

**Slovenia, Administrative Court, III U 207/2013, ordinary, 13 September 2013,  
ECLI:SI:UPRS:2013:III.U.207.2013**

Member State

 Slovenia

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Topic

Trust:

- Freedom of association of judges and prosecutors

Independence:

- Appearance of independence (measures)/Substantive independence

Impartiality:

- Conflict of interest
  - Individual judges' liability
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Deciding Court Original Language

Upravno sodišče Republike Slovenije

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Deciding Court English translation

Administrative Court of Republic of Slovenia

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Registration N

III U 207/2013

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Date Decision

13 September 2013

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ECLI (if available)

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## EU legal sources and CJEU jurisprudence

Article 2, 19(2) TEU, Article 47 CFREU (none mentioned in the case)

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## Subject Matter

Incompatibility of judicial function with participation in political parties

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## Legal issue(s)

Independence and impartiality of judges

The case revolves around the question whether a judge may participate in a Committee on Justice and Public Administration of a political party's Expert Council and opens broader concerns with regards to the conflicting values: freedom of association on the one hand and judicial independence and impartiality on the other hand.

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## National Law Sources

Article 133 of the Constitution

Articles 2, 3, 37, 42 and 43 of the Judicial Service Act (the JSA)

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## Facts of the case

An administrative court judge informed the president of the Administrative Court (the AC) that she was a member of Committee on Justice and Public Administration of a political party's Expert Council. The president of the AC demanded the review of (in)compatibility of her involvement in the political party with her judicial function before the Judicial council (the JC). The JC ruled that her position in the political party was incompatible and thus prohibited. The judge did not agree and started an administrative dispute before the AC. In addition to inadequate and unconvincing reasoning, she argued that the JC failed to review her actual involvement and the character of the Committee, but based its conclusion solely on her membership. She explained that the role of the members of the Committee was exclusively professional (apolitical). The Committee's task was to comment the proposed legislation a few times a year. She rarely gave any comments and her comments related only to topics she was professionally familiar with. She even claimed that her actions should have been met with appreciation since Article 29(1)-7 of the JSA considers cooperation in legislative procedures as one of the criteria for evaluation of judicial performance.

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

The AC was not convinced. It opined that the membership alone is a sufficient reason to establish

the incompatibility of the judicial function with participation in the Committee. A political party is, by definition, an association of citizens who pursue their political goals adopted in the party's program. Cooperation with a political party (also in the professional field) can give the impression of working towards achieving the set goals. Since the applicant is a professional judge, any doubt as to the objectivity of the professional activity cannot be accepted. One of the foundations of the rule of law is the full confidence of the public in the independent functioning of the judicial system.

The judge's activity was found to be contrary to Article 2 of the JSA, which stipulates that a judge must always act in such a way as to protect the impartiality and independence of the trial and the reputation of the judicial service, a judge may not perform functions or activities that are incompatible with the judicial function according to the provisions of the Constitution or the provisions of the JSA. Further, it is also in conflict with Article 37 of the JSA, according to which a judge must always behave in such a way as to protect impartiality and independence, judicial reputation and independence of the judiciary, as well as in violation of Article 42 of the JSA, which prohibits employment or work that would hinder the performance of judicial service or contradict the reputation of the judicial service or give the impression that a judge is not impartial in the performance of his duties. The described conduct was also found to be in conflict with Article 133 of the Constitution, which stipulates that the function of a judge is incompatible with functions in other state bodies, local self-government bodies and political party bodies, and with other functions and activities determined by law. Moreover, it is contrary to Code of Judicial Ethics (Article III - impartiality and Article VII incompatibility), which can serve as a tool for interpretation of legally binding rules.

The AC also underlined the importance of appearance of impartiality (external impartiality) which is not guaranteed in the case of involvement into a political party in such a way as in the case at hand.

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### Relation of the case to the EU Charter

The CFREU is not mentioned, but could be. The national judge is at the same time the "EU judge" and must comply with the EU requirements of independence and impartiality which are interfered with in the case at hand.

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### Other

There is a dormant public debate on the appropriateness of involvement of judges in politics in Slovenia. It erupted in 2006, when five supreme court judges publicly expressed support to a candidate for mayor in Ljubljana. From then onwards, the debate opens up from time to time. A recent example is a judge, who left the judiciary to become a deputy of the national assembly (lower house of the Slovene parliament) and returned in 2018. A part of media considered this to be a scandal, especially due to her facebook comment in response to the outcome of the referendum on a same-sex couples' rights, where the electorate turned down the proposed amendment. She wrote: "One year [the period in which the national assembly is barred from amending the legislation, that was turned down at the referendum] goes fast. In the mean time, we change the constitutional judges." Other examples are participation at a candidate's celebration after being elected for mayor and presence at a political party's rally. In both cases, these judges

were involved in proceedings against politicians from the opposing political spectrum.

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(Link to) full text

<http://sodisce.si/usrs/odlocitve/2012032113071739/>

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

1. 1.Judicial Council, Decision no. 2/13-182 of 18 April 2013
  2. 2.Administrative Court, Judgment III U 207-2013 of 13 September 2013
  3. 3.Supreme Court, Order X Ips 329/2013 of 6 February 2014
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