

Poland, Sąd Najwyższy - Professional Liability Chamber - Lieutenant Joanna T.

Member State

 Poland

Topic

independence, impartiality

Sector

Judicial Self-Government (Judicial Council)

Deciding Court Original Language

Poland, Sąd Najwyższy, Izba Odpowiedzialności Zawodowej

Deciding Court English translation

Supreme Court, Professional Liability Chamber. The chamber replaced in the Polish system the Disciplinary Chamber of the Supreme Court.

Registration N

II ZOW 23/23

Date Decision

21st of September 2023

ECLI (if available)

N/A

National Follow Up Of (when relevant)

not applicable

EU legal sources and CJEU jurisprudence

N/A

ECtHR Jurisprudence

N/A

Subject Matter

freedom of expression - military judiciary - service relationships - restraint required

Legal issue(s)

In the case concerning Lieutenant Colonel J.T., a judge of the Military Garrison Court, and the witness Colonel M.W., president of the same court, a conflict between them related to the absence of the accused J.T. from work on 19 April 2021 was considered. Both parties confirmed that there had been a conversation between them on that day regarding this issue, but there was a conflict in their working relationship, which could have affected the assessment of their behaviour.

The adjudicating court failed to take into account this tension, which distorted their perceptions of each other. Col. M.W. checked the actions of the accused and J.T. controlled the timeliness of his work, which indicated a lack of trust. The court considered that, due to the subjectivity of both parties, it was impossible to conclusively decide whether J.T.'s words were unethical or legitimate criticism.

In accordance with the principle of resolving doubts in favour of the accused, J.T. was acquitted, although it was pointed out that the manner in which the two parties conducted the dispute was inappropriate for people in high positions in the military judiciary. The Supreme Court upheld this ruling for these reasons.

Request for expedited/PPU procedures

No

Interim Relief

N/A

National Law Sources

Code of Criminal Procedure art 5, Law on Ordinary Courts, Law on Military Courts

Facts of the case

The case concerned a judge of the Military Garrison Court in Warsaw, Lieutenant-Colonel Joanna T. She was accused of using threats against a superior president of a military court with the intention of forcing a specific decision. The issue was that the president decided that Joanna T. would take one day of leave, even though no such request had been made by the defendant. Joanna T. was said to have entered the president's office in July 2021 and expressed her opinion. A different account was given by the president of the court.

The Disciplinary Court at the Court of Appeal in Gdańsk on 16 December 2022 acquitted Joanna T. of the charge of offending ethical standards.

This ruling was appealed by the National Council of the Judiciary and the Minister of Justice, requesting that the ruling be overturned and the case referred back for reconsideration.

The Supreme Court stated, the judge are not obliged to behave friendly with their superiors, but in constrained and professional manner.

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

Meanwhile, a factual, unemotional assessment does not allow the court to determine whether the words directed by the defendant J. T. were the result of an unethical behaviour or substantive criticism manifesting disagreement with the actions of a superior. To assess this, it would be important to establish the context of the words spoken, and this is impossible given the subjectivity of the account given by each party. Therefore, in the light of this - in accordance with the Article 5 § 2 of the Code of Criminal Procedure properly applied in disciplinary proceedings of military court judges. - it should have been assumed that in case there are indisputable doubts which should be resolved in favour of the accused J. T. This directive has a guarantee function for the defendant and is subsidiary to the principles of truthfulness and subsidiary to the principles of material truth and free assessment of evidence (cf. e.g. judgements of the Supreme Court: of 21 November 2007, ref. no. V KK 186/07, of of 28 March 2008, ref. no. III KK 484/07, or decision of the Supreme Court of 18 December 2008, ref. no. V KK 267/08). Finally, despite the upholding of the verdict acquitting Lt. Col. J. T. of the disciplinary offence with which she was charged, it is impossible to resist the reflection that the 'style' in which the witness Col. M. W. and the accused Lt. J. T., 'argued' about the correctness of the proceedings in the matter of the daily order number [...]. [...] of the President of the WSG in W. dated 19 April 2021, concerning the the granting of a leave of absence to the defendant on that day is not befitting of persons holding managerial positions in the military judiciary at the time. Guided by the reasons set out above, the Supreme Court ruled as follows in its judgment

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

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?

not at all - the court focused on its own reasoning.

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

The only source quoted was ""Wrong-Doing, Truth-Telling The Function of Avowal in Justice"" by Michel Foucault

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

No

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

No

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?

No

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

N/A

Connected national caselaw / templates

N/A

(Link to) full text

<https://www.sn.pl/sites/orzecznictwo/orzeczenia3/ii%20zow%2023-23.pdf>

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