Anonymised version

Case C-159/25 [Rowicz] [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:

26 February 2025

Referring court:

Sąd Okręgowy w Warszawie (Poland)

Date of the decision to refer:

6 February 2025

Appellants:

B.Ż

V. sp. z o.o.

Respondents:

T. SA

Ł.W.

Subject matter of the main proceedings

Two joined appeals against judgments at first instance ordering the payment of claims relating to late payment in commercial transactions. In both cases, a question arose as to whether the procedure for designating the adjudicating panel using an IT tool based on a random number generator – the System Losowego Przydziału Spraw (Random Case Allocation System) (‘SLPS’) – was compatible with EU law.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

Subject matter and legal basis of the request

Interpretation of Article 2 and the second subparagraph of Article 19(1) of the Treaty on European Union, read in conjunction with Articles 20 and 47 of the Charter of Fundamental Rights of the European Union, and recital 61 of Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144, and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act).

The question is referred pursuant to Article 267 of the Treaty on the Functioning of the European Union (TFEU).

Question referred for a preliminary ruling

In the light of Article 2 and the second subparagraph of Article 19(1) of the Treaty on European Union, read in conjunction with Articles 20 and 47 of the Charter of Fundamental Rights of the European Union and recital 61 of Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), does an ordinary court of last instance of a Member State whose composition includes a judge of that court designated by a random number generator to hear the case on the basis of the draw report and a prior decision of the college of the court constitute an independent and impartial tribunal previously established by law that ensures cases are heard without undue delay in a non-discriminatory manner and guarantees effective judicial protection in circumstances where:

1. a court administrative body such as the Kolegium Sądu Okręgowego (college of the regional court) arbitrarily released the previously assigned judge from the obligation to hear the cases already assigned to her, contrary to the provisions of national law on the assignment of cases, despite the fact that the national statutory criteria for releasing her from that obligation were not met, and did so in breach of the principle that a change in the composition of the court may only occur where it is impossible for the court to hear the case in its existing composition or where there is a lasting obstacle to it hearing the case in its existing composition;

2. a new judge was assigned using the SLPS random case allocation generator developed by a member of the executive branch of government, namely the Minister Sprawiedliwości (Minister for Justice), under the rules for the randomised assignment of cases in courts established by way of a regulation issued by that Minister (paragraphs 43–76 of the Rozporządzenie Ministra Sprawiedliwości z 18.6.2019 r. – Regulamin urzędowania sądów

powszechnych [Regulation of the Minister for Justice of 18 June 2019 laying down rules on the operation of the ordinary courts]) and in a manner that infringes the right to an independent and impartial tribunal and the right to a tribunal established by law;

3. a new judge was assigned using the SLPS random case allocation generator without knowledge of the source code or the ability to verify the operation of the SLPS algorithm for random case allocation to judges, where information on that system was published only on the Biuletyn Informacji Publicznej [Public Information Bulletin] website, or the ability to ascertain the vulnerability of the random case allocation tool to errors and manipulation, in a manner that infringes the parties' right to a fair trial;

4. a new judge was assigned using the SLPS random case allocation generator developed by a member of the executive branch of government, namely the Minister Sprawiedliwości (Minister for Justice), under the rules for the randomised assignment of cases in courts established by way of a regulation issued by that Minister (paragraphs 43–76 of the Rozporządzenie Ministra Sprawiedliwości z 18.6.2019 r. – Regulamin urzędowania sądów powszechnych [Regulation of the Minister of Justice of 18 June 2019 laying down rules on the operation of the ordinary courts]) and in a manner that infringes the parties' right to have their cases heard without undue delay through a failure to guarantee an even workload for judges as a result of the operation of the SLPS, in a manner that discriminates against the parties and infringes the principle of equality before the law;

5. this results in the judge hearing the case in proceedings that are invalid on account of the composition of the court being contrary to the provisions of law and the parties not being afforded effective judicial protection;

6. there is no effective remedy in national law available to the judge against a written decision of the court administrative body regarding the allocation of the case, the assignment of judges and the composition of the court, as there is no judicial remedy enabling the judge to challenge such a written decision before an impartial and independent tribunal in proceedings that meet the requirements arising from Articles 47 of the Charter of Fundamental Rights?

