

Case C-158/24 [Rojcki] ⁱ

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:

28 February 2024

Referring court:

Sąd Najwyższy (Poland)

Date of the decision to refer:

23 September 2022

Applicant:

J.P.

Defendants:

A.T.

J.B.

Skarb Państwa – Prezes Sądu Okręgowego w O.

Subject matter of the main proceedings

A legal issue referred to the Sąd Najwyższy (Supreme Court, Poland), sitting in extended composition, concerning whether a summons to a conciliation hearing interrupts the limitation period of a claim.

Subject matter and legal basis of the request

The legal effects of an act establishing the composition of a court if the composition thus established is not an independent and impartial tribunal previously established by law within the meaning of European Union law – Article 267 TFEU.

ⁱ The present case has been given a fictitious name which does not correspond to the real name of any of the parties to the proceedings.

Question referred for a preliminary ruling

Must Article 2, Article 6(1) and (3) and the second subparagraph of Article 19(1) of the Treaty on European Union, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union and Article 267 of the Treaty on the Functioning of the European Union, be interpreted as meaning that an act establishing the composition of a court, such as the order of a President of the Supreme Court who directs the work of a Chamber of the Supreme Court, does not produce legal effects if the composition of the court thus established is not an independent and impartial tribunal previously established by law within the meaning of European Union law, in particular having regard to:

- (a) the participation in its collegial composition of persons who have been appointed to the position of Supreme Court judge in a manner that is manifestly contrary to the provisions of national law concerning the appointment of judges, which has been established in the final rulings of the national court of highest instance, where those persons constitute a majority of the composition of the court;
- (b) the fact that the composition of the court was established in the manner indicated above by a President of the Supreme Court who has been appointed to the position of Supreme Court judge under the same circumstances and in breach of the rules concerning the appointment of a Supreme Court judge as a President of the Supreme Court?

Provisions of European Union law relied on

Treaty on European Union, Article 2, Article 6(1) and (3), and second subparagraph of Article 19(1)

Charter of Fundamental Rights of the European Union, Article 47

Treaty on the Functioning of the European Union, Article 267

Provisions of national law relied on

Konstytucja Rzeczypospolitej Polskiej (Constitution of the Republic of Poland), Articles 10, 173, 179, 186

Ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym (Law of 8 December 2017 on the Supreme Court), Articles 11 and 13a, Article 15(1) and (3), Article 26(2) and (3), Article 29(4), Article 72(1), Article 75(1)(5), Article 75(1a), [and] Article 80(1)

Rozporządzenie Prezydenta Rzeczypospolitej Polskiej z dnia 14 lipca 2022 r. – Regulamin Sądu Najwyższego (Regulation of the President of the Republic of

Poland of 14 July 2022 – Rules of Procedure of the Supreme Court) (Dziennik Ustaw (Journal of Laws) of 2022, item 1489), paragraph 84

Kodeks postępowania cywilnego (Code of Civil Procedure; ‘the CCP’), Article 379(4)

Case-law of the Court of Justice relied on

Judgment of 5 November 2019, *Commission v Poland (Independence of ordinary courts)*, C-192/18, EU:C:2019:924

Judgment of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153

Judgment 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

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

Succinct presentation of the facts and procedure in the main proceedings

- 1 By order dated 16 October 2020, the Sąd Najwyższy (Supreme Court, Poland), hearing an appeal on a point of law in an action for payment, referred a legal issue to the Supreme Court, sitting in extended composition, concerning whether a summons to a conciliation hearing interrupts the limitation period of a claim.
- 2 On 18 August 2022, the President of the Supreme Court directing the work of the Civil Chamber of the Supreme Court (‘the President of the Civil Chamber’) issued an order by which she appointed the following seven-judge panel of the Supreme Court to examine the legal issue concerned: ST (chair), ZX, KJ, YS, BV, CR, Dariusz Zawistowski (judge-rapporteur).
- 3 In a letter dated 5 September 2022, the judge-rapporteur informed the President of the Civil Chamber that he did not consider it possible for the case to be heard on the date indicated in the schedule of hearings having regard to the fact that the panel appointed to examine the issue included persons appointed to their positions as Supreme Court judges upon a proposal from the Krajowa Rada Sądownictwa (National Council of the Judiciary; ‘the NCJ’) constituted under the procedure provided for in the ustawa z dnia 8 grudnia 2017 r. o zmianie ustawy o Krajowej Radzie Sądownictwa (Law of 8 December 2017 amending the Law on the National Council of the Judiciary) (Dziennik Ustaw of 2018, item 3; ‘the Amending Law of 8 December 2017’). The judge-rapporteur pointed out that the resolution of the Civil Chamber, the Criminal Chamber and the Labour and Social Security Law Chamber of 23 January 2020 (Ref. BSA I-4110-1/20, OSNC 2020,

