

Poland, National Council of Judiciary, resolution, 626/2018, 12 December 2018

Member State

 Poland

Topic

Trust

Deciding Court Original Language

Krajowa Rada Sądowa

Deciding Court English translation

National Council of Judiciary

Registration N

626/2018

Date Decision

Resolution of NCJ from December 12th, 2018

ECLI (if available)

Not available

Subject Matter

Judges freedom of expression – trust in judiciary – political/social affiliation – rule of law – separation of powers

Legal issue(s)

Independence of judges. Possible ways of expressing beliefs for judges. Freedom of expression.

Request for expedited/PPU procedures

NO

National Law Sources

Laws:

Constitution,

Act of National Council of Judiciary

Soft law:

Collection of Principles of Professional Ethics for Judges and Judicial Assessors (Annex to Resolution No 25/2017 of the National Council of the Judiciary of 13 January 2017) – binding judges.

Facts of the case

After the first wave of anti-governmental protests in Poland in 2017, when people were speaking about the meaning and significance of division of power and rule of law, in the public sphere appeared the infographics “Constitution”, with Polish flag colours and special font.

It was the work of modern art, suddenly getting viral. People wore t-shirts with this word, bracelets and caps. There was a mural with “Constitution” painted on one house in Poznań.

Also, judges started to show up in t-shirts with “Constitution”. Members of NCJ decided then to interpret the § 10 of Code of Professional Conduct of Judges and Judicial Assessors.

The interpretation, it is important to mention, was done by body which main objective is “safeguarding the independence of judges”.

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

The conclusion of NCJ:

The behaviour that may undermine confidence in the independence and impartiality of a judge is public use by a judge of infographics, symbols that are or can be unequivocally identified with political parties, trade unions, as well as with social movements created by trade unions, political parties or other organisations conducting political activity

Full text of resolution:

“The National Council of the Judiciary pursuant to Article 3 Section 1 point 3 of the Act of 12 May 2011 on the National Council of the Judiciary (Journal of Laws of 2018, item 389, as amended) and § 7 of the Collection of Principles of Professional Ethics for Judges and Judicial Assessors (Annex to Resolution No 25/2017 of the National Council of the Judiciary of 13 January 2017.) interprets § 10 of the Collection of Principles of Professional Ethics for Judges and Court Assessors by assuming that the behaviour that may undermine confidence in the independence and impartiality of a judge is public use by a judge of infographics, symbols that are or can be unequivocally identified with political parties, trade unions, as well as with social movements created by trade unions, political parties or other organisations conducting political activity”.

The abovementioned §10 states:

“A judge should avoid behaviour that could undermine confidence in his independence and impartiality.”

Relation of the case to the EU Charter

Charter was not invoked.

Relation between the EU Charter and ECHR

Not applicable

Use of Judicial Interaction technique(s)

Not applicable

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

Not applicable

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)

Not applicable

Impact on Legislation / Policy

There were some rumours about Disciplinary Prosecutors planning to start procedures against judges, not confirmed yet.

(Link to) full text

<https://krs.pl/pl/o-radzie/zbior-zasad-etyki-zawodowej-sedziow/600-uchwala-krajowej-rady-sadownictwa-z-12-grudnia-2018-r-dotyczace-wykladni-zasad-etyki-zawodowej-sedziow.html>

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

Not applicable
