The Problem of Illegally Appointed Judges in Slovenia

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Abstract

In this paper the judicial process is described, which contravened the very essence of the principle that a tribunal must be established by law, one of the fundamental principles of the rule of law. The appellants in this case had not received a fair trial by the judge J.J.T. This judge is namely an illegal judge, without appropriate education and ability. This presents a violation of Article 6 § 1 of the European Convention on Human Rights (right to a tribunal established by law).

According to the slovenian national legislation, it is imperative for the judges (and even for attorneys) to have access to these courts, that they have passed the valid state bar exam. This is so-called test for postulation ability, the purpose of which is not to burden the courts with the inappropriate contents of persons who do not have the appropriate qualifications. The judge must be able to properly engage in the process professionally. The prescribed formal criterion for whether they meet this professional condition is the proof of passing the state bar exam.

J.J.T. passed only bar exam in former Socialist Republic of Bosnia and Herzegovina (BiH) and did not meet the conditions for the election for a permanent judicial term in Slovenia and other countries of EU. Considering further, that J.J.T. as candidate for judge even did not finish her internship completely, it is clear that her appointment was absolutely illegal. Despite that, she was illegally elected for a permanent term and is, therefore, an illegally appointed judge. Such illegal appointment also follows from the decisions of the Supreme Court and the Ministry for Jurisdiction of Republic of Slovenia. Since such bar exams from BiH are not recognized in Slovenia, the judgments which J.J.T. processed, are rebuttable as well. Her postulation inability is further emphasized by her judgement, in which she denied the apellants any right to the apartment, even though they had built it legaly with their own work and investment.