

Czech Republic, Ústavní soud (Constitutional Court), I. ÚS 2617/15, constitutional, 5. 9. 2016

Member State

 Czech Republic

Topic

Impartiality, freedom of expression

Sector

Freedom of Expression and Association; Disciplinary proceedings

Deciding Court Original Language

Ústavní soud

Deciding Court English translation

Constitutional Court

Registration N

I. ÚS 2617/15

Date Decision

5. 9. 2016

ECLI (if available)

ECLI:CZ:US:2016:1.US.2617.15.1

National Follow Up Of (when relevant)

No

EU legal sources and CJEU jurisprudence

N/A

ECtHR Jurisprudence

Art. 10 European Convention on Human Rights

Decision of the ECtHR from 26. 9. 1995, Vogt v Germany, application no. 17851/91
Decision of the ECtHR from 12. 2. 2008, Guja v Moldavia, application no. 14277/04
Decision of the ECtHR from 28. 10. 1999, Wille v Lichtenstein, application no. 28396/95
Decision of the ECtHR from 26. 2. 2009, Kudeshkina v Russia, application no. 29492/05
Decision of the ECtHR from 20. 11. 2012, Harabin v Slovakia, application no. 58688/11
Decision of the ECtHR from 23. 6. 2016, Baka v Hungary, application no. 20261/12
Decision of the ECtHR from 2. 9. 1998, Ahmed and others v United Kingdom, application no. 22954/93
Decision of the ECtHR from 14. 3. 2002, De Diego Nafria v Spain, application no. 46833/99
Decision of the ECtHR from 26. 10. 1984, De Cubber v Belgium, application no. 9186/80
Decision of the ECtHR from 15. 12. 2005, Kyprianou v Cyprus, application no. 73797/01
Decision of the ECtHR from 15. 9. 2009, Micallef v Malta, application no. 17056/06
Decision of the ECtHR from 23. 4. 2015, Morice v France, application no. 29369/10
Decision of the ECtHR from 1. 10. 1982, Piersack v Belgium, application no. 8692/79
Decision of the ECtHR from 28. 6. 1984, Campbell and Fell v United Kingdom, applications no. 7819/77 and 7878/77
Decision of the ECtHR from 22. 10. 1984, Sramek v Austria, application no. 8790/79
Decision of the ECtHR from 9. 6. 1998, Incal v Turkey, application no. 22678/93
Decision of the ECtHR from 6. 5. 2003, Kleyn and others v Netherlands, application no. 39343/98
Decision of the ECtHR from 17. 12. 2004, Pedersen and Baadsgaard v Denmark, application no. 49017/99
Decision of the ECtHR from 1. 12. 2009, Karsai v Hungary, application no. 5380/07
Decision of the ECtHR from 22. 10. 2007, Lindon, Otchakovsky-Laurens and July v France, applications no. 21279/02 and 36448/02
Decision of the ECtHR from 6. 10. 2009, Kuliś and Różycki 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 11. 4. 2006, Brasilier v France, application no. 71343/01
Decision of the ECtHR from 17. 12. 2004, Cumpănu and Mazăre v Romania, application no. 33348/96

Subject Matter

Freedom of expression of judges – political competition – local elections – commentary – division of powers

Legal issue(s)

The question in this case was how much a judge can be involved in election process as a “journalistic” commentator.

Request for expedited/PPU procedures

N/A

Interim Relief

N/A

National Law Sources

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

§ 80(4) and (5) of the act no. 6/2002 Coll., on Courts and Judges (zákon o soudech a soudcích)

Facts of the case

The judge was accused of undermining the dignity of the judicial office and abusing the judicial office to promote private interests while exercising his political rights. Shortly before the local elections, the judge wrote and distributed a leaflet in a village where he had a hut, evaluating the electoral programmes of political parties. Subsequently, after the election, he published an article in the local newspaper thanking people for voting, analysing possible coalitions, supporting the election's winner and warning of disaster if the leader of that party did not govern the village as a mayor. The disciplinary chamber found the judge guilty of disrespect for his office but refrained from imposing any penalty, as it deemed the hearing of the case in the disciplinary proceedings itself as sufficient.

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

The Constitutional Court began with general principles governing the freedom of expression of judges in political competition. Based on the jurisprudence of the ECtHR, the Constitutional Court stated that judges also have freedom of expression, but this is subject to specific limitations. The duty of loyalty and restraint binds them. On the one hand, according to a similar interpretation of the Czech Charter, judges should not question the fundamental values of the state, as the duty of loyalty binds them. On the other hand, the duty of restraint is broader. According to the case law of the ECtHR, judges must be impartial and independent. Their appearance in this sense is essential; therefore, the judge's statements must be restrained so as not to undermine confidence in the impartiality and independence of the judiciary.

The separation of powers is also important, all the more so given the Czech experience with the communist regime. Therefore, there is a particular interest in preventing judges from being linked to political parties and being excessively involved in political competition. Given the recent past, it is necessary to strengthen public confidence in the independence of the judiciary from political interests.

The Constitutional Court then analyses the criteria for assessing the judge's speech. On the basis of the ECtHR and its own case law, it distinguishes between factual assertions, value judgements or hybrid statements. The judge's statement must not flagrantly contradict the fundamental values of the democratic rule of law, must not undermine public confidence in the independence and impartiality of the judiciary, and must not excessively involve the judge in political competition. Moreover, speeches in which an individual explicitly refers to his or her position as a judge should be assessed more strictly. On the other hand, judges are more protected when criticising the judiciary. Last but not least, the sanction imposed must be evaluated.

In this case, the judge made hybrid statements. Although the statements do not contradict the fundamental values of the state, the judge, through his speech, on his own initiative, actively, openly and with excessive intensity engaged in political competition. In addition, the Constitutional Court found it contrary to the Constitution that the judge, through his public speeches, attempted to influence the shape of the coalitions in the council or who would serve as mayor. As a result, the judge infringed the duty of discretion. The sentence imposed was considered appropriate. In the end, the judge's constitutional complaint was rejected.

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 Constitutional Court cited its own case law.

There are no foreign judgements mentioned.

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

There was no interaction with other national supreme courts.

The court cited ECtHR extensively to assess basic rules on freedom of expression of judges.

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

The Constitutional Court cited the ECtHR case law extensively to build up the basic assumptions about freedom of expression of judges and subsequent analysis. Subsequently, it used the Convention and ECtHR case law to interpret the national Charter.

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://nalus.usoud.cz/Search/ResultDetail.aspx?id=94156&pos=1&cnt=1&typ=result>

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

1. Supreme administrative court, decision no. 16 Kss 7/2017-92 of 11. 5. 2015

2. Constitutional court, decision no. I. ÚS 26/17/15 of 5. 9. 2016
