

Court of Justice rules that lower courts may disregard decisions of higher courts that violate independence and impartiality

The Court of Justice ruling of 4 September 2025 (C-225/22) has declared that national courts may set aside decisions of higher courts that do not comply with the requirements of independence and impartiality derived from Article 19(1) of the Treaty on European Union and Article 47 of the Charter of Fundamental Rights of the European Union.

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The Judgment of the Court of Justice of the European Union of 4 September 2025 (case C-225/22) has ruled that national courts may set aside decisions of higher courts that do not comply with the requirements of independence and impartiality imposed by European Union law when such non-compliance is based on a decision of the Court of Justice itself.

The background to the main proceedings in which the preliminary ruling was requested can be summarised briefly as follows:

- By judgment of 20 October 2021, the Chamber of Extraordinary Control and Public Affairs of the Supreme Court of Poland set aside a decision of the Regional Civil Court in Krakow (which was final and prohibited the marketing of cer-

tain magazines protected by a registered trademark) and referred the case back to it for reconsideration.

- The civil court considered that, due to irregularities in the procedure for appointing the judges of that Chamber of the Polish Supreme Court, they did not qualify as a court for the purposes of EU law. In particular, irregularities in the appointment of five judges meant that the Chamber did not have that status, as stated by the Court of Justice in its judgment of 21 December 2023, *Krajowa Rada Sądownictwa* (C-718/21).
- However, the civil court referred the question for a preliminary ruling because it had doubts about the possibility of examining the composition of a higher court. National legislation and the case law of the Polish Constitutional Court prevented it from verifying the regularity of the appointment of judges, which obliged it to abide by the decision referring the case back to it for reconsideration.

The Polish Civil Court raised four questions for a preliminary ruling, which were resolved by the judgment in two rulings, both based on the interpretation of Article 19(1) of the Treaty on European Union, in the light of the requirements of Article 47 of the Charter of Fundamental Rights of the European Union and the principle of the primacy of EU law.

First, the Court of Justice affirms its jurisdiction to hear, by way of a preliminary ruling, questions relating to the independence and impartiality of the judiciary required by Article 47 of the Charter, even where the main proceedings do not concern the direct application of a rule of Union law, as required by Article 51 of the

Charter. This is based on the fact that Article 19(1) of the Treaty on European Union (TEU) imposes on Member States the obligation to ensure effective judicial protection in the areas covered by EU law, which must satisfy the requirements of Article 47 of the Charter. It is therefore sufficient for the referring court to be able to rule on questions of application or interpretation of EU law for the Court of Justice to have jurisdiction to interpret Article 19(1) in the light of those requirements.

The following statements from the judgment in relation to the questions referred for a preliminary ruling are particularly noteworthy:

- 1) In response to the first three questions, the judgment states the following:

... the second subparagraph of Article 19(1) TEU, read in the light of Article 47 of the Charter, and the principle of primacy of EU law, must be interpreted as precluding legislation of a Member State and case-law of the constitutional court of that Member State under which a national court is required to comply with a decision delivered by a formation of a higher court, where, on the basis of a decision of the Court of Justice, that national court finds that one or more judges forming part of that panel of judges do not meet the requirements of independence, impartiality and previous establishment by law, within the meaning of that provision.

Consequently, all courts of the Member States have jurisdiction to verify whether they themselves, the judges sitting on

them or other judges or courts, even if they are hierarchically superior, meet the requirements of Article 19(1) of the Treaty on European Union, in conjunction with Article 47 of the Charter, in relation to the independence, impartiality and previous establishment by law of the courts and judges concerned.

In this regard, as the Court of Justice has already stated in a previous judgment, national rules prohibiting national courts from carrying out such verification fail to comply with these requirements of EU law and, by virtue of the principle of primacy, it is for the courts themselves to disapply them, if necessary, as contrary to the requirements of EU law (as already stated in the judgment of 5 June 2023, *Commission v Poland*, case C204/21).

- 2) In answer to the fourth question, the judgment states that, where, as in the present case, “where it is found, on the basis of a decision of the Court, that a judicial body of last instance does not satisfy the requirements of independence, impartiality and previous establishment by law, within the meaning of that provision, a decision taken by such a body, by which the case concerned is referred back to a lower court for re-examination, must be regarded as null and void or as an effective decision which that lower court is nevertheless entitled to disregard and to refuse to apply”.

It should be noted that the decision of the Court of Justice which may serve as a basis for the national court to consider that the court of last instance does not meet the requirements of European Union law does not require that it has ruled

specifically on the particular case or on the judges concerned, which gives the national court a certain margin of discretion in assessing such circumstances.

In the case of Poland, the judgment of the Court of Justice of the European Union of 21 December 2023 (s, C-718/21) stated that the Chamber of Extraordinary Control and Public Affairs of the Supreme Court, which referred the question for a preliminary ruling, did not meet the condition of being an independent and impartial court previously established by law, due to the manner in which its judges were appointed. Consequently, in accordance with the case law of the Court of Justice of the European Union, it could not be considered a ‘court or tribunal’ for the purposes of referring a question for a preliminary ruling.

The ruling was therefore different, but the judgment states that the requirement of judicial independence necessary to raise a preliminary question “coincides, in essence, with that required of a body capable of ruling, as a court or tribunal, on questions concerning the interpretation or application of EU law”, in accordance with the requirements of Article 19(1) of the Treaty on European Union in conjunction with Article 47 of the Charter.

It is also for the referring court to assess whether the judges of the Chamber of Extraordinary Control and Public Affairs who delivered the judgment of 20 October 2021, now being questioned, were appointed under the same conditions that characterised the appointment of the three judges who constituted the referring court in the case that gave rise to the judgment

The ruling empowers all courts to review higher court decisions in accordance with Article 47

of 21 December 2023.

On this point, the Court

of Justice recalls that,

according to its case

law, “the presence, in the body concerned,

of a single judge appointed in the same

circumstances as those at issue in the

case which gave rise to that judgment is

sufficient to deprive that body of its status

as an independent and impartial tribunal

previously established by law” for the

purposes of the repeated requirements

of European Union law.

It should be noted that this judgment em-

powers all courts to verify whether the

decisions handed down by another court,

even if it is hierarchically superior, respect

the guarantees of independence and

impartiality required by Article 47 of the

Charter.

These requirements mean that the com-

position, appointment procedure, term of

office of judges and the proper function-

ing of the grounds for recusal must offer

sufficient guarantees to exclude, as this

judgment states, “reasonable doubts, in

the minds of individuals, as to the imper-

viousness of those judges and the panel in

which they sit to external factors, in par-

ticular, the direct or indirect influence of

the national legislature and executive and

their neutrality with respect to the interests

before them.”.

Where non-compliance with these re-

quirements is manifest, because it is sup-

ported by a ruling of the Court of Justice,

the lower court is entitled, in accor-

dance with this judgment, to declare the

act null and void or, where appropriate,

to refrain from applying it. Conversely, if

there are well-founded doubts about such

non-compliance and there is no prior rul-

ing by the Court of Justice of the Europe-

an Union, it is understood that it is for the

court to refer the matter for a preliminary

ruling under Article 267 of the Treaty on

the Functioning of the European Union.