

Poland, Commissioner of Human Rights, Letter, VII.501.53.2020.MW/CW, 9 March 2020

Member State

 Poland

Topic

Trust

Deciding Court Original Language

Rzecznik Praw Obywatelskich

Deciding Court English translation

Commissioner of Human Rights (ombudsman)

Registration N

VII.501.53.2020.MW/CW – Letter to General Inspector of Data Protection in Poland

Date Decision

March 9th, 2020

ECLI (if available)

Not available

National Follow Up Of (when relevant)

Not applicable

EU legal sources and CJEU jurisprudence

Treaty on functioning of EU;

GPRD;

ECtHR Jurisprudence

Baka vs Hungary – 20261/12; par 165-167

Subject Matter

Individual data about judges – independence – possible discrimination

Legal issue(s)

Independence of judges – gathering unnecessary information about judges – privacy of judges – judge's duty to present comments on judiciary in public debate – freedom of association for judges

Request for expedited/PPU procedures

NO - not applicable

National Law Sources

Constitution;

Act on Supreme Court;

Act on The Public Prosecution Office

Act of a system of common courts;

Act of a system of administrative courts;

Act of a system of military courts

Facts of the case

The adopted law of 20 December 2019 entered into force on 14 February 2020.

It introduced the obligation of judges of common courts (pursuant to Article 88a the Act on the system of common courts), administrative courts (Article 8 § 2 of the Act on the system of administrative courts), military courts (Article 70 of the Act on the system of military courts), judges of the Supreme Court (Article 45 § 3 of the Act on the Supreme Court) and public prosecutors (Article 103a of the Act on the Public Prosecutor's Office) to make declarations of membership in associations. (lege non distinguere – eg. sport club, association of Holocaust survivors, political party or housing cooperative).

These declarations are public and are subject to publication in the Public Information Bulletin. The

obligation to submit it should be fulfilled within 30 days from assuming office, occurrence of circumstances subject to disclosure or from the date of entry into force of the Act of 20 December 2019. This means that the deadline for submission of first statements by judges and prosecutors will expire on 14 March 2020.

In the opinion of the Ombudsman, necessary and immediate actions should be taken to secure the implementation of the right to the protection of private life and the protection of personal data referred to in the Constitution of the Republic of Poland (Article 47 and Article 51 respectively), whose respect is supervised by the President of the Office for Personal Data Protection.

The Ombudsman has already raised doubts of a constitutional nature with respect to the above-mentioned provisions in the course of legislative work on the Act of 20 December 2019, inter alia, in an opinion presented to the Speaker of the Sejm and the Speaker of the Senate.

The Ombudsman maintains his position, believing that the imposition of an obligation on judges and prosecutors to make the above statements, including in particular the publication of information on membership of associations on the Internet (in the Public Information Bulletin), unduly interferes with fundamental rights.

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

In the opinion of the Ombudsman, the aim of the legislator was not to strengthen the transparency and apoliticality of judicial officers, but in fact to carry out a general vetting of social, charitable and public activity of judges and prosecutors.

In many cases, the publication of information concerning them may lead to the disclosure of their world views, beliefs and even their sexual orientation (this is how membership of organisations defending LGBT rights may be interpreted). The obligation to make declarations may also have a freezing effect on constitutional freedom of association (Article 58 of the Polish Constitution).

Judges and prosecutors, while protecting their privacy, may decide to limit or even stopping their social and civil activities. It should be added that statements of assets of judges and prosecutors have already been made public. This means that, when compared to other public officials - such as MPs or senators - judges and prosecutors will enjoy the narrowest sphere of privacy. It is difficult to find justification for this state of affairs in the light of Article 31(3) of the Constitution of the Republic of Poland (the principle of proportionality), and in the context of the constitutional principle of the balance of legislative, executive and judicial powers (Article 10 of the Constitution).

It should be noted that the freedom of association of judges is particularly restricted by the Constitution through Article 178(3), which provides that a judge may not belong to a political party, trade union or carry out public activities incompatible with the principles of judicial independence and the independence of judges. In other respects, judges and prosecutors benefit from Article 58 of the Polish Constitution and Article 11 of the European Convention on Human Rights.

As indicated by the Consultative Council of European Judges, judges should be given the freedom

to engage in nonprofessional activities according to their own choice (see Opinion No 3 of the Consultative Council of European Judges addressed to the Committee of Ministers of the Council of Europe of 19 November 2020, par. 27 in fine).

Relation of the case to the EU Charter

Charter was not invoked, but the freedom of association is named as a fundamental law for judges also.

Relation between the EU Charter and ECHR

No analysis was provided

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

Not applicable

Notes on the national implementation of the preliminary ruling by the referring court

The Commissioner of Human Rights (ombudsman) cited the: Bangalore Principles; CCEJ Report – about general principles of judge's freedoms.

(Link to) full text

<https://www.rpo.gov.pl/sites/default/files/Wyst?pienie%20do%20Prezesa%20Urz?du%20Ochrony%20Dan>

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

1. Adopted law
 2. Ombudsmans Letter
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