No 4, item 34; ‘the resolution of the three Chambers of the Supreme Court’), which has the force of a legal principle and is binding on all compositions of the Supreme Court, states that a court the composition of which includes a person appointed to the position of Supreme Court judge under such circumstances is an improperly composed court, which makes the composition of that court unlawful within the meaning of Article 379(4) of the CCP and consequently renders the proceedings null and void. Four such persons, constituting the majority of the panel, were designated to hear Case III CZP 43/22.

- 4 In the aforementioned letter, the judge-rapporteur also referred to the settled case-law of the European Court of Human Rights (‘the ECtHR’), which confirms the position presented in the resolution of the three Chambers of the Supreme Court.
- 5 The judge-rapporteur stated that he would issue an order to refer the legal issue in question to a hearing immediately after a panel which was not unlawful within the meaning of Article 379(4) of the CCP had been appointed to hear the case.
- 6 In a letter dated 16 September 2022, the President of the Civil Chamber informed the judge-rapporteur that in view of his letter of 5 September 2022, she had ordered the case file to be forwarded to the chair of the relevant division of the Chamber together with information on the judge-rapporteur’s refusal to order a hearing date. By order dated 21 September 2022, the Chair of the 3rd Division referred the case to a hearing set to take place on 19 October 2022.

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

- 7 The Supreme Court referring the question for a preliminary ruling found that the appointment of some of the persons included in the panel to serve as Supreme Court judges was made in flagrant breach of the legal provisions governing the procedure for the appointment of Supreme Court judges, and thus a composition of a court that included those persons could not be considered an independent and impartial tribunal previously established by law.
- 8 The question whether the order of the President of the Civil Chamber appointing the adjudicating panel is effective is related to the need to clarify how the effective application of EU law, which requires that the composition of a court must meet the standard of an independent and impartial tribunal previously established by law within the meaning of Article 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’), is to be ensured in cases where the composition of the court is improperly appointed. The referring court’s doubts stem from the fact that in performing her official duties, the President of the Civil Chamber, which is the Supreme Court body competent to appoint compositions of the court, is failing to apply EU law by appointing compositions of the court that do not meet the standard laid down in Article 47 of the Charter. In that context, it is also important to note that the person who is the President of the Civil Chamber was appointed to serve as a Supreme Court judge on the basis of a resolution of the NCJ constituted pursuant to the Amending Law of 8 December 2017, and

candidates for the position of President of the Civil Chamber were selected in breach of the rules governing the relevant procedure.

- 9 The Supreme Court referring the question for a preliminary ruling is of the view that when appointing the composition of the court, the President of the Chamber of the Supreme Court, as a Supreme Court body, is obliged to apply EU law and to ensure compliance therewith, taking into account the principle of the primacy of EU law. The fact that the majority of the adjudicating panel comprises persons appointed to the Supreme Court in 2018 makes it difficult to assess whether the panel thus created constitutes a tribunal which meets the standard laid down in Article 47 of the Charter, since in practice this precludes the court in that composition from exercising its jurisdiction whenever a majority vote of the members of that adjudicating panel is required. Nor can such jurisdiction be exercised by the court (the adjudicating panel) in disregard of the *nemo iudex in causa sua* principle. For the above reasons, the question arises as to whether such a composition can effectively fulfil the obligation incumbent on every court (composition of a court) to examine of its own motion whether it constitutes a tribunal which meets the standard laid down in Article 47 of the Charter.
- 10 Taking action in order to fulfil that obligation carries the risk of disciplinary liability for those members of the panel who point to flagrant violations of provisions of national law in the procedures concerning appointments to the Supreme Court made in 2018 as a reason for considering the court to be improperly composed. As a general rule, the provisions of national law concerning the disciplinary liability of Supreme Court judges provide that a judge may be removed from office (dismissed from service) for disciplinary offences consisting in ‘a refusal to administer justice’, an act or omission of such a kind as to ‘prevent or seriously undermine the functioning of a judicial authority’ or an act calling into question ‘the existence of the employment relationship of a judge, the effectiveness of the appointment of a judge or the legitimacy of a constitutional organ of the Republic of Poland’. Therefore, assessing the effectiveness of the order of the President of the Supreme Court concerning the creation of the panel is a matter which also concerns the protection of the judicial independence of those members of the panel who, in connection with the manner in which the procedures in question were conducted, point to the fact that the adjudicating panel was improperly created.
- 11 Furthermore, the very need for a judge to be included in the composition of a court which does not meet the standard of an independent and impartial tribunal previously established by law undermines the independence of each member of the composition who points to that flaw as an impediment to ruling on the case. A judge who believes that the composition in which he or she is included does not meet the standard laid down in Article 47 of the Charter and thus does not guarantee the parties to the proceedings the right to a fair trial may – also in the judge’s own mind – raise doubts as to whether such a judge remains independent when sitting as part of that composition. It is therefore necessary to ensure a mechanism which allows for a fair assessment of whether a particular composition

