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Judgment of the Court in Case C-521/21 | Rzecznik Praw Obywatelskich (Recusal of a judge of an ordinary court)

Rule of law: an irregularity committed during the appointment of a judge is not in itself sufficient to find that that judge is not independent, since an overall assessment of all of the circumstances attending the appointment of that judge is necessary

The participation of the Polish National Council of the Judiciary, in a composition resulting from a reform of the Polish judicial system, in a judicial appointment procedure and the lack of an effective judicial remedy for the unsuccessful candidates are not in themselves sufficient to recuse that judge

In Poland, a party to civil proceedings applied for the recusal of the judge hearing the case, whose appointment had been recommended by the National Council of the Judiciary ('the KRS'), which, in its new composition, did not provide sufficient guarantees of independence vis-à-vis the executive and the legislature. The Court of Justice recalls that the national courts must be able to review, in the context of recusal procedures, the lawfulness of judicial appointment procedures and to ascertain whether the judges concerned satisfy the requirements of EU law. According to the Court, only irregularities which, in view of their nature and their gravity, are capable, when taken together, of creating a real risk of interference from other branches of the State in the appointment procedure and of giving rise to reasonable doubt in the minds of individuals as to the independence and impartiality of the judge concerned can call into question the requirement of a tribunal previously established by law. The participation of the KRS, in its new composition, in the appointment procedure or the lack of an effective judicial remedy for the unsuccessful candidates, taken in isolation or together, are not sufficient to rule that the judge concerned should be recused.

A party to civil proceedings before a Polish court applied for the recusal of the judge hearing the case, asserting that that judge's appointment to that post was not valid.

That assertion was based on the fact that the judge's candidature had been proposed by the KRS, in its new composition resulting from a reform of the Polish judicial system that raises questions as regards the guarantee of judicial independence and the value of the rule of law. The Court of Justice has held that that body was established in breach of the fundamental constitutional principles of Polish law and without guaranteeing the independence and impartiality required, *inter alia*, by EU law. ¹ Furthermore, Polish law prohibits national courts from assessing the lawfulness of judicial appointment procedures. That prohibition applies to the Chamber of Extraordinary Control and Public Affairs of the Polish Supreme Court, even though it is the only court having jurisdiction in Poland over judicial recusals on the basis of lack of independence and over appeals brought by candidates who have not been successful in a judicial appointment procedure. Moreover, that chamber is also composed of judges appointed on a proposal of the KRS, in its new composition. ²

The court hearing the application for recusal has made a reference to the Court of Justice for a preliminary ruling. It wishes to know whether a judicial panel that consists of a judge appointed at the end of a procedure involving the KRS, in its new composition, and depriving unsuccessful candidates of an effective judicial remedy, may be regarded as an independent and impartial tribunal previously established by law, for the purposes of EU law. ³

The Court recalls that the judicial appointment procedure is one of the guarantees designed to prevent any interference with the independence and impartiality of judges. Accordingly, **the national courts must be able to review the legality of the appointment procedure and ascertain whether the judge concerned meets the requirement of an independent and impartial tribunal previously established by law.** ⁴

Next, the Court specifies that only irregularities which, in view of their nature and their gravity, are capable, when taken together, of creating a real risk of interference from other branches of the State in the appointment procedure and of giving rise to reasonable doubt in the minds of individuals as to the independence and impartiality of the judge concerned can call into question the requirement of a tribunal previously established by law. Accordingly, the national court hearing the application for recusal must **assess all of the circumstances attending that appointment so as to ascertain if they can give rise to such doubt in the minds of citizens.** Nevertheless, the Court finds that **neither the participation of the KRS, in its new composition, in the appointment procedure nor the lack of an effective judicial remedy for unsuccessful candidates – taken in isolation or considered together – is sufficient to rule that the judge concerned should be recused.**

Lastly, the Court finds that, in order to restore public trust in the judicial system and ensure observance of the principle of separation of powers, **it is for Poland to put in place a legislative framework that enables, in view of the nature and gravity of the irregularities committed during the judicial appointment procedure, an assessment of the possibilities for persons irregularly appointed to judicial posts to continue to perform their duties.** ⁵

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text, and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ See, to that effect, the judgment of the Court of 15 July 2021, *Commission v Poland (Disciplinary regime for judges)*, [C-791/19](#) (see Press Release [No 130/21](#)).

² Judgment of 21 December 2023, *Krajowa Rada Sądownictwa (Continued holding of a judicial office)*, [C-718/21](#) (see Press Release [No 206/23](#)).

³ Second subparagraph of Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights of the European Union.

⁴ In the judgment of 5 June 2023, *Commission v Poland (Independence and private life of judges)*, [C-204/21](#) (see also Press Release [No 89/23](#)), the Court held, inter alia, that, by adopting a prohibition, applicable to the national courts, on examining whether those conditions have been satisfied, Poland had failed to fulfil its obligations under EU law.

⁵ More than 3 000 judges, that is to say, approximately 30% of the judiciary in Poland, were appointed on a proposal of the KRS in its new composition, in respect of whose independence there is reasonable doubt.