

Case C-146/23**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:**

10 March 2023

Referring court:

Sąd Rejonowy w Białymstoku (Poland)

Date of the decision to refer:

10 March 2023

Applicant:

XL

Respondent:

Sąd Rejonowy w Białymstoku (District Court, Białystok)

Subject matter of the case in the main proceedings

Demand for the payment of PLN 10 000 in remuneration for work performed from 1 July 2022 to 31 January 2023 and statutory late payment interest on the amounts for each month until the date of payment, lodged by Judge XL against his employer, the Sąd Rejonowy w Białymstoku (District Court, Białystok).

Subject matter and legal basis of the request

- 1 Request for an interpretation of Article 2 and of the second subparagraph of Article 19(1) of the Treaty on European Union (TEU), in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, lodged on the basis of the second subparagraph of Article 267 of the Treaty on the Functioning of the European Union (TFEU).

Question referred

Should Article 2 of the Treaty on European Union, which defines the values on which the European Union is based with regard to respect for the rule of law, and

the second subparagraph of Article 19(1) of the Treaty on European Union, in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, which requires Member States to ensure effective legal protection, which is based on the right to a fair and public hearing, be interpreted as meaning that the principle of judicial independence precludes provisions of national legislation which, for the purpose of limiting government spending, waives a mechanism for setting judges' pay on the basis of objective criteria that are independent of arbitrary interference by the executive and legislative authorities, resulting in sustained cuts to the pay of judges, thereby infringing the constitutional guarantees by which judges are granted remuneration consistent with the dignity of their office and the scope of their duties and the administration of justice is carried out by independent courts and independent judges?

Provisions of EU law relied on

Treaty on European Union, Articles 2 and 19.

Charter of Fundamental Rights of the European Union, Article 47

Provisions of national law relied on

Konstytucja Rzeczypospolitej Polskiej (Constitution of the Republic of Poland; 'the Constitution').

Article 2

The Republic of Poland is a democratic State subject to the rule of law and implementing the principles of social justice.

Article 10

1. The system of government of the Republic of Poland shall be based on the separation of and balance between the legislature, executive and judiciary.

2. Legislative power shall be vested in the Sejm and the Senate, executive power shall be vested in the President of the Republic and judicial power shall be vested in the courts and tribunals.

Article 173

The courts and tribunals shall constitute a separate power and shall be independent of other branches of power.

Article 178

1. Judges, within the exercise of their office, shall be independent and subject only to the Constitution and statutes.

2. Judges shall be provided with appropriate conditions for work and granted remuneration consistent with the dignity of their office and the scope of their duties.

[...]

Ustawa z dnia 27 lipca 2001 r. – Prawo o ustroju sądów powszechnych (Law of 27 July 2001 on the System of Ordinary Courts) (consolidated text of 14 December 2022, Journal of Laws 2023.217, hereinafter the ‘Law on the Ordinary Courts’)

Article 91.

[...]

Paragraph 1c. The basis for setting the basic salary of judges for a particular year shall be the average salary during the second quarter of the previous year published in the ‘*Monitor Polski*’ Journal of Laws by the President of the Central Statistical Office [...], subject to Paragraph 1d.

Paragraph 1d. If the average salary referred to in Paragraph 1c is lower than the average salary published for the second quarter of the preceding year, this shall be adopted as the basis for setting the basic salary of a judge at the previous rate.

Paragraph 2. The basic salary for a judge shall be expressed in grades, the level of which shall be determined through the application of multipliers to the basis for determining the basic salary referred to in Paragraph 1c. The basic salary grades for individual judicial posts and the multipliers used to determine the level of the basic salary for judges in individual grades are set out in the annex to this Law.

[...]

Paragraph 7. In addition, remuneration for judges shall be differentiated by a seniority allowance amounting, as from the sixth year of service, to 5% of the basic salary and increasing each year by 1% until it reaches 20% of the basic salary.

Ustawa z dnia 17 grudnia 2021 r. o szczególnych rozwiązaniach służących realizacji ustawy budżetowej na rok 2022 (Law of 17 December 2021 on specific arrangements for implementing the budget law for 2022) (Journal of Laws 2021.2445)

Article 8.

1. In 2022, the basis, referred to in Article 91(1c) of the Law on the Ordinary Courts, for determining the salary of judges shall be the average salary for the second quarter of 2020 published by the President of the Central Statistical Office.

2. The basis referred to in paragraph 1 shall be increased by the sum of PLN 26.

[...]

Ustawa z dnia 1 grudnia 2022 r. o szczególnych rozwiązaniach służących realizacji ustawy budżetowej na rok 2023 (Law of 1 December 2022 on specific arrangements for implementing the budget law for 2023) (Journal of Laws 2022.2666):

Article 8.

