



PRESS RELEASE No 108/25

Luxembourg, 4 September 2025

Judgment of the Court in Case C-225/22 | AW 'T'

A national court must consider the judgment of a higher court that does not constitute an independent and impartial tribunal previously established by law to be null and void

This is the case where such a consequence is necessary to ensure the primacy of EU law

By a judgment of 20 October 2021, the Chamber of Extraordinary Control and Public Affairs of the Polish Supreme Court set aside a judgment of 2006, which had become final in the intervening period and prohibited the placing on the market of certain crossword magazines. The case was referred back to a civil court for re-examination.

That court notes that, on account of irregularities vitiating the procedure for appointing judges to the chamber of the Polish Supreme Court concerned, the panel of judges which delivered the judgment of 20 October 2021 does not constitute a court within the meaning of EU law. Consequently, there is no need to examine the effects of that judgment.

However, it remains uncertain as to whether it is entitled to review the composition of a higher court. National legislation, and the case-law of the Polish Constitutional Court, prohibit it from verifying whether judges were appointed in a proper manner, so that it must comply with the decision referring the case back to it for re-examination.

Requiring clarification concerning EU law, ¹ the national court made a reference to the Court of Justice.

In reply, the Court states that **the national court cannot disregard the fact that the Court rejected the status as a court or tribunal of the Chamber of Extraordinary Control and Public Affairs of the Polish Supreme Court**, ² because that chamber does not satisfy the conditions of independence, impartiality and previous establishment by law established by EU law.

It is therefore for the national court to verify the regularity of the appointment of the judges forming part of the judicial panel that delivered the judgment of 20 October 2021. The presence, on the panel concerned, of a single judge whose appointment does not satisfy the requirements referred to is sufficient to deprive it of its status as an independent and impartial tribunal previously established by law, within the meaning of EU law.

The principle of primacy of EU law, and the binding effects of decisions of the Court mean that **such verification cannot be prevented either by national legislation or by the case-law of the Polish Constitutional Court**. ³

If the national court found that the decision to refer the case back for re-examination was delivered by a judicial panel that does not comply with the requirements of EU law, **that decision would have to be declared to be null and void**, where this is necessary to ensure the primacy of EU law. No consideration based on the principle of legal certainty or linked to the alleged finality of the decision can stand in the way of such a consequence.

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

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¹ Inter alia, concerning the second subparagraph of Article 19(1) TEU, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union.

² Judgment of 21 December 2023, *Krajowa Rada Sądownictwa*, [C-718/21](#) (see also Press Release No [206/23](#)). The Court held that the panel of judges of the Chamber of Extraordinary Control and Public Affairs of the Polish Supreme Court hearing that case, did not constitute a court or tribunal within the meaning of EU law, on account of the conditions under which its judges had been appointed.

³ In its judgment of 5 June 2023, *Commission v Poland (Independence and private life of judges)*, [C-204/21](#) (See also press release No [89/23](#)), the Court held that Poland infringed its obligations arising from EU law by adopting laws which prohibit judges from verifying whether they or other judges or courts satisfy the conditions of independence, impartiality and previous establishment by law, as provided for by EU law.