

**Poland, National Association of Judges of Administrative Courts, 2/2020, 17 July 2020**

Member State

 Poland

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Topic

Trust – freedom of expression/association of judges

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Deciding Court Original Language

**Stowarzyszenie Sędziów Sądów Administracyjnych w Polsce**

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Deciding Court English translation

**Resolution of the Board of the National Association of Judges of Administrative Courts of 17 July 2020**

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Registration N

**2/2020**

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Date Decision

July 17th, 2020

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ECLI (if available)

Not available

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National Follow Up Of (when relevant)

Indirect follow of CJEU judgment from November 19th, 2019

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EU legal sources and CJEU jurisprudence

Article 47 of EU Charter;

Cases C – 585/18; C – 624/18, C – 625/18

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## ECtHR Jurisprudence

N.a.

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### Subject Matter

Trust in judiciary

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### Legal issue(s)

Trust in judiciary – Judicial Freedom of Association – Muzzle law

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### Request for expedited/PPU procedures

NO

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### 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

Polish Constitution;

Act on Administrative Courts

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### Facts of the case

The Kłwów Commune Council adopted a declaration entitled: "The Kłwów Commune Free from LGBT Ideology". The Ombudsman challenged the declaration and presented a claim before the Voivodship Administrative Court in Warsaw. The court annulled the resolution of the Kłwów Commune Council.

The court pointed out that the term refers to people, and the resolution is discriminatory.

The Court stated that the Kłwów Commune Council adopted this resolution without a legal basis, and also exceeded its powers.

After the ruling, the public debate was fuelled by the articles by government inspired media affirming that the decision was biased due to the fact that one of the judges was politically involved as a member of a judicial association.

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

The whole resolution of Association of Judges of Administrative Courts:

We strongly protest against the personal attacks on judges of Voivodship administrative courts because of their judgments.

In the wPolityce.pl portal (wpolityce.pl) the judgment of the Voivodship Administrative Court in Warsaw issued in the case of the resolution of the Kłwów Municipal Council (referred to by journalists as the 'anti-LGBT resolution') was commented on by criticizing the judges of the bench and referring to their membership of 'politicized' associations.

Such criticism is inadmissible. It does not refer to the content and lawfulness of the judgment that was issued (the judgment is not final and is appealable), but to the people who issued the judgment. Its objective is purely to undermine their credibility and intimidate the judges by showing that passing 'inconvenient' judgements can involve the public disclosure of information which is unrelated to their working life. The way in which journalists present information about their membership of associations of judges is at least suggestive that the judges are not guided by law, but by politics, and that their actions are in conflict with the interests of the state and citizens.

We would like to point out that the judges are Polish citizens. Therefore, just like every citizen, they have the right to associate (freedom of association) arising from Article 58, para. 1 of the Constitution of the Republic of Poland. Associations of judges are legally operating associations, the objective and activities of which are not in conflict with the Constitution. The requirement to disclose membership of associations was only introduced with regard to judges under Article 88a of the Act on the Organization of Ordinary Courts of 27 July 2001 (Journal of Laws of 2020, item 365) and Article 29, para. 1 of the Act on the Organization of Administrative Courts of 25 July 2002 (Journal of Laws of 2019, item 2167), as this does not apply to other citizens. The constitutionality of this regulation is rightly questioned. As shown by the attacks that have been presented, this information is used to undermine trust in the courts and judges.

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#### Relation of the case to the EU Charter

Not applicable

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#### Relation between the EU Charter and ECHR

Not applicable

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#### Use of Judicial Interaction technique(s)

Not applicable

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

Not applicable

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

Please indicate what was (presumably) the scope pursued by the national court when using judicial interaction techniques, namely whether they wanted to solve a conflict of norms, conflicts of judicial interpretation involving fundamental rights enshrined in the EU Charter, fill in legislative gaps, institutional conflict, etc.

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### Impact on Legislation / Policy

NO impact on policy.

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### (Link to) full text

<http://osssa-sedziowie.org.pl/uchwala-nr-2-2020-zarzadu-ogolnopolskiego-stowarzyszenia-sedziow-sadow-administracyjnych-z-17-wrzesnia-2020-r/>

### English translation:

<http://themis-sedziowie.eu/materials-in-english/resolution-no-22020-of-the-board-of-the-national-association-of-judges-of-administrative-courts-of-17-july-2020/>

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### Author

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

1. Commune of Klwów resolution;
  2. Complaint filed by Ombudsman to Administrative Court;
  3. Judgment from July 15th of Voivodship Administrative Court;
  4. Critical voices of public opinion;
  5. Resolution from July 20th.
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