Provisions of European Union law relied on

Treaty on European Union ('the TEU'): Article 2 and the second subparagraph of Article 19(1);

Charter of Fundamental Rights of the European Union ('the Charter'): Articles 20 and 47;

Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and

amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) ('Regulation 2024/1689'): recital 61;

Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions: Article 6.

Provisions of national law relied on

Ustawa z 17 listopada 1964 r. Kodeks postępowania cywilnego (Law of 17 November 1964 establishing the Code of Civil Procedure) (consolidated text: Dziennik Ustaw (Journal of Laws) of 2024, item 1568): Article 379(4);

Ustawa z dnia 8 marca 2013 r. o przeciwdziałaniu nadmiernym opóźnieniom w transakcjach handlowych (Law of 8 March 2013 on Counteracting Excessive Delays in Commercial Transactions (Dziennik Ustaw of 2023, item 1790): Article 10;

Ustawa z dnia 27 lipca 2001 r. – Prawo o ustroju sądów powszechnych (Law of 27 July 2001 on the organisation of the ordinary courts) (consolidated text: Dziennik Ustaw of 2024, item 334) ('the LOOC'): Articles 37b(1), 41, 47a and 47b.

Rozporządzenie Ministra Sprawiedliwości z 18 grudnia 2019 r. – Regulamin urzędowania sądów powszechnych (Regulation of the Minister for Justice of 18 June 2019 laying down the down rules on the operation of the ordinary courts) (Dziennik Ustaw of 2024, item 867) ('the ROOC'): paragraphs 2(16), 43, 45, 48–50, 53, 55, 60–62, 66, 68 and 74–76.

Succinct presentation of the facts and procedure in the main proceedings

1 The cases in the main proceedings were registered with the referring court on 13 June and 14 June 2024.

2 On 17 and 18 June 2024, the SLPS randomly assigned Judge JD to hear those cases.

3 Judge JD was transferred to another division of the same court, and by decision of the college of that court, she was released on 30 October 2024, at her request, from the obligation to hear 100 cases allocated to her in 2024 by the SLPS in the previous division, including both cases which the request for a preliminary ruling concerns. No reasons were given for the college's decision, but twelve other cases that Judge JD was required to complete were indicated therein. It was not

explained why the judge was released from her obligation to complete the remaining 100 cases.

4 On 13 January 2025, Judge JD's remaining caseload (consisting of 100 cases) was included in a new draw to randomly select another judge, without any reason being given as to why those cases were entered into the SLPS on that specific date and without any explanation for the preceding two and a half months of inactivity. As a result of the SLPS draw, Judge Aneta Łazarska was assigned 56 of Judge JD's 100 cases, including both cases which the request for a preliminary ruling concerns, while other judges were either assigned either no cases or just a few cases.

5 Judge Aneta Łazarska's appeal against that allocation of Judge JD's cases was dismissed. The president of the court, who heard the appeal, pointed out that it was not within his remit to evaluate the operation of the SLPS, and the system 'probably' assigned Judge Aneta Łazarska to the cases in question so that her caseload would be equal to that of other judges. It was not indicated what Judge Aneta Łazarska's caseload should be, what the other judges' caseloads were, and why the generator allocated, in a single draw, as many as 56 cases to a single judge (and no cases or just a few cases to other judges). A draw done by a random number generator is a technical operation carried out pursuant to an order issued by the president of the court division. That order is a written decision of an administrative body (it is not a ruling and cannot be appealed to a Regional Administrative Court).

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

6 The second subparagraph of Article 19(1) TEU gives concrete expression to the value of the rule of law affirmed in Article 2 TEU, entrusting the responsibility for ensuring the full application of EU law in all Member States and judicial protection of the rights of individuals under that law to national courts and tribunals and to the Court of Justice (judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, paragraph 39 and the case-law cited). Therefore, the second subparagraph of Article 19(1) TEU must be interpreted in the light of Article 2 TEU, as the referring court must meet the requirements resulting from the right to effective judicial protection in order to hear the case between the parties, observing the principles of impartiality and independence and hearing the case without undue delay.

7 The dispute in the main proceedings falls within the scope of application of EU law within the meaning of Article 51(1) of the Charter. This is confirmed by the settled case-law of the Court, according to which the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by EU law, but not outside such situations (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, paragraph 78 and the case-law cited).

