



Hungarian courts' refusal to seek an EU preliminary ruling without giving reasons was not arbitrary

The case of [Somorjai v. Hungary](#) (application no. 60934/13) concerned the Hungarian Supreme Court's (the *Kúria*'s) failure to give reasons for refusing a request for a reference for a preliminary ruling on a pension dispute to the Court of Justice of the European Union (CJEU) and the length of proceedings before domestic courts.

In today's **Chamber** judgment¹ the European Court of Human Rights held, by a majority, that the applicant's complaint regarding the alleged lack of adequate reasoning with respect to a potential reference for a preliminary ruling to the CJEU was **inadmissible**.

It further held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights owing to the lengths of proceedings.

The Court held on the question of the referral that the refusal to refer the case to the CJEU for a preliminary ruling or the lack of reasoning on that issue could not be seen as arbitrary. The applicant had not actually requested for such a reference to the CJEU in the relevant stage of the proceedings. Moreover, the domestic courts expressed their view that the Hungarian provisions and the EU law did not conflict. Accordingly, the complaint was rejected by the Court as manifestly ill-founded.

On the length of proceedings, the Court held that special diligence was necessary in pension disputes. It found that the length of the proceedings at issue was excessive and had failed to meet the requirements set up in the Court's case-law ("reasonable time").

Principal facts

The applicant, Gábor Somorjai, is a Hungarian national who was born in 1939 and lives in Vác (Hungary).

In 1995, Mr Somorjai, who had worked before in Hungary and Austria, was awarded a disability pension.

In April 2006, following Hungary's EU accession in 2004, he requested a review of his pension rights in accordance with an EU Regulation (Regulation 1408/71/EEC) that stipulated that the rights of a person to whom a pension had been awarded could, on request, be recalculated. In September 2006 a first-instance pension authority reviewed Mr Somorjai's monthly pension and increased it from 74,361 Hungarian forints (HUF) (approximately 250 euros (EUR)) to HUF 134,566 (approximately EUR 449) per month with effect from 1 May 2004. Mr Somorjai appealed against that decision and a second-instance pension authority increased his monthly pension to HUF 135,450 (approximately EUR 452).

Mr Somorjai challenged the final administrative decision in court and requested that a question concerning the correct interpretation of the Regulation be referred to the CJEU for a preliminary

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

ruling. On 12 October 2007 the Budapest Labour Court dismissed the action and upheld the pension authority's decision.

Mr Somorjai lodged an appeal with the Supreme Court and in June 2009 it reversed the Labour Court ruling and ordered new proceedings, insisting that the relevant EU law principles be taken into account. Regarding the request for a reference for a preliminary ruling, the Supreme Court held that the procedure appeared to be unnecessary "because the conditions had not been fulfilled."

In the remitted case, the Labour Court quashed the pension authority's decision and instructed it to recalculate the pension in accordance with EU rules and in July 2010 the amount was increased to HUF 139,545 (approximately EUR 465). The 1997 Pensions Act provides that if a pension authority has made a mistake, the difference is to be paid for only the five years preceding the date the mistake was discovered, so payment of the difference to Mr Somorjai was ordered for the period after 19 March 2005 only. He appealed, claiming arrears for the whole period following Hungary's EU accession (1 May 2004), but to no avail.

Mr Somorjai, relying on the EU Regulation, requested a court review of the pension authority's decision. He contended that he had a right, as per the EU Regulation, to an adjusted pension for the whole period following 1 May 2004 and that the national rule restricting the very payment of that pension constituted a "limitation of rights" prohibited by the Regulation. The decision was, however, upheld by the Budapest Labour Court in February 2012. Three weeks later Mr Somorjai submitted a petition for review of the Labour Court's judgment. He did not request that the case be referred to the CJEU for a preliminary ruling; instead, he requested what he considered to be a correct application of the Regulation. Nevertheless, he argued that the judgment had violated Article 234 of the Treaty Establishing the European Community ("the EC Treaty"), without providing a detailed explanation on this point.

