



## PRESS RELEASE No 206/23

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Judgment of the Court in Case C-718/21 | Krajowa Rada Sądownictwa (Continued holding of a judicial office)

### **Polish judicial system: an adjudicating panel of the Extraordinary Review and Public Affairs Chamber of the Supreme Court does not constitute an independent and impartial tribunal previously established by law**

*The request for a preliminary ruling submitted by that adjudicating panel is consequently, declared inadmissible*

In view of all the circumstances connected with the appointment of judges of the Extraordinary Review and Public Affairs Chamber of the Polish Supreme Court, an adjudicating panel of that chamber does not constitute a 'court or tribunal' for the purposes of EU law. Consequently, the Court of Justice does not examine the substance of the questions for a preliminary ruling raised by that body.

In Poland, judges who wish to continue to perform their duties after reaching the age of retirement are required to declare their wish to do so to the National Council of the Judiciary ('the KRS'). A judge from one of the ordinary courts is disputing the resolution of the KRS finding that there was no need to rule on his request. The KRS held that the declaration had been made after the deadline imposed by law. Hearing an appeal brought by that judge, the Extraordinary Review and Public Affairs Chamber of the Polish Supreme Court ('the Extraordinary Review Chamber') has turned to the Court of Justice to request clarification regarding the principles of the irremovability of judges and judicial independence as enshrined in EU law.

In its judgment, **the Court finds that the questions put by that chamber do not originate from a body having the status of an independent and impartial tribunal previously established by law** as required by EU law. It therefore declares those questions **inadmissible**.

In order to reach that conclusion, the Court refers, first, to a judgment of the European Court of Human Rights<sup>1</sup> which has already found that two adjudicating panels of the Extraordinary Review Chamber are neither established by law nor independent. That judgment was based on the finding that appointments of members of those panels had taken place in manifest breach of fundamental national rules governing the procedure for the appointment of judges.

The circumstances in which, in 2017, the change in the composition of the KRS took place called into question the independence of that body with regard to the legislature and the executive, thereby affecting its ability to put forward independent and impartial candidates for judicial posts at the Supreme Court. Moreover, the judges concerned had been appointed by the President of the Republic of Poland on the basis of a resolution of the KRS the effects of which, at the time of their appointment, had been suspended by the Polish Supreme Administrative Court pending the examination of the lawfulness of that resolution. Next, the Court also emphasises that the Polish Supreme Administrative Court ultimately annulled the abovementioned resolution<sup>2</sup>.

The Court compares the findings and assessments of the European Court of Human Rights and of the Polish Supreme Administrative Court with its own case-law relating to the conditions for the appointment of judges to the Polish Supreme Court. It concludes from that comparison that the combination of various elements characterising the appointment of the judges making up the judicial panel forming the basis of the questions put in the present case is such as to give rise to legitimate doubts in the minds of individuals as to the independence and impartiality of those judges and to undermine the trust which justice in a democratic society governed by the rule of law must inspire in individuals. **Consequently, that adjudicating panel does not have the status of an independent and impartial tribunal previously established by law.**

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, the abstract](#) of the judgment are published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

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<sup>1</sup> Judgment of the European Court of Human Rights of 8 November 2021, *Dolińska-Ficek and Ozimek v Poland* ([CE:ECHR:2021:1108JUD004986819](#)).

<sup>2</sup> Judgment of the Polish Supreme Administrative Court of 21 September 2021, II GOK 10/18.