

Poland, Supreme Court, case PO 3/19 - CJEU C-508/19

Member State

 Poland

Topic

Independence and impartiality

Sector

Use of the preliminary reference procedure

Deciding Court Original Language

Sąd Najwyższy

Deciding Court English translation

Supreme Court

Registration N

II PO 3/19 - SC; C-508/19 - CJEU

Date Decision

CJEU judgment: 22/03/2022

ECLI (if available)

ECLI:EU:C:2022:201

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

Article 2, Article 4(3), Article 6(3), and the second subparagraph of Article 19(1) TEU, Article 267 TFEU and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

Irrespective of the various objections raised by J.M., the Public Prosecutor and the Polish Government as to the admissibility of the request for a preliminary ruling, it is important to bear in mind that, according to settled case-law, the Court itself must examine the circumstances in which cases are referred to it by the national court in order to assess whether it has jurisdiction or

whether the request submitted to it is admissible (see, to that effect, judgments of 24 April 2012, Kamberaj, C?571/10, EU:C:2012:233, paragraph 41 and the case-law cited, and order of 6 September 2018, Di Girolamo, C?472/17, not published, EU:C:2018:684, paragraph 25). By analogy, judgment of 11 March 1980, Foglia, 104/79, EU:C:1980:73, paragraph 12.

ECtHR Jurisprudence

N/A

Subject Matter

Reference for a preliminary ruling – Article 267 TFEU – Interpretation sought by the referring court necessary to enable it to give judgment – Concept – Disciplinary proceedings brought against a judge of an ordinary court – Designation of the disciplinary court having jurisdiction to hear those proceedings by the President of the Disciplinary Chamber of the S?d Najwy?szy (Supreme Court, Poland) – Civil action for a declaration that a service relationship does not exist between the President of that disciplinary chamber and the Supreme Court – Lack of jurisdiction of the referring court to review the validity of the appointment of a Supreme Court judge and inadmissibility of such an action under national law – Inadmissibility of the request for a preliminary ruling

Request for expedited/PPU procedures

First, it is of the utmost importance that answers to the questions referred for a preliminary ruling will enable the Supreme Court to rule on the application to secure the action, which by its very nature should be decided by the national court within seven days (Article 737 of the Code of Civil Procedure). Secondly, the decision on the admissibility of such a measure to protect the rule of law admissibility of such a measure for the protection of the rule of law as that covered by Question No 1, in the circumstances covered by Questions Nos 2 to 4, determines the possibility of bringing actions for a declaration of the non-existence of an official relationship and the absence of a mandate to exercise judicial power by all persons to whom instruments of appointment to the post of judge of the Supreme Court have been issued in the same circumstances as in the defendant's case. After thirdly, as explained above, these persons - when ruling in the Disciplinary Chamber, Extraordinary Review and Public Affairs Chamber and the Civil Chamber - are take various actions under national law aimed at blocking the parties to proceedings from exercising their right to a court within the meaning of Article 6(1) of the ECHR and the principle of effective judicial protection. Fourthly, further nomination processes are pending before the NCJ on the basis of legislation which, if questions 2-4 may lead to further appointments to the Supreme Court contrary to the principle of effective judicial protection.

Interim Relief

No

National Law Sources

Constitution, Law on Supreme Court, Code of Civil Procedure, Law on the ordinary courts, Law on National Council of Judiciary,

Facts of the case

M.F. holds office as a judge at the Sąd Rejonowy w P. (Regional Court of P., Poland). On 17 January 2019, the Deputy Disciplinary Officer responsible for cases concerning judges sitting in the ordinary courts decided to initiate disciplinary proceedings against M.F. for alleged slowness in the proceedings conducted by her and alleged delays in drawing up the grounds for her decisions. In his capacity as President of the Sąd Najwyższy (Supreme Court) responsible for the work of the disciplinary chamber of that court, J.M. issued on 28 January 2019, under Article 110(3) of the Law on the ordinary courts, an order designating the Sąd Dyscyplinarny przy Sądzie Apelacyjnym w ... (Disciplinary Court at the Court of Appeal of ..., Poland) as the disciplinary court having jurisdiction to hear those disciplinary proceedings at first instance.