1. In 2023, the basis, referred to in Article 91(1c) of the Law on the Ordinary Courts, for determining the salary of judges is PLN 5 444.42.

[...]

Succinct presentation of the facts of the case

- 2 The applicant XL was appointed as a judge at the Sąd Rejonowy w Suwałkach (District Court, Suwałki) on 4 December 2003 by order of the President of the Republic of Poland. On 3 April 2007, by decision of the Minister for Justice, he was seconded to the position of judge at the District Court, Białystok, where he has been working in a judicial function ever since.
- 3 From 5 August 2021, the applicant was assigned to basic pay grade five with a basic salary multiplier of 2.5 and a years-of-service supplement at 20% of the basic salary.
- 4 The applicant's salary for 2022 was calculated using a multiplier of 2.5 and the basic salary set at PLN 5 050.48.
- 5 The applicant's salary for 2023 was calculated using a multiplier of 2.5 and the basic salary set at PLN 5 444.42.
- 6 The applicant's payment claim is based on the discrepancy between the pay actually received and the pay due to him which, in accordance with the calculations submitted, was PLN 1 362.12 monthly from July to November 2022, PLN 1 053.90 in December 2022 (including the applicant's sick leave) and PLN 2 135.50 in January 2023. The total value of the claim is PLN 10 000.

Essential arguments of the parties to the main proceedings

- 7 The applicant claims that the salary actually paid to him was substantially lower than the salary due to him under the pay calculation mechanism set out in the Law on the Ordinary Courts. The applicant claims that there is a discrepancy between, on the one hand, ‘budget-related’ laws and, on the other, the Law on the Ordinary Courts and the Polish Constitution, as well as EU regulations. He submits that, in 2021, the usual, incidental and technical law setting out the basis for the remuneration of judges outlined a new system of remuneration (bypassing the mechanism set out in the Law on the Ordinary Courts), by introducing a regulation, renewed on a yearly basis, the aim of which was to ‘eliminate the principle of judicial independence and establish conditions allowing influence over judicial decisions, and thereby provide an opportunity for part of the judiciary to be taken over by the legislature and the executive’, which, the applicant believes, amounts to a ‘blatant attack on citizens’ rights as it fails to give society the right to an independent and impartial judiciary, understood as the Union judiciary’. He stresses the tendentiousness of ‘freezing’ the index-linking of judges’ pay against a background of an actual increase in pay for the managers of some state-sector entities, or persons in leading government positions (whose salaries have increased by 40%-60%).
- 8 The respondent, his employer, stated that it had no authority to set independently the salaries of judges and to bypass the contested provisions, and that it was therefore acting lawfully. It also stressed the lack of available funding in the financial plan for the judiciary.

Brief statement of and reasons for the request

- 9 The referring court notes that the European Union is based on common values of its Member States and that it is generally accepted that the values expressed in Article 2 TEU are an axiomatic expression of the underlying principles of the legal system of the Union. Article 19 TEU elaborates on the principle, set out in Article 2 TEU, of respect for the rule of law, by tasking the Court of Justice and the national courts with the full implementation of Union law. Mutual trust between the Member States is built on mutual trust between the courts applying EU provisions in judicial proceedings. According to the case-law of the Court of Justice, while the administration of justice is within the competence of the Member States, they are required to conform with EU law when exercising that competence (judgment of 18 May 2021, *Asociația “Forumul Judecătorilor din România” and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393). In exercising their powers, the Member States are obliged to comply with their obligations deriving from EU law, which may apply in particular to national provisions affecting the status of judges, including the procedures for appointing judges, and regulatory provisions of systems for the disciplinary liability of judges (judgment of 22 March 2022, *Prokurator*

Generalny (Disciplinary Chamber of the Supreme Court – Appointment), C-508/19, EU:C:2022:201).

