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Judgment of the Court in Joined Cases C-554/21 | HANN-INVEST, C-622/21 | MINERAL-SEKULINE and C-727/21 | UDRUGA KHL MEDVEŠČAK ZAGREB

Rule of law: only the judicial panel responsible for a case can decide its outcome

Any undue interference by persons from outside the judicial panel must be precluded

A procedural mechanism internal to a court or tribunal intended to avoid or resolve conflicts in case-law and thus to ensure the legal certainty inherent in the principle of the rule of law must itself comply with the requirements linked to the independence of the judiciary. In particular, it is only the judicial panel responsible for a case that is to take the decision closing the proceedings. Any undue interference by persons from outside the judicial panel must be precluded.

In the Croatian courts of second instance, all decisions adopted by a judicial panel must be forwarded to the registrations judge of the relevant court before the decision is considered formally delivered and may be sent to the parties.

The registrations judge is designated by the president of the relevant court. In practice, the registrations judge has the power to stay the delivery of a judgment and to give instructions to the judicial panel. The parties have no knowledge of the involvement or name of the registrations judge.

If the judicial panel does not comply with the instructions of the registration judge, that judge may request that a section meeting be convened. The section meeting is able to put forward a 'legal position' that is binding on all judicial panels belonging to the section. The judicial panel concerned, which will already have concluded its deliberations, must, if necessary, alter the judicial decision previously adopted.

According to the Croatian Commercial Court of Appeal, this procedural mechanism has thus far been justified by the need to ensure consistency of case-law. Having doubts as to its compatibility with EU law and, in particular, with the principle of the rule of law¹, it referred questions to the Court of Justice on the issue.

The Court has responded that EU law precludes national law from providing for a mechanism internal to a national court pursuant to which

- the judicial decision adopted by the judicial panel responsible for a case may be sent to the parties for the purpose of closing the case **only** if its content has been approved by a registrations judge who is not a member of that judicial panel;
- a section meeting of that court has the power to compel, by putting forward a 'legal position', the judicial panel responsible for the case to alter the content of the judicial decision which it previously adopted, even though that section meeting also includes judges other than those belonging to that judicial panel and, as the case may be, persons from outside the court concerned, before whom the parties do not have the

opportunity to put forward their arguments.

The guarantee of access to an independent tribunal previously established by law means that **it is only the judicial panel responsible for the case that is to take the decision closing the proceedings. The composition of judicial panels should be the subject of rules which are transparent and known to litigants so as to preclude any undue interference by persons from outside the judicial panel before whom the parties have not been able to put forward their arguments.**

A procedural mechanism which, in order to avoid or resolve conflicts in case-law and thus to ensure the legal certainty inherent in the principle of the rule of law, allows a judge of a national court, who is not a member of the judicial panel with jurisdiction, to refer a case to a panel of that court sitting in extended composition is nevertheless permissible, provided that: 1) the case has not yet been deliberated by the judicial panel initially designated; 2) the circumstances in which such a referral may be made are clearly set out in the applicable legislation; and 3) the referral in question does not deprive the persons concerned of the possibility of participating in the proceedings before the panel sitting in extended composition.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

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¹ This includes, inter alia, the right to effective judicial protection, the fundamental right to a fair hearing, the independence of the judiciary, the principle that both parties should be heard and access to a tribunal previously established by law.