



PRESS RELEASE No 50/25

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Advocate General's Opinion in Case C-225/22 | AW 'T'

Advocate General Spielmann: a national court is required to disregard, or find to be legally non-existent, the judgment of a higher court that does not meet the requirement of a tribunal previously established by law

In October 2021, the Chamber of Extraordinary Control and Public Affairs of the Polish Supreme Court set aside a judgment of 2006 prohibiting certain unfair competition practices on the cross-word publishing market. The case was referred back to a civil court for re-examination.

Tasked with that re-examination, the Polish civil court considers that, due to the irregularities associated with the procedure for the appointment of judges of the abovementioned chamber of the Polish Supreme Court, the panel of judges that referred the case back does not satisfy the requirement of an independent and impartial tribunal established by law within the meaning of EU law.

However, the Polish court is uncertain whether it is entitled to review the regularity of the composition of the higher-ranking court. If it is so entitled, and in the event of a negative conclusion of that review, it raises the question of the effects of the judgment given by a body which does not have the status of a tribunal established by law. Since it was uncertain as to the interpretation of EU law ¹ on those points, the Polish court referred the matter to the Court of Justice.

In his Opinion, Advocate General Dean Spielmann recalls that the guarantees of access to an independent and impartial tribunal previously established by law are essential in order to maintain citizens' trust in the justice system and to protect their rights under EU law. **Due to the importance of the process of appointing judges for the legitimacy of the judiciary, that process is an integral part of the concept of a 'tribunal established by law'.**

Consequently, every court is required to ensure compliance with those requirements, by verifying, in particular, the regularity of its own composition as well as that of other courts. **A hierarchical relationship between the courts concerned does not preclude that verification.**

As regards the Chamber of Extraordinary Control and Public Affairs of the Polish Supreme Court, Advocate General Spielmann aligns himself with the consistent case-law of the Court of Justice, ² according to which all the circumstances relating to the appointment of the judges of that chamber preclude it from being regarded as an independent and impartial tribunal previously established by law. ³

As regards the legal status of the judgment given by that body, **the national court is required to disregard that judgment** or, where that proves essential in order to guarantee the primacy of EU law in the procedural context concerned, **to find it to be null and void.** The choice of one of those consequences falls within the jurisdiction of the national court which, while respecting the national legal framework, must ensure the effective judicial protection of litigants.

The force of *res judicata* attaching to the judgment of the Polish Supreme Court at issue does not call that assessment into question. The Advocate General considers that, in the face of a deep crisis in the judicial system in

Poland, giving consideration to *res judicata* to the detriment of the effective judicial protection of litigants would in no way contribute to strengthening public confidence in justice.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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¹ The second subparagraph of Article 19(1) TEU.

² In particular judgment of 21 December 2023, *Krajowa Rada Sądownictwa (Continued holding of a judicial office)*, [C-718/21](#) (see Press Release No [206/23](#)).

³ Similar assessments were made by the European Court of Human Rights in its judgment of 8 November 2021, *Dolińska-Ficek and Ozimek v. Poland*, as well as by the Polish Supreme Administrative Court.