Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 10 March 2020 — BM, DM and EN v Getin Noble Bank SA

(Case C-132/20)

(2020/C 209/17)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Appellants: BM, DM and EN

Respondent: Getin Noble Bank SA

Questions referred

1. Must Article 2, Article 4(3), Article 6(1) and (3) and the second subparagraph of Article 19(1) of the Treaty on European Union ('TEU') in conjunction with the first and second paragraphs of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and the third paragraph of Article 267 TFEU, Article 38 of the Charter and Article 7 (1) and (2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts … [1] be interpreted as meaning that a body which includes a person appointed to the position of judge for the first or a subsequent time (to a higher court) by a political body within the executive branch of a State characterised by a totalitarian, undemocratic and communist system of power (the Rada Państwa Polskiej Rzeczypospolitej Ludowej (the Council of State of the People's Republic of Poland)) at the request of the Minister for Justice of that State, is a duly qualified independent and impartial tribunal within the meaning of EU law, in particular given (1) the lack of transparency of the appointment criteria, (2) the possibility that the judge may be removed from office at any time, and the lack of participation in the appointment procedure of (3) judicial self-government or (4) suitable public authorities elected through democratic elections, all of which could undermine the confidence which the judiciary should inspire in a democratic society?

2. Is it relevant for resolving the issue referred to in Question 1 that appointment to the position of judge in subsequent posts (in higher courts) could take place due to the acknowledgement of an appropriate period of work (length of service) and on the basis of an assessment of work in the post to which that person was appointed at least for the first time by the political body referred to in Question 1 and on the basis of the procedure described therein, which could undermine the confidence which the judiciary should inspire in a democratic society?

3. Is it relevant for resolving the issue referred to in Question 1 that appointment to the position of judge in subsequent posts (in higher courts, not including the Sąd Najwyższy (Supreme Court, Poland)) was not conditional upon taking a judicial oath to respect the values of a democratic society, and that when appointed for the first time the person concerned promised to uphold the political system of the communist State and the 'praworządność ludowa' (people's rule of law), which could undermine the confidence which the judiciary should inspire in a democratic society?

4. Must Article 2, Article 4(3), Article 6(1) and (3) and the second subparagraph of Article 19(1) TEU in conjunction with the first and second paragraphs of Article 47 of the Charter and the third paragraph of Article 267 TFEU, Article 38 of the Charter and Article 7(1) and (2) of Directive 93/13 be interpreted as meaning that a body which includes a person appointed to the position of judge for the first or a subsequent time (to a higher court) in flagrant breach of the constitutional provisions of a Member State of the European Union, since the composition of the body selecting that person as a candidate for subsequent appointment to the position of judge (the Krajowa Rada Sądownictwa (National Council of the Judiciary)) does not comply with the constitution of the Member State, as established by the constitutional court of that Member State, and which could consequently undermine the confidence which the judiciary should inspire in a democratic society, is a duly qualified independent and impartial tribunal within the meaning of EU law?

5. Must Article 2, Article 4(3), Article 6(1) and (3) and the second subparagraph of Article 19(1) TEU in conjunction with the first and second paragraphs of Article 47 of the Charter and the third paragraph of Article 267 TFEU, Article 38 of the Charter and Article 7(1) and (2) of Directive 93/13 be interpreted as meaning that a body which includes a person appointed to the position of judge for the first or a subsequent time (to a higher court) who was selected as a candidate for appointment to that office in proceedings before the body which assesses candidates (the National Council of the Judiciary), where those proceedings did not fulfil the criteria of open and transparent rules for the selection of candidates, which could undermine the confidence which the judiciary should inspire in a democratic society, is a duly qualified independent and impartial tribunal within the meaning of EU law?

6. Must Article 2, Article 4(3), Article 6(3) and the second subparagraph of Article 19(1) TEU in conjunction with the first and second paragraphs of Article 47 of the Charter and the third paragraph of Article 267 TFEU, Article 38 of the Charter and Article 7(1) and (2) of Directive 93/13 be interpreted as meaning that the court of last instance of a Member State of the European Union (the Supreme Court), in order to ensure effective judicial protection as a means of preventing the continued use of unfair terms in contracts concluded by sellers and suppliers with consumers, is obliged to assess *ex officio* at each stage of the proceedings:

   (a) whether the court referred to in Questions 1 and 4 fulfils the criteria of a duly qualified independent and impartial tribunal within the meaning of EU law, regardless of the impact the assessment of the criteria set out in those questions has on the substance of the decision as to whether a contractual term is unfair and, in addition,

   (b) whether the proceedings before the court referred to in Questions 1 and 4 are valid?

7. Must Article 2, Article 6(1) and (3) and the second subparagraph of Article 19(1) TEU in conjunction with the first and second paragraphs of Article 47 of the Charter and the third paragraph of Article 267 TFEU, Article 38 of the Charter and Article 7(1) and (2) of Directive 93/13 be interpreted as meaning that the constitutional provisions of a Member State of the European Union concerning the organisation of courts or the appointment of judges which make it impossible to assess the effectiveness of a judicial appointment may, in accordance with EU law, prevent determination of the lack of independence of a court or the lack of independence of a judge sitting in that court by reason of the circumstances referred to in Questions 1 to 5?

([1]) OJ 1993 L 95, p. 29.

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 11 March 2020 — European Pallet Association eV v PHZ BV

(Case C-133/20)

(2020/C 209/18)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: European Pallet Association eV

Defendant: PHZ BV

Questions referred

1. (a) Does successful recourse to Article 13(2) of the CTM Regulation ([1]) require that the further commercialisation of the branded products concerned adversely affect or are liable to adversely affect one or more of [the functions of guaranteeing origin and quality, as well as the functions of communication, investment and advertising] of the trade mark?