Case C-96/24

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:

6 February 2024

Referring court:

Sąd Najwyższy (Poland)

Date of the decision to refer:

11 January 2024

Applicant:

X.Y.

Subject matter of the main proceedings

Application of a defence counsel for a judge of the Sąd Najwyższy (Supreme Court, Poland) in a case to examine whether another judge of the Supreme Court assigned to the panel hearing a case to authorise criminal proceedings against a judge of the Supreme Court fulfils the requirements of independence and impartiality.

Subject matter and legal basis of the request

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 Article 47 [first and second paragraphs] 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 concerned party by way of an application to examine whether a judge of the Supreme Court – assigned to the panel hearing a case to authorise criminal proceedings against a judge of the Supreme Court – fulfils 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 (in a case to authorise criminal proceedings against a judge) is a tribunal 'previously established by law' in a situation where domestic law merely requires the examination of the judicial attributes of independence and impartiality;

(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 case to authorise criminal proceedings against a judge of the Supreme Court) 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 case (to authorise criminal proceedings against a judge of the Supreme Court), as prescribed by national law, and, consequently, it is not permissible to dismiss an application to examine whether a judge of the Supreme Court fulfils the requirements of independence and impartiality merely because the applicant has not provided evidence that the judge's conduct after being appointed undermines his or her independence?

- if the answer to the question set out 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 Article 47 [first and second paragraphs] 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 case to authorise criminal proceedings against a judge of the Supreme Court) 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 [first and second paragraphs] of the Charter of Fundamental Rights of the European Union has been infringed?

IV. Is the irregular composition of the entire panel – in a case to examine whether a judge 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 Article 47 [first and second paragraphs] of the Charter of Fundamental Rights of the European Union, by the fact that out of the five-judge panel only two judges were appointed to their positions of Supreme Court judges 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

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;

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

Case-law of the European Court of Human Rights

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 21 June 2011, *Fruni v. Slovakia*;

Judgment of 6 November 2018, *Ramos Nunes de Carvalho e Sá v. Portugal*;

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), and Article 534(1) and (2).

Succinct presentation of the facts and procedure in the main proceedings

1 The Law of 9 June 2022, which took effect on 15 July 2022, further amended the Law of 8 December 2017 on the Supreme Court (‘the Law on the Supreme Court’). It introduced the possibility for a concerned party or participant in Supreme Court proceedings to file an application to examine whether a particular judge assigned to a panel fulfils the requirements of independence and impartiality; Article 29(4) of the Law on the Supreme Court stipulates that the circumstances surrounding the appointment of a Supreme Court judge may not provide the sole basis for challenging a ruling given by a panel including that judge or for questioning his or her independence and impartiality. Pursuant to Article 29(5) of the Law on the Supreme Court, it is permissible to examine whether a judge of the Supreme Court fulfils the requirements of independence and impartiality, taking into account the circumstances surrounding his or her appointment and his or her conduct after being appointed, upon the application of an eligible party (that is to say, a party or a participant in Supreme Court proceedings), if, in the given case, this could result in a breach of the standard of independence or impartiality affecting the outcome of the case, taking into account the circumstances related to the eligible party and the nature of the case. The Supreme Court hears the application in closed session, sitting as a panel of five judges drawn by lot from among all judges of the Supreme Court, after hearing the judge whom the application concerns, unless such hearing is impossible or very difficult. If the application is upheld, the Supreme Court excludes the judge from hearing the case. The exclusion of a judge from hearing a case cannot provide the basis for excluding that judge from other cases heard by a panel on which he or she sits. The order issued as a result of considering the application may be appealed against before the Supreme Court sitting as a panel of seven judges drawn by lot from among all judges of the Supreme Court.

2 The defence counsel for Supreme Court Judge X.Y., in connection with the case to authorise criminal proceedings, filed an application to establish whether the conditions referred to in Article 29(5) of the Law on the Supreme Court had been fulfilled, and requested that the fulfilment by Supreme Court Judge A.K. of the

requirements of independence and impartiality be examined and that she be excluded from hearing the case involving Judge X.Y.