of a court meets the standard laid down in Article 47 of the Charter. The interpretation of the provisions of EU law indicated in the question referred is especially important, since there is no effective remedy under national law for a judge who relies on the provisions of EU law when pointing to defects in the appointment of members of the composition in which he or she is included as an impediment to ruling on the case.

- 12 Judges selected jointly with persons who have been improperly appointed to serve as Supreme Court judges are to submit motions for such persons to be excluded from ruling on the case. However, such motions submitted in cases heard in the Civil Chamber are not acted upon and are not considered on their merits. This practice deprives those judges of any legal remedy enabling them to initiate proceedings that would allow the validity of their allegations to be assessed.
- 13 When ruling on a legal issue referred to it, the Supreme Court, sitting in extended composition, may adopt a resolution and give it the force of a legal principle. All compositions of the Supreme Court are then bound by that resolution. Therefore, the issuing of such a resolution is relevant to how the Supreme Court rules on each individual case to which the provisions interpreted by the Supreme Court apply. It is also worth recalling that the Supreme Court rules on appeals in areas covered by EU law.
- 14 Citing the settled case-law of the Court of Justice, the referring court notes that under Article 19 TEU, the courts of the Member States are obliged to ensure the full application of EU law in all Member States and to safeguard the rights that individuals derive from EU law. Moreover, under Article 47 of the Charter, everyone whose rights and freedoms guaranteed by the law of the Union are violated is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law.
- 15 In that regard, the referring court also refers to the standard established by Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR'), recalling the judgment of the ECtHR of 1 December 2020 in *Guðmundur Andri Ástráðsson v. Iceland*.
- 16 The fact that the appointed panel will result in the proceedings being null and void is determined by the resolution of the three Chambers of the Supreme Court. That resolution has the force of a legal principle and is binding on all compositions of the Supreme Court notwithstanding the judgment of the Trybunał Konstytucyjny (Constitutional Court, Poland) of 20 April 2020, Ref. U 2/20, OTK-A 2020, item 61. In that regard, the referring court agrees with the reasoning, cited in particular in the grounds for the resolution of a seven-judge panel of the Supreme Court of 22 June 2022 (Ref. I KZP 2/22, OSNKW 2022, No 6, item 22), the grounds for the Supreme Court's resolution of 5 April 2022 (Ref. III PZP 1/22), and in the judgments of the ECtHR of 22 July 2021, Application No 43447/19, *Reczkowicz v. Poland*, of 8 November 2021, Applications Nos 49868/19 and

57511/19, *Dolińska-Ficek and Ozimek v. Poland*, and of 3 February 2022, Application No 1469/20, *Advance Pharma sp. z o.o. v. Poland*.

