

C/2023/1277

11.12.2023

**Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 20 July 2023 — G.T. v T. S.A.****(Case C-455/23, Garera <sup>(1)</sup>)**

(C/2023/1277)

*Language of the case: Polish***Referring court**

Sąd Najwyższy

**Parties to the main proceedings***Appellant on a point of law: G.T.**Respondent on a point of law: T. S.A.***Questions referred**

1. Must the second subparagraph of Article 19(1) TEU, in the light of the interpretation given by the Court of Justice in its judgment in Case C 487/19 W.Ż., be interpreted as meaning that designating a judge of the Sąd Najwyższy (Supreme Court), without his or her consent, to adjudicate temporarily in another chamber of the Sąd Najwyższy is, like transferring a judge of an ordinary court between two divisions of that ordinary court, in breach of the principle of the irremovability and independence of judges, where:
  - the judge is designated to adjudicate in cases whose subject matter does not coincide with the substantive jurisdiction of the chamber to which the judge of the Sąd Najwyższy was appointed to adjudicate;
  - the judge has no judicial remedy against the decision regarding that designation which meets the requirements laid down in paragraph 118 of the judgment in C 487/19 W.Ż.;
  - the order of the First President of the Sąd Najwyższy regarding the designation to adjudicate in another chamber and the order of the President who directs the work of the Civil Chamber of the Sąd Najwyższy regarding the allocation of specific cases have been issued by persons appointed to the position of judge of the Sąd Najwyższy in the same circumstances as in Case C 487/19 W.Ż. and, in the light of previous case-law, judicial proceedings involving such persons are either invalid or infringe a party's right to a fair trial under Article 6 ECHR;
  - designating a judge, without his or her consent, to adjudicate for a fixed period in a chamber of the Sąd Najwyższy other than that in which he or she performs his or her duties, while maintaining the obligation to adjudicate in his or her home chamber, has no basis in national law;
  - designating a judge, without his or her consent, to adjudicate for a fixed period in a chamber of the Sąd Najwyższy other than that in which he or she performs his or her duties results in an infringement of Article 6(b) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time? <sup>(2)</sup>
2. Regardless of the answer to the first question, must the second subparagraph of Article 19(1) TEU be interpreted as meaning that a court in a formation constituted as a result of the First President of the Sąd Najwyższy regarding designation to adjudicate in another chamber of the Sąd Najwyższy and an order of the President who directs the work of the Civil Chamber of the Sąd Najwyższy regarding allocation of specific cases, issued by persons appointed to the position of judge of the Sąd Najwyższy in the same circumstances as in Case C 487/19 W.Ż., does not constitute a tribunal 'established by law' where, according to previous case-law, judicial proceedings involving persons so appointed are invalid or infringe a party's right to a fair trial under Article 6 ECHR?

<sup>(1)</sup> The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

<sup>(2)</sup> OJ 2003 L 299, p. 9.

3. In the event that the first question is answered in the affirmative or the second question is answered to the effect that a court thus established does not constitute a court or tribunal 'established by law', must the second subparagraph of Article 19(1) TEU and the principle of the primacy of EU law be interpreted as meaning that judges appointed to a formation of a court established in the manner described in Questions 1 and 2 may refuse to act in the case allocated to them (which includes refusing to adjudicate), regarding as non-existent the orders regarding designation to adjudicate in another chamber of the Sąd Najwyższy and allocation of specific cases, or are they to deliver their ruling, leaving it to the parties to decide whether to contest it on the grounds that it infringes a party's right to have a case heard by a tribunal which meets the requirements laid down in the second subparagraph of Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights?
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