3 In the grounds for the application, it was indicated that Supreme Court Judge A.K. was appointed to serve as a judge of the Supreme Court by a decision of the Prezydent Rzeczpospolitej Polskiej (President of the Republic of Poland) dated 10 October 2018, on the basis of an earlier proposal for appointment contained in Resolution No 331/2018 of 29 August 2018 adopted by the Krajowa Rada Sądownictwa (National Council of the Judiciary, 'the KRS') constituted under the procedure set out in the provisions of the ustawa z dnia 8 grudnia 2017 r. o zmianie ustawy o Krajowej Radzie Sądownictwa oraz niektórych innych ustaw (Law of 8 December 2017 amending the law on the National Council of the Judiciary and certain other laws, 'the 8 December 2017 amendment'). The flawed composition of the KRS is a fundamental problem of the Polish judiciary and the primary source of the charges levelled by European tribunals against court panels that include judges appointed after 2018. The application also draws attention to a statement made by Judge A.K. in the media: distinguishing between so-called 'old' and 'new' judges, she stressed that the 'old' judges 'behave in an uncivil and inelegant manner that demeans the dignity of a judge'.

4 The five-judge panel adjudicating on the so-called 'independence test', which was drawn by lot, includes, among others, Judges Z.B. (Civil Chamber) and A.S. (Chamber of Extraordinary Control and Public Affairs). Those judges were also appointed to their positions as Supreme Court judges upon a proposal from the KRS constituted under the procedure set out in the 8 December 2017 amendment.

5 Applications by the judge's defence counsel to establish whether the conditions referred to in Article 29(5) of the Law on the Supreme Court had been fulfilled and to examine whether Judges Z.B and A.S. fulfilled the requirements of independence and impartiality were rejected by order of the President of the Supreme Court in charge of the Professional Responsibility Chamber on 16 March 2023. The justification given was that in so-called test cases (that is to say, cases in which the fulfilment by a Supreme Court judge of the requirements of independence and impartiality is examined) the procedure for examining whether the judges drawn for the panel meet the requirements of independence and impartiality is not applicable.

6 In connection with the above, the judge-rapporteur filed an application to exclude Judges Z.B. and A.S. from ruling in the proceedings to examine whether Supreme Court Judge A.K. fulfils the requirements of independence and impartiality in the case to authorise criminal proceedings against Supreme Court Judge X.Y. pending before the Professional Responsibility Chamber of the Supreme Court. In the application, it was noted that the case should not be heard by a panel that includes any Supreme Court judges appointed to their positions under a flawed appointment procedure, namely after the 8 December 2017 amendment.

7 However, the application was ruled inadmissible and was left without consideration by a Supreme Court order dated 14 December 2023. That order was issued by a Supreme Court judge who was also appointed under a flawed appointment procedure, namely after the 8 December 2017 amendment.

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

8 The above questions referred for a preliminary ruling have been submitted by a single judge despite the fact that a panel consisting of five Supreme Court judges was appointed to hear the case. However, the Court of Justice allows questions to be referred by a single member of a panel composed of multiple judges (judgments 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, paragraphs 42–44, and of 29 March 2022, *Getin Noble Bank*, C-132/20, EU:C:2022:235, paragraphs 66, 70–71). Moreover, following the judgment of 21 December 2023, *Krajowa Rada Sądownictwa (Continued holding of a judicial office)*, C-718/21, EU:C:2023:1015, it is doubtful that the Court of Justice would consider admissible a request for a preliminary ruling submitted by a panel which includes judges in respect of whom the Court of Justice has ruled that a court with their participation is not a tribunal under EU law.