On 26 June 2013 the Supreme Court, renamed the *Kúria* in 2012, upheld the Labour Court's judgment, reasoning that the Regulation concerned only the acquisition of rights, not the actual payment of allowances. In the *Kúria's* view, the applicant's rights were not subject to any forfeiture or limitation; it was only the actual payment of the increased amount which had been limited, there was thus no conflict between the 1997 Pensions Act and the Regulation. The *Kúria's* judgment contained no reasoning on the alleged violation of Article 234 of the EC Treaty.

Mr Somorjai had also lodged a petition with the Constitutional Court on 2 February 2008, which rejected his case, arguing that it lacked competence to examine an alleged conflict between Hungarian and EU law.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1, the applicant complained that the Hungarian authorities had not taken due account of the applicable EU law provisions which, in particular, placed an obligation on national courts of final instance to provide reasons for not referring a question to the CJEU for a preliminary ruling. He also complained about the length of the proceedings.

The application was lodged with the European Court of Human Rights on 23 September 2013.

Judgment was given by a Chamber of seven judges, composed as follows:

Vincent A. **De Gaetano** (Malta), *President*,
András **Sajó** (Hungary),
Paulo **Pinto de Albuquerque** (Portugal),
Krzysztof **Wojtyczek** (Poland),
Egidijus **Kūris** (Lithuania),
Iulia **Motoc** (Romania),
Marko **Bošnjak** (Slovenia),

and also Marialena Tsirli, *Section Registrar*.

Decision of the Court

Article 6 § 1 (fairness of the proceedings)

The Court reiterated that the task of interpreting and applying domestic law, if necessary in conformity with EU law, fell primarily to the national courts. The Court should not act as a fourth instance and would not therefore question the judgments of the national courts, unless their findings were arbitrary or manifestly unreasonable. Hence, the Court considered that the complaint challenging the soundness of the *Kúria*'s interpretation of EU law fell outside its jurisdiction.

The Court noted that Mr Somorjai's case had been heard twice by the supreme domestic judicial instance in Hungary and that he was required, as per domestic law, to formulate his appeal to the *Kúria* in a comprehensive and self-explanatory manner, without reference to any previous submissions. However, at that stage he had not requested that his case be referred to the CJEU for a preliminary ruling; nor had he provided any reasons as to why the domestic court's decision had allegedly violated Article 234 of the EC Treaty. Under those circumstances, the lack of reasoning regarding those aspects seemed to be in line with domestic procedural rules.

The Court further observed that it was solely for the domestic courts to determine in each case the need for a preliminary ruling in order to enable them to deliver judgments. The *Kúria* had considered that the Hungarian provisions were not in conflict with EU law and therefore had not found that a preliminary ruling on an EU law question was necessary. The Court did not discern any appearance of arbitrariness in the domestic court's decisions and so it rejected the complaint concerning the fairness of the proceedings as inadmissible.

Article 6 § 1 (length of proceedings)

The reasonableness of the length of proceedings had always to be assessed in the light of the circumstances of the case, with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute.

The Court noted that the case had not been exceptionally complex and that Mr Somorjai had not caused any delays. Also, special diligence was necessary in pension disputes.

The dispute had lasted more than six years and nine months at two administrative levels and two levels of court. In such circumstances and with regard to its case-law on the subject, the Court considered that the length of the proceedings had been excessive and had failed to meet the "reasonable time" requirement. It consequently held that there had been a violation of Article 6 § 1 of the Convention.

Just satisfaction (Article 41)

The Court held that Hungary was to pay the applicant 2,000 euros (EUR) in respect of non-pecuniary damage and EUR 500 in respect of costs and expenses.

Separate opinion

Judges Sajó and Pinto de Albuquerque expressed a joint dissenting opinion. This opinion is annexed to the judgment.

The judgment is available only in English.

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Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Somi Nikol (tel: + 33 3 90 21 64 25)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.