



Court of Justice of the European Union

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Press and Information

Judgment in Joined Cases C-585/18, C-624/18 and C-625/18
A.K. v Krajowa Rada Sądownictwa, and CP and DO v Sąd Najwyższy

The referring court must ascertain whether the new Disciplinary Chamber of the Polish Supreme Court is independent in order to determine whether that chamber has jurisdiction to rule on cases where judges of the Supreme Court have been retired, or in order to determine whether such cases must be examined by another court which meets the requirement that courts must be independent

In the judgment in *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)* (C 585/18, C 624/18 and C 625/18), delivered on 19 November 2019 in an expedited procedure, the Grand Chamber of the Court of Justice held that the right to an effective remedy, enshrined in Article 47 of the Charter of Fundamental Rights of the European Union and reaffirmed, in a specific field, by Directive 2000/78,¹ precludes cases concerning the application of EU law from falling within the exclusive jurisdiction of a court which is not an independent and impartial tribunal. The Court considers that that is the case where the objective circumstances in which such a court was formed, its characteristics and the means by which its members have been appointed are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of that court to external factors, in particular, as to the direct or indirect influence of the legislature and the executive and its neutrality with respect to the interests before it. Those factors may thus lead to that court not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society must inspire in subjects of the law. It is for the referring court to determine, in the light of all the relevant factors established before it, whether that does in fact apply to the new Disciplinary Chamber of the Polish Supreme Court. If that is the case, the principle of the primacy of EU law thus requires it to disapply the provision of national law which reserves exclusive jurisdiction to the Disciplinary Chamber to hear and rule on cases of the retiring of judges of the Supreme Court, so that those cases may be examined by a court which meets the requirements of independence and impartiality and which, were it not for that provision, would have jurisdiction in the relevant field.

In the cases pending before the referring court, three Polish judges (of the Supreme Administrative Court and of the Supreme Court) relied on, *inter alia*, infringements of the prohibition on discrimination on the ground of age in employment, on account of their early retirement pursuant to the New Law of 8 December 2017 on the Supreme Court. Despite the fact that, following a recent amendment, that law no longer concerns judges who, like the applicants in the main proceedings, were already serving members of the Supreme Court when that law entered into force and that therefore those applicants in the main proceedings were kept in their posts or reinstated, the referring court considered that it was still faced with a problem of a procedural nature. Although such cases would ordinarily fall within the jurisdiction of the Disciplinary Chamber, as newly-created within the Supreme Court, the referring court asked whether, on account of concerns relating to the independence of that chamber, it was required to disapply national rules on the distribution of jurisdiction and, if necessary, rule itself on the substance of those cases.

¹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

In the first place, having confirmed that, in the present cases, both Article 47 of the Charter of Fundamental Rights and the second subparagraph of Article 19(1) TEU were applicable, the Court stated that the requirement that courts be independent forms part of the essence of the right to effective judicial protection and the fundamental right to a fair trial, rights which are of cardinal importance as a guarantee that all the rights which individuals derive from EU law will be protected and that the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law, will be safeguarded. Next, it set out, in detail, its case-law on the scope of the requirement that courts must be independent and held, in particular, that, in accordance with the principle of the separation of powers which characterises the operation of the rule of law, the independence of the judiciary must be ensured in relation to the legislature and the executive.

In the second place, the Court noted the specific factors which must be examined by the referring court in order to allow it to ascertain whether the Disciplinary Chamber of the Supreme Court offers sufficient guarantees of independence.

First, the Court stated that the mere fact that the judges of the Disciplinary Chamber were appointed by the President of the Republic does not give rise to a relationship of subordination to the political authorities or to doubts as to the former's impartiality, if, once appointed, they are free from influence or pressure when carrying out their role. Furthermore, the prior participation of the National Council of the Judiciary, which is responsible for proposing judicial appointments, is objectively capable of circumscribing the President of the Republic's discretion, provided, however, that that body is itself sufficiently independent of the legislature, the executive and the President of the Republic. In that regard, the Court added that regard must be had to relevant points of law and fact relating both to the circumstances in which the members of the new Polish National Council of the Judiciary are appointed and the way in which that body actually exercises its role of ensuring the independence of the courts and of the judiciary. The Court also stated that it would be necessary to ascertain the scope for the judicial review of propositions of the National Council of the Judiciary in so far as the President of the Republic's appointment decisions are not per se amenable to such judicial review.

Second, the Court referred to other factors that more directly characterise the Disciplinary Chamber. For example, it stated that, in the specific circumstances resulting from the — highly contentious — adoption of the provisions of the New Law on the Supreme Court which the Court declared to be contrary to EU law in its judgment of 24 June 2019, *Commission v Poland (Independence of the Supreme Court)* (C-619/18, EU:C:2019:531),² it was relevant to note that the Disciplinary Chamber had been granted exclusive jurisdiction to rule on cases of the retiring of judges of the Supreme Court resulting from that law, that that chamber must be constituted solely of newly-appointed judges and that that chamber appears to enjoy a particularly high degree of autonomy within the Supreme Court. As a general point, the Court reiterated on several occasions that, although each of the factors examined, taken in isolation, is not necessarily capable of calling into question the independence of that chamber, that may, however, not be true once they are taken together.

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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² Case [C-619/18](#) *Commission v Poland (Independence of the Supreme Court)*, see Press Release No [81/19](#).