9 There are no duly justified normative reasons for not applying EU law in the cases referred to in Article 29(5) of the Law on the Supreme Court (*lege non distinguente nec nostrum est distinguere*), especially as the subject matter of those cases is the verification of the correct composition of the adjudicating panel in the main proceedings, in which a judge subject to that verification procedure has been assigned to rule. In its case-law, the Court of Justice has emphasised that the answers to questions referred may be necessary in order to provide referring courts with an interpretation of EU law that enables them to settle procedural questions of national law before they rule on the substance of the disputes pending before them. The case to examine whether a judge of the Supreme Court fulfils the requirements of independence and impartiality is directly related to the main proceedings (which concern the authorisation of criminal proceedings against a judge) and is a stage of the main proceedings (triggered by the application of an eligible party). Therefore, the questions referred concern the interpretation of provisions of EU law and their effects, particularly in view of the primacy of EU law, on the correct composition of the adjudicating panels hearing the cases in the main proceedings.

10 The problem lies in the fact that the procedure provided for in Article 29(5) et seq. of the Law on the Supreme Court was designed in such a manner that Supreme Court judges appointed to their positions under a flawed appointment procedure were not excluded by law from participating in the panels that hear such cases. Supreme Court judges appointed to their positions after the 8 December 2017 amendment had come into effect do not recognise the case-law of the Court of Justice and of the European Court of Human Rights, which confirms that their

appointment procedure was flawed to the extent that they do not meet the requirements of being established by law, independent and impartial. In essence, they are judges in their own cases, which is contrary to the principle of *nemo judex in causa sua*.

11 It should also be stressed that a party that challenges the qualities of judge such as being established by law (which law is compatible with the Constitution of the Republic of Poland), impartiality and independence, has – under national law – limited possibilities to file an application to exclude a Supreme Court judge who participated in the appointment procedure organised by the 'new' KRS and was recommended by it. Indeed, applications or declarations regarding the exclusion of a judge, including pleas to the effect that a court or judge is not independent, fall within the jurisdiction of the Chamber of Extraordinary Control and Public Affairs. Additionally, such applications are not considered if they involve establishing and assessing the legality of a judicial appointment or a judge's authority to carry out judicial functions. Finally, it is within the jurisdiction of the Chamber of Extraordinary Control and Public Affairs to hear applications concerning the illegality of a final court ruling if that illegality consists in challenging the status of a person appointed to serve as a judge who gave the ruling in the case.

12 The ability of a concerned party to file an application to examine whether a particular Supreme Court judge meets the requirements of independence and impartiality has been significantly restricted, since the national legislature has excluded the possibility of challenging a ruling given with the participation of such a judge or questioning his or her independence and impartiality solely on the basis of the circumstances surrounding his or her appointment. Moreover, citing in the application the conduct of the judge in question after his or her appointment does not result in the application being rejected, but if that conduct does not provide grounds for challenging the judge's qualities such as independence and impartiality, the application is still dismissed even if the judge was appointed under a (fundamentally) flawed appointment procedure.

13 Furthermore, the scope of cases in connection with which such an application can be filed has been restricted. The Polish legislature made the assumption that a judge of the Supreme Court (having been appointed with the participation of the 'new' KRS) always met the condition of being established by law. As a result, the construction adopted by the national legislature raises a number of problems not only in terms of formal logic, but, above all, common sense. Indeed, fulfilment of the condition that a tribunal must be established by law is of fundamental importance to any case.

14 There is a need for the Court of Justice to answer the questions referred because the provision of Article 29(5) et seq. of the Law on the Supreme Court is a hybrid legislative arrangement, the purpose of which is actually to legitimise judges appointed under a procedure that is flawed from the point of view of the judicial qualities of being established by law, independent and impartial.