- 10 Article 19 TEU confers judicial supervision over the legal system of the European Union not only to the European Court of Justice, but also to the national courts. Member States are obliged to ensure that EU law is applied and respected in their territory by establishing the means necessary to ensure the protection of the rights of individuals to effective judicial protection in areas covered by EU law (judgment of 16 February 2022, *Poland v Parliament and Council*, C-157/21, EU:C:2022:98).
- 11 According to the case-law of the Court of Justice, guaranteeing effective judicial protection is underpinned by the principle of judicial independence. The requirements that courts be independent and impartial form part of the essence of the right to effective judicial protection and the fundamental right to a fair trial (judgment of the Court of 26 March 2020, *Review Simpson v Council and Review HG v Commission*, C-542/18 RX-II and C-543/18 RX-II, EU:C:2020:232). Independence means, inter alia, that the body concerned exercises its judicial functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, and is thus protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions (judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117).
- 12 In its judgment of 19 September 2006, *Wilson*, C-506/04 (EU:C:2006:587), the Court refers to the concept of judicial independence as an integral element of jurisprudence and stresses the need to provide judges with defined personal guarantees to preclude external interference and pressure which may threaten judicial independence and neutrality with regard to the interests of the parties in dispute. However, in the judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses* (C-64/16, EU:C:2018:117), the Court carried out a detailed analysis of the essence of the guarantee of judicial independence, stating that a level of remuneration commensurate with the importance of the functions they carry out constitutes a guarantee essential to judicial independence (paragraph 45). The cited interpretation of the requirement to provide judges with personal guarantees, including ensuring an adequate level of remuneration, is particularly important for analysing the mechanism, defined in national regulations, for paying judges and how changes in these regulations may actually undermine the financial situation of judges as a result of a permanent reduction in their level of remuneration.
- 13 Addressing the facts of the current case, the referring court states that the provisions of the Law on the Ordinary Courts in force have provided, since 2009, a mechanism whereby the pay of judges is determined in relation to the average pay index for the second quarter of the previous year as officially published annually by the president of the Central Statistical Office in the Polish Journal of

Laws, replacing the previous method, which was based on the basic amount defined annually in the budget law. The introduction of this mechanism ensured a more objective method of setting pay rates for judges, and limited the influence of other branches of power in regard to basic pay rates for judges.

- 14 The mechanism for determining the pay of judges was changed on three occasions at the initiative of the executive by means of the laws on specific arrangements for implementing the budget law for 2021, 2022 and 2023. In the budget projections for 2021, the system of index-linking judges' pay was 'frozen' by basing their pay increase on the average pay in the second quarter of 2019, instead of the average pay in the second quarter of 2020. The pay rates for judges for 2022 were based on the average pay in the second quarter of 2020, with an increase by a designated amount, instead of an increase based on the average pay in the second quarter of 2021. Then, in 2023, the system of setting judges' pay on the basis of a basic rate was introduced, instead of basing their pay on the average rate for the second quarter of 2022.
- 15 A number of the provisions of the Law of 1 December 2022 on specific arrangements for implementing the budget law for 2023, including Article 8 of that Law, were contested before the Trybunał Konstytucyjny (Constitutional Court). In December 2022, applications for a ruling on the unconstitutionality of the provisions amending the mechanism for establishing judges' pay rates established primarily in the Law on the Ordinary Courts were lodged by the Pierwsza Prezes Sądu Najwyższego (First President of the Supreme Court), the Prezes Naczelnego Sądu Administracyjnego (President of the Supreme Administrative Court) and the Krajowa Rada Sądownictwa (National Council of the Judiciary).
- 16 The First President of the Supreme Court pointed out that the contested provisions infringed the guarantee that judges would be remunerated at a level corresponding to the dignity of their office and the scope of their duties, thereby infringing the guarantee of judicial independence, the principle of protecting acquired rights and confidence in the State and the established law and the right of judges to receive remuneration corresponding to the dignity of their office and the scope of their duties, meaning the subjective right to have pay based on objective criteria independent of arbitrary decisions of the legislature. She underlined that the pay-setting methods introduced as an exemption from the applicable legal principles, or bypassing those principles, subject the decision in this important sphere to ad-hoc decisions by the legislature acting on prior directions from the executive. This means that the accepted model of setting pay rates for judges would no longer be automatic and objective, but would be based on an annual, and somewhat unpredictable, determination by the legislature.
- 17 In his application, the President of the Supreme Administrative Court stated, *inter alia*, that the provisions of the budget law in question were an episodic regulation and represented a departure from the established statutory principles of setting the remuneration of judges. Linking the remuneration of judges with the average pay

protects it, in his view, against reductions in purchasing power due to inflation, but through its episodic regulation the legislature has effectively reduced the index-linked pay increase for judges adopted in the Law on the Ordinary Courts. The application states that judges are the only group of State employees mentioned in the Constitution in the context of working conditions and remuneration, thereby requiring the introduction of a pay-setting system distinct from the system applicable to other civil servants. This system should take into account the protection of an independent judiciary, the dignity of the office and the burden of responsibility, with the remuneration of judges fulfilling a protective function against external pressures when taking their decisions. The applicant states that the drop in real earnings for judges in the period 2021-2023 will be approximately 23.6%, a significant difference from the increase in average gross salaries of 6.74% in the years 2020-2021.

