

Poland, Supreme Court, II DO 52/20, 23 September 2020

Member State

 Poland

Topic

Independence of judges

Deciding Court Original Language

National Court

Sąd Najwyższy

(Disciplinary Chamber!)

Deciding Court English translation

Supreme Court

Registration N

II DO 52/20

Date Decision

September 23rd, 2020;

ECLI (if available)

Not available

EU legal sources and CJEU jurisprudence

Article 47 of EU Charter;

C – 585/18; C – 624/18, C – 625/18; C-506/04; C-407/98; C-24/92; C-516/99

ECtHR Jurisprudence

Not applicable

Subject Matter

Composition of Supreme Court – Disciplinary Chamber – Substance of the procedure for waiver of immunity

Legal issue(s)

Independence of judges – Disciplinary proceedings against judges – Proper composition of court – Scope of disciplinary rulings – Waiving the immunity of a judge/prosecutor

Request for expedited/PPU procedures

NO

Interim Relief

1. Indicate if the national court/applicant asked the CJEU/ECtHR for interim relief and a short summary of the reasons put forward
 2. Indicate if the CJEU/ECtHR granted the interim relief
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National Law Sources

Constitution;

Act on Supreme Court

Act on Ordinary Courts

Code of Criminal Procedure

Facts of the case

The Disciplinary Chamber has lawfully waived the immunity of the prosecutor and allowed him to be held criminally responsible.

The prosecutor demanded then a resumption of the procedure.

The CJEU ruling was cited as the basis for the resumption.

The Disciplinary Chamber left the request unrecognised.

As the main reason for the decision, it pointed out that the decision on allowing him to be held liable does not override the presumption of innocence, does not prejudge the guilt.

Moreover, the Disciplinary Chamber indicated that the decision of the CJEU cannot be regarded as binding on the grounds of the Polish legal order, because the questions were asked to the CJEU for a preliminary ruling in the composition contrary to the provisions of law.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

From reasoning (being quoted in extenso, however I underlined parts of particular meaning):

“It should be added here that the judgment of the Court of Justice of the European Union of 19 November 2019, mentioned by complainant W.P, in Joined Cases C-585/18, C-624/18 and C-625/18, cannot be regarded as binding on the grounds of the Polish legal order, because in all proceedings before the Chamber of Labour and Social Insurance of the Supreme Court, in which questions were submitted to the CJEU for a preliminary ruling (III PO 7/18 - question for a preliminary ruling registered in the CJEU at Sygn. C-585/18 - III PO 8/18 - question for a preliminary ruling registered in the CJEU under References C-624/18 - III PO 9/18 - question for a preliminary ruling registered in the CJEU under References C-625/18), were carried out in (panel) compositions which were contrary to legal regulations.

Each of the provisions which formulated the questions for a preliminary ruling was made up of three judges. There is no justification for omitting to apply the quoted provision of Article 79 of the Code of Civil Procedure, and proceedings in a composition contrary to the provisions of law in a case pending under the provisions of the Code of Civil Procedure lead to absolute nullity of the proceedings - pursuant to Article 379 of the Code of Civil Procedure. (Court assessed the decision of the CJEU on the basis of the legality of the composition of the questioner on grounds of Polish procedure)

The case-law of the CJEU has formulated the principle that the admissibility of hearing questions for a preliminary ruling depends on whether the referring authority meets the criteria of an independent court or tribunal. In its judgment of 19 September 2006, C-506/04, the Court formulated the boundary conditions for independence, inter alia by linking it to 'the concept of impartiality and equal distance between the parties to a dispute and their interests in relation to its subject matter'. Those conditions are intended to 'preclude any reasonable doubt on the part of the legal entities as to the independence of that body from external factors and its neutrality in relation to the interests at issue'. The need for objectivity is emphasised (judgment of 6 July 2000 in Case C-407/98 Abrahamsson and Anderson [2000] ECR I-5539, paragraph 32) and the absence of any

interest in the concrete settlement of the dispute other than the strict application of the law (similarly, judgments of 30 March 1993 in Case C-24/92 Corbiau [1993] ECR I-1277, paragraph 15, and of 30 May 2002 in Case C- 516/99 Schmid [2002] ECR I-4573, paragraph 36).

