

subsequently transferred from that airport by coach to the airport of arrival for which the original booking was made, which the passengers reach with a delay in arrival of less than three hours, there is a cancellation of the flight?

(<sup>1</sup>) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

**Request for a preliminary ruling from the Sąd Okręgowy w Krakowie (Poland) lodged on 27 April 2021 — BC and DC v X**

**(Case C-269/21)**

(2021/C 289/38)

*Language of the case: Polish*

**Referring court**

Sąd Okręgowy w Krakowie

**Parties to the main proceedings**

*Applicants:* BC and DC

*Defendant:* X

**Questions referred**

1. Must Article 2 and Article 19(1) of the Treaty on European Union ('the TEU'), as well as Article 6(1) to (3) TEU, read in conjunction with Article 47 of the Charter of Fundamental Rights ('the CFR'), be interpreted as meaning that:

(a) where a court includes in its composition a person appointed to a judicial post in that court as a result of a procedure which does not provide for the participation of judicial self-government bodies, which bodies are appointed largely independently of the executive and the legislature, in a situation where, in the light of the constitutional *acquis* of the Member State, the participation of a judicial self-government body meeting those requirements in the judicial appointment procedure is necessary, that court is not a tribunal established by law within the meaning of EU law, having regard to the institutional and structural context and given that:

— there was a requirement for the college of that court — a body that was composed in such a way that most of its members were appointed by a representative of the executive (the Minister Sprawiedliwości (Minister for Justice), who is also the Prokurator Generalny (Public Prosecutor General)) — to give an opinion on candidates' suitability for the judicial post;

— the current Krajowa Rada Sądownictwa (National Council of the Judiciary), which was elected contrary to Polish constitutional and statutory provisions, is not an independent body and no representatives of the judiciary were elected to it independently of the executive and the legislature, and therefore no motion for appointment to the post of judge was effectively lodged as required under national law;

— the participants in the competition for appointment to the post had no right of appeal to a court within the meaning of Article 2 and Article 19(1) TEU, as well as Article 6(1) to (3) TEU, read in conjunction with Article 47 of the CFR?

(b) where a court includes in its composition a person appointed to a judicial post in that court as a result of a procedure which is subject to arbitrary interference by the executive and omits the participation of judicial self-government bodies, which bodies are appointed largely independently of the executive and the legislature, or of another body ensuring an objective assessment of the candidate, in view of the fact that the participation of judicial self-government bodies or of another body independent of the executive and the legislature which ensures an objective assessment of the candidate in the judicial appointment procedure is, in the context of the European legal

tradition which is rooted in the aforementioned provisions of the TEU and the CFR and which underpins a union of law such as the European Union, necessary to ensure that the national court guarantees the required level of effective judicial protection in cases governed by EU law, and consequently that the principles of separation and balance of powers and of the rule of law are safeguarded, that court does not satisfy the requirements of an independent tribunal established by law?

2. Must Article 2 and Article 19(1) TEU, read in conjunction with Article 47 of the CFR, be interpreted as meaning that, where a court includes in its composition a person appointed in the circumstances described in point 1 above:
  - (a) those provisions preclude the application of provisions of national law which place the review of the lawfulness of the appointment of such a person to a judicial post within the exclusive jurisdiction of a chamber of the Sąd Najwyższy (Supreme Court, Poland) which is composed exclusively of persons appointed to judicial posts in the circumstances described in point 1 above and which provisions of national law also require that any objections concerning the appointment to a judicial post be disregarded, having regard to the institutional and systemic context?
  - (b) those provisions require, in order to ensure the effectiveness of EU law, provisions of national law to be interpreted in a manner that allows a court to exclude, of its own motion, such a person from hearing the case on the basis of the rules, applicable by analogy, which govern the exclusion of a judge who is incapable of deciding cases (*iudex inhabilis*)?

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**Request for a preliminary ruling from the Administrativen sad Sofia-grad (Bulgaria) lodged on 5 May 2021 — IG v Varhoven administrativen sad**

(Case C-289/21)

(2021/C 289/39)

*Language of the case: Bulgarian*

**Referring court**

Administrativen sad Sofia-grad

**Parties to the main proceedings**

*Applicant:* IG

*Defendant:* Varhoven administrativen sad

**Questions referred**

1. Does the amendment of a provision of a national normative legal act previously declared by a court of appeal to be incompatible with an applicable provision of EU law relieve the Court of Cassation of the obligation to examine the provision applicable prior to the amendment and accordingly to assess whether it is compatible with EU law?
2. Does the presumption that the provision at issue has been withdrawn constitute an effective remedy with regard to rights and freedoms guaranteed by EU law (*in casu*, Articles 9 and 10 of Directive 2012/27/EU), <sup>(1)</sup> or does the possibility provided for in national law to examine whether the national provision in question was compatible with EU law before it was amended constitute such a remedy if it exists only if the competent court is seised of a specific action for damages on account of that provision and only in relation to the person who brought the action?
3. If Question 2 is answered in the affirmative, is it permissible for the provision in question to continue to regulate, during the period between its adoption and its amendment, legal relationships in respect of an unlimited group of persons who have not brought actions for damages on account of that provision, or for the assessment of the compatibility of the national rule with the EU law provision in respect of the period prior to the amendment not to have been carried out in relation to those persons?

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<sup>(1)</sup> Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ 2012 L 315, p. 1).