

Poland, Disciplinary Court at Rzeszów Court of Appeal, ASD 1/23, pending

Member State

 Poland

Topic

Freedom of expression

Sector

Disciplinary proceedings, Freedom of expression.

Deciding Court Original Language

Sąd Dyscyplinarny przy Sądzie Apelacyjnym w Rzeszowie

Deciding Court English translation

Disciplinary Court at Rzeszów Court of Appeal

Registration N

ASD 1/23

Date Decision

Case pending

ECLI (if available)

N/A

National Follow Up Of (when relevant)

Indirect follow of Polish NCJ/S.C. cases

EU legal sources and CJEU jurisprudence

European Charter of Fundamental Rights, European Treaty

Judgments about Polish judiciary since 2018

ECtHR Jurisprudence

Zurek case indirectly - freedom of speech of a judge and judge-spokesperson

Subject Matter

Freedom of expression of the judge - judge and judicial association - ethics of judges - permissible criticism of judges and presidents of supreme courts - interference of political power in the judiciary - appointment of judges - appointment of judicial councils

Legal issue(s)

Case pending. Disciplinary proceedings against a judge who, in a public statement and as spokesperson for the judges' association, summarised the entirety of the actions of the government and the president of the Supreme Court. Disciplinary proceedings have been initiated against him. During the hearing, he gave an accusatory speech as the defendant, describing the actions of the government and the president of the Supreme Court.

The accused judge has been deputy minister of justice since January 2024.

Request for expedited/PPU procedures

NO

Interim Relief

NO

National Law Sources

Constitution of Poland, Law on ordinary courts, law on NCJ, law on S.C., criminal code

Facts of the case

Judge Mazur is being prosecuted by the disciplinary ombudsman for statements made to one of Poland's largest online portals in the second half of July 2021. This was shortly after the CJEU issued two rulings on the Disciplinary Chamber. First, the CJEU on 14 July issued a safeguard suspending the Chamber. And on 15 July, the CJEU issued a ruling that the Chamber was not a legitimate court.

With this judgment, the measure of security issued much earlier suspending the work of the Chamber collapsed. However, the new interim measure of 14 July was in force. In spite of this, Małgorzata Manowska, the neo-judge as First President of the Supreme Court, has fully "unfrozen" the work of the Chamber, in defiance of the latest CJEU interim measure and in defiance of the 15 July judgment. Mazur made the statement to Onet on 16 July. At the time, he commented on the full unfreezing of the Chamber by Manowska. He criticised her decision. He said that she was facing criminal liability for it.

He said that by reinstating the work of the Chamber, Manowska had rejected EU law. He warned that Poland would lose billions of EU funds for failing to implement the CJEU rulings. Which then happened, as the EU has still not paid Poland billions from the National Recovery Plan.

He also warned that Poland would be fined millions of euros for failing to implement the CJEU rulings, and that happened too. The fines are increasing all the time and today amount to more

than €600 million.

The judge went on to say that Manowska was assisting the CJEU's Julia Przytycka in unconstitutionally changing the law, which he described as a legal crime. He stressed that, as a result, she should not hold public office, including the office of judge. For these statements, disciplinary proceedings were initiated against the judge. As a result, the judge was charged with a disciplinary violation of the dignity of the office of judge. The deputy disciplinary commissioner at the Court of Appeal in Lublin, Bartosz Kamieniak, applied for his punishment to the disciplinary court. He is a "neo-judge" from the District Court in Lublin.

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

Not available yet

Relation of the case to the EU Charter

ECHR as legally binding instrument

Relation between the EU Charter and ECHR

Not available yet

Use of Judicial Interaction technique(s)

N/A

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

N/A

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

N/A

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

N/A

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://monitorkonstytucyjny.eu/archiwa/26810>

Author

Jarosław Gwizdak, Institute for Law and Society (INPRIS)
