

## Poland, Court of Justice of the European Union (Grand Chamber), Joined Cases C-615/20 and C-671/20, Supreme, 13 July 2023

### Member State

 Poland

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### Topic

Independence, accountability, impartiality.

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### Sector

Judicial Interaction Techniques, Judicial Self-Government (Judicial Council, Court Presidents), role of national higher courts, Disciplinary proceedings, Use of the Preliminary Reference Procedure.

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### Deciding Court Original Language

Trybuna? Sprawiedliwo?ci Unii Europejskiej (Wielka Izba)

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### Deciding Court English translation

Court of Justice of the European Union (Grand Chamber)

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### Registration N

C-615/20 & C-671/20

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### Date Decision

13 July 2023

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### ECLI (if available)

ECLI:EU:C:2023:562

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### National Follow Up Of (when relevant)

This is the ruling of the CJEU.

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### EU legal sources and CJEU jurisprudence

Article 2 TEU; second subparagraph of Article 19(1) TEU; Article 4(3) TEU; Article 47 of the Charter of Fundamental Rights of the European Union; Principle of the primacy of EU law; Principle of sincere cooperation; Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation (recast))

CJEU judgments provided in the national decision:

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

Commission v. Poland (Independence of the Disciplinary Regime for Judges), C-791/19, EU:C:2021:596

W.?. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court - Appointment), C-487/19, EU:C:2021:798

Prokurator Generalny and Others (Disciplinary Chamber of the Supreme Court - Appointment), C-508/19, EU:C:2022:201

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### ECtHR Jurisprudence

The judgment does not refer to any ECtHR jurisprudence.

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### Subject Matter

References for a preliminary ruling — Rule of law — Effective judicial protection — Independence and impartiality of judges — Primacy of EU law — Duty of sincere cooperation — Lifting of a judge's immunity and suspension by a non-independent body — Obligations of national courts to disapply national provisions and decisions that undermine judicial independence under EU law.

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### Legal issue(s)

The cases concern whether national provisions allowing a non-independent body to lift a judge's immunity, suspend them from duties, and reduce their remuneration comply with EU law on judicial independence and effective legal protection. The CJEU ruled that national courts must disapply such provisions and any decisions made by non-independent bodies, ensuring compliance with EU principles of judicial independence and the primacy of EU law.

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### Request for expedited/PPU procedures

NO. The national court requested an expedited procedure, arguing that the resolution of the questions was urgent due to their potential impact on the status and functioning of judges. However, the CJEU declined the request, considering the legal issues complex and sensitive, and not suitable for an expedited process.

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### Interim Relief

The national court did not request interim relief from the CJEU.

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### National Law Sources

Constitution of the Republic of Poland (Konstytucja Rzeczypospolitej Polskiej): Article 45(1); Article 179; Article 180(1)-(2); Article 181

Law on the Supreme Court (Ustawa o Sądzie Najwyższym), of 8 December 2017, as amended: Article 3(5); Article 27(1) and (1a)

Law on the Organisation of the Ordinary Courts (Prawo o ustroju sądów powszechnych), as

amended: Article 41b(1) and (3); Article 42a(1) and (2); Article 47a(1); Article 47b(1) and (3); Article 80(1) and (2c); Article 107(1) point 2 and 3; Article 110(2a); Article 129(1) to (3)

Criminal Code (Kodeks karny): Article 241(1)

Code of Criminal Procedure (Kodeks postępowania karnego): Article 439(1)(1) and (2)

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### Facts of the case

The case involves two separate requests for a preliminary ruling from the Regional Court in Warsaw, Poland. Both requests pertain to the lifting of immunity and suspension from duties of Judge I.T. by the Disciplinary Chamber of the Polish Supreme Court, a body whose independence and impartiality have been contested. The first case (C-615/20) concerns criminal proceedings against YP and others, where Judge I.T. was removed from the case due to the Disciplinary Chamber's resolution. The second case (C-671/20) involves proceedings regarding a compulsory mortgage over property owned by M.M., initially overseen by Judge I.T., who was later suspended by the same Chamber. The Polish court questioned whether such actions align with EU principles, including judicial independence and the rule of law, and sought clarification on whether to disapply national provisions undermining these principles.

