

Slovenia, The Ethics and Integrity Commission, Decision of 29 November 2016 - Public expression of a judge in interviews, instance: ordinary, 29 November 2016

Member State

 Slovenia

Topic

Independence, accountability, impartiality, freedom of expression

Sector

Judicial Self-Government; Freedom of Expression and Association; Disciplinary proceedings; Judicial Ethics

Deciding Court Original Language

Komisija za etiko in integriteto Sodnega sveta Republike Slovenije

Deciding Court English translation

Ethics and Integrity Commission of the Judicial Council of the Republic of Slovenia

Registration N

N/A

Date Decision

29 August 2016

ECLI (if available)

N/A

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

N/A

ECtHR Jurisprudence

European Convention on Human Rights, Article 10.

Baka v. Hungary (GC), app. no. 20261/12, 23 June 2016

Subject Matter

The Ethics and Integrity Commission heard a case regarding interviews made by a national judge to two different newspapers. The question presented was whether he, in doing so, violated the Code of Judicial Ethics.

Legal issue(s)

The case raises the following legal issues:

Did the national judge violate the Code of Ethics by making public statements about legal topics and when criticising the judicial branch?

Request for expedited/PPU procedures

NO

Interim Relief

NO

National Law Sources

Constitution of the Republic of Slovenia, Article 39 (svoboda izražanja - freedom of expression)
Zakon o sodniški službi (ZSS) [Judicial Service Act] Articles 38 and 42.

Kodeks sodniške etike [Code of Judicial Ethics]; accessible through the following link:

http://www.sodni-svet.si/images/stories/Kodeks_sodniske_etike_komentar_ang_sept_2017.pdf-sodniske-etike/ [last accessed: 13. 11. 2023]

Facts of the case

A Slovenian judge gave two interviews on the 27. 2. 2016 and 6. 8. 2016 to two different newspapers, namely Dnevnik and Delo. In the first interview, he addressed the Slovenian asylum legislation from the perspective of EU law and presented the work of the International Judges Association in the field of refugee law. He critically assessed some of the judgments by the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECHR). In the second interview, he reflected on the role of the Administrative Court in the protection of human rights and drew attention to the differences in the positions adopted by the Administrative Court on the one hand and Supreme Court on the other. In that regard, he explained what legal options the parties have in cases of such divergence in the case law of both courts. He explains the legal regulations of family proceedings and again draws attention to different opinions of the Administrative Court and other civil courts. He also commented on the lack of usage of the jurisprudence of the ECtHR at the national level.

The president of the Administrative Court and the president of the Supreme Court both separately addressed their concerns to the Ethics and Integrity Commission (hereinafter: the Commission) and asked the Commission to assess the judge's conduct in accordance with the Code of Judicial Ethics.

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

The Commission finds the judge did not violate the Judges Code of Ethics. It first emphasises that a judge's professional and personal reputation plays an important role in building and maintaining the public's trust in the independence of the judiciary. When a judge publicly expresses his opinions on the judicial system, fellow judges or political candidates, it can diminish the independence and reputation of the judiciary. In this regard, the Commission refers to the ECHR and international guidelines where it is emphasised that judges should be reserved when publicly expressing their opinions and discreet when commenting on ongoing judicial proceedings. Referring back to the ECHR, the Commission highlights the importance of the free flow of ideas, as judges are equipped with a great understanding of how the judicial system works. The Commission cites the ECtHR judgement *Baka v. Hungary* where the ECHR declared that addressing such questions is in the public interest. The Commission also emphasises that judges can contribute to the development of society, especially in such small societies like the Slovenian one as a small part of the academic sphere focuses on specific issues. But that also means that they must be careful as they are not supposed to advocate for a solution or how they would adjudicate a specific case. The Commission explains when the limitation of freedom of expression is acceptable and draws attention to the chilling effect that might occur in public discourse on the efficiency and adequate functioning of the judiciary.

The Commission finds that there are no concrete rules, what can judges say and what not. However, it cites the Code of Judicial Ethics and ZSS where it is established that judges are obliged at all times to act in such a way as to safeguard the impartiality and independence of the judiciary and uphold the judicial reputation. Further, judges can engage in teaching, scientific and journalistic research or other similar work in the legal profession, provided that this does not interfere with the performance of their judicial duties.

Applying the established principles and rules to the concrete case, the Commission takes into account that the newspapers in which the interview was published are widely read by diverse audiences. Such a publishment of themes concerning the legal systems contributes to the public's understanding of legal issues and increases the trust in the judicial system. Even though the judge was in some aspects critical of the work of some of the courts, he still did not violate the Code, as criticism is a necessary premise of development. Also noting that he did not directly comment on pending cases before national courts and taking into account that the themes in the interviews were relevant for the public, as they consisted of topics, at that time, predominant in public discussion such as asylum legislation and legislation relevant to a pending case before family courts. Also, the Commission notes that writing or speaking of topics relevant to the public can be perceived as a form of pressure on the judicial branch, however, such pressure should be considered legitimate if it is in line with the freedom of expression. The Commission concludes that only if a judge's public expression could be attributed to being intemperate, tendentious, excessively provocative, ambiguous, reckless, populist and/or discussing the specific legal and factual dilemmas of a particular open case, could it be denied legitimacy and deemed ethically objectionable.

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)

N/A

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

The Ethics and Integrity Commission referred to the CCJE opinions no. 3, 7 and 18. Particularly, it relied on the CCJE Opinion no. 18 when explaining that the legitimacy of the judicial branch originates from the independence, persuasiveness of the judicial decisions and a high degree of professionalism and ethical integrity. The Ethics and Integrity Commission also used CCJE opinion no. 3 to showcase that judges enjoy freedom of expression, just like any other individual. Also referencing CCJE opinions no. 7 and 18, the Commission argued that including the judiciary in the society, with a continuous and respectful dialogue, will help maintain its independence and legitimacy.

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

The Ethics and Integrity Commission cites the ECtHR judgment in *Baka v Hungary* as a key case concerning the freedom of expression of judges. In general, it also leans on the ECtHR's understanding of the chilling effect that might occur in the event of imposing limits on freedom of expression.

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

The reference to the ECtHR's case law is used as a supporting argument for the interpretation of the constitutional provision of the right to freedom of expression and in the argumentation of the need to consider the expression on a case-by-case basis.

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

<http://www.sodni-svet.si/skei/keiNmJavno-izrazanje-sodnika-v-intervjujih.html?ver=3>

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

1. The Ethics and Integrity Commission, 9th of November 2016
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