

I.ÚS 2617/15 of 5 September 2016

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Restrictions on a judge's freedom of expression when commenting on a political contest

Note: The abstract and legal sentences are not part of the Constitutional Court's decision; their meaning is merely annotative and informative. The abstracts of selected decisions are prepared by the Analytical Department of the Constitutional Court. The legal sentences are formulated by the Judge-Rapporteur or his office for decisions published in the Collection of Findings and Resolutions of the Constitutional Court.

ABSTRACT

Analytical legal theorem

In order to maintain public confidence in the judiciary, it is essential that judges maintain a distance from political competition, even in their speeches, at any level, including at the local level. Judges cannot participate in the campaigning of political parties, political movements or electoral groups or specific politicians, nor can they influence the shape of future coalitions through their post-election speeches.

Application and proceedings before the Constitutional Court

By its ruling of 5 September 2016, the First Chamber of the Constitutional Court rejected the application of the complainant K. No. 16 Kss 7/2014-92 of 11 June 2015, as it did not find a violation of the right to a fair trial within the meaning of Article 36(1) of the Charter of Fundamental Rights and Freedoms and Article 6 of the Convention for the Protection of Fundamental Rights and Human Freedoms, nor an impermissible restriction on freedom of expression within the meaning of Article 17 of the Charter and Article 10 of the Convention.

Narrative part

The complainant is a judge who owns a cottage in a small village where he participated in the campaign for the local elections by preparing and distributing his own leaflets, and subsequently, through an article in a local periodical, he also publicly commented on the outcome of the elections and possible coalition alternatives, including the post of mayor of the village. For this conduct, he was found guilty by the disciplinary court, as he acted in the exercise of his political rights in such a way as to compromise the dignity of the judicial office and thus abused the judicial office to promote private interests. However, the disciplinary court refrained from imposing disciplinary measures on the complainant.

Justification of the Constitutional Court's ruling

The Constitutional Court commented only briefly on the alleged unconstitutionality of the single-instance disciplinary proceedings in the case in question, referring to the key ruling in Case No. ÚS 33/09, which dealt with this issue in depth. The Constitutional Court also did not find any alleged deficiencies in the instructions provided by the disciplinary court, and therefore, in its view, the procedural guarantees for the protection of fundamental rights were complied with. The Constitutional Court also found the objection of violation of the freedom of thought, which reflects the internal thinking process of every person and which is an absolute, unlimited right, to be false. However, the complainant was not punished by the disciplinary court for his inner thoughts but for the outward expression of his opinions.

Therefore, the Constitutional Court has dealt in more detail only with the complainant's objection regarding the violation of freedom of expression. In doing so, it did not dispute, with the support of the case law of the European Court of Human Rights ("ECtHR"), that even speeches by a judge are protected by Article 17 of the Charter and Article 10 of the Convention. However, by the nature of a judge's public office, such speech is subject to special restrictions. In this context, the Constitutional Court recalled the duty of loyalty and restraint inherent in all civil servants in relation to their exercise of freedom of expression, including judges, as established by the case law of the ECtHR. It is a prerequisite for the proper and effective functioning of an independent and impartial judiciary, so that the judiciary enjoys public confidence.

The Constitutional Court concluded that while the duty of loyalty binds a judge only to the fundamental principles and values of a democratic state governed by the rule of law, the duty of restraint is broader. In doing so, it emphasised the historical experience prior to 1989, as a result of which it is necessary to insist on judges' firm distance from political competition. The current constitution, based on a value discontinuity with the communist regime, has a particular interest in preventing judges from linking themselves to political parties and becoming excessively involved in political competition. Thus, in exercising his freedom of speech, the judge must exercise restraint even in relation to political competition, at all levels. It cannot be disregarded that the judge is subject to these constitutional restrictions on freedom of

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speech is subject to his or her own free decision at the time he or she accepts the office of judge and takes the oath of office.

In assessing whether the judge's speech complied with the duty of loyalty and restraint, according to the case law of the ECtHR and the Constitutional Court, it must be taken into account whether the speech was not in flagrant violation of the fundamental values of the democratic legal order and whether it did not undermine public confidence in the independence and impartiality of the judiciary. These obligations also apply to judges in private life, but depend on the specific circumstances in which the speeches are made. Speeches in which an individual refers explicitly to his or her office or targets a circle of persons known to be judges should be judged more strictly. Conversely, speech by judges which relates to matters concerning the administration and organisation of the judiciary will enjoy a high degree of protection. Finally, it must be assessed whether the nature and severity of any sanction is proportionate to the misconduct found.

Applying the above principles to the present case, the Constitutional Court concluded that the disciplinary court pursued the legitimate aim of protecting the impartiality and independence of the judiciary in its decision. While the Constitutional Court did not find the complainant in breach of the duty of loyalty, the same conclusion could not be drawn with regard to the duty of restraint. In fact, the leaflets distributed explicitly used the complainant's position as a judge in favour of the campaign of a particular party and the complainant also entered the public debate in a significant way by publishing an article in a local magazine, when there was reason to associate that speech with his position. In that speech, the complainant thus breached the duty of restraint which he owes as a judge, since he actively, openly and with excessive intensity engaged in political competition on his own initiative.

The judge reporting in the case was Kateřina Šimáčková. No judge dissented.

LEGAL MATTERS

An individual who has accepted a judicial office is bound by the duty of loyalty and restraint in the exercise of his or her freedom of expression under Article 17 of the Charter and Article 10 of the Convention. His or her freedom of expression is therefore subject to the specific limitations arising from that obligation. In particular, a judge must not, by his or her speeches, undermine public confidence that he or she will rule in accordance with the fundamental principles of the democratic rule of law and confidence in the impartiality and independence of the judiciary. A judge must therefore exercise restraint in his or her speeches concerning political competition, in particular public assessments of individual candidates or electoral parties and groups or the formation of political coalitions. However, each case must be assessed individually, taking into account all the circumstances, taking into account in particular the position of the judge who made the speech, the content of his or her statements, the place and manner of the speech and the overall context in which those statements were made.

In order to maintain public confidence in the judiciary, it is essential that judges maintain a distance from political competition, even in their speeches, at any level, including at the local level. Judges may not participate in the campaigning of political parties, political movements or electoral groups or specific politicians. Nor is it appropriate for them to seek to influence the shape of coalitions in the council or who will hold the office of mayor through their public speeches. Such speeches undermine public confidence that judges will decide disputes according to the law and not according to political interests.