



Reports of Cases

Case C-748/23 [Gekus]ⁱ

C. Limited

v

M. S.

(Request for a preliminary ruling from the Sąd Najwyższy)

Judgment of the Court (Fourth Chamber) of 16 July 2026

(Reference for a preliminary ruling – Rule of law – Judicial independence – Second subparagraph of Article 19(1) TEU – Article 47 of the Charter of Fundamental Rights of the European Union – National legislation permitting a review of compliance with the requirements of independence and impartiality of a judge sitting in the Sąd Najwyższy (Supreme Court, Poland) – Composition of the panel of judges called upon to review compliance with those requirements – Irregularities in the appointment of a member of the panel – Consequences of such irregularities – Impartiality – Primacy of EU law)

1. *Questions referred for a preliminary ruling – Jurisdiction of the Court – Limits – Obligation on Member States to establish the necessary remedies to ensure effective judicial protection – Questions concerning national rules relating to the organisation and operation of a judicial body – Included*
(Art. 19(1) TEU; Art. 267 TFEU; Charter of Fundamental Rights of the European Union, Art. 47)

(see paragraph 27)

2. *Member States – Obligations – Provision of remedies sufficient to ensure effective legal protection – Observance of the principle of judicial independence – Right to an independent and impartial tribunal previously established by law – National rules on the composition of panels – Circumstances surrounding the appointment of a judge that may, in and of themselves, entail an infringement of the right to an independent and impartial tribunal previously established by law – Condition – Circumstances involving an irregularity of a nature and gravity giving rise to a legitimate doubt, in the minds of individuals, as to the independence or impartiality of that judge*
(Art. 19(1), second subpara., TEU; Charter of Fundamental Rights of the European Union, Art. 47)

ⁱ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

(see paragraphs 28-43, operative part 1)

3. *Member States – Obligations – Provision of remedies sufficient to ensure effective judicial protection – Observance of the principle of judicial independence – Right to an independent and impartial tribunal previously established by law – National legislation permitting a review of compliance with the requirements of independence and impartiality of a judge sitting in a court – Composition of the panel of judges called upon to review compliance with those requirements – Panel of judges comprising one or more judges who, because of the conditions of their appointment, are in an identical situation to that of the judge under review – Inadmissibility*
(Art. 19(1), second subpara., TEU; Charter of Fundamental Rights of the European Union, Art. 47)

(see paragraphs 45-62, operative part 2)

4. *Member States – Obligations – Provision of the remedies necessary to ensure effective judicial protection – Observance of the principle of judicial independence – Right to an independent and impartial tribunal previously established by law – Primacy – Obligations of national courts – Obligation to disapply, on their own authority, any national regulation or practice contrary to a provision of EU law having direct effect – National legislation permitting a review of compliance with the requirements of independence and impartiality of a judge sitting within a court – Composition of the panel of judges called upon to review compliance with those requirements – Infringement, by that panel of judges, of the right to a tribunal previously established by law – Court concerned having to ensure that any judge who does not meet those requirements does not take part in the examination of such an application for an independence and impartiality test – Court also having to disapply national rules determining the composition of that panel – Legal system of the Member State concerned having to lay down detailed procedural rules to ensure that the panel of judges hearing such an application meets those requirements*
(Art. 4(3) and 19(1), second subpara., TEU; Charter of Fundamental Rights of the European Union, Art. 47)

(see paragraphs 64-72, operative part 3)

Résumé

Having received a request for a preliminary ruling from the Sąd Najwyższy (Supreme Court, Poland), the Court of Justice clarifies, inter alia, as regards the right to an independent and impartial tribunal previously established by law, the consequences that the legal system of a Member State must draw from the unlawful composition of a panel of judges called upon to hear an application to review compliance with the requirements of independence and impartiality of a judge.

By a judgment delivered in June 2021, a Polish court ordered M. S., an Irish national, to pay an amount of money to C. Limited, an Irish company.

M. S. lodged an appeal in cassation against that judgment before the referring court. A three-judge panel, including Judge JG, was appointed to hear the appeal.

