

Slovenia, Judicial Council of the Republic of Slovenia, Decision Su 12/2023-13, instance: ordinary, 11 May 2023

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

Sodni svet Republike Slovenije

Deciding Court English translation

Judicial Council of the Republic of Slovenia

Registration N

Su 12/2023-13

Date Decision

11 May 2023

ECLI (if available)

N/A

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

N/A

ECtHR Jurisprudence

N/A

Subject Matter

Judicial council-left-wing Slovenian newspaper-interview of a judge-catholic online news portal-freedom of religion and expression-unmerited complaint-legitimate expression of personal (religious) convictions of a judge.

Legal issue(s)

The case raises the following legal issue:

Did the district court judge, who gave an interview for a catholic news portal violate the appearance of impartiality, required for members of the judiciary?

Request for expedited/PPU procedures

NO

Interim Relief

NO

National Law Sources

Not mentioned, but relevant:

Article 125 of the Constitution (judicial independence)

Article 39 of the Constitution (freedom of expression)

Article 41 of the Constitution (freedom of religion)

Judicial code of ethics

Facts of the case

Famous left-wing Slovenian newspaper Mladina notified the Judicial Council of the Republic of Slovenia (the JC) about the extrajudicial speech of a district court judge. According to the newspaper, her interview in the catholic news portal (Aleteia.si) could jeopardise her appearance of impartiality. The JC analysed the interview and held that the interview at hand could not be prejudicial to impartiality of the judge concerned.

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

The JC decided, after hearing the case at one of its sessions, without giving a detailed reasoning. It simply ruled that:

“The expression of positive messages or values [...] even if expressed in the context of a particular religious belief or other worldview, cannot affect the appearance of impartiality of the judge. According to Article 41 of the Constitution of the Republic of Slovenia, which regulates the freedom of religion, in the Republic of Slovenia the practice of religion and other religious beliefs in private and public life is free. This includes attending religious services, etc., which also applies to judges.”

The decision was adopted unanimously.

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)

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

It is hard to tell whether the case had an impact on policy. The case is important as it shows how the Judicial Council in Slovenia increasingly plays an important role in safeguarding individual judges. This time, a left-wing newspaper reproached the lack of impartiality to a judge, who gave an interview to a catholic online portal. In the interview, she discussed how her beliefs help her to be a better judge (e.g. to treat parties in a more compassionate way). Her speech was clearly not related to her judicial duties as such or concrete cases, and was apolitical. The JC rightly found in her favour, arguably sending an important message to judges and the media that it will not support frivolous denunciations of allegedly inadequate behaviour of judges, especially when there is a suspicion that they are political or motivated by a particular worldview.

The case is also interesting from the procedural point of view. The JC heard the case, even though it has no (clear) legal basis to decide in a case of such third party complaint. It seems that the Judicial Council has broadly interpreted its general competence to ensure the independence and impartiality of the judiciary. If such practice becomes more often, the Judicial Council would become a new adjudicatory body hearing such cases, that primarily fall within the field of competence of the Ethical Commission. However, this would be an unfortunate development, since third parties can also refer cases to the Ethical commission under Article 52 (2) of the Judicial council act.

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

See Judicial Council of the Republic of Slovenia, Decision Su 293/2022 of 27 October 2022 – <https://cjc.eui.eu/data/data/data?idPermanent=636&trial=1>

(Link to) full text

https://www.sodni-svet.si/doc/Zapisnik_38_seja_2023.pdf

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

1. Judicial Council of the Republic of Slovenia, Decision Su 12/2023-13 of 11 May 2023
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