8 The requirement of effective judicial protection has long been part of the EU system and stems from Article 19(1) TEU and Article 47 of the Charter. Article 19(1) TEU states in general terms that Member States shall 'provide remedies sufficient to ensure effective legal protection'. That provision does not refer to the concept of the independence of judges or courts. However, under Article 47 of the Charter, the standard for effective judicial protection is protection by an 'independent and impartial tribunal'. According to Article 47 of the Charter, everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal. As the Court has found, 'the obligation imposed on the Member States, in the second subparagraph of Article 19(1) TEU, to provide remedies sufficient to ensure effective legal protection in the fields covered by Union law corresponds to that right'. Those principles concern, in particular, the composition of the body and the appointment, length of service and grounds for rejection and dismissal of its members, in order to dispel any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it.

9 Article 47 of the Charter is also applicable for the reason that the second subparagraph of Article 19(1) TEU requires Member States to provide remedies sufficient to ensure effective judicial protection, within the meaning in particular of Article 47 of the Charter, in the fields covered by EU law. Therefore, that latter provision must also be duly taken into consideration for the purposes of interpreting the second subparagraph of Article 19(1) TEU (see, to that effect, the judgment of 20 April 2021, *Repubblika*, C-896/19, paragraph 45 and the case-law cited).

10 The principle of effective judicial protection of individuals' rights under EU law thus referred to in the second subparagraph of Article 19(1) TEU and, therefore, the requirement to guarantee the independence and impartiality of courts and tribunals is a general principle of EU law stemming from the constitutional traditions common to the Member States, which is now reaffirmed by Article 47 of the Charter. In addition, Article 52(3) of the Charter is intended to ensure the necessary consistency between the rights contained in the Charter and the corresponding rights guaranteed by the European Court of Human Rights in Strasbourg ('the ECtHR'), without undermining the autonomy of EU law and that of the Court of Justice of the European Union. Account must therefore be taken of the corresponding rights guaranteed by the ECtHR for the purpose of interpreting the Charter, as the minimum threshold of protection (judgment of 6 October 2020, *La Quadrature du Net and others*, C-511/18, C-512/18 and C-520/18). The case-law of the ECtHR addresses the question of the gravity of irregularities that may constitute, on the basis of the 'threshold test', a breach of the right to a 'tribunal established by law' (see the ECtHR judgment of 1 December 2020 in *Guðmundur Andri Ástráðsson v. Iceland*, paragraphs 235–290).

11 The national court has taken into account the fact that, according to EU case-law, the requirement of judicial independence, which derives from the second

subparagraph of Article 19(1) TEU, has two aspects. The first aspect is external in nature, and the second internal. The latter aspect is linked to impartiality and concerns ensuring a level playing field for the parties to proceedings and their respective interests with regard to the subject matter of those proceedings. That aspect requires objectivity and the absence of any interest in the outcome of the proceedings apart from strict application of the rule of law.

12 The referring court concurs with the Opinion of Advocate General Medina of 20 June 2024 in Case C-197/23, point 79, which states that those two aspects – external and internal – form part of the test to find whether the specific situation in which the case has been (re)allocated to a judge at first instance is of such a type and of such gravity as to create a real risk that (a) other persons or administrative bodies within the judiciary itself could exercise undue discretion undermining the integrity of the outcome of the (re)allocation of cases to judges and (b) the result of such a (re)allocation could call into question the objectivity and absence of any 'interest in the outcome of the proceedings' and thus give rise to a reasonable doubt in the minds of individuals as to the independence and impartiality of the judge(s) concerned.

13 In the view of the referring court, all of the abovementioned prerequisites of the threshold test have been met. They should trigger the right to judicial review in accordance with the second subparagraph of Article 19(1) TEU, as interpreted in the light of Article 2 TEU and Article 47 of the Charter, in so far as such violations are capable of casting doubt on the independence and impartiality of a Member State court or tribunal.

14 The right to a court established by law enshrined in Article 47 of the Charter is a guarantee not only of constitutional, but also functional judicial independence. The absence of guarantees of transparent case allocation has an important bearing on the exercise of EU citizens' rights to a fair trial, as it allows manual control over that process and often also the selection of amenable judges who rule according to the wishes and orders of the [political] authorities. Objective criteria for the allocation of cases could include cyclical rotation, names of parties, districts for which local courts are competent, and judges' specialist knowledge. To ensure the transparency of that process, and thus the reputation of the judiciary, it is important that the system cannot be manipulated.