To sum up, the Supreme Court - in view of these obvious deficiencies in the filling of courts adjudicating in the cases of Sygn. file III PO 7/18 (question for a preliminary ruling registered in the CJEU under C-585/18), III PO 8/18 (question for a preliminary ruling registered in the CJEU under Sygn. C-624/18), III PO 9/18 (question for a preliminary ruling registered at the CJEU under C-625/18), which have the effect of rendering the proceedings invalid - considers that since the invalidity concerns the whole of the proceedings, a preliminary ruling of the CJEU which was obtained in the framework of such invalid proceedings cannot also be valid.

Relation of the case to the EU Charter

EU Charter was used as a legally binding parameter, without broader analysis. However, the analysis of Charter led to above-mentioned conclusion.

Relation between the EU Charter and ECHR

Not applicable

Use of Judicial Interaction technique(s)

It is not a judicial dialogue at all.

It is a clear attempt to eliminate the CJEU judgment from the Polish legal order.

Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

Only national jurisprudence

Strategic use of judicial interaction technique (purpose aimed by the national court)

Please indicate what was (presumably) the scope pursued by the national court when using judicial interaction techniques, namely whether they wanted to solve a conflict of norms, conflicts of judicial interpretation involving fundamental rights enshrined in the EU Charter, fill in legislative gaps, institutional conflict, etc.

Solving a conflict of norms in favor of Polish law only.

Impact on Legislation / Policy

NO impact on policy, but very strong and critical comments by scientists and legal practitioners.

Critical article in “Rzeczpospolita” Daily written by Piotr Kardas and Maciej Gudowski (both legal professors and barristers): “How did the Disciplinary Chamber want to invalidate the CJEU”

Some important thesis

“The mechanism used by the Supreme Court in its decision of 2 August 2018 to apply the EU standard and omit provisions of national law that are contrary to EU law is, on the other hand, a key, recognised and widely used mechanism of priority application of EU law since the 1960s (cf. e.g. Van Gend en Loos 26/62, Costa 6/64, SN's decision of 10 December 2015, V CSK 186/15).”

Secondly, ID erroneously considered that if there was a defect in the composition of the referring court (in this case, the Supreme Court as the referring court) causing the proceedings before that court, as defined in Article 379 of the Code of Civil Procedure, to be invalid, that defect would concern the proceedings before the CJEU. After all, the Court in Luxembourg does not rule at all on the basis of the Code of Civil Procedure. Therefore, from the perspective of the admissibility of a question for a preliminary ruling, the infringements of national procedure, which could possibly occur when formulating the question, are not relevant. For example, in the case of *Reina v. Landeskreditbank Baden-Wurtemberg*, 65/81, the Court answered the question of the national court even though the composition of the court was contrary to German law.

Indeed, only judicial authorities may ask for a preliminary question. This is, however, a question of the merit of an institution, and not of the correctness of its composition in the light of national law. The criteria for defining the court for a preliminary ruling procedure were set out in the *Abrahamsson v. Fogelquist* case, C-407/98, ordering consideration, in the course of the analysis, of whether the question for a preliminary ruling was asked by an authority entitled to do so, i.e. the Court of Justice: 1) whether the authority in question was established by law, 2) whether it is permanent, 3) whether its jurisdiction is mandatory, 4) whether it adjudicates in disputed proceedings, 5) whether it adjudicates by law, 6) whether it is independent. On the basis of this test, the admissibility of questions posed by the ordinary courts of law, administrative courts, within the scope of their public function, arbitration courts (*Nordsee v. Reederei Mond*, 102/81) and even disciplinary courts (*Broekmeulen*, 246/80) was recognised. In this context, the statement that the Supreme Court of the Republic of Poland is not a judicial body seems rather eccentric, even for a Disciplinary Chamber.

[Connected national caselaw / templates](#)

Templates #1,2,3, 14

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<http://www.sn.pl/sites/orzecznictwo/orzeczenia3/ii%20do%2052-20.pdf>

Official translation:

http://www.sn.pl/aktualnosci/SiteAssets/Lists/Komunikaty_o_sprawach/AllItems/Case%20II%20DO%2052-20.pdf

Author

Jarosław Gwizdak INPRIS

History of the case: (please note the chronological order of the summarised/referred national judgments.)

1. Disciplinary Chamber lawful decision on waiver the immunity;
 2. CJEU judgment;
 3. Motion for resumption the procedure.
 4. SC (DC) judgment.
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