



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

FLASH REPORT

Country:	Poland
Title:	Opinion of parish priest in education selection
Date:	27 October 2020
Expert:	Łukasz Bojarski
<u>Context</u>	
Issue at stake:	Can an educational institution request candidates to deliver an opinion of their parish priest to enrol in studies?
Grounds of discrimination:	Religion or belief
Field of application:	Education
Source:	Court ruling in the case of <i>M.J. (Marek Jopp) v. CSMC (College)</i> ¹
Applicable law:	Act on the Implementation of Certain Regulations of the European Union in Equal Treatment (ETA)

Facts of the case: by decision of March 2017 the College of Social and Media Culture (CSMC) Dean decided not to accept M.J. for postgraduate studies in environmental protection - ecology and management. The Dean stated that M.J. did not attach in the qualification procedure a required document - the opinion of the parish priest for the applicant's place of residence.

Earlier however, in a letter of March 2017, M.J. was informed that he was admitted to the studies.

M.J. appealed the decision to the rector of the College, stating that: a/ he had read the list of documents required at the recruitment stage, b/ in January 2017 he wrote an email to the College asking whether the delivery of an opinion issued by the parish priest is obligatory in the case of studies subsidised by the National Fund for Environmental Protection and Water Management, c/ he received a reply that if he does not want to provide an opinion, he should send a statement, stating the reasons why the opinion is not submitted, d/ M.J. did so and received confirmation of the submission of the documents required, e/ subsequently M.J. received a positive decision on admission to the College including information on the required transfer of tuition fees for the first semester, f/ M.J. transferred the tuition fees and appeared at the College in order to receive 'indeks' (student record book), g/ on this occasion the dean informed M.J. that he was not admitted to the College, and after a few days M.J. received a written rejection decision.

In his appeal to the rector, M.J. argued that the refusal was in conflict with the constitutional obligation of equal treatment in education regardless of religion. Additionally, the course was subsidised from public funds. Thus, it should be available universally, without using the criterion of religion, even if it is run by a College with a religious profile. The Rector upheld the decision. According to the Rector, Article 70.5 of the Constitution of

¹ The College of Social and Media Culture – Wyższa Szkoła Kultury Społecznej i Medialnej, a private vocational college in Toruń, Poland.

the Republic of Poland provides higher schools (universities, colleges) with full autonomy and Article 73 provides freedom of teaching.

In his civil complaint to the court, M.J. alleged a violation of (among others) the Constitution, the European Convention on Human Rights and Fundamental Freedoms, the Act on the Implementation of Certain Regulations of the European Union in Equal Treatment (ETA) (and also an infringement of the Law on Higher Education, Act on Public Finance in connection with Environmental Protection Act, Code of Administrative Procedure.

M.J. alleged a violation of his right to equal treatment and non-discrimination in social life for any reason, including a violation of his right to professional training by simultaneously violating the principle of autonomy of higher education, refusing to accept the claimant's application to the secular post-graduate studies due to his failure to submit a written opinion by the priest.

The complaint was brought by PTPA² on behalf of M. J., who was represented by one lawyer from PTPA and two local lawyers collaborating with PTPA.

Decision of the court:

Sąd Rejonowy in Toruń (1st instance)

Case: Sygn. akt: I C 469/18

Date: 6 August 2019

Parties: M. J. v. the College of Social and Media Culture in Toruń

The court found indirect discrimination on the ground of religion/belief and awarded PLN 5000 (circa EUR 1200) as compensation to the claimant, as well as PLN 1167 (circa EUR 250) for the reimbursement of legal expenses. The verdict was challenged by the College in the appeal.

Sąd Okręgowy in Toruń (2nd instance)

Case: Sygn. Akt: VIII Ca 1058/19

Date: 21 August 2020

The Regional Court, after the meeting held in camera, dismissed the appeal of the College, agreed with all the findings of the 1st instance court and additionally awarded the claimant PLN 450 (circa EUR 100) as reimbursement of the costs of legal representation in the appeal proceedings. When the respondent did not execute the judgment voluntarily, the claimant requested the court bailiff to transfer the funds from the College. The court bailiff transferred to M.J.'s bank account the compensation awarded from the College on 7 October 2020. M.J. declared in the media that he decided to spend the money awarded by enrolling to the same College for other postgraduate studies.

Key points of analysis: This is an important ruling not just because the court found indirect discrimination. It is especially interesting because the court awarded PLN 5000 (circa EUR 1200) as compensation (as requested by the claimant) based on the ETA. Previously, courts had tended (in the very few such cases that were brought to justice) to award compensation only for material damage, arguing that that is what the ETA covers. In this case, however, the court argued, quoting European law and rulings by the CJEU,³ that the compensation available under ETA also covers non-material damage, including damage to the dignity of the party (however, it still underlined that the punitive element is not included in Polish law). The court did not consider filing for a preliminary reference to the CJEU.

² Polskie Towarzystwo Prawa Antydyskryminacyjnego (The Polish Society of Anti-Discrimination Law).

³ Including the following rulings: judgment of 13 February 1985, *Françoise Gravier v. the city of Liege*, C-293/83, EU:C:1985:69; judgment of 2 February 1988, *Vincent Blaizot v. the University of Liege and others*, C-24/86, EU:C:1988:43.

The court found indirect discrimination unlike the claimant who argued that there had been direct discrimination. The court stated that: 'The requirement to provide such an opinion is seemingly neutral as it applies to all candidates for studies. In fact, however, it is only possible for people who actively participate in the life of the parish to do so, thus excluding both non-believers and non-Christian believers from the group of people who can study at the university (in fact, all non-Christian believers other than the practicing Catholic because – although this was not explicitly expressed – given the nature of the university in question, it can be assumed that this was the opinion of the parish priest of the Catholic church)'.

Internet link source: Verdicts are not available online. Media reports:

https://torun.wyborcza.pl/torun/7,48723,26263845,uczelnia-o-tadeusz-rydzka-musi-zaplacic-niedoszlemu-studentowi.html?fbclid=IwAR2bCIusW0nqw7CqjYn8eZkNzLBundA58ukjFp4-ox3G08DKumCJoyT816k#do_w=66&do_v=114&do_a=350&s=BoxLoToImg1.

<https://nowosci.com.pl/marek-jopp-sld-znow-chce-studiowac-u-o-rydzka-i-to-za-jego-pieniadze/ga/c15-15162464/zd/45167120>.

https://nowosci.com.pl/marek-jopp-bezskutecznie-czeka-na-odszkodowanie-od-wyzszej-szkoly-kultury-spolecznej-i-medialnej/ar/c15-15185042?utm_source=facebook.com&utm_medium=nowosci&utm_campaign=marek-jopp-bezskutecznie&fbclid=IwAR2nEVsxq7uwUnr0126_fUUvcH6-JJWzyVgcqy-98Ahg7jgvntMdk7fLoI.

http://www.pozatorun.pl/nikt-nie-moze-stac-ponad-prawem-wywiad/?fbclid=IwAR0iQnZcQ3Y7YkCWUueEqGoLAqL421BxMaoDmSG0SIW_TcotiyygB0iDk1M.