

Czech Republic, Nejvyšší správní soud (Supreme Administrative Court), 13 Kss 5/2016-75, ordinary, 2. 11. 2016

Member State

 Czech Republic

Topic

independence, impartiality, freedom of expression

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 5/2016-75

Date Decision

6. 11. 2016

ECLI (if available)

ECLI:CZ:NSS:2016:13.Kss.5.2016.75

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

N/A

ECtHR Jurisprudence

Art. 10 European Convention on Human Rights

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

Subject Matter

Disciplinary conduct – freedom of speech of judges – internal criticism of colleagues – public confidence in the judiciary – criticism of a court's president – impartiality – compatibility of the office of judge and member of administrative authority

Legal issue(s)

- 1) Whether accusing a judge-colleague of unlawful, arbitrary and unethical interference with one own case is disciplinary misconduct; and
 - 2) Is a judge's membership of the administrative body that decides on administrative appeals consistent with his or her duty not to undermine the dignity of the judicial office or to undermine confidence in the independence and impartiality of the judiciary? In other words, can a judge work, alongside his judicial official, also as an official in an administrative body?
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Request for expedited/PPU procedures

No

Interim Relief

No

National Law Sources

Art. 82(3) of the Constitution (Ústava)

Art. 17; art. 26 of the (Czech) Charter on Fundamental Rights and Freedoms (Listina základních práv a svobod)

§ 74; § 80; § 85 of the act no. 6/2002 Coll., on Courts and Judges (zákon o soudech a soudcích)

Facts of the case

The accused judge formally reported one of his colleagues in a letter to the president of a court. The colleague was alleged to have interfered unlawfully, arbitrarily and unethically in one of the criminal cases the accused judge presided over. Specifically, the judge-colleague suggested to a public prosecutor to file a motion for a retrial. He urged the court's president to initiate disciplinary proceedings against the colleague.

The accused judge was also charged with disciplinary misconduct for undermining the dignity of the office of a judge and undermining confidence in the independent, impartial, professional and fair administration of justice. This was allegedly done by his appointment as a member of the Appeals Committee of an administrative body (Czech Telecommunication Office, a central administrative body for matters related to market regulation and definition of the conditions for

business activities in the area of electronic communications and postal services). This should have been incompatible with the office of a judge, since the Constitution limits the personal connections between the judiciary, the legislature, the executive, and local government, so that the judiciary cannot appear in the eyes of the public to be connected in any way to the other branches of the government.

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

Citing the case law of the European Court of Human Rights, the disciplinary chamber of the Supreme Administrative Court noted that a judge's freedom of expression is protected, including criticism of the internal affairs of the judiciary. However, a judge may reasonably be required to exercise this freedom with some restraint. The court then disagreed with the criticism of the judge's colleague on the merits, stating that procedurally, the approach was in accordance with the law. Even though the criticism was unfounded, it was nevertheless protected. This type of internal criticism enjoys a high degree of protection. Since the formal complaint made by the accused judge was neither defamatory nor an abuse of the law, was not made in public and was addressed only to the court president, the disciplinary chamber found it difficult to imagine that it could undermine public confidence in the judiciary. In this respect, the judge was, therefore, acquitted.

Concerning the second part (the compatibility of holding the judge's office and being a member of the Appeals Board of an administrative body), the disciplinary chamber found they were incompatible. A judge cannot be a member of the Board of Appeal. However, the court found many "mitigating circumstances" - the accused judge sent a notice of his appointment to the president of the court with a justification of the mutual compatibility of the functions, he subsequently decided not to take any action as a member until the matter was resolved, he was not involved in any administrative proceedings, he did not receive remuneration, and he finally resigned. Therefore, although the judge violated his duties, he was also acquitted in this part.

Relation of the case to the EU Charter

N/A

Relation between the EU Charter and ECHR

N/A

Use of Judicial Interaction technique(s)

consistent interpretation, proportionality

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

The disciplinary chamber works with its own decisions (from 20. 5. 2015, no. 13 Kss 1/2015-112; from 11. 6. 2015, no. 16 Kss 7/2014; from 6. 6. 2016, no. 11 Kss 6/2015) and decisions of Czech Constitutional Court (from 5. 9. 2016, no. I. ÚS 2617/15; from 18. 6. 2002, no. Pl. ÚS 7/02; from 6. 10. 2010, no. Pl. ÚS 39/08; from 5. 9. 2016, no. I. ÚS 2617/15; from ze dne 7. 9. 2010, no. Pl. ÚS 22/09).

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

There was no review by the Czech Constitutional Court.

The majority of the ECtHR decisions are cited in a purely ornamental way, as this was the second decision regarding this particular judge, and the disciplinary chamber only pointed to the judgements with a note that it had already cited this case law in the previous decision. More space was devoted to the Baka v Hungary case, as the disciplinary court pointed out the basic premises of freedom of expression of a judge. However, no substantial outcomes are taken and worked with. All these judgements concerned the freedom of expression part of the case. No international case law was cited for the second part.

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

The disciplinary chamber used the ECtHR case law to show basic principles relating to the judges' freedom of expression.

Impact on Legislation / Policy

N/A

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?

N/A

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

N/A

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

N/A

Was there a consensus among national courts on how to implement the CJEU's preliminary ruling; and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?

N/A

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

N/A

Connected national caselaw / templates

N/A

Other

N/A

(Link to) full text

<https://vyhledavac.nssoud.cz/DokumentOriginal/Html/640449>

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

There is no procedural history of this case, as the disciplinary chamber is the first and last instance in the disciplinary proceedings. There was no review by the Constitutional Court.