Having doubts as to the circumstances surrounding that judge's appointment, C. Limited filed an application for an independence and impartiality test to be carried out in respect of Judge JG, in accordance with the procedure set out in the Law on the Supreme Court.

Five judges of the referring court were drawn by lot to make up the panel hearing that application, three of whom were appointed on the proposal of the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland; 'the KRS') in its new composition, including the judge who is the subject of the application for the test.

Examining the admissibility of that application, the referring court, composed of a single judge who is also the President of that five-judge panel, asks the Court how to ensure the compatibility of the independence and impartiality test provided for by the Law on the Supreme Court 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').

Findings of the Court

First of all, as regards the procedure for the appointment of judges, the Court notes that, having regard to its implications for the functioning and the legitimacy of the judiciary in a State governed by the rule of law, such a procedure necessarily constitutes an inherent element of the concept of a 'tribunal previously established by law', within the meaning of Article 47 of the Charter. While not every error that may take place during the procedure for the appointment of a judge is of such a nature as to give rise to doubts as to the independence and impartiality of that judge, certain failures in the procedure for the appointment of judges may, in and of themselves, indicate that the judges in question fail to meet the requirements of independence and impartiality. In such cases, a party to the proceedings who raises the question of compliance with those requirements, for example by requesting an independence and impartiality test in respect of a judge sitting on a panel of judges, cannot be required to provide additional evidence, including in relation to the judge's conduct following his or her appointment. The party making such a request should therefore be able to rely on arguments based solely on the circumstances surrounding the appointment of that judge and demonstrating that, on that occasion, an irregularity occurred of such a kind and of such gravity as to give rise to doubts in the minds of individuals as to the impartiality of the judge concerned and his or her independence from the executive or legislative branches. Consequently, the circumstances surrounding the appointment of a judge may, in and of themselves, entail an infringement of the right to an independent and impartial tribunal previously established by law, within the meaning of the second subparagraph of Article 19(1) TEU, read in the light of Article 47 of the Charter, if they involve an irregularity of such a nature and gravity as to give rise to a legitimate doubt in the minds of individuals as to the independence or impartiality of that judge.

Next, as regards the composition of the panel of judges called upon to examine an application for an independence and impartiality test in respect of a judge, the Court specifies that the members of that panel cannot be in the same situation as the judge who is the subject of the test. The identical nature of the circumstances surrounding their own appointment as judges and those of the judge who is the subject of the test could raise legitimate doubts in the minds of individuals as to the neutrality of that panel in relation to the interests at stake. Thus, the formation of the referring court called upon to examine the question of the independence and impartiality of a judge of that court must itself meet the requirements of an independent and impartial court previously established by law. In the present case, however, it appears that three of the judges on

the panel examining the application for an independence and impartiality test at issue in the main proceedings were appointed in circumstances identical to those surrounding the appointment of the judge who is the subject of the test, involving the KRS in its new composition. Moreover, one of the judges was recused in another case, after the same procedure as the one requested in the main proceedings. Therefore, having regard to the second subparagraph of Article 19(1) TEU, read in the light of Article 47 of the Charter, it cannot be accepted that the review of compliance with the requirements of independence and impartiality in respect of a judge sitting in a court may be entrusted to a panel of judges of that court comprising one or more judges who, because of the conditions of their appointment, are in the same situation as the judge under review.

Lastly, the Court holds that, by virtue of those same provisions, in the event that the panel of judges called upon to hear an application for an independence and impartiality test in respect of a judge itself infringes the right to a tribunal previously established by law owing to the presence within it of a judge who does not meet the requirements of independence and impartiality, the court in question is required to ensure that such a judge does not take part in the examination of that application. If necessary, it must disapply the national rules determining the composition of that panel so that the application may be examined by a body in accordance with those provisions. The legal system of the Member State concerned must lay down the detailed procedural rules to ensure that such an application is heard by a judicial panel which meets the requirements stemming from the fundamental right to an effective remedy and to a fair trial.