

## Poland, Court of Justice of the European Union (Grand Chamber), Case C-718/21, Supreme Court, 21 December 2023

### Member State

 Poland

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### Topic

Independence, Impartiality.

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### Sector

Judicial Self-Government (Judicial Council), 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-718/21

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### Date Decision

21 December 2023

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### ECLI (if available)

ECLI:EU:C:2023:1015

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### National Follow Up Of (when relevant)

This is a preliminary reference from a national court to the CJEU.

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### EU legal sources and CJEU jurisprudence

Article 267 of the Treaty on the Functioning of the European Union (TFEU)

Article 19(1) of the Treaty on European Union (TEU)

Article 47 of the Charter of Fundamental Rights of the European Union

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### ECtHR Jurisprudence

Article 6(1) of the European Convention on Human Rights (ECHR)

Dolińska-Ficek and Ozimek v. Poland, judgment of 8 November 2021, Application Nos. 49868/19 and 57511/19

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### Subject Matter

A preliminary reference was made by the Supreme Court of Poland (Chamber of Extraordinary Control and Public Affairs) to the CJEU regarding the interpretation of Article 19(1) TEU. The CJEU declared the request inadmissible due to the lack of independence and impartiality of the referring court.

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### Legal issue(s)

The legal issues concern whether the Chamber of Extraordinary Control and Public Affairs of the Polish Supreme Court qualifies as a "court or tribunal" under EU law, given concerns about its independence and impartiality due to the process of appointing its judges and the influence of legislative and executive powers.

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### Request for expedited/PPU procedures

NO

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### Interim Relief

The legal issues concern whether the Chamber of Extraordinary Control and Public Affairs of the Polish Supreme Court qualifies as a "court or tribunal" under EU law, given concerns about its independence and impartiality due to the process of appointing its judges and the influence of legislative and executive powers.

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### National Law Sources

Articles 10, 45(1), 60, 77(2), 179, 186(1), 187 of the Constitution of the Republic of Poland; Article 26(1) of the Law on the Supreme Court of 8 December 2017 (with amendments); Articles 9a, 37(1), 43(2), 44(1, 1a, 1b, 4) of the Law on the National Council of the Judiciary of 12 May 2011 (with amendments); Article 69(1, 1b) of the Law on the system of ordinary courts of 27 July 2001 (with amendments).

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### Facts of the case

The case concerns L.G., a judge in Poland, who sought to continue serving beyond the mandatory retirement age. The National Council of the Judiciary (KRS) declined to rule on L.G.'s application

due to late submission. L.G. challenged this decision before the Supreme Court of Poland (Chamber of Extraordinary Control and Public Affairs), which then referred questions to the CJEU about the interpretation of EU law regarding judicial independence and the legality of the KRS's decision. The CJEU found the request inadmissible due to doubts about the independence and impartiality of the referring court.

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

The legal reasoning focused on whether the Chamber of Extraordinary Control and Public Affairs of the Polish Supreme Court qualifies as a "court or tribunal" under EU law, given concerns about its independence and impartiality due to the process of appointing its judges and the influence of legislative and executive powers. The CJEU examined the appointment procedure in light of Article 19(1) TEU and Article 267 TFEU, referencing Article 47 of the Charter of Fundamental Rights of the European Union and Article 6(1) of the European Convention on Human Rights (ECHR). It concluded that the lack of independence and impartiality disqualified the Chamber as a "court or tribunal" under EU law, making the preliminary reference inadmissible. The CJEU concluded that the Chamber lacked the necessary independence and impartiality to qualify as a "court or tribunal" under EU law due to the manner in which its judges were appointed, which involved significant influence from the legislative and executive branches, contravening EU principles of judicial independence. The CJEU referenced prior judgments from the ECtHR, such as *Dolińska-Ficek and Ozimek v. Poland*, which found that appointments to the Chamber were made in violation of fundamental national laws, thereby undermining the separation of powers and judicial independence. Additionally, the CJEU noted that the Chamber's creation and appointment procedures raised systemic doubts about its impartiality, further supported by Article 47 of the Charter and Article 6(1) ECHR. As a result, these deficiencies disqualified the Chamber from making a valid preliminary reference, leading the CJEU to declare the request inadmissible.

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### Relation of the case to the EU Charter

The EU Charter was invoked by the CJEU to assess whether the Chamber of Extraordinary Control and Public Affairs met the standards of an independent and impartial tribunal previously established by law, as required under EU law. Article 47 of the Charter, which guarantees the right to a fair trial, was used as a legally binding parameter to evaluate the judicial independence and impartiality of the referring court. The CJEU used the Charter to substantiate its reasoning that the appointment procedures and structural deficiencies of the Chamber raised serious doubts about its compliance with EU law standards, leading to the declaration of inadmissibility for the preliminary reference.

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### Relation between the EU Charter and ECHR

The ECHR was cited by the CJEU to draw parallels between the standards of judicial independence and impartiality required under both EU law and the ECHR. The CJEU referenced Article 6(1) of the ECHR, which ensures the right to a fair trial, to highlight consistent principles across European legal frameworks concerning the independence and impartiality of courts. The citation of the ECHR served a substantive purpose rather than an ornamental one, reinforcing the interpretation of Article 47 of the EU Charter by demonstrating that both instruments share common standards for judicial independence.

