



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Poland
Title:	Printing house employee guilty of refusal to print a roll-up for LGBT initiative. Supreme Court upholds the verdict
Date:	12 July 2018
Expert:	Lukasz, Bojarski
Update of news report:	Poland - Printing house employee found guilty of refusal to print a roll-up for LGBT initiative. Unprecedented reaction of Minister of Justice (PDF 162 kB)
<u>Context</u>	
Issue at stake:	Balance between the prohibition of discrimination and freedom of thought, beliefs and views as well as economic freedom and freedom of transactions
Ground of discrimination:	Sexual orientation
Source:	National Court decision (Supreme Court, 14 June 2018; II KK 333/17)
Field:	Access to goods and services
Applicable law:	Code of Petty Crimes ¹

Content

The case concerns the refusal of a small printing company to print a roll-up of the Civil Society Organization LGBT Business Forum. In light of the violation of Art. 138 of the Code of Petty Crimes,² a fine of EUR 45 (PLN 200) was imposed on the company by the *Lodz-Widzew* District Court in a simplified procedure.³ The Court verdict was objected by the accused. The District Court in a standard procedure upheld the decision made by the Court in the simplified procedure but waived the punishment.⁴ After an appeal of the accused, the public prosecutor and the auxiliary prosecutor (CSO Campaign Against Homophobia), the second instance Regional Court rejected the appeal.⁵

The case has attracted high attention, including for the Minister of Justice/Prosecutor General. The latter criticized the judgement delivered by the courts and considered that freedom of thoughts, beliefs and views as well as economic freedom and freedom of transaction should not be stifled by the prohibition of non-discrimination.⁶

¹ Poland, Law of 20 May 1971 on Petty Crimes (*Ustawa z dnia 20 maja 1971 r. Kodeks wykroczeń*).

² Art 138 of the Code of Petty Crimes reads as follows: „Anyone who, being a professional service provider, demands or collects payment higher than that in force, or deliberately refuses to provide the service without just cause, shall be subject to a fine”.

³ Procedure where there is no hearing. The sanction is only based on a motion filed by the Police. Sąd Rejonowy dla Łodzi-Widzewa (Łódź-Widzew District Court); July 2016; Police v. Printing house.

⁴ District Court for Lodz-Widzew; 31 March 2017.

⁵ The Regional Court for Łódź (Sąd Okręgowy); 26 May 2017.

⁶ For more detailed information on the position taken by different actors in the society, please see previous Flash Report FR 082-PL-ND-2017.

The Prosecutor General/Minister of Justice challenged the court's decision in front of the Supreme Court.⁷ The Supreme Court pointed out⁸ that freedom of conscience and religious beliefs may justify a refusal to provide a service, however a balance between freedom of conscience and religious beliefs and the prohibition of discrimination should always be struck in the light of the circumstances of the case. According to the court "When religious beliefs are in obvious contradiction with the features and character of the service, it is allowed to refuse to perform such a service, even if it is in conflict with other values, including constitutional ones, such as the prohibition of discrimination. However, a refusal can not be justified by individual characteristics of persons for whom this service is to be performed, such as religious denomination, manifested views or sexual preferences". The Supreme Court pointed out that, in this particular case, the accused printer, refusing to perform service motivated by his convictions, had no legitimate reason. His task (printing) was purely reproductive (not original) and only involved the performance of purely technical activities. The court also noted that the roll up was an advertising of the foundation containing its logotype. The contents contained in it did not promote behaviours that could be contrary to the values and canons of the Catholic faith.

In the court's opinion, the refusal to provide the service would be justified, for example, if the service consisted in creating a specific work that would create a conflict between the artist's values and not if the service consists in performing ordinary technical activities. Justifying the verdict, the judge rapporteur also quoted the content of the European Convention on Human Rights (ECHR) and the Catechism of the Catholic Church, which in paragraph 2357 states that homosexual persons "should be treated with respect, compassion and tenderness" and that "any signs of unjust discrimination should be avoided against them".

The Prosecutor General/Minister of Justice also challenged (before the Constitutional Tribunal) Art. 138 of the Code of Petty Crimes as being contrary to the principle of a democratic state of law expressed in the Constitution. This procedure is still pending.

Finally, the Prosecutor General/Minister of Justice declared that if the complaint made to the Constitutional Tribunal is not successful, he would consider proposing an amendment of the law on petty crimes abolishing Art. 138. He stated: "And in this matter I will be very consistent. I consider this sentence [of the Supreme Court – LB] as a very bad sign, a bad signal. I hope that it will be leveled, changed by the judgment of the Constitutional Tribunal. If that does not happen, then I will strive with determination to change the law in Poland by eliminating this provision from the legal order."⁹

Key points of analysis: The verdict of the Supreme Court brought a very vivid critique of conservative and governmental circles. Prosecutor General/Minister of Justice Z. Ziobro commented during the special press conference that "The Supreme Court found that such behaviours can be condemned and punished. The Supreme Court in this case spoke against freedom, the Supreme Court took part in the state's violence, in the service of the ideology of homosexual activists. Against the freedom guaranteed in the Polish Constitution to every citizen, regardless of their political beliefs".¹⁰

Internet link source: The court verdicts of 1st and 2nd instance are not available.

Supreme Court verdict – information about the verdict from the Supreme Court website (the written justification is not available yet):

⁷ Supreme Court, 14 June 2018; II KK 333/17.

⁸ Based on the Supreme Court website: http://www.sn.pl/aktualnosci/SitePages/Komunikaty_o_sprawach.aspx?ItemSID=229-271e0911-7542-42c1-ba34-d1e945caefb2&ListName=Komunikaty_o_sprawach.

⁹ Publication quoting Polish Press Agency report: <http://www.rmfm24.pl/fakty/polska/news-ziobro-sad-najwyzszy-ws-drukarza-wypowiedzial-sie-przeciwko-,nId,2594196>.

¹⁰ Publication quoting Polish Press Agency report: <http://www.rmfm24.pl/fakty/polska/news-ziobro-sad-najwyzszy-ws-drukarza-wypowiedzial-sie-przeciwko-,nId,2594196>.

http://www.sn.pl/aktualnosci/SitePages/Komunikaty_o_sprawach.aspx?ItemSID=229-271e0911-7542-42c1-ba34-d1e945caefb2&ListName=Komunikaty_o_sprawach.

Pending constitutional complaint (K16/17):

<http://trybunal.gov.pl/sprawy-w-trybunale/art/10008-kodeks-wykroczen-odmowa-swiadczenia-uslugi-klauzula-sumienia/>.

Motions submitted in the constitutional complaint case (K16/17): complaint of the Prosecutor General; position of the Ombud opposing the complaint; position of the Parliament supporting the complaint:

<https://ipo.trybunal.gov.pl/ipo/Sprawa?&pokaz=dokumenty&sygnatura=K%2016/17>.

Other sources as listed above in the footnotes.