

Case C-112/24**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

12 February 2024

Referring court:

Sąd Najwyższy (Poland)

Date of the decision to refer:

11 January 2024

Applicant:

L.S.

Subject matter of the main proceedings

Application of the defence counsel for a sąd rejonowy (district court) judge in a case to examine whether a judge of the Sąd Najwyższy (Supreme Court) assigned to the panel hearing a disciplinary case against an ordinary court judge fulfils the requirements of independence and impartiality.

Subject matter and legal basis of the request

- 1 Compatibility with EU law, in particular with the second subparagraph of Article 19(1) TEU, read in conjunction with the first and second paragraphs of Article 47 of the Charter of Fundamental Rights of the European Union, of the test of a judge's independence and impartiality as provided for in national law – questions raised under Article 267 TFEU.

Questions referred for a preliminary ruling

I. Must the second subparagraph of Article 19(1) of the Treaty on European Union, read in conjunction with the first and second paragraphs of Article 47 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that:

(1) the national Supreme Court, in special proceedings initiated by a party by way of an application to examine whether a judge of the Supreme Court – assigned to the panel hearing a disciplinary case against an ordinary court judge – fulfils the requirements of independence and impartiality, is obliged to examine of its own motion whether the panel drawn by lot from among all judges of the Supreme Court is also a tribunal ‘previously established by law’;

(2) if the application to examine whether a judge of the Supreme Court fulfils the requirements of independence and impartiality is based on the plea that the judge in question was appointed to his or her position under a (fundamentally) flawed appointment procedure, then a panel of five judges drawn by lot from among all judges of the Supreme Court may not include Supreme Court judges who were appointed under the same flawed appointment procedure, since such a Supreme Court panel cannot be considered an independent and impartial tribunal previously established by law;

(3) if, in a case to examine whether a judge of the Supreme Court assigned to a panel (hearing a disciplinary case concerning an ordinary court judge) fulfils the requirements of independence and impartiality, a party has demonstrated that, on account of that judge’s participation in a (fundamentally) flawed appointment procedure in respect of that position, the selected panel does not meet the requirements of an independent and impartial tribunal previously established by law, then in order to rule on the application to examine whether that judge of the Supreme Court fulfils the requirements of independence and impartiality, it is no longer necessary to examine the judge’s conduct after his or her appointment to the judicial position and the nature of the disciplinary case, as prescribed by national law, and, consequently, the failure to indicate in the application the circumstances relating to the conduct of that judge after his or her appointment to the position of Supreme Court judge does not constitute grounds for its rejection on the basis of the provisions of national law (Article 29(10) of the ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym – Law of 8 December 2017 on the Supreme Court)?

- if the answer to the question presented in point I(2) above is in the affirmative:

II. Must the second subparagraph of Article 19(1) of the Treaty on European Union, read in conjunction with the first and second paragraphs of Article 47 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that:

a judge included in the panel hearing a case to examine whether a judge (assigned to hear a disciplinary case against an ordinary court judge) fulfils the requirements of independence and impartiality may, firstly, file an application to exclude from the panel another judge (or judges) drawn from among all judges of the Supreme Court where that judge was appointed to the position of Supreme Court judge under a (fundamentally) flawed appointment procedure which precludes a court

with his or her participation from being considered an independent and impartial tribunal previously established by law, and, secondly, demand that such an application not be heard by a judge who was also appointed to the position of Supreme Court judge under that flawed appointment procedure?

III. If the application referred to in point II above is dismissed without further consideration (by order of the national court), is it permissible for the judge who filed such an application to refuse to take action in the case to examine whether a judge of the Supreme Court fulfils the requirements of independence and impartiality, or should he or she still participate in giving the relevant ruling, leaving it up to the party concerned to decide whether to appeal against that ruling on the grounds that the party's right to have the case heard by a court that meets the requirements of the second subparagraph of Article 19(1) of the Treaty on European Union and Article 47 of the Charter of Fundamental Rights of the European Union has been infringed?;

IV. Is the irregular composition of the panel – in a case to examine whether a judge of the Supreme Court fulfils the requirements of independence and impartiality – affected, in the context of the second subparagraph of Article 19(1) of the Treaty on European Union and the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, by the fact that out of the five-judge panel only one judge was appointed to his or her position of Supreme Court judge under a (fundamentally) flawed appointment procedure, that is to say, is it nevertheless possible to continue the proceedings and to give a ruling, since the issue of flawed appointment to the position of Supreme Court judge does not affect the majority of the judges in the selected panel?

Provisions of European Union law relied on

Treaty on European Union – Article 4(3), Article 6(1), second subparagraph of Article 19(1);

Treaty on the Functioning of the European Union – Article 2(1) and (2), Article 267;

Charter of Fundamental Rights, first and second paragraphs of Article 47.

Case-law of the Court of Justice relied on

Judgment of 19 November 2019, *A.K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, 'the judgment in A.K.';

Judgment of 29 March 2022, *Getin Noble Bank*, C-132/20, EU:C:2022:235;

Judgment of 21 December 2023, *Krajowa Rada Sądownictwa (Continued holding of a judicial office)*, C-718/21, EU:C:2023:1015;

Judgment of 1 July 2008, *Chronopost and La Poste v UFEX and Others*, C-341/06 P and C-342/06 P, EU:C:2008:375;

Judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530;

Judgment of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626;

Judgment of 22 May 2003, *Connect Austria*, C-462/99, EU:C:2003:297;

Judgment of 2 June 2005, *Koppensteiner*, C-15/04, EU:C:2005:345;

Judgment of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, C-487/19, EU:C:2021:798.

Case-law of the European Court of Human Rights relied on

Judgment of 22 July 2021, *Reczkowicz v. Poland*;

Judgment of 3 February 2022, Application No 1469/20, *Advance Pharma sp. z o.o. v. Poland*;

Judgment of 1 December 2020, Application No 26374/18, *G. Astradsson v. Iceland*;

Judgment of 7 May 2021, Application No 4907/18, *Xero Flor w Polsce sp. z o.o. v. Poland*;

Judgment of 8 November 2021, Applications Nos 49868/19 and 57511/19, *Dolińska-Ficek and Ozimek v. Poland*.

Provisions of national law relied on

Konstytucja Rzeczypospolitej Polskiej (Constitution of the Republic of Poland) – Article 45(1);

Ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym (Law of 8 December 2017 on the Supreme Court) – Article 10(1), Article 29(4), (5), (6), (8), (9), (10), (15), (17), (18), (21) and (24), Article 22a(1), Article 26(2), (3) and (4), and Article 73(1);

Ustawa z dnia 27 lipca 2001 r. – Prawo o ustroju sądów powszechnych (Law of 27 July 2001 on the organisation of the ordinary courts) – Article 128;

Ustawa z dnia 6 czerwca 1997 r. – Kodeks postępowania karnego (Law of 6 June 1997 – Code of Criminal Procedure) – Article 30(1) and (2), Article 41(1), Article 42(1), Article 534(1) and (2).

Succinct presentation of the facts and procedure in the main proceedings

The facts of the case are largely identical to the facts in Cases C-96/24 and C-103/24 or analogous to them.

Succinct presentation of the reasoning in the request for a preliminary ruling

The reasoning of the request for a preliminary ruling is for the most part identical to the reasoning in Cases C-96/24 and C-103/24 or analogous to it.

WORKING DOCUMENT