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

The CJEU's judgment in this case is centered on the principles of judicial independence, impartiality, and the primacy of EU law, as required by the second subparagraph of Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights of the European Union. The Court examined whether the Disciplinary Chamber of the Polish Supreme Court, which was established under conditions that did not guarantee independence and impartiality, met the requirements of EU law.

The Court reiterated that while Member States have the competence to organize their judicial systems, they must comply with their obligations under EU law. Effective legal protection in fields covered by EU law requires that national courts be independent and impartial. Independence means that courts must be free from external influence, especially from the executive and legislative branches, while impartiality requires that judges be neutral and unbiased.

The Court found that the Disciplinary Chamber, established by recent legislative changes in Poland, did not meet these requirements. The process of appointing its judges, heavily influenced by the executive and legislative branches through the National Council of the Judiciary (NCJ), did not provide adequate guarantees of independence. As a result, the Disciplinary Chamber could not be regarded as an independent and impartial tribunal under Article 19(1) TEU and Article 47 of the Charter.

Furthermore, the Court emphasized the primacy of EU law, which requires national courts to disregard national laws or decisions that conflict with EU law. In this case, Polish courts are obligated to disapply resolutions or decisions of the Disciplinary Chamber that are not consistent with EU standards of judicial independence and impartiality.

The CJEU also highlighted the duty of sincere cooperation under Article 4(3) TEU, which requires Member States to ensure that their national courts apply and uphold EU law. The actions of the Disciplinary Chamber were seen as undermining this duty and, by extension, the rule of law—a fundamental value of the EU as enshrined in Article 2 TEU.

The judgment concluded that the judicial reforms in Poland related to the Disciplinary Chamber posed a threat to judicial independence and thus to the rule of law within the EU. Therefore, national courts must ensure the application of EU law by disapplying the actions and decisions of bodies that do not meet the necessary standards of independence and impartiality. The CJEU's decision underscores the importance of maintaining an independent judiciary to safeguard the rule of law and the uniform application of EU law across all Member States.

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### Relation of the case to the EU Charter

The CJEU's judgment in this case is directly related to the interpretation and application of the EU Charter of Fundamental Rights, particularly Article 47, which guarantees the right to an effective remedy and to a fair trial before an independent and impartial tribunal previously established by law.

The Court emphasized that judicial independence is a crucial aspect of the right to a fair trial under Article 47 of the Charter. The case involved the Disciplinary Chamber of the Polish Supreme Court, which was found not to meet the necessary standards of independence and impartiality required by EU law and the Charter. This lack of independence undermined the guarantees provided by Article 47, as the Disciplinary Chamber was subject to significant influence from the executive and legislative branches of the Polish government.

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### Relation between the EU Charter and ECHR

In this case, the CJEU did not make explicit references to the European Convention on Human Rights (ECHR) but focused primarily on the EU Charter of Fundamental Rights, particularly Article 47, which guarantees the right to an effective remedy and a fair trial.

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### Use of Judicial Interaction technique(s)

In this case, judicial dialogue is evident through several key judicial interaction techniques that highlight the collaboration between national courts and the CJEU.

**Preliminary Reference:** The Polish national courts referred questions to the CJEU under Article 267 TFEU, seeking clarification on the interpretation of EU law, particularly regarding judicial independence and the primacy of EU law. This fosters consistent application of EU law across Member States.

**Disapplication of National Law:** The CJEU instructed national courts to disapply Polish laws that conflicted with EU law, specifically those compromising judicial independence under Article 19(1) TEU. This emphasizes the primacy of EU law over national provisions.

**Consistent Interpretation:** National courts were guided to interpret domestic law in line with EU legal standards, particularly those concerning judicial immunity and independence, ensuring coherence between national and EU legal frameworks.

**Proportionality:** The CJEU assessed whether national measures against judges were proportionate and emphasized that actions undermining judicial independence cannot be justified under EU law.

Mutual Recognition and Cooperation: The case underscores the importance of mutual recognition between national courts and the CJEU, ensuring judicial decisions align with EU law.

