

Poland, Deputy Disciplinary Commissioner for Judges, 17 January 2020

Member State

 Poland

Topic

Trust

Deciding Court Original Language

National Court

Zastępcą Rzecznika Dyscyplinarnego Sędziów Sądów Powszechnych

Deciding Court English translation

Deputy Disciplinary Commissioner for Judges

Date Decision

January 17th 2020;

ECLI (if available)

Not available

Subject Matter

Trust in judiciary – proper composition of court/panel – independence of National Council of Judiciary – examination of promotion of judges – recommendation for NCJ members

Legal issue(s)

Trust – addressing a legal issue to Supreme Court, after CJEU ruling as a criminal offence (an act to the detriment of the public interest in the form of proper functioning of the justice system)

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 Council of Judiciary

Law on Common Court System

Criminal Code

Code of Civil Procedure

Facts of the case

Seven three-person panels adjudicating in seven different appeal cases heard in the 9th Civil Appeals Division of the Olsztyn District Court in closed session on 7 January 2020 addressed the Supreme Court with the following legal issue:

"Can the composition of the court where a person appointed by the President of the Republic of Poland to hold office as a judge at the request of the National Council of the Judiciary shaped by the election, on the basis of the Act of 8 December 2017 amending the Act on the National Council of the Judiciary and certain other acts, of fifteen of its members from among judges by the Sejm of the Republic of Poland, constitute an independent premise for recognition by the appellate court?

1) that the composition of the court was inconsistent with the provisions of law, and the ruling issued was made in conditions of invalidity of the proceedings (Article 379(4) of the Code of Civil Procedure),

or, 2) that a judgment given by a court with the participation of such a person is a non-existent judgment (sententia non existens)?'.

8 out of 10 judges in the Olsztyn District Court in the 9th Civil Appeals Department took part in referring the above legal issue to the Supreme Court.

One week after the information was published, the Deputy Disciplinary Commissioner for Judges announced the start of proceedings against judges, for asking the question.

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

Deputy Disciplinary Commissioner for Judges of Courts, Common Courts Judges, Judge Micha?

Lasota has undertaken explanatory activities on a justified suspicion of disciplinary offences under Article 107 § 1 of the Act of 27 July 2001. - Law on the system of common courts (Journal of Laws No. 52 of 2019), consisting in violation of the dignity of office by the judges of the District Court in Olsztyn, who on 7 January 2020, as public officers, members of the three-member composition adjudicating in seven cases of this Court exceeded their powers in such a way that they granted themselves the competence to determine and assess the manner of operation of the constitutional bodies of the state in the scope of the manner of selecting some of the members of the National Council of the Judiciary and the manner of appointing a judge at its request by the President of the Republic of Poland, thus undermining the provision of Article 55 § 1 of the Act of 27 July 2001. - Law on the system of common courts and ignoring the judgment of the Constitutional Tribunal of 25 March 2019 ref. K 12/18 on the compliance with the Constitution of Article 9a of the Act of 12 May 2011 on the National Council of the Judiciary (Journal of Laws of 2018, item 389 as amended) issued decisions on presenting legal issues to the Supreme Court, the content of which constituted an illegal interference in the statutory manner of appointing judges to adjudicating panels, which could lead to the infringement of Article 178(1) of the Constitution and violated the provision of Article 82(1) of the Law on the Common Court System, which specified the obligation to act in accordance with the judicial oath, including in particular the obligation to uphold the law, and thus exhausting the constituent elements of the offence under Article 231(1) of the Penal Code, constituted an act to the detriment of the public interest in the form of proper functioning of the justice system.

Relation of the case to the EU Charter

Charter 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)

There is a quotation from binding judgment of the Constitutional Tribunal of 25 March 2019 ref. K 12/18 (the sentence: the provisions of Act on NCJ are constitutional)

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

Not applicable

Impact on Legislation / Policy

The proceedings are still pending. There was a huge criticism over this decision and an

intervention of Ombudsman.

Connected national caselaw / templates

Templates #1,2,3, 14

(Link to) full text

<http://rzecznik.gov.pl/wp-content/uploads/2020/01/Komunikat-Olsztyn.pdf>

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

1. CJEU ruling;
 2. Legal issues in Olsztyn Court cases
 3. Communication of Deputy Disciplinary Commissioner;
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