



Court of Justice of the European Union

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Judgment in Case C-508/19 Prokurator Generalny
(Disciplinary Chamber of the Supreme Court – Appointment)

Press and Information

The Court declares inadmissible the request for a preliminary ruling from a Polish court, asking whether EU law confers on it the power, which it does not have under Polish law, to find that a judge's service relationship does not exist due to irregularities vitiating the instrument of his appointment

The questions referred by the national court do not meet an objective need for the purpose of settling the dispute brought before it

In January 2019, disciplinary proceedings were initiated against M.F., a judge at the Sąd Rejonowy w P. (Regional Court of P., Poland), for alleged delays in handling the cases on which that judge was called upon to rule. J.M., in his capacity as President of the Sąd Najwyższy (Supreme Court) responsible for the work of the disciplinary chamber of the latter court, designated the Sąd Dyscyplinarny przy Sądzie Apelacyjnym w ... (Disciplinary Court at the Court of Appeal of ..., Poland) to hear those disciplinary proceedings.

Being of the view that J.M.'s appointment in that disciplinary chamber was vitiated by several irregularities, M.F. brought a civil action before the Supreme Court for a declaration that a service relationship does not exist between J.M. and that court, while also asking the latter to stay the disciplinary proceedings brought against M.F.. One of the chambers of the Supreme Court, the Izba Pracy i Ubezpieczeń Społecznych (Labour and Social Insurance Chamber; 'the referring court') was then instructed to examine those requests.

The referring court, after observing that a judge's mandate reflects a legal relationship governed by public law, and not by civil law, and that an action such as that at issue in the main proceedings is, therefore, not capable of falling within the scope of the Code of Civil Procedure, still wonders whether the principle of effective judicial protection, which is enshrined in EU law, and the Member States' duty, under the second subparagraph of Article 19(1) TEU, to ensure that the courts and tribunals in its legal system which may rule in the fields covered by EU law meet the requirements arising from that principle and, in particular, that relating to their independence, their impartiality and the fact that they must be established by law, have the effect of conferring on it the power, which it does not have under Polish law, to find, in the main proceedings, that the defendant concerned does not have a judge's mandate.

In its judgment delivered today, **the Court finds that the request for a preliminary ruling is inadmissible.**

The Court recalls that the questions referred by a national court or tribunal must meet an objective need for the purpose of settling disputes brought before it and that the cooperation between the Court of Justice and the national courts provided for in Article 267 TFEU thus presupposes, in principle, that the referring court has jurisdiction to rule on the dispute in the main proceedings, so that it cannot be regarded as purely hypothetical. While the Court has recognised that this may be different in certain exceptional circumstances, such as solution cannot be adopted in the present case.

First, the referring court itself observes that when it is seised of a civil action for a declaration that a legal relationship does not exist, it lacks, under national law, the jurisdiction which would enable it to rule on the lawfulness of the instrument of appointment at issue.

Second, the civil action brought by M.F. seeks, in fact, to challenge the decision by which J.M. designated the disciplinary court as having jurisdiction to hear the disciplinary proceedings brought against M.F., proceedings which, moreover, the latter requested the referring court to stay as an interim measure. Thus, the questions referred to the Court relate intrinsically to a dispute other than that in the main proceedings, to which the latter is merely incidental. In order to answer them, the Court would be obliged to have regard to the particulars of that other dispute rather than to confine itself to the configuration of the dispute in the main proceedings, as required by Article 267 TFEU.

Third, the Court notes that, in the absence of a direct right of action against J.M.'s appointment as President of the Disciplinary Chamber of the Supreme Court or against J.M.'s decision designating the disciplinary court in charge of examining that dispute, M.F. could have raised before that court an objection alleging a possible infringement, arising from the decision at issue, of her right to have the said dispute determined by an independent and impartial tribunal previously established by law. The Court recalls, moreover, in that respect, that it has held that the provisions of the Law on the ordinary courts, inasmuch as they confer on the President of the disciplinary chamber of the Supreme Court the discretionary power to designate the disciplinary tribunal with territorial jurisdiction to hear disciplinary proceedings in respect of judges of the ordinary courts, do not meet the requirement derived from the second subparagraph of Article 19(1) TEU that such cases must be examined by a tribunal 'established by law'.¹ That provision, in that it lays down such a requirement, must also be regarded as having direct effect, with the result that the principle of primacy of EU law requires a disciplinary court so designated to disapply the national provisions pursuant to which that designation was made and, consequently, declare that it has no jurisdiction to hear the dispute before it.

Fourth, the Court has also stated that, here, the action in the main proceedings seeks, in essence, to obtain a form of *erga omnes* invalidation of J.M.'s appointment to the office of judge, even though national law does not authorise, and has never authorised, all subjects of the law to challenge the appointment of judges by means of a direct action for annulment or invalidation of such an appointment.

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 European Union law or the validity of a European Union 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](#) of the judgment is published on the CURIA website on the day of delivery.

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

¹ Judgment of 15 July 2021, *Commission v Poland (Disciplinary regime for judges)* (C-791/19, see also PR no. [130/21](#), paragraph 176).