15 On the other hand, in a national environment with a highly destabilised judicial system, it may prove impossible or at least very difficult and time-consuming to compose, as in this case, an entire five-judge panel that fully meets EU, conventional and constitutional requirements, which, in turn, will result in a party's right to have a case heard within a reasonable time, as guaranteed by EU law (second paragraph of Article 47 of the Charter), international conventions (Article 6(1) of the ECHR) and national law (Article 45(1) of the Constitution of the Republic of Poland), becoming illusory. In such a situation, it must be considered whether the national court should nevertheless – guided by pragmatism, arithmetic, and the need, in the final analysis, to choose a solution that will have less severe negative consequences – rule on the application to examine whether a judge of the Supreme Court fulfils the requirements of independence and impartiality when the majority of the panel (three out of five) have the proper attributes of judicial authority. It should be noted that in the present proceedings, the court panel at first instance consists of five judges, and at second instance of seven judges, while in the main case (to authorise criminal proceedings against a judge), the panel at first instance consists of a single judge, and at second instance of three judges. Of course, in those circumstances, the votes of judges appointed to the Supreme Court under a flawed procedure should not be taken into account. Indeed, the national legislature's adoption of five-judge and seven-judge panels in such cases was motivated solely by political (legitimising improperly appointed judges) rather than juridical goals. On the other hand, for a judge to refrain from ruling because the court panel is unlawful means giving way to lawlessness.

16 In view of the above, an answer from the Court is necessary as to how – from the point of view of EU law and its interpretation – a judge of a Member State is to act when he or she has been assigned to an unlawful court panel and has exhausted all possibilities under national law to rectify the composition of that panel.

17 Referring to the case-law of the Court and of the ECtHR, the referring court points out that where it appears that a provision of national law reserves jurisdiction to hear cases to a court which does not meet the requirements of independence or impartiality under EU law, in particular Article 47 of the Charter, another court before which such a case is brought has the obligation, in order to ensure effective judicial protection within the meaning of Article 47 and in accordance with the principle of sincere cooperation enshrined in Article 4(3) TEU, to disapply that provision of national law so that case may be determined by a court which meets those requirements and which, were it not for that provision, would have jurisdiction in the area in question. Thus, if it turns out that the ruling was made by a body which does not constitute an independent and impartial tribunal previously established by law, within the meaning of EU law, it will not be possible to successfully rely on any considerations derived from the principle of legal certainty. Consequently, that the national legislature, in Article 29(5) et seq. of the Law on the Supreme Court, limited the permissibility of examining a judge's qualities to the requirements of independence and impartiality, and thus,

in essence, excluded the premiss of establishment by law, is contrary to Article 47 of the Charter and Article 6(1) of the ECHR as well as Article 45 of the Constitution of the Republic of Poland. It is necessary, therefore, to distinguish between the public-law status of such judges as state officials, which cannot be challenged, and their judicial attributes, such as establishment by (national) law that is compatible with the Constitution, independence and impartiality.

18 At this point, it should be noted that on 13 January 2023, the Polish legislature enacted the Law amending the law on the Supreme Court and certain other laws, which allowed for the possibility to examine the fulfilment of that condition as well, but the President of the Republic of Poland referred the law to the Trybunał Konstytucyjny (Constitutional Court) in order for its compatibility with the Constitution of the Republic of Poland to be examined, and the Constitutional Court found the law to be incompatible with the Constitution in its judgment of 11 December 2023, No Kp 1/23.

19 A fundamental feature of the judicial system is the right to a court with jurisdiction, which encompasses the concepts of a court having jurisdiction to hear a case by virtue of its territorial, material and functional jurisdiction, and also a court that is properly composed and gives rulings in accordance with its jurisdiction. A court with jurisdiction is a court with a properly composed panel consisting of judges who have the authority to rule in a given court, in a given instance and in a given case, that is to say, they have legitimate jurisdictional authority in a particular case.

