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Judgment of the Court in Joined Cases C-647/21 | D.K. and C-648/21 | M.C and M.F. (Withdrawal of cases from a judge)

### **Independence of judges: the decision to withdraw cases from a judge must be based on objective and precise criteria**

*It must also include a statement of reasons in order to show that the withdrawal of cases was not arbitrary and that it did not amount to a disguised disciplinary penalty*

In October 2021, the College of the Regional Court, Słupsk <sup>1</sup> (Poland) withdrew approximately 70 pending cases from one of the judges of that court in which she was the reporting judge. The resolution of that college was adopted without her consent, was not served on her and did not contain any justification. The judge was also refused access to its content. Next, the cases in question were each reassigned to another judge.

The judge considers that those measures constitute a form of penalty for her attempts to challenge the lawfulness of the appointment of a judge with whom she sat in another formation hearing a case. In her view, it is also a penalty for having set aside a judgment at first instance delivered by a court which does not meet the requirements of EU law. <sup>2</sup> The withdrawal of cases was designed to prevent any future attempts in that regard.

In two of the cases withdrawn from her, that judge referred questions to the Court of Justice. <sup>3</sup> She wishes to know whether, in the light of EU law, <sup>4</sup> she continues to have the authority to examine them, despite the abovementioned resolution and the subsequent reassignment of each of those cases to another judge. <sup>5</sup>

The Court observes that **the independence of judges entails their being free of undue interference likely to influence their decisions, including interference from within the court concerned**. The fact that a college of a court can withdraw cases from a judge without observing objective and precise criteria, which govern that authority, and without justifying such a decision may compromise judicial independence. **It cannot be ruled out that the withdrawal of cases was arbitrary or that it amounts to a disguised disciplinary penalty.**

Subject to verification and confirmation that the withdrawal was carried out in breach of EU law, the national court is required to nullify its unlawful consequences. Accordingly, **the application of the College resolution and subsequent measures must be set aside** and the judge from whom cases were withdrawn may continue to sit in the cases previously assigned to her.

**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, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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<sup>1</sup> A collective body made up of the President of that court and the presidents of the five district courts within the jurisdiction of the regional court. The power to appoint judges to posts of president of a court belongs to the Minister for Justice, who is also the Prosecutor General.

<sup>2</sup> The reservations of the judge arose from the fact that those other judges had been appointed to their duties on the basis of a resolution of the National Council of the Judiciary, whose composition, as amended in 2017, no longer guaranteed its independence from the legislative and the executive, thus affecting its capacity to propose independent and impartial candidates for judicial posts.

<sup>3</sup> On the date on which the judge referred questions to the Court, she was still responsible for hearing those cases. After the cases were withdrawn from her, the questions were not withdrawn.

<sup>4</sup> The second subparagraph of Article 19(1) TEU.

<sup>5</sup> In addition to the withdrawal of her cases, the judge concerned was transferred from the appellate division of the Regional Court, Słupsk to the first instance division of that court. While that transfer is not, in itself, the subject of the questions raised before the Court, it is an important factual element, particularly since it took place immediately after the cases were withdrawn from her.