In this particular case, the protection granted through the EU Charter is considered more extensive because the CJEU emphasized that the standards of independence and impartiality under Article 47 of the Charter are closely linked with the requirements of being a "tribunal established by

law." This link requires a more rigorous scrutiny of the judicial appointment process and the structural independence of the court. The CJEU's use of the ECHR supported its reasoning but underscored that EU law, as applied through the Charter, requires a strict compliance with these standards to maintain uniform interpretation and application across Member States, reflecting a broader scope of protection in the context of EU law.

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### Use of Judicial Interaction technique(s)

In this case, the CJEU utilized the preliminary reference procedure, which is a core element of judicial dialogue within the EU legal framework. This mechanism fosters a direct dialogue between the national courts and the CJEU to ensure uniform interpretation and application of EU law across all Member States.

The CJEU also engaged in consistent interpretation by aligning its assessment of judicial independence and impartiality with the standards set out under both EU law (specifically Article 47 of the Charter) and the ECHR (Article 6(1)).

Additionally, the CJEU referred to the disapplication of national law in favour of EU law, indirectly by suggesting that if national procedures or structures fail to comply with EU law standards, particularly in terms of judicial independence, such national rules cannot be upheld. This demonstrates the primacy of EU law over conflicting national provisions, emphasizing the need for national legal systems to conform to EU standards.

Finally, the CJEU employed comparative reasoning with foreign caselaw, referencing judgments of the ECtHR to underline common European standards on judicial independence and impartiality, thereby fostering a broader judicial dialogue beyond the EU context. This comparative approach helps to integrate and harmonize judicial practices across European jurisdictions, promoting mutual recognition and reinforcing the rule of law.

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

In this case, the national court did not engage in horizontal judicial interaction with other national courts, nor did it cite or assess judgments from other national courts in its reasoning. There was no indication of a constitutionality review by the national court directly engaging with other national judicial bodies to assess the constitutionality of the laws in question.

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

In this case, vertical judicial interaction primarily occurs externally with European supranational courts, particularly the CJEU and the ECtHR. The Supreme Court of Poland (Chamber of Extraordinary Control and Public Affairs) made a preliminary reference to the CJEU, seeking guidance on the interpretation of EU law concerning judicial independence and impartiality.

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

On superficial level the national court's strategic use of the judicial interaction technique, specifically the preliminary reference to the CJEU, appears aimed at resolving conflicts of judicial interpretation involving fundamental rights enshrined in the EU Charter. However, there is a suspicion that the Polish Supreme Court (Chamber of Extraordinary Control and Public Affairs)

sought to establish its legitimacy as a court within the meaning of EU law. Had the CJEU addressed the substantive question, it could have potentially recognized this Chamber as a court under EU law. However, the CJEU avoided this outcome by declaring the preliminary reference inadmissible, thereby refraining from legitimizing a Chamber that does not satisfy the necessary standards of independence and impartiality required under EU law.

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### Impact on Legislation / Policy

The decision of the CJEU to declare the preliminary reference inadmissible has significant implications for both legislation and policy in Poland and potentially within the broader EU framework. By refusing to recognize the Polish Supreme Court (Chamber of Extraordinary Control and Public Affairs) as a legitimate court under EU law due to concerns about judicial independence and impartiality, the CJEU has underscored the importance of these principles as fundamental requirements for the judiciary in EU Member States.

This decision should prompt legislative and policy changes in Poland, particularly concerning the composition and appointment processes of judicial bodies to align with EU standards. The ruling serves as a clear signal that national judicial reforms must adhere to EU law, specifically the requirements of independence and impartiality as enshrined in Article 19(1) TEU and Article 47 of the EU Charter. As a result, the Polish government may need to reconsider and potentially amend laws related to the judiciary, including those governing the National Council of the Judiciary (KRS) and the appointment of judges, to ensure compliance with EU law.

Additionally, the decision may have a broader impact on EU policy by reinforcing the CJEU's role in safeguarding the rule of law across Member States. It could lead to increased scrutiny of judicial reforms in other Member States and potentially influence future EU legislation or policy measures aimed at protecting judicial independence and the rule of law within the EU.

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

Don't know yet.

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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?

No

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

No

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Did the national court take into account national case law on fundamental rights?

No

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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 do not have such a situation here.

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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?

There is no consensus among Polish courts on how to implement the CJEU's preliminary ruling. The divide largely exists between judges appointed by the old National Council of the Judiciary (KRS) and those appointed by the new KRS, which has been subject to scrutiny regarding its independence and the influence of legislative and executive powers over judicial appointments. Judges appointed by the old KRS generally support the CJEU's findings and emphasize the importance of judicial independence in line with the EU standards. In contrast, judges appointed by the new KRS may be more inclined to question or resist the implications of the CJEU's decision, given their appointments are directly affected by the ruling.

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

It is currently unclear if there has been any change in approach with respect to previous case law prompted by the CJEU's decision. The lack of consensus among Polish judges, particularly between those appointed by the old KRS and those appointed by the new KRS, has created uncertainty and division within the judiciary. Consequently, there is no clear indication of how this ruling might impact the consistency of judicial decisions or whether it will lead to a shift in the interpretation and application of EU law in future cases. The ongoing tensions and disagreements make it difficult to assess the long-term impact of the CJEU's decision on Polish case law.

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#### Connected national caselaw / templates

Currently, there are no specific decisions that refer to the CJEU's judgment in Case C-718/21 or demonstrate its implementation by Polish courts.

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(Link to) full text

[curia.europa.eu](https://curia.europa.eu)

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#### Author

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