- 18 The National Council of the Judiciary, in its application, emphasised Article 178(2) of the Constitution of the Republic of Poland, underlining the constitutional guarantee of judges' salaries, which limits the legality of interference by the legislature in the system for setting pay. It pointed out that judges' pay is a significant element in guaranteeing the independence and impartiality of judges, and one of the most important aspects of appropriate remuneration for the office of judge is to define objective, quantifiable conditions for that remuneration and a guarantee of automatic index-linking without giving the authorities the opportunity to make discretionary decisions on setting pay rates, which could become a tool for exerting pressure on judges. The application also sets out the dynamics of inflationary processes, the de facto increase in the cost of living and the lack of justification for the changes introduced vis-a-vis macroeconomic parameters, the position of the State budget and the overall financial situation of the country.
- 19 The referring court shares the reservations and arguments raised in the three cited applications to the Constitutional Court both in terms of the interpretation of provisions of the Constitution and in terms of the overall financial situation of the country. The referring court believes that note should be taken of the infringement of the guarantee of the independence of judges mentioned in all the cited applications, which is a precondition for an independent judiciary. In its view, the significance of undermining the independence of the judiciary should also be seen in the 'frozen' index-linking of judges' pay over the last three years, and de facto waiving the mechanism of setting the remuneration of judges based on objective reference to the index of the average remuneration in the second quarter of the preceding year. This infringement, in the view of the referring court, is associated with the threat of a permanent, repeated and consistent reduction of the remuneration of judges entailed in the intended subordination of the judiciary to the executive and legislature.
- 20 In the view of the referring court, the real deterioration in the working conditions of judges in the context of the increased effect of new cases, a growing backlog and greater time requirements for disposing of cases could make the action taken

to increase the efficiency of judges ineffective, and involves a risk of widespread demands by judges for payment of the difference between the remuneration paid and the remuneration that may be due.

- 21 Referring again to the judgment of the Court of Justice of 27 February 2018, *Associação Sindical dos Juizes Portugueses* (C-64/16, EU:C:2018:117), which ruled that the principle of judicial independence does not preclude the application of general rules reducing remuneration, the referring court stresses that that judgment of the Court referred to general regulations whereby all public officials in the country have a part to play in austerity measures dictated by the need to reduce an excessive national budget deficit and to regulations which simultaneously reduced the remuneration of all public officials in Portugal. The admissibility of the temporary nature of reductions in the remuneration of judges in the context of general reductions in remuneration as part of the requirements for reducing an excessive budget deficit have also been analysed in the judgment of 7 February 2019, *Escribano Vindel* (C-49/18, EU:C:2019:106). In the opinion of the referring court, the Court of Justice's conclusions about the general nature of the provisions and the associated participation in savings cuts by all members of the public administration (paragraph 49 of the judgment in Case C-64/16 and paragraphs 60 and 67 of the judgment in Case C-49/18), and the temporary nature of the provisions reducing remuneration (paragraph 50 of the judgment in Case C-64/16 and paragraph 9 of the judgment in Case C-49/18), are not applicable in the main proceedings in the present case.
- 22 In the opinion of the referring court, the facts of the case in the main proceedings here differ significantly from the facts analysed in the above decisions of the Court of Justice. Furthermore, in the present instance, it is a matter of the introduction of the permanent renunciation of a previously established mechanism of setting remuneration according to specific provisions addressed directly to the profession of judges (and also indirectly to other professions whose remuneration is calculated on the basis of the mechanism analysed). The permanent nature of the waiver of the mechanism for setting the remuneration of judges and the fact that it burdens solely the profession of judge with salary-reducing changes in the rules are substantially and decisively significant in interpreting EU rules in the context of the facts of the matter in the main proceedings.
- 23 In the view of the referring court, an interpretation of provisions of EU law is therefore necessary in order to resolve the dispute on salaries in the main proceedings. The crux of the matter lies in the interpretation of Article 2 TEU and of the second subparagraph of Article 19(1) TEU, in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, regarding the replacement of an objective mechanism for setting judges' pay with a 'freeze' on their pay levels, resulting in a real and actual reduction in pay through specific legislation fundamentally aimed at judges alone. An answer to the doubts with regard to the interpretation of EU rules and the confirmation of a possible infringement of the guarantee of judicial independence in national legislation would be of fundamental significance for the proper functioning of the system of

judicial cooperation under the mechanism of referral for a preliminary ruling provided for in Article 267 TFEU.

- 24 The referring court is inclined towards an interpretation of the provisions listed above to the effect that they are an obstacle to the introduction into national law of permanent solutions, by means of haphazard provisions intended to improve the stability of public finances, which threaten the subordination of the legislative power by subjecting the formation of judges' pay to interference by the executive and the legislature. An answer from the Court of Justice to the question referred for a preliminary ruling will allow the national court, by observing the primacy of EU law, to disapply any national provisions that may be contrary to EU law.

WORKING DOCUMENT