



## PRESS RELEASE No 20/25

Luxembourg, 25 February 2025

Judgment of the Court in Joined Cases C-146/23 | Sąd Rejonowy w Białymstoku and C-374/23 | [Adoreikė] <sup>1</sup>

### Judicial independence: the Court of Justice clarifies the requirements of EU law concerning the determination of national judges' remuneration

*Enshrined in law, the detailed rules for determining that remuneration must be objective, foreseeable, stable and transparent*

Polish and Lithuanian courts have referred questions to the Court of Justice concerning the determination of judges' remuneration. The Court recalls that that remuneration, which is one of the guarantees of judicial independence, must be commensurate with the importance of judges' functions. The determination of that remuneration must have a legal basis and meet the criteria of objectivity, foreseeability, stability and transparency. The level of remuneration of judges must be sufficiently high, in the light of the socio-economic context of the Member State concerned, in particular with regard to the average salary. Any derogation from the method for determining the remuneration must be justified by an objective of general interest. Such derogations, which must not be specifically aimed at judges, must be necessary, proportionate and temporary. They may not undermine the commensurate nature of judges' remuneration with their functions.

Polish and Lithuanian courts have referred questions to the Court of Justice concerning the compatibility with EU law of the national provisions for determining judges' remuneration. <sup>2</sup>

In Poland, a law provides that the basic salary of judges is to be determined objectively, on the basis of the average salary published by the Central Statistical Office. Nevertheless, three periodic laws amended that method of calculation, resulting in a 'freeze' in the uprating of judges' remuneration for the years 2021, 2022 and 2023. That derogating measure was stated to be justified by budgetary constraints linked to the Covid-19 pandemic and Russia's aggression against Ukraine.

Challenging that amendment, a judge seeks payment of a sum corresponding to the difference between the salary received and that which would have been due to him if the uprating had not been 'frozen'.

In Lithuania, two judges brought an action for damages against that Member State. They maintain that the level of their remuneration directly depends on the political will of the executive and the legislature. They also complain that there is no legal mechanism for setting remuneration commensurate with the dignity of their office, consistent with the responsibilities of judges and comparable to the salaries of representatives of other legal professions.

In its judgment, the Court recalls that **the receipt by judges of a level of remuneration commensurate with the importance of the functions they carry out constitutes a guarantee essential to their independence.** Consequently, in laying down the detailed rules for determining judges' remuneration, the Member States are required to comply with their obligations deriving from EU law. <sup>3</sup>

Thus, **those rules must have a legal basis.** They must be objective, foreseeable, stable and transparent, so as to

exclude any arbitrary intervention by the legislature and the executive. The same requirements apply to derogating measures which lead to the reduction of judges' remuneration or to the uprating of that remuneration being 'frozen'.

**The level of remuneration of judges must be sufficiently high**, having regard to the economic, social and financial situation of the Member State concerned, in particular with regard to the average salary. That remuneration must be commensurate with the importance of the functions entrusted, in order to protect judges from any pressure liable to influence their decisions and to protect them against the risk of corruption. However, **judicial independence does not preclude their remuneration from being established at a level lower than that of the average remuneration of other legal professionals.**

Derogations from the rules on the determination of judges' remuneration must be **justified by an objective of general interest**, such as the elimination of an excessive government deficit. In principle, those derogations must not be aimed specifically at judges. They must also be necessary and strictly proportionate to the attainment of the objective pursued. **Notwithstanding the application of those measures, which are exceptional and temporary by their nature**, judges' remuneration must remain commensurate with the importance of their functions.

Lastly, the way in which judges' remuneration is determined, as well as the measures derogating from it, must be capable of being subject to **effective judicial review** before a national court.

It is for the national courts to verify whether those requirements have been complied with in the present case, which, according to the Court, appears *prima facie* to be the case.

**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 EU law or the validity of an EU 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 and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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<sup>1</sup> The name of the present case is a fictitious name. It does not correspond to the real name of any of the parties to the proceedings.

<sup>2</sup> Article 2 and the second subparagraph of Article 19(1) TEU.

<sup>3</sup> Article 19 TEU, which gives concrete expression to the value of the rule of law affirmed in Article 2 TEU, entrusts the responsibility for ensuring the full application of EU law in all Member States and the judicial protection that individuals derive from EU law to national courts and tribunals and to the Court of Justice. To that end, maintaining the independence of those bodies is essential.