- 17 The flaws inherent in such proceedings are not cured by the right of the parties thereto to use the measure (the test of a judge's impartiality) provided for in Article 29(4) to (25) of the Law on the Supreme Court as amended by the Law of 9 June 2022 (*Dziennik Ustaw*, item 1259). That is because the test constitutes an additional legal remedy, with restrictions imposed on the timing and grounds for its application, which cannot limit the rights of the parties and the powers of the court hearing the case or its obligation to determine whether the composition of the court meets the requirements of Article 47 of the Charter and Article 6(1) ECHR.
- 18 The referring court also points to the first question referred in Case C-658/22, which directly concerns the status of collegial compositions of the Supreme Court, although that request was related to the finding contained in the order of 2 September 2021 that the persons covered by the resolution of the three Chambers of the Supreme Court were appointed to serve as Supreme Court judges in flagrant breach of the law. The referring court fully agrees with the reasoning presented in that regard in the order for reference in Case C-658/22.
- 19 The referring court also points to the breach of the rules concerning the method of selecting candidates for the position of President of the Civil Chamber, which is an additional factor that may give rise to reasonable doubts, in the minds of individuals, as to the independence and impartiality of the persons forming compositions of a court created pursuant to the orders of the President of the Civil Chamber. If an improperly formed composition of a court is established by order of a President of the Supreme Court who him- or herself has been appointed to the position of Supreme Court judge in gross breach of the provisions concerning the appointment of judges and under the same circumstances as those in which the persons included in the composition pursuant to his or her order were appointed, this may only compound the belief of those individuals that the composition of the court does not meet the standards of an independent and impartial tribunal previously established by law. Forming compositions in such a manner might be perceived as an attempt to legitimise the effects of a flawed appointment procedure.
- 20 Under Article 15 of the Law on the Supreme Court, candidates for the position of President of the Supreme Court are selected by the General Assembly of judges of the chamber in question ('the General Assembly'). The General Assembly is a body of the Supreme Court and includes all the judges of which the chamber is composed. Candidates for the position of President of the Supreme Court must be selected by a group that is representative of the composition of the relevant chamber and must receive a sufficient majority of votes from members of the General Assembly.

- 21 On 29 June 2021, the General Assembly of judges of the Civil Chamber of the Supreme Court, convened for the purpose of selecting candidates for the position of President of the Civil Chamber, adopted – by a majority of votes – a resolution to adjourn the meeting until the completion of the already advanced proceedings pending before the Court of Justice in *Commission v Poland* (Case C-791/19) and in cases resulting from preliminary questions (Cases C-487/19 and C-508/19), recognising that their outcome would be relevant to the proceedings concerning the selection of candidates. On 31 August 2021, the term of office of the then President of the Civil Chamber, Mr Dariusz Zawistowski, expired.
- 22 In those circumstances, the Prezydent Rzeczypospolitej Polskiej (President of the Republic of Poland) decided that the work of the Civil Chamber would be directed by the Pierwszy Prezes Sądu Najwyższego (First President of the Supreme Court). This resulted in the de facto merger of the functions of the First President of the Supreme Court and those of the President of the Civil Chamber, which is not provided for in the Law on the Supreme Court. Article 11 of that Law stipulates that the First President of the Supreme Court and the Presidents of the Supreme Court are separate bodies of the Supreme Court. At the same time, the scope of the powers vested in a President of the Supreme Court precludes their exercise by the First President of the Supreme Court. Article 13a of the Law on the Supreme Court, which grants the President of the Republic of Poland the power to designate a Supreme Court judge who is to perform the duties of a President of the Supreme Court, cannot be understood to mean that the President of the Republic of Poland, as an executive body, may select a specific person from among the judges of the Supreme Court without taking into account all the statutory regulations concerning the organisation of the Supreme Court. The fact that the President of the Republic of Poland had improperly entrusted the person previously appointed to the position of First President of the Supreme Court with performing the duties of the President of the Civil Chamber was raised during the General Assembly on 7 September 2021.
- 23 The power of the President of the Republic of Poland to entrust a person with performing the duties of a President of the Supreme Court, provided for in Article 13a of the Law on the Supreme Court, read in conjunction with Article 15 thereof, constitutes a breach of the constitutional principle of the separation and independence of the judiciary from the executive. The provisions of the Constitution of the Republic of Poland governing the scope of the powers of the President of the Republic of Poland do not vest in the President, as an executive body, the power to decide independently on the appointment of certain judges to positions which allow them to exercise the powers of bodies of the Supreme Court. Article 144(3)(23) of the Constitution of the Republic of Poland provides only for the appointment of Presidents of the Supreme Court by the President of the Republic of Poland, with the candidates for those positions being selected by a body composed of judges (the General Assembly). Only in the cases indicated in Article 144(3) of the Constitution of the Republic of Poland do official acts of the President of the Republic of Poland not require the signature of the Prezes Rady Ministrów (Prime Minister) in order to be valid. Where the President of the

