

Members of independent administrative authorities can be recused under principle of impartiality

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Introduction

In a 4 June 2020 decision, the first civil chamber of the Supreme Court recognised the admissibility of a petition for a risk of lack of impartiality against a member of an independent administrative authority – namely, the president of the French Polynesian Competition Authority.

By way of this decision, the Supreme Court confirmed its earlier decision that an independent administrative authority with the power to impose penalties must comply with Article 6(1) of the European Convention on Human Rights (ECHR).

Thus, referring to the principle of impartiality, the Supreme Court held that when an administrative authority acts within the framework of its power to impose penalties, it is considered a court (ie, jurisdiction) under Article 6(1) of the ECHR. As such, Article L.111-8 of the French Judicial Organisation Code, which concerns the recusal of judges, applies.

Independent administrative authorities

France has many independent administrative authorities whose powers are enacted by law and which differ from the administration. In many cases, these authorities were created to regulate a market or ensure that the competition rules are adhered to by economic actors which operate in France.

These authorities differ, with some having the capacity to give opinions or recommendations and some having regulatory powers, including the power to take individual decisions or impose penalties on parties which fail to comply with the rules which the authorities are tasked with enforcing. As an example, the Competition Authority can impose substantial fines.

Right to fair hearing and right of defence before independent administrative authorities

In its 4 June 2020 decision, the first civil chamber of the Supreme Court reaffirmed, using general wording, well-known case law, according to which independent administrative authorities must comply with Article 6(1) of the ECHR (ie, the right to a fair trial) when imposing penalties.

On the basis of Article 6(1), on 5 October 1999 the Supreme Court ruled that the participation of a judge rapporteur (who had carried out an investigation) and the general rapporteur (under whose authority the investigation had been conducted) in the deliberations of the former Competition Council, despite not having the right to vote, contravened the principle of the right to a fair trial.

In its 4 June 2020 decision concerning the French Polynesian Competition Authority, the first civil chamber of the Supreme Court drew on the consequences of its former jurisprudence and applied Article L.111-8 of the Judicial Organisation Code, the first paragraph of which provides that "in civil matters, it may be ordered a transfer of a case to another court of the same nature and degree on grounds of "legitimate suspicion", public safety or if there are grounds for disqualification against several judges".⁽¹⁾

Therefore, the first civil chamber of the Supreme Court ruled that "even without a specific provision, any

AUTHORS

[Nicolas Contis](#)



[Camille Doguet](#)



person... must be able to request to recuse a member of an independent administrative authority before the Court hearing appeals from that authority".⁽²⁾

Comment

This decision is a step forward in terms of protecting the right to a fair hearing before all independent administrative authorities which have the power to impose penalties.

The Supreme Court granted the plaintiff the same rights as those which it would have had before a court; thus, plaintiffs may seek the recusal of a member of those authorities which are empowered to impose a penalty, even if no rule of law grants such right.

For further information on this topic please contact [Nicolas Contis](mailto:ncontis@kalliope-law.com) or [Camille Doguet](mailto:cdoguet@kalliope-law.com) at Kalliope by telephone (+33 1 44 70 64 70) or email (ncontis@kalliope-law.com or cdoguet@kalliope-law.com). The Kalliope website can be accessed at www.kalliope-law.com.

Endnotes

(1) In French: "*en matière civile, le renvoi à une autre juridiction de même nature et de même degré peut être ordonné pour cause de suspicion légitime, de sûreté publique ou s'il existe des causes de récusation contre plusieurs juge*".

(2) In French: "*même en l'absence de disposition spécifique, toute personne poursuivie devant elle doit pouvoir demander le renvoi pour cause de suspicion légitime devant la juridiction ayant à connaître des recours de cette autorité*".

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