



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 173/21**

Luxembourg, 6 October 2021

Judgment in Case C-487/19

W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)

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**Transfers without consent of a judge from one court to another or between two divisions of the same court are liable to undermine the principles of the irremovability of judges and judicial independence**

*The order by which a court, ruling at last instance and sitting as a single judge, dismissed the action of a judge transferred against his will, must be declared null and void if the appointment of that single judge took place in clear breach of fundamental rules concerning the establishment and functioning of the judicial system concerned*

In August 2018, the judge W.Ż. was transferred without his consent from the division of the Sąd Okręgowy w K. (Regional Court of K., Poland) in which he held office to another division of that court. W.Ż. brought an action against that decision before the KRS, which, by resolution of 21 September 2018, ruled that there was no need to adjudicate. Subsequently, W.Ż. appealed against that resolution before the Sąd Najwyższy (Supreme Court, Poland).

In parallel with that appeal, W.Ż. also lodged an application for the recusal of all the judges of the Sąd Najwyższy sitting in the Chamber of Extraordinary Control and Public Affairs ('the Chamber of Extraordinary Control') of that court, which was called upon in principle to rule on that appeal. He maintained that, in view of the manner in which they were appointed, the members of that chamber did not offer the necessary guarantees of independence and impartiality.

In that regard, W. Ż inter alia claimed that the proposal for the appointment to the office of judge at the Sąd Najwyższy of all the persons sitting in the Chamber of Extraordinary Control who were concerned by the application for recusal was presented by Resolution No 331/2018 of the KRS, of 28 August 2018. That resolution was the subject of an appeal in its entirety before the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland), brought by other participants in the appointment procedure whose appointment to the office of judge at the Sąd Najwyższy the KRS had not proposed to the President of the Republic of Poland. Notwithstanding that appeal and the suspension of the effects of that resolution ordered by the Supreme Administrative Court, the President of the Republic appointed to the posts of judge of the Chamber of Extraordinary Control certain of the candidates put forward in that resolution.

Despite the pending proceedings, on 20 February 2019, the President of the Republic of Poland, subsequently, on the basis of the same Resolution No 331/2018 of the KRS, appointed A. S to the office of judge at the Sąd Najwyższy sitting in the Chamber of Extraordinary Control. On 8 March 2019, shortly before the hearing in the Civil Chamber of the Supreme Court called upon to rule on the abovementioned application for recusal, A.S., ruling as a single judge of the Chamber of Extraordinary Control, without having access to the case-file and without hearing W. Ż, made an order dismissing the appeal lodged by W.Ż. as inadmissible.

It is in that context that the Civil Chamber of the Supreme Court referred a question to the Court of Justice for a preliminary ruling.

In today's judgment, the Court notes, first, that the principle of the effective judicial protection of individuals' rights under EU law is a general principle of EU law stemming from the constitutional traditions common to the Member States, which has been enshrined in the Convention for the

Protection of Human Rights and Fundamental Freedoms,<sup>1</sup> and which is now set out in the Charter of Fundamental Rights of the European Union ('the Charter').<sup>2</sup> Next, the Court points out that **an ordinary Polish court such as the sąd okręgowy (regional court) in which W. Ż holds office as a judge**, may be called upon to rule on questions relating to the application or interpretation of EU law and that, therefore, as a 'court or tribunal' within the meaning of EU law, **it falls within the Polish system of legal remedies in the 'fields covered by Union law', within the meaning of the TEU.**<sup>3</sup> To ensure that such a body is in a position to ensure the effective legal protection thus required, **maintaining its independence is essential.**

According to the Court, **transfers without consent of a judge to another court, or between two divisions of the same court are potentially capable of undermining the principles of the irremovability of judges and judicial independence.** Such transfers may constitute a way of exercising control over the content of judicial decisions because they are likely not only to affect the scope of cases allocated to judges and the handling of cases entrusted to them, but also to have significant consequences on the life and career of those persons and, thus, to have effects similar to those of a disciplinary sanction. In that context, the Court states that **the requirement of judicial independence means that the rules applicable to transfer without the consent of such judges present, like the rules governing disciplinary matters, in particular the necessary guarantees to prevent any risk of that independence being jeopardised by direct or indirect external interventions.** It is thus important that, even where such transfer measures without consent are, as in the context of the case in the main proceedings, adopted by the president of the court to which the judge who is the subject of those measures belongs outside the context of the disciplinary regime applicable to judges, those measures may only be ordered on legitimate grounds, in particular relating to distribution of available resources to ensure the proper administration of justice, and that such decisions may be legally challenged in accordance with a procedure which fully safeguards the rights enshrined in the Charter, in particular the rights of the defence.