Republic of Poland entrusts a judge with performing the duties of a President of the Supreme Court, this does not amount to exercising the power set forth in Article 144(3)(23) of the Constitution of the Republic of Poland, and thus necessitates cooperation between the President of the Republic of Poland and the Prime Minister. At the same time, this type of official act by the highest executive body, without a clear constitutional basis, is not justified by the need to ensure the proper functioning of a chamber of the Supreme Court in the event that the term of office of the President of the Supreme Court directing the work of that chamber expires, since constitutional provisions clearly specify the person who is to replace the President directing the work of the chamber in such a case.

- 24 The Constitution of the Republic of Poland, interpreted in accordance with the principle of the separation of powers and taking into account its provision expressly stipulating the separate nature of the judiciary (Article 173), does not permit the assumption that the President of the Republic of Poland, as an executive body, may through his or her official acts influence in any way the procedure for selecting candidates for the position of President of the Supreme Court. In the case of the selection procedure held in the Civil Chamber in 2021, the decision of the President of the Republic of Poland to entrust the First President of the Supreme Court with directing the work of that Chamber was issued already during the proceedings regarding the selection of candidates, after the meeting had been adjourned by a resolution of the General Assembly. That decision had the practical effect of blocking the application of the constitutional regulation that designates the person who is to replace a President of the Supreme Court and who is to direct the work of the chamber of the Supreme Court concerned after the expiry of that president's term of office. This fundamentally affected the process of selecting candidates for the position of President of the Civil Chamber.
- 25 The First President of the Supreme Court, TM, as the person designated by the President of the Republic of Poland to direct the work of the Civil Chamber ('the Chair of the General Assembly'), convened the General Assembly for 7 September 2021 in order to select candidates for the position of President of the Civil Chamber despite protests from the majority of General Assembly members, who cited the General Assembly's resolution of 29 June 2021 and the fact that the proceedings before the Court of Justice had not been concluded. At the 7 September 2021 meeting of the General Assembly, the Chair of the General Assembly also refused to allow a vote on a formal motion to adjourn the meeting. As a result, thirteen judges appointed to the Supreme Court before 2018, constituting a majority of the General Assembly's members, refused to participate in the meeting. This resulted in a lack of quorum. A similar situation occurred on 16 September and on 27 September 2021.
- 26 After the conclusion of the General Assembly on 7 September 2021, the judges who had requested an adjournment submitted a statement indicating, inter alia, that the resolution of the General Assembly of 29 June 2021 had not been rescinded and was still in effect, that the reasons for its adoption were still present,

and that on 7 September 2021 the Chair of the General Assembly had refused to allow a vote on the duly submitted motion to adjourn the meeting.

- 27 The participation of one-third of the judges comprising the Civil Chamber was sufficient to hold the General Assembly on 27 September 2021. The regulation in that regard was introduced on the basis of an amendment to the Law on the Supreme Court, which was amended several times after its enactment in 2017. Limiting the quorum required to select candidates for the position of President of the Supreme Court to one-third of the composition of the chamber of the Supreme Court raises serious concerns as to whether a selection made on the basis of that regulation is valid.
- 28 At the meeting of the General Assembly on 27 September 2021, the Chair of the General Assembly refused to allow a vote on (i) a motion to adjourn the meeting until at least 7 October 2021 in view of the Court of Justice's announcement that its judgment in Case C-487/19 would be given on 6 October 2021, and (ii) a motion to request the President of the Republic of Poland to remove the First President of the Supreme Court from her position as the person directing the work of the Civil Chamber.
- 29 On 27 September 2021, only members of the General Assembly appointed to serve as Supreme Court judges on the basis of a resolution of the NCJ constituted pursuant to the Amending Law of 8 December 2017 participated in the selection of candidates for the position of President of the Civil Chamber. The required quorum for the General Assembly composed in that manner was ensured when the First President of the Supreme Court transferred to the Civil Chamber two persons previously appointed to judicial positions in the Chamber of Extraordinary Review and Public Affairs (BV and ZH) as well as UC, who had previously been appointed to the Disciplinary Chamber.
- 30 The selection of candidates for the position of President of the Civil Chamber was carried out contrary to the position of the majority of judges constituting the Civil Chamber and in breach of the rules governing the functioning of the General Assembly, which is a body of the Supreme Court. The above description of the General Assembly meeting at which candidates for the position of President of the Civil Chamber were selected in 2021 indicates that the rules concerning the proper conduct of the General Assembly were not observed. The breach of those rules prevented the majority of voting members from participating in the General Assembly and nominating candidates for the position of President of the Civil Chamber. After the appointment of the President of the Civil Chamber in 2021, the entire structure of the Civil Chamber of the Supreme Court was altered. All existing division chairs, who had been appointed to judicial positions in the Supreme Court prior to 2018, were dismissed and replaced with division chairs appointed to serve as Supreme Court judges on the basis of a resolution of the NCJ constituted pursuant to the Amending Law of 8 December 2017.

