



Press and Information

Court of Justice of the European Union

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Judgment in Case C-896/19
Repubblika v Il-Prim Ministru

National provisions of a Member State which confer on the Prime Minister a decisive power in the appointment of members of the judiciary, while providing for the involvement of an independent body responsible for assessing candidates and providing an opinion, are not contrary to EU law

Repubblika is an association whose purpose is to promote the protection of justice and the rule of law in Malta. Following the appointment, in April 2019, of new members of the judiciary, that association brought an *actio popularis* before the Prim'Awla tal-Qorti Ċivili – Ġurisdiżjoni Kostituzzjonali (First Hall of the Civil Court, sitting as a Constitutional Court, Malta), with a view, in particular, to challenging the procedure for the appointment of members of the Maltese judiciary, as governed by the Constitution.¹ The constitutional provisions concerned, which had remained unchanged from the time of their adoption in 1964 until a reform in 2016, confer on Il-Prim Ministru (Prime Minister, Malta) the power to submit to the President of the Republic the appointment of a candidate to such office. In practice, the Prime Minister thus has a decisive power in the appointment of members of the Maltese judiciary, which, according to Repubblika, raises doubts as to the independence of those judges and magistrates. Nevertheless, the candidates must satisfy certain conditions, also laid down by the Constitution, and, since the 2016 reform, a Judicial Appointments Committee has been established, which is charged with assessing candidates and providing an opinion to the Prime Minister.

In that context, the referring court decided to refer questions to the Court of Justice on the conformity of the Maltese system for appointing members of the judiciary with EU law and, more specifically, with the second subparagraph of Article 19(1) TEU and with Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'). The second subparagraph of Article 19(1) TEU, it should be noted, requires the Member States to provide sufficient remedies in order to ensure effective judicial protection in the fields covered by EU law, while Article 47 of the Charter sets out the right to an effective remedy for any litigant relying, in a given case, on a right that he or she derives from EU law.

The Court, sitting as the Grand Chamber, holds that **EU law does not preclude national constitutional provisions such as the provisions of Maltese law relating to the appointment of members of the judiciary**. It does not appear that those provisions might lead to those members of the judiciary not being seen to be independent or impartial, the consequence of which would be to undermine the trust which justice in a democratic society governed by the rule of law must inspire in individuals.

Findings of the Court

First, the Court states that **the second subparagraph of Article 19(1) TEU is intended to apply in the present case**, since the action seeks to challenge the conformity with EU law of national-law provisions governing the procedure for the appointment of members of the judiciary called upon to rule on questions relating to the application or interpretation of EU law, and which it is alleged are liable to affect their independence. In so far as **Article 47 of the Charter** is concerned,

¹ Articles 96, 96A and 100 of the Maltese Constitution.

the Court states that, although it is not applicable as such ² inasmuch as Repubblika does not rely on a subjective right that it derives from EU law, **it must nonetheless be taken into consideration for the purposes of interpreting the second subparagraph of Article 19(1) TEU.**

Second, the Court holds that **the second subparagraph of Article 19(1) TEU does not preclude national provisions which confer on a Prime Minister a decisive power in the process for appointing members of the judiciary, while providing for the involvement, in that process, of an independent body tasked, in particular, with assessing candidates for judicial office and providing an opinion to that Prime Minister.**

In order to reach that conclusion, the Court first points out, generally, that, amongst the requirements of effective judicial protection which must be satisfied by national courts which are liable to rule on the application or interpretation of EU law, the independence of the judiciary is of fundamental importance, in particular for the EU legal order, in a number of respects. It is essential to the proper working of the preliminary-ruling procedure, laid down in Article 267 TFEU, which may be activated only by an independent court or tribunal. Furthermore, it forms part of the essence of the fundamental right to effective judicial protection and to a fair trial provided for in Article 47 of the Charter.

Next, the Court recalls its recent case-law, ³ in which it clarified the guarantees of judicial independence and impartiality, required under EU law. Those guarantees presuppose, inter alia, the existence of rules that are such as to dispel any reasonable doubt in the minds of individuals as to the imperviousness of members of the judiciary to external factors, in particular to direct or indirect influence from the legislature or the executive, and as to their neutrality with respect to the interests before them.

Lastly, the Court points out that, under Article 49 TEU, the European Union is composed of States which have freely and voluntarily committed themselves to the common values referred to in Article 2 TEU, such as the rule of law, which respect those values and undertake to promote them. A Member State cannot therefore amend its legislation, particularly in regard to the organisation of justice, in such a way as to bring about a reduction in the protection of the value of the rule of law, a value which is given concrete expression by, inter alia, Article 19 TEU. Against that backdrop, the Member States are required to refrain from adopting rules which would undermine the independence of the judiciary.

Having clarified those points, the Court holds, first, that the creation, in 2016, of the Judicial Appointments Committee serves, on the contrary, to reinforce the guarantee of judicial independence in Malta in comparison with the situation arising from the constitutional provisions which were in force when Malta acceded to the European Union. In that connection, the Court states that, in principle, the involvement of such a body may be such as to contribute to rendering more objective the process for appointing members of the judiciary, by circumscribing the leeway available to the Prime Minister in the exercise of the power conferred on him or her in that regard, provided that that body is sufficiently independent. In the present case, the Court finds that there is a series of rules which appear to be such as to guarantee that independence.

Second, the Court points out that, although the Prime Minister has a certain power in the appointment of members of the judiciary, the exercise of that power is circumscribed by the requirements of professional experience, laid down in the Constitution, which must be satisfied by candidates for judicial office. Moreover, although the Prime Minister may decide to submit to the President of the Republic the appointment of a candidate not put forward by the Judicial Appointments Committee, the Prime Minister is then required to communicate his or her reasons to, in particular, the legislature. According to the Court, provided that the Prime Minister exercises

² In accordance with Article 51(1) of the Charter.

³ See judgments of 19 November 2019, *A.K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, [C-585/18](#), [C-624/18](#) and [C-625/18](#) (see also [Press Release No 145/19](#)), and of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, [C-824/18](#) (see also [Press Release No 31/21](#)).

that power only in exceptional circumstances and adheres to strict and effective compliance with the obligation to state reasons, that power is not such as to give rise to legitimate doubts concerning the independence of the candidates selected.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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