15 Owing to those fundamental considerations, national law stipulates that the adjudicating panel of a court must remain unchanged. This statutory principle provides that the composition of a court must remain constant (unchanged) from the moment the adjudicating panel has been randomly selected until it has ruled on the case. Exceptions to the principle of constant court composition are strictly defined by regulations.

16 Pursuant to Article 47b(1) of the LOOC, a change in the composition of a court may take place only where it is impossible for the court to hear and determine the case in its current composition or where there is a lasting obstacle to the court

hearing and determining the case in its current composition. No such circumstance arose in the case at issue, as there was no obstacle to Judge JD continuing to hear cases. Pursuant to Article 47b(4) and (6) of the LOOC, the change of a judge's posting or a judge's secondment to another court, as well as the termination of a judge's secondment, do not constitute an obstacle to the judge handling the cases to which he or she was assigned at his or her previous posting or place of service until those cases have been completed; this also applies to a judge's transfer to another division of the same court. There is no doubt that in view of the principle of constant court composition and the guarantee of the right to a court established by law, such a decision to release a judge from the obligation to hear 100 cases should be based on statutory criteria and include a statement of reasons, especially as that decision is made not by a court but by a court administrative body. A decision of the college of the court should not be arbitrary and discretionary; in particular, an explanation should be given as to why a judge is released from the obligation to hear some cases and, above all, those provisions should not be used to circumvent the principle of constant court composition and to 'select' the cases where the assigned judge is to be replaced. Those norms provide a guarantee of an independent and impartial tribunal previously established by law in a system where cases can be reallocated to another judge.

17 The reason for releasing Judge JD from the obligation to hear 100 ongoing cases was not an extraordinary obstacle or circumstance, but rather her transfer to another division within the same court building. The college's decision was discretionary and contained no explanation as to why the principle of constant court composition was not observed. The court's doubts, therefore, relate to the question whether, in the light of Article 2 and the second paragraph of Article 19(1) TEU, read in conjunction with Article 47 of the Charter, an ordinary court of last instance of a Member State is an independent and impartial tribunal previously established by law that ensures that cases are heard without undue delay in a non-discriminatory manner and guarantees effective judicial protection where the adjudicating panel includes a judge of that court designated by a random number generator on the basis of the draw report and a prior decision of the college of the court made contrary to the provisions of national law on the assignment of cases, and after the court administrative body had arbitrarily released the previously assigned judge from the obligation to hear the cases already assigned to her, despite the fact that the national statutory criteria for releasing her from that obligation were not met, and did so in breach of the principle that a change in the composition of the court may only occur where it is impossible for the court to hear the case in its existing composition or where there is a lasting obstacle to the court hearing the case in its existing composition.

18 The reference to a 'tribunal established by law', which appears in the second paragraph of Article 47 of the Charter, reflects, in particular, the principle of the rule of law and covers not only the legal basis for the very existence of a tribunal, but also the composition of the bench in each case and any other provision of domestic law which, if breached, would render the participation of one or more judges in the examination of a case irregular (see the Court's judgments of

29 March 2022, *Getin Noble Bank*, C-132/20, paragraph 121, and of 6 October 2021, *W.Ż.*, C-487/19, paragraph 129).

19 It follows from national case-law that a change in the composition of the court may take place only where it is impossible for the court to hear the case in its existing composition or where there is a lasting obstacle to the court hearing the case in its existing composition (Article 47b(1) of the LOOC). As a rule, an adjudicating panel must complete the cases allocated to it, including when, as a result of a change in the sharing of duties, one of the judges is transferred to another division without his or her consent.

20 In its judgment of 5 June 2023, *Commission v Poland (Independence and private life of judges)* (C-204/21, paragraphs 226 and 227), the Court held that a rule of national law which generally prevents the review of allocation of cases to judges, namely Article 55(4) of the Law on the System of the Ordinary Courts, infringes the second subparagraph of Article 19(1) TEU, read in conjunction with Article 47 of the Charter.

21 The principle of random case allocation consists in the allocation of cases to judges and trainee judges randomly within each category of cases (Article 47a(1) *ab initio* of the LOOC). The random allocation of cases to judges and trainee judges within each category of cases is carried out by an ICT system for the random allocation of cases and court tasks that operates on the basis of a random number generator (SLPS) (paragraph 2(16) of the ROOC). Since the beginning of the system's operation, the underlying algorithm of the SLPS was not known. The system was, and continues to be, fraught with numerous errors.

22 Some of the flaws in the SLPS were described in the 22 September 2020 report of the Najwyższa Izba Kontroli (Supreme Audit Office), but the system was approved for use without any security testing and operated in that manner for nearly 18 months. As a result of insufficient testing, inadequate preparation and support for users, and the lack of automation of some processes, in 2018 the operation of the SLPS program was disrupted by errors that were both system- and user-related, such as errors related to changes in system indicators. In view of the large number of errors present in the SLPS, the key task was to diagnose and fix them. However, the process of fixing errors, even major ones, was lengthy. Currently, neither the court nor the parties have any tools to enable them to verify whether the system is operating correctly, and the court does not know the program's source code.

23 It is only since the judgment of the Naczelny Sąd Administracyjny (Supreme Administrative Court) of 19 April 2021, No III OSK 836/21 that the activities of a public authority regarding the design, use and functioning of the SLPS have been considered to be 'a public matter' within the meaning of Article 1(1) of the Ustawa o dostępie do informacji publicznej (Law on Access to Public Information), and that the way in which the SLPS operates, as determined by its algorithm, constitutes information about the sequence of operations resulting in

the assignment of a specific judge to hear a specific case. The fact that the abovementioned sequence of operations is carried out by a computer program and is therefore technical in nature does not change the fact that the information on how a judge is assigned to a case is public information. Consequently, the use of algorithmic systems in the exercise of public authority may potentially impinge on the fundamental rights of individuals, such as the right to a fair and public hearing of their cases within a reasonable time by an independent and impartial tribunal.

24 Following the abovementioned Supreme Administrative Court judgment, the Minister of Justice published a document entitled 'Algorytm na podstawie dokumentacji analitycznej' (The algorithm on the basis of analytical documentation) on the Public Information Bulletin website. The mathematical formula used to calculate the 'cost of a case', taking into account both the case allocation rate and absenteeism, was also published. However, a fundamental shortcoming continues to be the non-availability and non-transparency of the data relating to how the IT tool in question operates. To date, the source code has not been provided, and the information published in the Public Information Bulletin is only the program's algorithm. Reports on the random allocation of cases using the SLPS have also begun to be published.

25 Doubts about the actual impartiality of the system's operation were also raised by the former Rzecznik Praw Obywatelskich (Ombudsman). The Ombudsman pointed out that since the source code was not available, it was not possible to determine how judges were assigned to specific cases, and in practice it turned out that the draw results were a source of concern for citizens, who raised many objections in their applications to the Ombudsman. Despite those objections, the source code of the SLPS system has so far not been disclosed. The code is only known to the SLPS administrator, and users of the program in the courts do not have access to it.

26 In view of the principle of judicial independence and the right to a tribunal established by law, fundamental doubts are raised by the overly broad powers of the Minister of Justice, as a representative of the executive, to determine the detailed rules for the allocation of cases to judges, including the determination of court composition by way of an internal ministerial act, that is, a regulation. Pursuant to the powers delegated by Article 41(1) of the LOOC, the Minister for Justice, following consultation with the Krajowa Rada Sądownictwa (National Council of the Judiciary), determines, by way of a regulation, the internal Rules on the operation of the ordinary courts, which stipulate: (1) the internal organisation and operation of the courts; (2) the detailed rules for the allocation of cases, including: (a) the method by which cases are drawn; (b) the rules for determining adjudicating panels that include multiple judges; (d) the rules for reducing caseload owing to functions performed and justified absences, and the grounds for temporarily suspending the allocation of cases; (e) the conditions for participating in the allocation of only certain categories of cases heard in the court division; (f) the rostering system and the types of cases to be allocated in accordance with the roster; (g) the rules for drawing up a substitution plan and the

types of activities to be undertaken in accordance with the substitution plan. There is no doubt that those matters fall within the scope of judicial independence, including in particular the determination of the rules for allocating cases to judges, the rostering system and the conditions for participating in the allocation of cases. It is difficult to find any justification for such extensive influence and impact by the minister on matters falling within the scope of judicial independence, including the determination of court composition.

27 Therefore, the regulations authorising the Minister of Justice to determine how cases are to be randomly allocated are contradictory because, by definition, random allocation does not ensure an even and objectively determined caseload. Article 41 of the LOOC is itself vague; it uses the terms 'even', 'objectively determined caseload' and 'similar probability of participation' without defining and clarifying those principles, which gives the minister a great deal of discretion when it comes to developing a case allocation tool. Decoding those principles from the operation of the algorithm is another matter entirely. Article 47a(1) of the LOOC also refers to 'categories of cases'. The purpose of dividing cases into categories was to classify them according to the workload they entail. As a result of that division, cases are marked with a particular statistical symbol and entered into relevant registers. This is an act of gross oversimplification, as even cases in the same category may vary in terms of workload (depending on the parties, the number of volumes and size of the case file, the legal and factual problems and the scope of the evidence taken). Thus, a case allocation system defined in that manner does not take into account the actual workload involved in a case, as it relies on the abstract notion of 'categories of cases', and yet within each category there are different types of cases. That mechanism is not sufficient to ensure an even and objectively determined caseload for judges, and is subject to the minister's discretion.

28 The complexity of the SLPS, combined with the potential for human error, makes the system vulnerable to manipulation, and the ambiguity of the applicable laws creates the risk that legal regulations may be incorrectly translated into the automatic operation of the program. System errors, in turn, may result in violations of the right to a court established by law. The parameters of the system remain unknown, and actions such as increasing or decreasing a specific judge's caseload on a one-off basis leave no trace in the generated reports, while some parameters specified in the ROOC are not taken into account at all.

29 The SLPS also fails to ensure an even distribution of caseloads between courts, thereby violating the principle of efficiency of proceedings and the principle, arising from Article 47(1) of the Charter, that cases should be heard without undue delay, as well as the principle of equality before the law. There is no doubt that guaranteeing an even caseload is as important as guaranteeing the random allocation of cases, as it impinges on the duration of court cases (which should be heard without undue delay) and thus on the right of EU citizens to due process and effective protection. In the case at issue, the technical tool allocated 56 cases to a single judge overnight (in a single draw), while other judges received no cases or

just a few cases in the same draw. Such an allocation of cases is discriminatory, as it results in a judge accumulating a significant backlog, which results in longer waiting times for cases to be heard. As a result, the waiting time becomes dependent on random factors, rather than on rational and efficient case management and on the even distribution of cases among all judges in a given court or division.

30 Given the fundamental importance of the right to a competent court, the case allocation system should meet the requirements of a fair trial (Article 47 of the Charter). The principles and criteria of the case allocation methodology should be objective and take into account the following: guarantees of the right to a fair trial, judicial independence and impartiality, the lawfulness of the procedure, the nature and complexity of cases, the competences, experience and specialist knowledge of judges, the number of judges and their caseloads, and the need for case allocation rules to be accessible to the public. Therefore, the system of dividing tasks in courts should be transparent, and any deviation from the established rules should be precisely worded and subject to external scrutiny. A transparent case allocation system helps ensure the right to a judge established by law and contributes to respect for the independence of judges and courts. The established rules for the distribution of cases should take into account the principle that caseloads must be equally divided among judges and courts so that cases can be heard without undue delay. The uneven distribution of cases in the national court system results in significant disparities in terms of the time required for a case to be scheduled for trial or an *in camera* hearing, and then the time required for that case to be heard. The allocation of cases within each individual court and its smallest unit (division) should likewise be based on transparent and rational principles. An unequal distribution of cases among judges within a given court can also result in disparities in the caseloads of judges within the unit in question, which may even infringe the rights of citizens to a court under Article 47 of the Charter and to equal treatment, as well as the principle of equal caseload, which should guide the organisation of work in the courts.

