

Case C-564/19**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

24 July 2019

Referring court:

Pesti Központi Kerületi Bíróság (Central District Court, Pest, Hungary)

Date of the decision to refer:

11 July 2019

Defendant:IS

Subject-matter of the main proceedings

Criminal proceedings before the Pesti Központi Kerületi Bíróság (Central District Court, Pest) against IS, a Swedish national, for an offence of misuse of firearms and ammunition.

Subject-matter and legal basis of the request for a preliminary ruling

The referring court seeks guidance on the interpretation of the right to a fair trial in relation, first, to the adequacy of language interpretation (I); second, the decision of the president of the Országos Bírósági Hivatal (National Office of the Judiciary, 'OBH') to withdraw the calls for applications to fill positions of judges and high level judicial posts (II); and, third, the salary situation of Hungarian judges (III).

Legal basis of the request for a preliminary ruling: Article 267 TFEU

Questions referred for a preliminary ruling

- 1.A Must Article 6(1) TEU and Article 5(2) of Directive 2010/64/EU be interpreted as meaning that, in order to guarantee the right to a fair trial for defendants who do not speak the language of the proceedings, a Member State must create a register of properly qualified independent translators and

interpreters or — failing that — ensure by some other means that it is possible to control the quality of language interpretation in court proceedings?

- 1.B** If the previous question is answered in the affirmative and if, in the specific case, since the language interpretation is not of adequate quality, it is not possible to establish whether the defendant has been informed of the subject matter of the charge or indictment against him, must Article 6(1) TEU and Articles 4(5) and 6(1) of Directive 2012/13/EU be interpreted as meaning that, in those circumstances, the proceedings cannot continue in his absence?
- 2.A** Must the principle of judicial independence referred to in the second subparagraph of Article 19(1) TEU, Article 47 of the Charter of Fundamental Rights and the case-law of the Court of Justice of the European Union be interpreted as meaning that that principle is breached where the president of the National Office of the Judiciary, who is responsible for the central administration of the courts and who is appointed by the parliament, the only body to which he or she is accountable and which may remove him or her from office, fills the post of president of a court — a president who, *inter alia*, has powers in relation to organisation of the allocation of cases, commencement of disciplinary procedures against judges, and assessment of judges — by means of a direct temporary nomination, circumventing the applications procedure and constantly disregarding the opinion of the competent self-governance bodies of judges?
- 2.B** If the previous question is answered in the affirmative and if the court hearing the specific case has reasonable grounds to fear that that case is being unduly prejudiced as a result of the president's judicial and administrative activities, must the principle of judicial independence be interpreted as meaning that a fair trial is not guaranteed in that case?
- 3.A** Must the principle of judicial independence referred to in the second subparagraph of Article 19(1) TEU, Article 47 of the Charter of Fundamental Rights and the case-law of the Court of Justice of the European Union be interpreted as precluding a situation in which, since 1 September 2018 — unlike the practice followed in previous decades — Hungarian judges receive by law lower remuneration than prosecutors of the equivalent category who have the same grade and the same length of service, and in which, in view of the country's economic situation, judges' salaries are generally not commensurate with the importance of the functions they perform, particularly in the light of the practice of discretionary bonuses applied by holders of high level posts?
- 3.B** If the previous question is answered in the affirmative, must the principle of judicial independence be interpreted as meaning that, in such circumstances, the right to a fair trial cannot be guaranteed?

I. Quality control of language interpretation in the light of the right to a fair trial

Provisions of EU law relied on

- Treaty on European Union (‘TEU’): Article 6
- Charter of Fundamental Rights of the European Union (‘Charter of Fundamental Rights’): Article 47
- Treaty on the Functioning of the European Union (‘TFEU’): Article 82(1) and (2)(b)
- Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ 2010 L 280, p. 1): Articles 5(1) and (2) and 9(1)
- Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ 2012 L 142, p. 1): Articles 4(5) and 6(1)

Provisions of national law relied on

- A büntetőeljárásról szóló 2017. évi XC. törvény (Law XC of 2017 on Criminal Procedure): Articles 78(1), 201(1), 866(2) and 755(1)(a)(aa)
- A szakfordításról és tolmácsolásról szóló 24/1986. (VI.26.) minisztertanácsi rendelet (Decree 24/1986 of the Council of Ministers of 26 June on specialist translation and interpretation): Articles 2 and 6(1)
- A szakfordító és tolmácsképesítés megszerzésének feltételeiről szóló 7/1986. (VI.26.) MM rendelet (Decree 7/1986 of the Ministry of Culture of 26 June 1986 on conditions for the authorisation of specialist translators and interpreters): Article 1(1) and (2)

Succinct presentation of the facts and the procedure in the main proceedings

- 1 IS was arrested in Hungary on 25 August 2015 and questioned as a suspect on the same day. Before questioning, a defence lawyer and an interpreter were appointed for IS because he does not speak Hungarian. During the questioning of IS, in which the defence lawyer was unable to participate, IS was notified of the charge, following which, since it had not been possible for him to be advised by his defence lawyer, IS refused to make a statement. In addition, communications between IS and his defence lawyer can only be effected through an interpreter. Although the officer in charge of the investigation made use of a Swedish interpreter during the questioning, no information is available concerning the

system for selecting the interpreter or concerning whether proper checks were made of the interpreter's suitability and of whether the interpreter and the suspect were able to understand one another.

