



Preliminary ruling procedure – a useful tool within the national judicial system

Tallin - 2024

WORKING SESSION

Case 2 – Charter, Radovan

Legal context

1. European Union law

Article 47 Charter of fundamental rights of the European Union

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Second subparagraph of Article 19(1) TEU

Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.

Article 2 TUE

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 6(1) of the European Convention of Human Rights

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

2. Slovak law

Law n° 432/2021 introducing the disciplinary regime of the Supreme Administrative Court of the Slovak Republic and amending and supplementing certain laws, has governed, since December 2021, disciplinary proceedings concerning judges, prosecutors, bailiffs and notaries.

In accordance with Article 3 of this Law, the Disciplinary Chamber of the Supreme Administrative Court of the Slovak Republic rules on the disciplinary liability of those professionals and imposes any disciplinary measures on them.

That Law provides that the Disciplinary Chamber is to consist of five members, namely a President, two judges and two non-professional judges. Furthermore, according to the provisions of that Law, a disciplinary complaint against a judge may, inter alia, be made by the Minister for Justice.

The main proceedings

1. On 27 June 2020, the applicant, Radovan Z., brought a civil action before District Court, Bratislava II, Slovakia.
2. The single judge making up the court considers that the case in the main proceedings may be described as ‘politically sensitive’. The defendant in the main proceedings, X., is an important political person in Slovakia.
3. In view of the political context of the case in the main proceedings, the single judge making up the district court expresses fears that disciplinary proceedings may be brought against him.
4. Furthermore, the judge states that he has already been the subject of disciplinary proceedings following a request from the then Minister for Justice, on the basis of a report drawn up by an employee of the Ministry of Justice. According to that report, that judge made inappropriate comments concerning that employee following a hearing which she had attended as a member of the public. These disciplinary proceedings are, at the moment of speaking, pending before the Supreme Administrative Court of the Slovak Republic.
5. The concerns of the judge that he would be faced with new disciplinary proceedings are caused, in essence, by the fact that, following the reform of the disciplinary regime for judges, which entered into force on December 2021, the objectivity and impartiality of disciplinary proceedings against judges would no longer be guaranteed and the independence of the Slovak courts would be affected. According to the judge, the Disciplinary Chamber does not meet the requirements of an independent and impartial tribunal.

The judge is thinking to stay the proceedings and to refer to the Court of Justice for a preliminary ruling asking:

1) If Article 47 of the Charter, read in conjunction with the second subparagraph of Article 19(1) TEU, Article 2 TEU and Article 6(1) of the European Convention of Human Rights, sincere cooperation and legal certainty, are to be interpreted as permitting a Disciplinary Chamber of judges to be regarded as an independent court within the meaning of EU law even if according to the national legislation, five members are professional judges and two are non-professional judges sitting as ‘other persons appointed by the Council of the Judiciary?

2) If the first question is answered in the negative, must Article 2 TEU, the second subparagraph of Article 19(1) TEU and Article 47 of the Charter, and the principles of primacy of EU law, sincere cooperation and legal certainty be interpreted as meaning that they impose on all national authorities, including judicial and administrative authorities, the obligation to nullify the unlawful consequences of the decisions of the Disciplinary Chamber and not to comply with such decisions?

You are the Court of Justice, what’s the solution to these questions? Briefly state the reasons.