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

Does not refer to the CJEU judgment

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

The national court in this case primarily relied on the CJEU's guidance and engaged with its previous rulings rather than engaging in an extensive assessment of other national judgments. The national court made a straightforward reference to the CJEU's earlier decisions, particularly on judicial independence, and integrated these into its reasoning.

There was no direct constitutionality review involved by the national court in the traditional sense of assessing the constitutionality of domestic laws; instead, the court focused on the incompatibility of national provisions with EU law, as interpreted by the CJEU. In doing so, it followed the CJEU's instruction to disapply national law that conflicted with EU law, particularly regarding the independence of the judiciary.

The interaction between the ordinary and appellate/supreme courts in this case was characterized by the supreme court's involvement, particularly the Disciplinary Chamber's decisions, which were subject to scrutiny. The CJEU's ruling influenced the national court's decision to disregard those national measures that undermined EU legal principles, particularly judicial independence under Article 19(1) TEU. The ruling highlighted the dynamic between the CJEU and national courts in maintaining the rule of law and the independence of the judiciary in Member States.

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

The national court presumably used judicial interaction techniques to resolve a conflict of norms between national law and EU law, particularly concerning judicial independence and effective legal protection under Article 19(1) TEU. The court aimed to address a conflict of judicial interpretation, specifically regarding the appointment and functioning of the Disciplinary Chamber, which lacked the required independence and impartiality.

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Impact on Legislation / Policy

The decision had significant implications for both national legislation and policy. The CJEU's ruling highlighted the incompatibility of certain national laws with EU principles, particularly regarding judicial independence. This decision, along with related CJEU rulings, contributed to a broader legal and political debate in Poland and the EU regarding the rule of law, judicial reforms, and the independence of the judiciary.

The decision pressured the Polish government to reconsider the functioning and composition of the Disciplinary Chamber of the Supreme Court, which had been widely criticized for undermining judicial independence.

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Notes on the national implementation of the preliminary ruling by the referring court

Following the CJEU ruling in Joined Cases C-615/20 and C-671/20 (July 2023), which dealt with

the legal effects of disciplinary actions against Polish judges, including the suspension of Judge Igor Tuleya, significant follow-up developments occurred. The CJEU confirmed that the Disciplinary Chamber of the Polish Supreme Court could not continue conducting proceedings against judges because its lack of independence violated EU law. Consequently, national courts were required to disapply resolutions that suspended judges or reassigned their cases to different panels.

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[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?](#)

Regarding the case law of the CJEU or ECtHR, the national court did not refer to any new CJEU or ECtHR judgments beyond those already cited in the CJEU decision itself. The case focused heavily on EU principles of judicial independence and sincere cooperation, which were central to the CJEU's reasoning.

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[Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?](#)

In the case of C-615/20 and C-671/20, there was no mention of soft law instruments such as GRECO Reports, Venice Commission reports, CEPEJ Reports, or CCEJ Reports in the judgment. The focus of the case was more on the judicial procedures and the violation of EU law regarding judicial independence, impartiality, and the protection of judges from unlawful prosecution by bodies lacking independence, such as the Disciplinary Chamber of the Polish Supreme Court.

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[Did the national court take into account national case law on fundamental rights?](#)

In the case of C-615/20 and C-671/20, the national court referenced Polish constitutional provisions related to judicial independence and fair trial rights, particularly Articles 45 and 179 of the Polish Constitution. These articles enshrine the right to a fair trial and regulate the appointment of judges, providing the national framework for judicial independence.

However, the national court's focus was largely on EU law, such as the Charter of Fundamental Rights of the EU and Article 19(1) TEU, rather than an in-depth examination of Polish case law on fundamental rights. The Court of Justice of the European Union (CJEU) evaluated the national provisions in light of EU legal standards, especially regarding judicial independence, which were central to the case. Therefore, while national constitutional provisions were mentioned, the national case law on fundamental rights was not the primary legal reference guiding the decision

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[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](#)

We have no knowledge of the further developments regarding this matter.

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[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?](#)

We have no knowledge of the further developments regarding this matter.

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[Impact on national case law from the same Member State or other Member States](#)

N/A

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(Link to) full text

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