- 2 IS's arrest came to an end after questioning and the defendant is currently abroad. Given that the prosecution is seeking the imposition of a fine, it was not possible to issue a European or national arrest warrant and, therefore, if IS fails to appear in court, despite having been duly summoned, the court must hear the criminal proceedings in his absence.

Essential arguments of the parties to the main proceedings

- 3 IS's defence lawyer submits that it is necessary to make a request for a preliminary ruling on the interpretation of the provisions of Directive 2010/64/EU relating to the adequacy of language interpretation in the light of the exercise of the right to information.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 4 Directive 2010/64/EU was not properly transposed into national law either in 2013 or subsequently. There is no register of translators and interpreters of any kind in Hungary; nor does any clear legislation or national practice exist regarding who can be appointed as an interpreter or translator, and under what circumstances, in each particular case. Specific legislation exists only in relation to certified translation.
- 5 Quality control of language interpretation is not systematically guaranteed in Hungary. Neither the defence lawyer nor the judge can ensure the quality of language interpretation. However, if the interpreter lacks the appropriate specialist knowledge, the accused person's right to information and right of defence may be breached.
- 6 The referring court asks whether national legislation and practice are compatible with the EU directives on the rights of accused persons and whether it follows from the interpretation of EU law that, in the situation described, the court cannot continue the proceedings against the accused person in his absence.

II. Effects on judicial independence of the decision to withdraw the calls for applications to fill positions of judges and high level judicial posts

Provisions of EU law relied on

- TEU: Articles 2, 6(1) and (3), and 19(1)
- Charter of Fundamental Rights: Article 47

- Case-law of the Court of Justice of the European Union, in particular: judgments of 24 June 2019, *Commission v Poland* (C-619/18, ECLI:EU:C:2019:531, paragraphs 52 and 72) to 74; of 25 July 2018, *Minister for Justice and Equality* (C-216/18 PPU, ECLI:EU:C:2018:586), paragraphs 48, 67 and 75, and of 27 February 2018, *Associação Sindical dos Juízes Portugueses* (C-64/16, ECLI:EU:C:2018:117, paragraph 43); Opinion of Advocate General Tanchev in *A.K. and Others* (C-585/18, C-624/18 and C-625/18, ECLI:EU:C:2019:551), points 120 to 122 and 125 to 128, and judgment of 27 May 2019, *OG and PI* (C-508/18 and C-82/19 PPU, ECLI:EU:C:2019:456, paragraph 90)

Provisions of national law relied on

- Magyarország Alaptörvénye (Fundamental Law of Hungary): Article 25
- A bíróságok szervezetéről és igazgatásáról szóló 2011. évi CLXI. törvény (Law CLXI of 2011 on the organisation and administration of the courts): Articles 76 and 130 to 133

Succinct presentation of the facts and the procedure in the main proceedings

- 7 Responsibility for the central administration of the courts lies with the president of the OBH, who is appointed by the parliament for a term of nine years. The power to supervise the president of the OBH and to approve decisions adopted by her in relation to certain matters rests with the Országos Bírói Tanács (National Council of the Judiciary; ‘OBT’), which is elected by judges.
- 8 On 2 May 2018, following an investigation, the OBT issued a report in which it concluded that the president of the OBH, without adequate factual reasons and, in a number of instances, without any explanation, withdrew the calls for applications to fill positions of judges and high level judicial posts, following which she filled the high level posts on a temporary basis by means of direct nomination.
- 9 No president has been appointed to the Fővárosi Törvényszék (Budapest High Court, Hungary), in whose judicial district the district court seised of the present criminal proceedings is situated, since 5 January 2018. The president of the OBH published a call for applications to fill the post of president on a total of three occasions but each time she withdrew the call for applications and directly appointed a judge sitting in another court to that post for a term of one year.
- 10 After issuing a total of eight warnings relating to legality, which, essentially, were ineffective, the OBT commenced before the parliament, on 8 May 2019, the procedure to remove the president of the OBH from office, on the grounds that she had systematically breached the constitutional principle of the scrutinised

exercise of power. However, the parliament rejected the OBT's initiative without any debate or examination of the substance.