Following the adoption of that order, M.F. brought an action before the Sąd Najwyższy (Supreme Court) under Article 189 of the Code of Civil Procedure seeking a declaration that a service relationship does not exist between J.M. and the Sąd Najwyższy (Supreme Court), within the meaning of Article 33(1) of the Law on the Supreme Court, on account of irregularities affecting his appointment to the office of judge in the Disciplinary Chamber of the Sąd Najwyższy (Supreme Court). M.F. also made an application to have all the judges appointed to that disciplinary chamber removed and to have the Izba Pracy i Ubezpieczeń Społecznych (Labour and Social Insurance Chamber) of the Sąd Najwyższy (Supreme Court) designated to rule on that action. Lastly, M.F. made a request, as an interim measure and for the duration of the main proceedings, for an order to stay the disciplinary proceedings brought against her. In support of her action, M.F. claimed that J.M.'s appointment to the position of judge of the Sąd Najwyższy (Supreme Court) was ineffective because the instrument of appointment by the President of the Republic was delivered to him on 20 September 2018, whereas the KRS resolution of 23 August 2018 which proposed J.M. for appointment to that position was the subject of an appeal brought on 17 September 2018 before the Naczelny Sąd Administracyjny (Supreme Administrative Court), pursuant to Article 44(1a) of the Law on the KRS, by a candidate not proposed for appointment under that resolution. In addition, the selection procedure at issue was conducted following a communication from the President of the Republic adopted on the basis of Article 31(1) of the Law on the Supreme Court and published on 29 June 2018, a communication which did not bear the required ministerial countersignature.

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

In that regard, it must be noted that, as is apparent from settled case-law, although it is true that the organisation of justice in the Member States falls within the competence of those Member States, the fact remains that, when exercising that competence, the Member States are required to comply with their obligations deriving from EU law and that that may be the case, in particular, as regards national rules relating to the adoption of decisions appointing judges and, where applicable, rules relating to the judicial review that applies in the context of such appointment procedures and that of the rules governing the disciplinary regime applicable to judges (see, to that effect, judgments of 15 July 2021, *Commission v Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraphs 56 and 61 and the case-law cited, and of 16 November 2021, *Prokuratura Rejonowa w Miłsku Mazowieckim and Others*, C-748/19 to C-754/19, EU:C:2021:931, paragraph 36 and the case-law cited).

Relation of the case to the EU Charter

Charter was not directly invoked => reasoning based on art. art. 19 TEU and 267 TFEU

Relation between the EU Charter and ECHR

N/A

Use of Judicial Interaction technique(s)

Preliminary reference

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

N/A

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

N/A

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

N/A

Impact on Legislation / Policy

After almost 4 years of operation, the Disciplinary Chamber finished functioning on 14th of July 2022, according to the amendment to the law on Supreme Court (9 June 2022). Since 15th July 2022 it is a Chamber of Professional Liability.

Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred to by the CJEU in its decision) or the Explanations?

Yes. Furthermore, after the Naczelny Sąd Administracyjny (Supreme Administrative Court), by decision of 21 November 2018, referred questions to the Court for a preliminary ruling in the case which, in the meantime, has given rise to the judgment of 2 March 2021, A.B. and Others (Appointment of judges to the Supreme Court – Actions) (C-824/18, EU:C:2021:153) ('the judgment in A.B. and Others'), on whether EU law precludes amendments such as those which have thus affected Article 44 of the Law on the KRS, the Polish legislature, in the light of the judgment of 25 March 2019 of the Trybunał Konstytucyjny (Constitutional Court), referred to in paragraph 17 above, adopted the Law of 26 April 2019 which led, first, to a declaration that cases pending before the Naczelny Sąd Administracyjny (Supreme Administrative Court) such as those that gave rise to that reference for a preliminary ruling were to be discontinued. Secondly, that law once again amended Article 44 of the Law on the KRS in order to preclude, going forward, any possibility of bringing judicial proceedings against a resolution of the KRS proposing a candidate for appointment to the position of judge of the Sąd Najwyższy (Supreme Court).

Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?

no

If the court that issued the preliminary reference is not a last instance court, and the "follow up"

was appealed before a higher court, include the information

N/A

Was there a consensus among national courts on how to implement the CJEU's preliminary ruling; and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?

N/A

Impact on national case law from the same Member State or other Member States

N/A

Connected national caselaw / templates

N/A

(Link to) full text

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=256246&pageIndex=0&doclang=EN&mo>

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