- 31 The circumstances surrounding the selection of candidates for the position of President of the Civil Chamber in 2021, and the selection of those candidates exclusively from among persons appointed to serve as Supreme Court judges on the basis of a resolution of the NCJ constituted pursuant to the Amending Law, are events that may raise doubts, in the minds of individuals, as to whether the President of the Civil Chamber appointed by the President of the Republic of Poland from among those candidates is a body of the Supreme Court independent of the political authorities, whereas the independence of that body is an important factor guaranteeing that compositions are appointed in a manner which ensures that they meet the standard of an independent and impartial tribunal previously established by law.
- 32 For the reasons stated above, the referring court has doubts as to whether, in light of the provisions of EU law cited in the question referred, the order of the President of the Civil Chamber appointing the adjudicating panel, which mostly includes persons appointed to serve as judges upon a proposal of the NCJ constituted pursuant to the Amending Law of 8 December 2017, produces legal effects. The answer to that question is relevant to determining whether, given the manner in which the panel in the present case was appointed, the court in that composition can effectively assess its status in terms of meeting the standard of an independent and impartial tribunal previously established by law. The appointment of extended compositions (seven-judge panels of the Supreme Court), such as in the present case, has become a regular practice pursued by the President of the Civil Chamber. Currently, in all cases where legal issues scheduled to be examined by extended compositions are pending, those compositions have been appointed in a manner similar to that in the present case.
- 33 The referring court is of the view that the President of the Civil Chamber, as a body of the Supreme Court whose statutory competences include the appointment of compositions, should issue orders in that regard in accordance with EU law and appoint panels of judges exclusively in such a manner that the court comprising the persons appointed to those panels meets the standard laid down in Article 47 of the Charter. The interpretation of EU law that the Court of Justice has made in relation to that standard is binding on every court of the Member States of the European Union and cannot be disregarded even by a body of the Supreme Court, such as the President of the Supreme Court, when issuing orders appointing compositions of a court. Such orders directly affect the conduct of proceedings, since appointing a composition of a court that is unlawful causes the proceedings in a civil case to be rendered null and void (Article 379(4) of the CCP). An order of the President of the Supreme Court appointing a composition is an act that determines the composition of the court and has similar significance to the court exercising its jurisdiction by giving a ruling on the exclusion of a judge. The subject and purpose of both those acts should be the proper composition of the court. From that point of view, the act of designating a composition of a court, given its form (an issued order) and procedural consequences, cannot remain beyond the court's assessment, since the court is obliged to determine of its own

motion whether its composition meets the standard of an independent and impartial tribunal previously established by law.

- 34 The referring court cites in that regard the judgment of the Court of Justice of 6 October 2021 in *W.Ż. (Chamber of extraordinary review and public affairs of the Supreme Court – Appointment)*, C-487/19, EU:C:2021:798. It believes that the Court’s assessment in that judgment supports the view that orders issued by a court body (the President of the Supreme Court), on the basis of which a composition of the court is created, should be subject to the same evaluation. That position appears to be all the more justified as there is no adequate remedy in national law, which prevents or seriously impedes the court – having regard to the way in which its composition is formed – from effectively applying EU law with respect to its obligation to determine whether it is an independent and impartial tribunal previously established by law, and thus ensuring the primacy of the application of EU law in that regard.