Essential arguments of the parties to the main proceedings

- 11 IS's defence lawyer requested that a request be made for a preliminary ruling on the incompatibility of that practice with the Charter of Fundamental Rights.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 12 The president of the OBH has wide-ranging powers. In that connection, the appointment and promotion of judges are also dependent on decisions made by her. She has a decisive influence on the training of judges, on their opportunities to take part in study trips abroad and on the daily practice of their profession. When the post of president of a *tetörvényszék* (high court) or of an *ítélőtábla* (regional court of appeal) is filled by direct nomination, the president of the OBH is able to exert considerable influence over the allocation of cases, judges' liability to disciplinary action and the assessment of their judicial work. Judges who perform judicial functions are also faced with serious reprisals for expressing critical opinions of the activities of the president of the OBH or of the holders of high level office.
- 13 In the judicial system, the OBT represents self-governance for judges and is the polar opposite of the OBH. Although the OBT is entitled to approve appointments to senior judicial posts when the advisory body does not support the candidates, in practice its powers are not sufficient for the effective supervision of the president of the OBH. A number of international bodies have described the fact that the power of the president of the OBH is not subject to effective scrutiny as a systemic failing.
- 14 The referring court asks whether judges who perform judicial functions in a court in which the holder of the highest office has been appointed by direct nomination by the president of the OBH, without calling for applications or following an applications process which has been cancelled, can be regarded as independent. The judge hearing the present case performs his functions in the *Pesti Központi Kerületi Bíróság* (Central District Court, Pest), which belongs to the judicial district of the *Fővárosi Törvényszék* (Budapest High Court). That judge is a member of the OBT and his applications for senior judicial posts were rejected in 2017 by the president of the OBH without valid reason. On a proposal from the president of the OBH, the former president of the *Fővárosi Törvényszék* (Budapest High Court), who was appointed by direct nomination, began disciplinary proceedings against him in June 2018 and, owing to his membership the OBT, a number of defamatory articles were also published about him in the Hungarian press.

- 15 Powers relating to staff are currently exercised over judges of the Pesti Központi Kerületi Bíróság (Central District Court, Pest) by a directly nominated president who, in his capacity as holder of a senior judicial office, expressed on a number of previous occasions views favourable to the president of the OBH in open letters. Moreover, after similarly withdrawing a call for applications, the president of the OBH also appointed by direct nomination the president of the criminal division, who is responsible for the professional management of criminal judges who perform their functions in the district of the Fővárosi Törvényszék (Budapest High Court), to carry out management duties.
- 16 In view of the fact that, in the case of the Fővárosi Törvényszék (Budapest High Court), the president of the OBH is able to exert substantial political influence over judges, in particular over certain members of the OBT, the independence of the judges of those courts is questionable.

III. Salary situation of Hungarian judges

Provisions of EU law relied on

- TEU: Article 6(1) and (3)
- Charter of Fundamental Rights: Article 47
- Case-law of the Court of Justice of the European Union, in particular, judgment of 27 February 2018, *Associação Sindical dos Juizes Portugueses* (C-64/16, ECLI:EU:C:2018:117, paragraph 45)

Provisions of national law relied on

- Magyarország 2019. évi központi költségvetéséről szóló 2018. évi L. törvény (Law L of 2018 on Hungarian general budgets for the year 2019): Article 64(1)
- A bírák jogállásáról és javadalmazásáról szóló 2011. évi CLXII. törvény (Law CLXII of 2011 on the legal status and remuneration of judges): Annex No 2
- A legfőbb ügyész, az ügyészek és más ügyészségi alkalmazottak jogállásáról és az ügyészi életpályáról szóló 2011. évi CLXIV. törvény (Law CLXIV of 2011 on the legal status of the Prosecutor General, prosecutors and other staff of the prosecution service and on the career of prosecutor)

Succinct presentation of the facts and the procedure in the main proceedings

- 17 The statutory amendment which entered into force on 1 September 2018 increased grade and management supplements in respect of prosecutors' remuneration, whereas no changes were introduced in relation to the grade supplements or other

salary components of judges. That broke with the practice whereby judges would receive the same salary as prosecutors of the equivalent category who had the same grade and the same length of service.

- 18 The OBT has already told the Minister for Justice that a salary increase is necessary so that judges cannot be influenced by the practice of discretionary bonuses and additional incentives which may be granted by holders of senior posts. The OBT does not consider appropriate the practice of the president of the OBH which involves seeking to offset low salaries by one-off bonuses and incentives granted at her discretion. To date, no legislative bill has been presented which includes new salary scales.

Essential arguments of the parties to the main proceedings

- 19 IS's defence lawyer has requested that an application be made for a preliminary ruling on the unfairly low level of Hungarian judges' salaries compared with those of prosecutors, as regards the compatibility of this practice with the Charter of Fundamental Rights.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 20 The referring court asks whether, first, in the light of the judgment in *Associação Sindical dos Juízes Portugueses*, regard being had to inflation, the country's economic standing and average incomes, the fact that judges' salaries have not been reviewed for a long period of time has in reality the same effect as a salary reduction. The second question that arises is whether the Hungarian State, by increasing prosecutors' salaries, has deliberately placed the Hungarian judiciary in a humiliating position, since, without any valid reason, it has not brought judges' salaries into line with prosecutors' salaries.
- 21 Furthermore, the discretionary incentives granted by the president of the OBH and holders of high level judicial office raise in themselves the issue of the influence exerted over judges and the breach of judicial independence. Based on the foregoing considerations, the salaries of Hungarian judges, which are also humiliatingly low compared with other European countries, and the practice of the president of the OBH of granting bonuses generally and systematically breach the principle of judicial independence.