

vplyvmi. V otázkach, týkajúcich sa ich kariér... môžu absenciu súdnej kontroly rozhodnutia o preložení opodstatniť len veľmi závažné dôvody, ktoré Súdu v tejto veci preukázané neboli.” (bod 96).

(42) V rozsudku *Giamengus* ESJP – okrem potvrdenia relevancie citovaných dokumentov európskych a medzinárodných justičných sietí a zdôraznenia požiadavky procesných záruk – podrobil dôsledky ukrajinskej reformy súdnej sústavy nielen aspektom práva na spravodlivý proces, ale aj práva na ochranu súkromia, keď vyslovil, že namietané opatrenia „zbavili sťažovateľov možnosti... realizovať svoje ciele profesionálneho aj osobného rozvoja”.

(43) Zmienené rozhodnutia ESJP zohľadňuje vo svojej judikatúre aj Súdny dvor Európskej únie (ďalej len „SDEÚ”), keď v rozsudku zo 6. októbra 2021, W.Ż., C-487/19, okrem iného skonštatoval, že nielen preradenie sudcu bez jeho súhlasu na iný súd, ale (ako to bolo vo veci samej) aj preradenie sudcu bez jeho súhlasu medzi dvomi oddelenia toho istého súdu (teda bez zmeny miesta výkonu práce sudcu), môže potenciálne porušovať zásady neodvolateľnosti a nezávislosti sudcov. Takéto preradenia totiž môžu predstavovať prostriedok vykonávania kontroly nad obsahom súdnych rozhodnutí, keďže môžu mať nielen vplyv na rozsah právomoci dotknutých sudcov a vybavovanie vecí, ktoré im boli pridelené, ale aj významný vplyv na ich život a kariéru, a tak z nich môžu vyplývať dôsledky analogické s dôsledkami disciplinárnej sankcie. Zároveň zdôraznil, že požiadavka nezávislosti sudcov vyplývajúca z článku 19 ods.1 druhého pododseku Zmluvy Európskej únie, vykladaná s ohľadom na článok 47 Charty základných práv Európskej únie (ďalej len „Charta”), vyžaduje, aby režim uplatniteľný na preradenia týchto sudcov bez ich súhlasu poskytoval, tak ako je to v prípade pravidiel v disciplinárnej oblasti, predovšetkým záruky potrebné na zabránenie akéhokoľvek rizika toho, že dôjde k ohrozeniu tejto nezávislosti priamymi alebo nepriamymi vonkajšími zásahmi.

(44) Podľa SDEÚ je preto dôležité, aby aj v prípade, že takéto opatrenia spočívajúce v preradení bez súhlasu, tak ako v kontexte veci samej, sú zo strany predsedu súdu, ku ktorému patrí sudca, na ktorého sa tieto opatrenia vzťahujú, prijaté mimo rámca disciplinárneho režimu uplatniteľného na sudcov, bolo o uvedených opatreniach možné rozhodnúť iba z legitímnych dôvodov týkajúcich sa predovšetkým prerazenia dostupných zdrojov umožňujúcich zaručiť riadny výkon spravodlivosti, a aby proti takýmto rozhodnutiam bolo možné podať opravný prostriedok na súd v súlade s postupom plne zaručujúcim práva zakotvené v článkoch 47 a 48 Charty, predovšetkým práva na obranu.

(45) Špecifické okolnosti týchto aviacerých iných prípadov nie sú také dôležité ako zovšeobecniteľné princípy, ktoré z nich vyplývajú a sú relevantné vo vzahu k namietanej úprave zákona o súdoch, zákona o sídlach a obvodoch súdov a vyhlášky.

III.3. Aplikácia dohovoru na napadnutú úpravu

(46) Úprava rozvrhu práce podľa citovaných ustanovení zákona o súdoch, zákona o sídlach a obvodoch súdov a vyhlášky nie je *de iure* rozhodnutím o preložení sudcu. Vo vzahu k tým sudcom, ktorí budú rozvrhom práce z doterajšieho miesta výkonu práce preložení na iné miesto výkonu práce však nepochybné pôjde o opatrenia s podobným, resp. totožným účinkom, ako má preloženie sudcu. Je pritom nesporné a ako nesporné je to ustálené aj v judikatúre, že opatrenia sa neposudzujú podľa ich označenia či nomenklatúrnej klasifikácie, ale podľa reálneho obsahu a účinkov.

Nakrenenie I Oprokidyvanie Malotonnazhnogo Sudna Pri Ego Zalivanii Poputnoi Volnoi Monografiia

Daniela Niemeyer



Nakrenenie I Oprokidyvanie Malotonnazhnogo Sudna Pri Ego Zalivanii Poputnoi Volnoi Monografiia:

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