



Press and Information

Court of Justice of the European Union

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Judgment in Case C-132/20
Getin Noble Bank

The mere fact that a judge was appointed at a time when that judge's Member State was not a democratic regime does not affect the independence and impartiality of that judge

The Polish Supreme Court must rule in the final instance on the alleged unfairness of an indexation clause in a loan agreement concluded between consumers and the Polish Bank Getin Noble Bank.

In that context, that court asks **whether the three appellate judges who previously heard that dispute meet the requirements of independence and impartiality laid down by EU law.**

One of them started his career as a judge under the communist regime and did not swear a new judicial oath after that regime ended. The other two were appointed appellate judges at a time (namely between 2000 and 2018) when, according to the Polish Supreme Court, the National Council for the Judiciary (the KRS), which was involved in their appointment, did not operate transparently and its composition was contrary to the Constitution.

The Polish Supreme Court, sitting in a single-judge formation, thus decided to question the Court of Justice on the requirements of independence and impartiality of courts and tribunals.

By its judgment delivered today, the Court of Justice first sets aside the argument of the Polish Ombudsman, a party to the proceedings, that the judge of the Polish Supreme Court who addressed the matter to Court of Justice was not entitled to refer questions for a preliminary ruling given the flaws in his own appointment affecting his own independence and impartiality.

The Court of Justice does not have information relating to that judge or other evidence capable of rebutting the presumption that the Polish Supreme Court, irrespective of its actual composition, meets the requirements, inter alia that of independence and impartiality, that allow it to be considered to be a 'court or tribunal' of a Member State able to refer matters to the Court of Justice for a preliminary ruling. The questions referred are thus admissible.

Next, the Court of Justice examines the two parts of the questions referred.

As regards the appellate judge who started his career under the communist regime, the Court of Justice, applying the analytical framework derived from its case-law of the past years relating to the guarantee of independence and impartiality of courts and tribunals under EU law, considers that that mere fact as such does not affect the independence and impartiality of the said judge in the exercise of his subsequent judicial functions. It points out in that context, inter alia, that the Republic of Poland accessed the European Union and its values, inter alia that of the rule of law, without the circumstance that some Polish judges had been appointed at a time when that State was not yet a democratic regime being an issue in that context. The referring court, incidentally, did not provide any evidence capable of giving rise to doubts in that regard.

As regards the other two appellate judges, the Court of Justice, applying that same analytical framework, notes that the Polish Supreme Court did not rule on the independence

of the KRS when it declared, in 2017, that the composition of the latter, as it was at the time two judges in question were appointed, was contrary to the Constitution. That unconstitutionality as such is therefore not sufficient to affect the independence and impartiality of the KRS in its composition at the time and, consequently, that of the judges in whose appointment it was involved. In addition, the same conclusion applies when a judge has been appointed by the KRS as a candidate for the position of judge following a procedure that was not, at the time, either transparent or public or open to judicial review, where there is no evidence to show a lack of independence of the KRS. The referring court has not put forward any specific evidence capable of giving rise to doubt in that regard.

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.

Unofficial document for media use, not binding on the Court of Justice.

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

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

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106