

Czech Republic, Nejvyšší správní soud (Supreme Administrative Court), no. 13 Kss 6/2017-538, ordinary instance, 28. 11. 2018, no. 4365/2022 of the Coll.

Member State

 Czech Republic

Topic

Freedom of expresion

Sector

Freedom of Expression and Association; Disciplinary proceedings

Deciding Court Original Language

Nejvyšší správní soud

Deciding Court English translation

Supreme Administrative Court

Registration N

13 Kss 6/2017-538

Date Decision

28.11.2018

ECLI (if available)

ECLI:CZ:NSS:2018:13.Kss.6.2017.538

National Follow Up Of (when relevant)

No

EU legal sources and CJEU jurisprudence

N/A

ECtHR Jurisprudence

Decision of the ECtHR from 27. 5. 2014, Baka v Hungary, application no. 20261/12

Decision of the ECtHR from 26. 2. 2009, Kudeshkina v Russia, application no. 29492/05

Decision of the ECtHR from 16. 9. 1999, Buscemi v Italy, application no. 29569/95
Decision of the ECtHR from 28. 10. 1999, Wille v Lichtenstein, application no. 28396/95
Decision of the ECtHR from 17. 12. 2004, Pedersen a Baadsgaard v Denmark, application no. 49017/99
Decision of the ECtHR from 22. 10. 2007, Lindon, Otchakovsky-Laurens a July v France, applications no. 21279/02 a 36448/02
Decision of the ECtHR from 6. 10. 2009, Kuli? a Ró?ycki v Poland, application no. 27209/03
Decision of the ECtHR from 27. 2. 2001, Jerusalem v Austria, application no. 26958/95
Decision of the ECtHR from 23. 4. 2015, Morice v France, application no. 29369/10
Decision of the ECtHR from 11. 4. 2006, Brasilier v France, application no. 71343/01

Subject Matter

Freedom of expression of a judge – comments made for media – value and factual statements – suggesting the acceptance of a bribe for amnesty

Legal issue(s)

The extent to which judges owe a duty of loyalty and restraint in making public statements, including in their private lives.

Request for expedited/PPU procedures

No

Interim Relief

No

National Law Sources

§ 80(1); § 80(2)(b); § 80(2)(e); § 80(4) of act no. 6/2022 Coll., on Courts and Judges (zákon o soudech a soudcích)

Art. 17 of the (Czech) Charter on Fundamental Rights and Freedoms (Listina základních práv a svobod)

Facts of the case

The judge was disciplinary prosecuted for statements he made on camera for the show "Special Investigation Episode 3: Klaus's Amnesty? 'He told me who and what amount he said he paid'" made by a domestic medium. Asked by a reporter whether he thought the President's decision on amnesty on 1 January 2013 was prepared to affect specific people, he replied, "I am personally convinced of that"; then, when asked what he thought about reports that the preparation of the amnesty "was paid for", he replied, "What is impossible in this country? Is it impossible? It's possible."; to a follow-up question as to whether he thought it was possible that "somebody prepared it" and that "somebody paid for it," he replied, "It's quite possible, so anything is possible in this state."; and to the question: "Are you saying that as a judge?", he replied, "That's what I'm saying". He then told the reporter, off camera, unverified information that the President's decision on amnesty was "ordered" for CZK 300 million by an named businessman, which was subsequently broadcast as part of an interview between two reporters.

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

The Disciplinary Chamber first discussed the general principles. It stated that, on the one hand, a judge cannot be excluded from exercising his constitutional right to freedom of expression, but that, on the other hand, the exercise of such a right by any person, and even more so by a judge, is not unlimited, since it entails duties and responsibilities and may be limited by law. In view of the importance of the separation of powers and the need to ensure the independence of the judiciary, any interference with a judge's freedom of expression must be subject to careful scrutiny. In particular, a judge's speech concerning the functioning of the judiciary is highly protected. Each case must be considered individually, taking into account all the circumstances and the context in which the statements were made. Any sanction for such speech must not have a chilling effect.

A judge is bound by a duty of loyalty and restraint from the moment he assumes office, including in his or her private life. However, the circumstances in which he makes a statement will affect the scope of that duty. A speech in which a judge makes an express reference to his office is to be treated more strictly. Such a speech will also be more closely connected with the way in which the judge performs his duties. If, on the other hand, it is not objectively apparent from the speech that it was made by a judge, this is evidence of greater protection and tolerance. Such speech is less likely to be associated with the office of judge.

The Court's assessment of the judge's statements was divided into two parts - on-camera and off-camera statements.

In the case of the on-camera statements, the court found that they were factual statements. They send a very disturbing signal to the public, as they indicate that the disciplinary defendant, as an experienced criminal judge, believes that the amnesty was prepared for the purpose of allowing certain persons to escape justice by dropping their prosecution, and that it is possible that a bribe was offered to prepare the amnesty in this form. In the opinion of the Disciplinary Chamber, such a communication in itself constitutes a rather fundamental threat to the confidence of citizens in the functioning of the judiciary and the democratic rule of law in general. This does not mean, however, that such a statement by a judge is always absolutely inadmissible. However, on the basis of the evidence presented, the Court concludes in this part that it cannot be said to have a realistic basis. As a result, the judge culpably breached his obligations to refrain, not only in the exercise of his judicial office, but also outside it in the exercise of his political rights, from anything that might undermine the dignity of the judicial office, introduce a cause for diminished confidence in the judiciary or undermine confidence in the independent, impartial and fair decision-making of the courts. The court reprimanded the judge for this.

In assessing the off-the-record statements, the Court pointed to their off-the-record nature and noted that the disclosure of the information was accompanied by a statement that the information was unsupported and that the businessman was not identifiable to the public. Therefore, the judge did not breach any legal duty in this part of the case and there was no disciplinary offence.

Relation of the case to the EU Charter

N/A

Relation between the EU Charter and ECHR

The ECtHR case law is cited more in ornamental way, than to have some impact on national norms and their interpretation.

Use of Judicial Interaction technique(s)

Consistent interpretation

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

The Court cites its previous case law (from 20. 5. 2015, no. 13 Kss 1/2015-112; from 11. 2016, no. 13 Kss 5/2016-75; from 2. 11. 2016, no. 13 Kss 5/2016-106)

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

The SAC cited decision of the CC from 5. 9. 2016, no. I. ÚS 2617/15 and from 11. 4. 2017, no. IV. ÚS 2609/16 to demonstrate the constitutional conformity of its theoretical results, as the CC previously generally accepted similar reasoning of the SAC.

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

The SAC wanted to strengthen the reasoning, as the case was concerning human rights of the judge.

Impact on Legislation / Policy

No

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

N/A

Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred to by the CJEU in its decision) or the Explanations?

N/A

Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?

No

Did the national court take into account national case law on fundamental rights?

Yes

If the court that issued the preliminary reference is not a last instance court, and the “follow up” was appealed before a higher court, include the information
No preliminary reference by the SAC in this case

Impact on national case law from the same Member State or other Member States
N/A

Connected national caselaw / templates
N/A

(Link to) full text
<https://vyhledavac.nssoud.cz/DokumentOriginal/Html/649183>

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