

Poland, Constitutional court, P 9/18, 26 November 2019

Member State

 Poland

Topic

Rule of law, access to justice, meaning of the “court” and “case”

Deciding Court Original Language

National Court

Trybuna? Konstytucyjny

Deciding Court English translation

Constitutional Court

Registration N

P 9/18

Date Decision

November 26th, 2019;

ECLI (if available)

Not available

National Follow Up Of (when relevant)

Not applicable

EU legal sources and CJEU jurisprudence

Only the national legal sources

Subject Matter

Access to justice – Right to an effective remedy before a tribunal – privacy

Legal issue(s)

Rule of law – fair trial – capacity to lodge a complaint – court referendary as a court – delivery of decision.

Request for expedited/PPU procedures

NO

Interim Relief

1. Indicate if the national court/applicant asked the CJEU/ECtHR for interim relief and a short summary of the reasons put forward
 2. Indicate if the CJEU/ECtHR granted the interim relief
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National Law Sources

Constitution;

Act on National Court Register;

Act on Consumer Protection;

Facts of the case

The Constitutional Tribunal, in its judgment of 26 November 2019, in the case ref. no.: P 9/18, declared unconstitutional the exclusion of the obligation of the court to deliver to a participant of registration proceedings a decision on the entry of insolvent debtors into the register. Moreover, he also considered it unconstitutional to deprive the participant in these proceedings of the right to lodge a complaint against the decision of the court referendary ordering entry in such register.

The decision of the Constitutional Tribunal was issued as a result of legal questions of the District Court in Białystok, XII Commercial Division of the National Court Register. The questions concerned the issue of the lack of possibility to appeal against the decision of the court referendary concerning the entry in the Insolvent Debtors Register.

The Register of Insolvent Debtors includes, among others, persons against whom the bankruptcy court has declared a ban on conducting business activity and who are over six months in arrears with payment of alimony.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

In the present proceedings the Court decided that the court's decision on disclosing the data of the so-called insolvent debtor in the register referred to in Article 55 of the Act on the National Court Register - which is open and uses the presumption of the authenticity of the data contained therein - constitutes a "case" within the meaning of Article 45 paragraph 1 of the Constitution. Although it is not a matter of 'administration of justice', it is nevertheless a matter of 'legal protection'. The latter category of court cases also falls within the framework of the normalisation of this control pattern (see, for example, among the last ones, judgment P 19/17, in which the Court considered a 'case'. - within the meaning of Article 45(1) of the Constitution - examination by the court of competition and consumer protection of the motion of the President of the Office of Competition and Consumer Protection to conduct a search of the premises of the entrepreneur). According to the Court's jurisprudence, the constitutionally guaranteed right to court includes not only the right to the judicial administration of justice, i.e. the substantive settlement in cases concerning the rights of individuals, but also the right to judicial review of acts which are contrary to the constitutional rights and freedoms of individuals. In the latter case, the court carries out activities in the field of legal protection (see, inter alia, judgments of the Court of Justice in the case of the rights of the individual, and also the right to judicial review of acts which undermine the constitutional rights and freedoms of the individual: 12 May 2003, ref. SK 38/02, OTK ZU No. 5/A/2003, item 38; 12 May 2011, ref. P 38/08, OTK ZU No. 4/A/2011, item 33; 13 January 2015, ref. SK 34/12, OTK ZU No. 1/A/2015, item 1, together with judicates cited therein).

A participant in registration proceedings conducted by a court registrar (the latter being authorised by the legislator under Article 5091 § 2 of Code of Civil Procedure) has been deprived of the right to file a 'case' (in the constitutional sense) to a judicial authority, despite the fact that the legislator has theoretically retained the model of handling cases of entries referred to in Article 55(4) and (5) of the Act on the National Court Register by registry courts until the register of insolvent debtors is finally abolished. In such circumstances, the "raising" of the standard of proceedings in such legal protection cases has in fact become apparent.

Relation of the case to the EU Charter

[If the EU Charter was invoked, please indicate why the Charter was referred to, according to the national judge; specify whether the EU Charter was used as a legally binding parameter or it was used to support the reasoning only]

Relation between the EU Charter and ECHR

[please explain what were the reasons behind citing the ECHR, ornamental or whether the protection granted through the EU Charter is more extensive than that stemming from ECHR in the particular case]

Use of Judicial Interaction technique(s)

Only internal dialogue, the court quotes his jurisprudence only, without broader view.

Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with

foreign courts)

As above.

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

Not applicable

Strategic use of judicial interaction technique (purpose aimed by the national court)

The main idea was to show national “juridical tools” to solve the problem, which could be also solved (or at least examined) using EU Charter art. 47

Impact on Legislation / Policy

There was an amendment in Civil Procedure Code made.

Connected national caselaw / templates

Template #4 – the way Constitutional Court reasoning is done.

(Link to) full text

<https://ipo.trybunal.gov.pl/ipo/Sprawa?cid=2&dokument=18660&sprawa=20872>

Author

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History of the case: (please note the chronological order of the summarised/referred national judgments.)

1. Legal question of Bielski District Court;
 2. Judgment of Constitutional Court.
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