31 Ultimately, an uneven allocation of cases may also threaten a judge's internal independence. When deciding a case, a judge should be free from any pressure from within the court and also any time pressure caused by cases that remain to be heard. Allocating an excessive caseload to a judge may result in him or her trying to complete the cases assigned without putting in much work. Time pressure may lead to a judge opting for a ruling that takes the least amount of time and that the judge can easily justify, but not necessarily one that is fair.

32 In its judgment of 12 January 2016, *Miracle Europe Kft. v. Hungary*, Application No 57774/13, paragraph 58, the ECtHR found that, as a result of a discretionary reallocation of the case, the relevant court was not a tribunal established by law and, therefore, ruled that there was a violation of the right to a fair hearing under Article 6(1) ECHR.

33 In its judgment of 26 March 2020, *Réexamen Simpson v Council and HG v Commission*, C-542/18, paragraph 73 and the case-law cited, the Court pointed out that 'according to the settled case-law of the European Court of Human Rights, the reason for the introduction of the term "established by law" in the first sentence of Article 6(1) ECHR […] is to ensure in particular, [that] the principle of the rule of law [is respected] and covers not only the legal basis for the very existence of a tribunal, but also the composition of the bench in each case and any other provision of domestic law which, if breached, would render the participation of one or more judges in the examination of a case irregular, including, in particular, provisions concerning the independence and impartiality of the members of the court concerned'.

34 In its judgment of 15 July 2021, *Commission v Poland (Disciplinary regime for judges)*, C-791/19, paragraphs 172 and 173, the Court held that 'where no such criteria have been laid down, such a power could, inter alia, be used in order to direct certain cases to certain judges while avoiding assigning them to other judges, or in order to put pressure on the judges thus designated'.

35 The referring court notes that the current operation of the SLPS, which has not been verified and is controlled by the Minister of Justice, makes it possible to determine the composition of the court of second instance in an arbitrary manner. The parties to the proceedings do not have access to any IT tools provided by law that would allow them to verify the draw conducted using the random number generator. Judges are likewise unable to exercise control over the draw, as they have no effective means of challenging the written decision of the administrative body before an impartial and independent court.

36 It follows from Regulation 2024/1689 that certain AI systems intended for the administration of justice and democratic processes should be classified as high-risk, considering their potentially significant impact on democracy, rule of law, individual freedoms as well as the right to an effective remedy and to a fair trial. In particular, to address the risks of potential biases, errors and opacity, it is appropriate to qualify as high-risk AI systems intended to assist judicial authorities in researching and interpreting facts and the law and in applying the law to a concrete set of facts. In the case at issue, the case allocation system applied does not perform a technical function, but rather affects the exercise of the right to a court established by law as stipulated in Article 47 of the Charter. That system, developed by the executive branch of government, is not transparent and does not guarantee the right to a fair trial.

37 In its judgment of 14 November 2024, *S. S.A. v C. sp. z o.o.*, C-197/23, the Court found that the second subparagraph of Article 19(1) TEU, read in the light of Article 2 TEU and of Article 47 of the Charter, must be interpreted as precluding a national provision which in all circumstances prevents the appellate court from reviewing whether the reallocation of a case to the formation of the court which ruled on it at first instance was made in breach of the national rules on the reallocation of cases within the courts. It follows from the case-law of the Court of

Justice that if a Member State lays down legal provisions relating to the composition of the formation of the court sitting in each case and to the reallocation of cases, Article 19(2) TEU, read in the light of Article 2 TEU and of Article 47 of the Charter, requires that compliance with those rules may be subject to judicial review (see the judgment of the Court of 14 November 2024, *S. S.A. v C. sp. z o.o.*, C-197/23, paragraph 67). In the case at issue, the lack of judicial remedy against the decision of the college of the court makes it impossible to review the case allocation rules and, as a result, the proceedings conducted by the national court become invalid.

38 Provisions governing the composition of a court and the manner in which that composition is to be determined are guided by the utmost objective to ensure their role of safeguarding judicial independence, and thus avoiding influence by the legislative and executive authorities in connection with the assignment of a particular judge to hear a case and on arrangements between the judges themselves of a particular court as to which of them will hear a particular case. While Member States have discretion to choose how the composition of the court will be formed under national legislation, if such provisions of law are adopted, the independence of the court must be sufficiently guaranteed (see the Opinion of Advocate General Tanchev of 27 June 2019, C-585/18, C-624/18 and C-625/18, point 129).