



## PRESS RELEASE No 55/25

Luxembourg, 29 April 2025

Advocate General's Opinion in Case C-521/21 | Rzecznik Praw Obywatelskich (Exclusion of a judge of the ordinary courts)

### **Advocate General Spielmann: the involvement of a body lacking a guarantee of independence in a procedure for the appointment of a judge does not, in itself, justify the exclusion of that judge**

*In order to assess the validity of the appointment, it is necessary to consider all the related systemic and factual elements*

One of the parties to civil proceedings before a Polish court sought the exclusion of the judge dealing with the case, submitting that her appointment was invalid.

Her candidacy had been recommended by the Polish National Council of the Judiciary (the 'KRS'), whose independence from the legislature and the executive was called into question by a reform introduced in 2017. Furthermore, the relevant provisions of national law placed the review of the legality of the appointment of a judge within the exclusive jurisdiction of the Chamber of Extraordinary Control and Public Affairs of the Polish Supreme Court, composed of judges who were themselves appointed on a proposal of the KRS.

The court before which the application for exclusion was brought has submitted a request for a preliminary ruling to the Court of Justice. The referring court wishes to know whether a judge appointed following the abovementioned procedure can be considered to be a tribunal previously established by law within the meaning of EU law.<sup>1</sup> If so, it also asks what procedural conclusions should be drawn from that.

In his Opinion, Advocate General Dean Spielmann considers that **neither the involvement of the KRS in the appointment procedure, nor the absence of an effective remedy for unsuccessful candidates – those factors taken in isolation or in combination – automatically support the conclusion that the judge of the ordinary courts concerned is not a tribunal previously established by law.**

The Advocate General suggests an **individual and specific assessment**, taking account of the legal and factual context and of other relevant factors relating to the particular situation of each judge or panel of judges concerned. That approach should maintain effective compliance with the principles of independence and impartiality as well as maintain public confidence in the judiciary. On the latter point, Advocate General Spielmann notes that what is at stake in the case is considerable, given that approximately 3 000 judges in Poland were appointed on a proposal of the KRS.

In addition, the Advocate General recalls that, under EU law, national courts must have jurisdiction so that they themselves can assess the legality of the appointment of judges. **The principle of primacy requires that those courts disregard the national rules and the judgments of the constitutional court that prevent them from doing so.**

Accordingly, **national courts must be able automatically to exclude a judge who does not satisfy the**

**requirements of independence and impartiality inherent in a tribunal previously established by law.**

However, it is for the national courts to determine the specific arrangements for implementing that requirement, in compliance with national law and the principles deriving from EU law.

**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.

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

Images of the delivery of the Opinion are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

**Stay Connected!**



<sup>1</sup> Article 19(1) TEU.