20 The process of appointing judges is, by definition, part of the concept of establishing a court by law within the meaning of Article 6(1) of the ECHR and Article 47 of the Charter. There is a close connection between the correctness of a judge's appointment and the assessment of whether a court can be considered independent within the meaning of Article 6(1) of the ECHR and Article 47 of the Charter, since underlying both of those requirements is the need to maintain public confidence in the judiciary and ensure its independence from other branches of government. The right to a tribunal established by law is an independent right under Article 6(1) of the ECHR, and the close connection between that right and guarantees of independence and impartiality is often emphasised. The examination of whether the requirement of a tribunal established by law has been met consists in determining whether the alleged irregularity in a particular case is sufficiently serious to undermine the abovementioned fundamental principles and threaten the independence of the court in question.

21 In the judgment in A.K., the Court of Justice ruled that Article 47 of the Charter must be interpreted as precluding cases concerning the application of EU law from falling within the exclusive jurisdiction of a court which is not an independent and impartial tribunal within the meaning of that provision. Implementing the abovementioned Court judgment, in a resolution dated 23 January 2020, No BSA 1-4110-1/20, the combined chambers of the Supreme Court (Civil Chamber, Criminal Chamber, and Chamber of Labour and Social Insurance) clarified that a

court is improperly composed within the meaning of applicable laws, resulting in the proceedings being null and void, also where its composition includes a person appointed to the position of judge of the Supreme Court upon a proposal from the KRS constituted under the procedure stipulated in the 8 December 2017 amendment. That resolution was given the force of a legal principle. The referring court points out that the abovementioned resolution cannot be reversed by the Constitutional Court's judgment of 20 April 2020, which declared it unconstitutional, since that judgment went beyond the constitutional competence of the Constitutional Court, and, moreover, the panel that gave the judgment included Judge M.M., whose inclusion in the panel was found by the ECtHR to violate the right to a tribunal established by law (judgment of 7 May 2021, Application No 4907/18, *Xero Flor w Polsce sp. z o.o. v. Poland*).

22 As for the condition of being established by law, under the Constitution of the Republic of Poland judges are appointed by the President of the Republic of Poland upon a proposal from the KRS. However, a presidential appointment cannot cure irregularities in the appointment process in such a manner that the inclusion of a judge so appointed in an adjudicating panel renders that court an independent and impartial tribunal established by law under the Constitution (Article 45(1) of the Constitution of the Republic of Poland), international conventions (Article 6(1) of the ECHR), and EU law (Article 47 of the Charter).

23 The referring court invokes the European standards on the qualities of a judge contained in the United Nations Basic Principles on the Independence of the Judiciary approved by General Assembly resolution No 40/32 of 29 November 1985 and No 40/146 of 13 December 1985, and in the European Charter on the Status of Judges of 8–10 July 1998.

24 The referring court describes the origins of the KRS and its responsibilities, pointing out how the changes implemented in 2018 have resulted in judicial appointment procedures conducted with the involvement of that body in its new form being flawed. As a result of that flaw, a court that includes judges so appointed does not meet the requirements of a court with jurisdiction within the meaning of Article 45(1) of the Constitution of the Republic of Poland and of a tribunal established by law within the meaning of Article 6(1) of the ECHR and Article 47 of the Charter, and thus, without further examination, cannot be considered independent and impartial in the sense required by the above provisions.

25 The referring court points out that it is not possible to cure such a flaw by limiting the examination conducted by a court, in a case where a plea has been raised that the proceedings are null and void, exclusively to the conditions of impartiality and independence, since a court has no authority to replace the KRS and to assess, after the fact, whether an improperly appointed judge would have nevertheless been appointed to a judicial position if (hypothetically) the KRS had not been a flawed constitutional body. The presidential appointment of judges is not subject to judicial review, but, also in view of the fact that the President signed the law

amending the KRS, which was obviously incompatible with the Constitution and with the hitherto unquestionable will of the constitutional legislature, and in view of the President's obvious disregard for the rule of law highlighted by the European Court of Human Rights, inter alia, in connection with the 2018 appointments to the Civil Chamber of the Supreme Court, the judges so appointed by the President cannot be considered to meet the constitutional, conventional and EU attributes of an independent and impartial tribunal previously established by law.