

## **Czech Republic, Ústavní soud (Constitutional Court), II. ÚS 2490/15, constitutional, 8. 11. 2016**

### Member State

 Czech Republic

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### Topic

independence, impartiality, freedom of expression

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### Sector

Freedom of Expression and Association; Disciplinary proceedings

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### Deciding Court Original Language

Ústavní soud

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### Deciding Court English translation

Constitutional Court

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### Registration N

II. ÚS 2490/15

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### Date Decision

8. 11. 2016

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### ECLI (if available)

ECLI:CZ:US:2016:2.US.2490.15.1

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### National Follow Up Of (when relevant)

N/A

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### EU legal sources and CJEU jurisprudence

N/A

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### ECtHR Jurisprudence

Art. 10 European Convention on Human Rights

Decision of the ECtHR from 28. 10. 1999, Wille v Lichtenstein, application no. 28396/95

### Subject Matter

Freedom of expression – Judges – Election campaign – Forwarding fictional interview – Impartial and independent judiciary

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### Legal issue(s)

Limits of freedom of expression of judges while forwarding e-mail related to political campaigns from personal e-mail to, among others, journalists.

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### Request for expedited/PPU procedures

N/A

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### Interim Relief

N/A

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### National Law Sources

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

§ 80, § 87(1) of the act no. 6/2002 Coll., on Courts and Judges (zákon o soudech a soudcích)

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### Facts of the case

The judge was found guilty of disciplinary misconduct by the Disciplinary Chamber of the Supreme Administrative Court. Just as the campaign for the local and senatorial elections were beginning, he forwarded a message from his personal e-mail to 32 different recipients, including journalists. The message gives the impression that it is a transcript of conversations between politicians of a major Czech political party, contains many vulgar expressions and implies illegal actions of the persons mentioned in it, although he was aware that it was a fictitious document. The Disciplinary Chamber reduced his salary by 10% for three months. The judge challenged this decision before the Constitutional Court.

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

The Constitutional Court agreed with the Disciplinary Chamber as to whether the limits of freedom of expression had been exceeded. The content of the e-mail in question had considerable defamatory potential, and any explanatory comments by the judge did not accompany the e-mail. Moreover, it could reasonably have given some people the impression that it was an authentic conversation between politicians. The Court also considered that the circle of persons to whom the e-mail in question had been forwarded did not indicate that the complainant's conduct had been purely private. By his conduct, the complainant expressed a certain indifference as to how the text would be treated and interpreted and as to the fact that the complainant, i.e. the person holding judicial office, would be identified as the sender of the message.

In defining the limits of the judges' freedom of expression, the Constitutional Court referred to the ECtHR and its previous decisions. Although judges must be guaranteed freedom of expression, its exercise is subject to certain limitations. To the extent necessary, the exercise of freedom of expression by judges and other judiciary representatives may be required to be exercised with a

certain degree of restraint, i.e. in particular so as not to compromise the authority and impartiality of the judiciary unduly. This same degree of restraint applies to the exercise of freedom of expression in their private life.

While the judge sent the e-mail from his personal e-mail, the recipients included journalists who only knew the judge professionally. If the judge forwarded the e-mail in question to these persons, in some cases even to their work address, without any comment, he must have been fully aware that in this situation, the content of the e-mail in question could become public, with the judge identified as the sender of the message. From this point of view, therefore, the e-mail communication cannot be regarded as purely private, even though it was forwarded from the judge's private address. At the same time, by forwarding a message with content that can be considered highly defamatory, the complainant may have interfered with the personal rights of the politicians to whom the content of the message related. Although the Constitutional Court subsequently found fault with some of the evidence, the complaint was dismissed in its entirety.

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#### Relation of the case to the EU Charter

N/A

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#### Relation between the EU Charter and ECHR

N/A

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#### Use of Judicial Interaction technique(s)

Consistent interpretation

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#### 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.

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#### 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 Constitutional Court cited the ECtHR sporadically and in an ornamental way.

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

The Constitutional Court wanted to strengthen its reasoning, as the case was concerning human rights of the judge. However, the use of case law is very ornamental.

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#### Impact on Legislation / Policy

N/A

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

N/A

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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

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

N/A

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

N/A

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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

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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

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

N/A

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Connected national caselaw / templates

N/A

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Other

N/A

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(Link to) full text

<https://nalus.usoud.cz/Search/ResultDetail.aspx?id=95010&pos=1&cnt=1&typ=result>

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Author

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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. 13 Kss 1/2015-112 of 20. 5. 2015
  2. Constitutional Court, decision no. II. ÚS 2490/15 of 8. 11. 2016
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