

Slovenia, Disciplinary court of the Judicial Council, Ds-ss 1/2021, ordinary, 13 April 2021

Member State

 Slovenia

Topic

Rule of law - Prevention of abuse of powers

Independence – Discipline of judges

Trust - Freedom of Expression of judges and prosecutors, Integrity and diligence

Accountability - Disciplinary, liability of magistrates (judges and prosecutors); The use of social media

Deciding Court Original Language

Disciplinsko sodišče pri Sodnem svetu Republike Slovenije

Deciding Court English translation

Disciplinary court of the Judicial Council of the Republic of Slovenia

Registration N

Ds-ss 1/2021

Date Decision

13 April 2021

ECtHR Jurisprudence

Baka v Hungary

Guz v Poland

Kudeshkina v Russia

Wille v Liechtenstein

Previti c. Italie

Kayasu v. Turkey

Di Giovanni v. Italy

Pitkevich v. Russia

Albayrak v. Turkey

Simi? v. BiH

Oluji? v. Croatia

Uj v. Hungary

Harabin v. Slovakia

Oberschlick v. Austria

Ska?ka v. Poland

Mamere v. France

Schrager and Oberschlick v. Austria

Rujak v Croatia

Mladina d.d. Ljubljana v. Slovenia

Subject Matter

Disciplinary court had to determine disciplinary liability of a judge, who harshly criticized the prime minister and the members of a special scientific group for COVID-19 on facebook, where her profile was set in such way that only some 50-60 facebook friends could see, but not share her posts. One of her facebook friends made a printscreen of her posts that ultimately found their way to a member of the ruling party, who send it to the media.

Legal issue(s)

Independence and accountability of judges (freedom of expression of judges)

The main legal issues were the following:

- The scope of protection of political speech of judges under the ECHR and under the

Constitution

- How does the fact that the judge's privacy settings prevented further dissemination of her message and the fact that she shared her views with only 50-60 facebook friends affect the outcome of a disciplinary procedure? (blurred lines between private and public speech of a judge)

Request for expedited/PPU procedures

NO

Interim Relief

NO

National Law Sources

Constitution, Art. 39, 133

Judicial Service Act (the JSA), Articles 2, 37, 38, 40, 81

Judicial Council Act (the JCA), Article 53

Code of Judicial Ethics

Facts of the case

In November 2020, during the second wave of the COVID-19 pandemic, when public life was limited and residents were not allowed to cross the borders of their municipalities without a valid reason (i.e. work), a local court judge published two posts on her closed facebook profile. In the first, she wrote that “this was an order of Janez Janša [Slovene prime minister], who, at the government meeting, ordered that policemen should go to the roads and municipality borders to collect fines” and that “it is not about your safety and health, but it is about filling the empty state budget bag”. In the second post, written as a comment under another post, where somebody expressed his views against the measures taken by the government, she wrote: “I prefer this kind of rhetoric to Beovi?, Krek, Bregant, Kacin, and the great dictator Janša ... Virus gave zest to frustrated specimen with criminal past and a will to oppress everything on their way. And ofcourse, a great need for revenge.”

One of judge’s 50-60 facebook friends, who were unable to share her comments further on, due to her privacy settings, made a screenshot of her comments. Eventually they ended up with Vinko Gorenak, a ruling party MP, who then published them in his blog and as a result, all the Slovene media reported on “scandalous” facebook posts of the judge concerned.

On the demand of the president of the Local court in Ljubljana, a disciplinary procedure was initiated.

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

The Disciplinary court (the DC) acquitted the judge. The jurisprudence of the ECtHR formed the basis for the assessment of the DC. The DC rejected the argument that the disciplinary offences were not “prescribed by law”. After referring to *Guz v. Poland*, it found that terms “acting in such way to undermine the reputation of the judicial office” and “inappropriate and indecent expression towards individuals” were sufficiently precise and foreseeable. The DC noted that according to Slovene legislation, judges are able to be members of political parties, they can stand for election to the highest political positions (e.g. member of parliament, president of the republic) and hold the highest political offices in the state administration. During the time of holding such political function, judicial mandate is suspended. Hence, if holding such offices and being a member of a political party is not proscribed, making a statement, that can be regarded as political as a way of criticizing the prime minister cannot be regarded as a disciplinary offence, in the context of a heated debate on the measures for fighting the pandemic, that had an unprecedented effect on the human rights of the whole population. This holding was further reinforced by the fact that the judge set her facebook privacy settings to prevent any further dissemination of her posts or comments and that the public became aware of her posts only when one of her “friends” made a print screen and share them on.

Use of Judicial Interaction technique(s)

Comparative reasoning with foreign caselaw: the DC referred to *Monir v Wood*, EWHC(QB) 3525, 2018 and to *Stocker v Stocker*, (2019) UKSC 17. Both cases concern the question how people perceive messages on facebook.

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

The court extensively referred to the caselaw of the ECtHR in the first part of its reasoning. The case *Baka v Hungary* was regarded as central. The DC also referred to the 2015 opinion of the Venice Commission on freedom of expression of judges. It quoted the part, where the Venice Commission states that a constitutional crisis or breakdown is an important element of context in determination of the scope of freedom of expression of judges.

Connected national caselaw / templates

- *Cimperšek v. Slovenia* – see the corresponding template
 - SuZ 53/2020 of 11 August 2020 and VSRS judgment U 3/2021-33 – see the corresponding template
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Other

The president of the Local court of Ljubljana changed the working schedule without any formal procedure. As a result, the judge in question lost her leadership position (she was a leader of one of the departments within the civil section of the court). This measure could be *prima facie* regarded as a covert sanction for her comments. However, no legal proceedings were brought by the judge against such measure.

(Link to) full text

http://www.sodni-svet.si/doc/Disc.%20sklep_Ds-ss1.2021.pdf

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

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