



**Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 18 April 2024 – X.Y.**

(Case C-273/24, Naski) (1)

(C/2024/4445)

*Language of the case: Polish*

**Referring court**

Sąd Najwyższy

**Parties to the main proceedings**

*Appellant:* X.Y.

*Other parties:* Prokurator Generalny zastępowany przez Prokuratorę Krajową, Rzecznika Praw Obywatelskich

**Question referred**

In a situation in which the court of last instance of a Member State (Sąd Najwyższy (Supreme Court, Poland) – following an interpretation of EU law by the CJEU as to the legal consequences of a breach of the fundamental rules of the law of that State concerning the appointment of judges of the Supreme Court, consisting of:

- (a) the President of the Republic of Poland handing out letters of appointment to the position of judge of the Supreme Court despite the fact that the resolution of the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland; 'the KRS'), which includes the proposal for appointment of judges, was previously challenged before the national court having jurisdiction (Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland)), that the Supreme Administrative Court suspended the implementation of that resolution in accordance with national law, and that the appeal proceedings were not concluded, after which proceedings the Supreme Administrative Court set aside the challenged resolution of the KRS due to its unlawfulness, permanently removing it from the legal order, thereby depriving the process used to appoint judges of the Supreme Court of the legal basis required by Article 179 of the Konstytucja Rzeczypospolitej Polskiej (Constitution of the Republic of Poland), which basis consists of a proposal by the KRS for appointment to the position of judge,
- (b) pre-appointment proceedings being conducted without regard to the principles of transparency and fairness by a national body (the KRS) which, given the circumstances surrounding its establishment (the selection of judges) and the manner in which it operates, does not meet the requirements of a constitutional body upholding the independence of the courts and of judges, as it was constituted under the procedure stipulated in the ustawy z 8 grudnia 2017 r. o zmianie ustawy o Krajowej Radzie Sądownictwa oraz niektórych innych ustaw (Law of 8 December 2017 amending the Law on the KRS and certain other laws) (DZ. U. of 2018, Item 3),
  - is required to resolve a legal question submitted to that court by applying the interpretation of EU law adopted by the CJEU, should the provisions of Article 2, Article 6(1) and (3) and the second subparagraph of Article 19(1) [TEU] and Article 267 TFEU, in conjunction with Article 47 [of the Charter], be interpreted as precluding the participation, in the composition of the Supreme Court deciding this legal question, of any of the persons appointed as judges of the Supreme Court in breach of the rules of national law of a Member State described in point 1(a) or (b) above, and as precluding changes to the composition of the bench of the court of the Member State that made the reference for a preliminary ruling to the CJEU, where such changes take place after the CJEU has delivered its judgment in response to that question and are not justified on objective grounds (for example, death, retirement of the judge who was a member of the court that made the reference for a preliminary ruling),

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

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- and as precluding the taking of any decision-making action in the case involving the resolution of this legal issue, including the issuing of orders as to, in particular, the composition of the Supreme Court or the date on which it is to be heard, by a person appointed as President of the Supreme Court who directs the work of the Civil Chamber and who was also appointed as a judge of the Supreme Court in breach of the rules of national law of a Member State described in points 1(a) and 1(b) above, or by any other person appointed as a judge of the Supreme Court also in breach of the rules of national law of a Member State described in points 1(a) and 1(b) above, with the result that such orders or decision-making acts must be regarded as having no legal effect,
- and as meaning that a judge of the Supreme Court, whose appointment was not vitiated by any of the shortcomings referred to in points 1(a) or (b) above, has the right and the obligation – in order to avoid a case being decided by a court that is not an independent, impartial court previously established by law, within the meaning of EU law – to refuse to sit on a collective bench of the Supreme Court in which a majority of those appointed as judges of the Supreme Court were appointed in breach of the rules of national law of the Member State referred to in point 1(a) or (b) above, and, in the event that the above question is answered in the affirmative, also as meaning that, if appointed to the office of judge of the Supreme Court without the infringements referred to in points 1(a) or 1(b) above, a judge of that court who is the Judge-Rapporteur in a case involving the legal issue in question is empowered to designate the composition of the Supreme Court that is to decide that issue, without regard to the provisions of national law conferring on the President of the Supreme Court directing the work of the Civil Chamber the power to designate the formations of the bench hearing cases heard in the Civil Chamber of the Supreme Court in order to give effect to EU law and its interpretation as adopted by the CJEU, and as precluding any person appointed as a judge of the Supreme Court in breach of the rules of national law of a Member State described in point 1(a) or (b) above or any other person appointed as a judge of the Supreme Court in breach of the rules of national law of a Member State described in point 1(a) or (b) above from holding any executive office in the Supreme Court (inter alia, that of President of that court, including the office of First President of that court or of Presidents of Chambers of the Supreme Court) and any office in the organs of the Supreme Court (such as that of member or deputy member of the College of the Supreme Court or the office of Disciplinary Officer of Chambers of the Supreme Court), which offices may only be exercised by lawfully appointed judges of the Supreme Court, and as precluding such persons from taking any action falling within the jurisdiction of the Supreme Court judges performing the abovementioned functions, in view of their possible influence, in fact or in law, on the exercise of the jurisdictional functions of the Supreme Court?

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