, with the exception of six bankruptcy cases. The Disciplinary Court focused on whether the vice president had the authority to issue such a directive. According to the allocation rules, only the President of the Court - or, in his absence, the designated vice presidents - could make exceptions to the case allocation procedures. The relevant rules provided that these exceptions were to be administered by certain vice-presidents, none of whom included the defendant. Therefore, the Court ruled that the Respondent had exceeded his authority by independently halting the assignment of cases to his division.

The court ruled that although there was no evidence of wilful misconduct, the vice-chairman's actions showed negligence. The court concluded that he had a responsibility to clarify the limits of

his authority, particularly given his senior role and the public's expectation of accurate and impartial administration of justice. By failing to do so, he not only violated the court's rules, but also undermined public confidence in the independence and fairness of the judiciary.

To the first allegation, the court noted a lack of specific details on vice president conduct and responsibility. Ultimately, it held that differing legal interpretations of the assignment's validity could not alone constitute misconduct. Similarly, the disciplinary court noted the inadequacy and brevity of the disciplinary complaint. Generally, it held that improper communication between the court's president and vicepresident could not be a disciplinary offence. In regard to the fourth allegation, the conduct was time-barred.

Ultimately, the disciplinary court determined that the misconduct for which the vice-chair was found guilty was closely tied to his position and responsibilities. Considering the severity of the violation and the potential serious implications of his unclear understanding of his authority, the court deemed a reprimand (the mildest penalty) inadequate. Instead, it chose the next stricter measure: removing his salary increase tied to his role as vice-president for a period of six months.

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)

The Supreme Administrative Court does not engage with foreign case law or case law of other national courts.

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

N/A

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

N/A

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?

No

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

Was there a consensus among national courts on how to implement the CJEU's preliminary ruling; and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?

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

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