Finally the Court rules on the question whether, given **the circumstances in which the appointment of A.S. took place**, he may be regarded as constituting an 'independent and impartial tribunal previously established by law within the meaning of EU law'. It notes in that regard that, **viewed together**, those circumstances<sup>4</sup> **are**, subject to the final assessments to be made by the national court, **such as to lead, on the one hand, to the conclusion that the appointment of the judge concerned took place in clear disregard of the fundamental procedural rules for the appointment of judges to the Sąd Najwyższy** forming an integral part of the establishment and functioning of the Polish judicial system. On the other hand, subject to the same proviso, all those circumstances may also lead the national court to conclude that **the conditions in which the appointment of the judge concerned thus took place undermined the integrity of the outcome of the appointment process for the appointment of that judge by serving to create in the minds of individuals, reasonable doubts as to the imperviousness of that judge to external factors and as to his neutrality with respect to the interests before him as well as a lack of appearance of independence or impartiality on his part likely to prejudice the trust which justice in a democratic society governed by the rule of law must inspire in individuals.**

**If the referring court reaches such conclusions, it will be necessary to consider that the conditions in which the appointment of the judge concerned thus took place were, in the**

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<sup>1</sup> Articles 6 and 13.

<sup>2</sup> Article 47.

<sup>3</sup> The second subparagraph of Article 19(1),

<sup>4</sup> That is to say the fact that (i) the appointment of the judge concerned took place in breach of the final decision of the Naczelny Sąd Administracyjny (Supreme Administrative Court) ordering the suspension of the effects of the Resolution of the KRS No<sup>o</sup>331/2018, (ii) that appointment took place without awaiting the Court's judgment in the case A. B. and Others (Appointment of judges to the Supreme Court – Actions), [C-824/18](#) (see also Press Release [No 31/21](#)), which undermined the effectiveness of the preliminary ruling system laid down in Article 267 TFUE; (iii) the independence of the KRS which proposed the person concerned for appointment gives rise to reasonable doubts, (iv) the appointment and order of inadmissibility at issue were made even though the Sąd Najwyższy (Izba Cywilna) (Supreme Court (Civil Chamber)) was seised of an application for recusal in respect of all the judges initially appointed to the Chamber of Extraordinary Control.

**present case, such as to preclude his being capable, in a formation consisting of a single judge, of constituting an independent and impartial tribunal previously established by law and thus to prevent him from ruling,** in such a formation, on a decision to transfer a judge without consent, who, like W. Ž, may be called upon to interpret and apply EU law. In that case, in accordance with the principle of the primacy of EU law, the order of inadmissibility at issue must be declared null and void, without any provision of national law being able to preclude this.

The Court concludes that a national court seised of an application for recusal as an adjunct to an action by which a judge holding office in a court that may be called upon to interpret and apply EU law challenges a decision to transfer him without his consent, must – where such a consequence is essential in view of the procedural situation at issue in order to ensure the primacy of EU law – declare to be null and void an order by which a court, ruling at last instance and comprising a single judge, has dismissed that action, if it follows from all the conditions and circumstances in which the process of the appointment of that single judge took place that (i) that appointment took place in clear breach of fundamental rules which form an integral part of the establishment and functioning of the judicial system concerned, and (ii) the integrity of the outcome of that procedure is undermined, giving rise to reasonable doubt in the minds of individuals as to the independence and impartiality of the judge concerned, with the result that that order may not be regarded as being issued by an independent and impartial tribunal previously established by law.

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**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 texts](#) of the judgment and its résumé are published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

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