

Poland, Lex super Omnia Association, resolution 19 December 2019

Member State

 Poland

Topic

Impartiality

Deciding Court Original Language

Association

Stowarzyszenie Prokuratorów “LEX Super Omnia”

Deciding Court English translation

“Lex Super Omnia” Association of Prosecutors

Date Decision

Resolution from December 19th, 2019

ECLI (if available)

Not available

EU legal sources and CJEU jurisprudence

Judgment from November 19th , 2019

Subject Matter

Guidelines/recommendations for prosecutors, follow up of CJEU Decision.

Recommendation to initiate disciplinary proceedings against judges. Applying EU law as a disciplinary offence.

Legal issue(s)

Impartiality – Recommendations/guidelines for prosecutors – proper court (panel) composition – disciplinary proceedings

Request for expedited/PPU procedures

NO

National Law Sources

Constitution;

Code of Criminal Procedure

Code of Civil Procedure

Facts of the case

Following the CJEU judgment from November 19th, 2019, The First Deputy General Prosecutor, the National Prosecutor asked in the internal instruction the heads of departments in the Prosecutor's Office to react immediately to all cases of questioning: a/ the status of judges adjudicating in the Supreme Court; b/judges of common courts appointed by the President of Poland at the request of the NCJ.

He wrote also "The prosecutor's office must respond to attempts to disorganise the Polish and democratic justice system". And he requested that in such cases prosecutors should submit motions for exclusion of a judge, report such events to the Disciplinary Prosecutor and notify the Department of Judicial Proceedings of the National Prosecutor's Office each time.

The recommendation was not published on official (.gov) website. Still it is not published (as for June 20th)

After receiving such a document, the Association LSO published quoted resolution.

Despite the hierarchical structure of the prosecutor's office, this position proved to be a very strong voice of the community, so the prosecution authorities had to withdraw (unofficially) from their previous position.

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

Quotations from the motifs of the resolution:

"Nor do the Prosecutors, members of the Lex Super Omnia Association of Prosecutors, find any grounds for accepting, as set out in the letter of 16 December 2019, the expectation that a request will be made to exclude a judge or judges from the judgement in any case where the adjudicating

court has doubts as to the legality of the court's composition. The grounds for exclusion of a judge are precisely defined in the procedures of particular branches of law. There is no prerequisite for the adjudicating panel or its individual members to express a legal opinion different from that expected by the prosecutor's superior”.

“The Lex Super Omnia Prosecutors' Association emphasises that if the adjudicating court has doubts as to the compatibility of the composition of the court with the provisions of law, either within the meaning of Article 379(4) of the Code of Civil Procedure or Article 439(1)(1) of the Code of Civil Procedure. - the prosecutor should take a position according to his best knowledge and conscience. In doing so, it is inconceivable to omit the case-law acquis, and in particular the reasoning of the judgment of the Court of Justice of the European Union of 19 November 2019 in Joined Cases C-585/18, C-624/18, C-625/18 and the judgment of the Supreme Court of 5 December 2019, ref. III PO 7/18”.

“The Association of Prosecutors Lex Super Omnia states that the Law on Public Prosecutors does not provide for any involvement of a prosecutor, including the National Prosecutor, in disciplining judges. A law-abiding, impartial prosecutor may challenge court decisions only through admissible means of redress”.

“We find that the letter from the First Deputy Attorney General is also another example of the excessive association of the members of the Disciplinary Chamber of the Supreme Court with the executive, which disqualifies that body as a court”.

The Lex Super Omnia Association of Prosecutors protests against the attempt to discriminate between prosecutors and judges and the progressive politicisation of the prosecution. Members of the Association will not be passive witnesses of an assassination attempt on the foundations of the political system of the Republic of Poland dressed in the appearance of legality.

Relation of the case to the EU Charter

Indirectly referred to, as the quoted rulings did.

Relation between the EU Charter and ECHR

Not applicable

Use of Judicial Interaction technique(s)

Kind of an interpretation

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

Impact on Legislation / Policy

Not applicable

Connected national caselaw / templates

Templates #1, 2, 3, 14

(Link to) full text

<http://lexso.org.pl/2019/12/19/stanowisko-stowarzyszenia-prokuratorow-lex-super-omnia-wobec-zalecen-prokuratora-krajowego-i-zastepcy-prokuratora-generalnego-skierowanych-16-grudnia-2019-r-do-prokuratorow-regionalnych-i-naczelniko/>

Author

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

1. (Final) Judgment III PO 7/18; (template #14)
 2. Recommendation of Deputy Prosecutor General;
 3. Resolution of the LSO Prosecutors Association.
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