

2. Are the requirements referred to in Question 1 breached in a situation where the parties can lodge an extraordinary appeal against a judgment handed down in court proceedings such as those described in Question 1, and this extraordinary appeal is lodged with a court such as the Sąd Najwyższy (Supreme Court, Poland), the decisions of which cannot be the subject of appeal under national law, and national law imposes on the president of the organisational unit of that court (chamber) competent to hear the appeal the obligation to allocate cases in accordance with an alphabetical list of judges of that chamber, expressly prohibiting the omission of any judge, and the judges among whom the cases are allocated include a person appointed upon the motion of a collegiate body such as the Krajowa Rada Sądownictwa (National Council of the Judiciary), the members of which are judges:
 - (a) elected by a chamber of parliament which votes for a list of candidates drawn up in advance by a parliamentary committee from among the candidates nominated by parliamentary factions or a body of that chamber of parliament on the basis of proposals from groups of judges or citizens, and as a result there are three occasions on which the candidates receive support from politicians during the election procedure;
 - (b) who represent a majority of the members of that collegiate body sufficient to take decisions on submitting motions for appointments to judicial positions as well as other binding decisions required under national law?
3. From the point of view of EU law, including the provisions and requirements referred to in Question 1, what is the effect of a judgment handed down in court proceedings such as those described in Question 1, and of a judgment handed down in proceedings before the Supreme Court, if the person referred to in Question 2 participates in the handing-down of that judgment?
4. Does EU law, including the provisions referred to in Question 1, make the effects of the judgments referred to in Question 3 conditional upon whether the court in question has ruled in favour of or against the accused person?

(¹) OJ 2016 L 65, p. 1; Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings.

Request for a preliminary ruling from the Sąd Apelacyjny w Krakowie (Poland) lodged on 18 October 2019 — D.S. v S.P., A.P., D.K., Sz. w K.

(Case C-763/19)

(2020/C 54/26)

Language of the case: Polish

Referring court

Sąd Apelacyjny w Krakowie

Parties to the main proceedings

Applicant: D.S.

Defendants: S.P., A.P., D.K., Sz. w K.

Questions referred

1. Must the second subparagraph of Article 19(1), Article 2, Article 4(3) and Article 6(3) of the Treaty on the European Union, in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union and Article 267 of the Treaty on the Functioning of the European Union, be interpreted as meaning that a person who has been appointed to the position of judge in flagrant breach of the laws of a Member State applicable to judicial appointments — which breach included, in particular, the appointment of that person to the position of judge as a result of the designation of a body which does not guarantee independence from the executive and legislative authorities and impartiality, with the systematic exclusion from judicial review of the lawfulness of the nomination procedure, and also the appointment of that person to the position of judge despite a prior appeal to the competent national court (the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland)) against the resolution of a national body (the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland)), which included a motion for the appointment of that person to the position of judge, notwithstanding the fact that the implementation of that resolution had been stayed in accordance with national law and that proceedings before the competent national court (Supreme Administrative Court) had not been concluded before the delivery of the appointment letter — is not an independent judge within the meaning of EU law,

— and consequently is a court whose composition includes persons appointed under the conditions set out above not an independent and impartial tribunal previously established by law within the meaning of EU law?
2. If the first question is answered in the affirmative, must the second subparagraph of Article 19(1), Article 2, Article 4(3) and Article 6(3) of the Treaty on the European Union, in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union and Article 267 of the Treaty on the Functioning of the European Union, be interpreted as meaning that a judgment given by a judge and a court of final instance, established in the manner described in paragraph 1, is not a judgment in a legal sense (is a non-existent judgment) within the meaning of EU law, and the assessment in that regard may be made by an ordinary court which satisfies the requirements laid down on a tribunal within the meaning of EU law?

Request for a preliminary ruling from the Sąd Apelacyjny w Krakowie (Poland) lodged on 18 October 2019 — C. S.A. v Administrator in the insolvency of I.T. in liquidation

(Case C-764/19)

(2020/C 54/27)

Language of the case: Polish

Referring court

Sąd Apelacyjny w Krakowie

Parties to the main proceedings

Applicant: C. S.A.

Defendant: Administrator in the insolvency of I.T. in liquidation

Questions referred

1. Must the second subparagraph of Article 19(1), Article 2, Article 4(3) and Article 6(3) of the Treaty on the European Union, in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union and Article 267 of the Treaty on the Functioning of the European Union, be interpreted as meaning that a person who has been appointed to the position of judge in flagrant breach of the laws of a Member State applicable to judicial appointments — which breach included, in particular, the appointment of that person to the position of judge as a result of the designation of a body which does not guarantee independence from the executive and legislative authorities and impartiality, with the systematic exclusion from judicial review of the lawfulness of the nomination procedure, and also the appointment of that person to the position of judge despite a prior appeal to the competent national court (the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland))