

**Press release of the #FreeCourts initiative
on the hearing to be held on 22 September 2020 at the CJEU
in C-487/19 W.Ż. (Waldemar Żurek) regarding a request for a preliminary ruling**

Case C-487/19 W.Ż. regarding a request for a preliminary ruling submitted by the Civil Chamber of the Polish Supreme Court in the case of Waldemar Żurek is to be considered on 22 September 2020 before the Grand Chamber of the Court of Justice of the European Union. The hearing will start at 9 a.m. in the main courtroom of the CJEU.

The case is pending before the Court in connection with the fundamental doubts of the Supreme Court as to the correct implementation of the principle of effective judicial protection in the Polish judicial system, which is one of the fundamental principles arising from EU law. The obligation to implement this principle by all EU Member States arises from the second paragraph of Article 19(1) of the Treaty on European Union. What this means exactly is specified in Article 47 of the EU Charter of Fundamental Rights, which states, among others, that ***'Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law.'***

Aleksander Stępkowski, who was appointed by President Andrzej Duda to the Extraordinary Control and Public Affairs Chamber of the Supreme Court, ruled on his own in the case of Judge Żurek's appeal against the resolution of the new National Council of the Judiciary (NCJ), which was unfavourable for him. In connection with this 'ruling', the Civil Chamber of the Supreme Court submitted a request to the CJEU for a preliminary ruling (namely a preliminary legal question) as to whether such a single-person body, which was established in gross violation of the law, is a court in the meaning of EU standards? Judge Żurek will be represented before the CJEU by advocates from the 'Free Courts' – Sylwia Gregorczyk-Abram and Michał Wawrykiewicz – as part of the activities of the Justice Defence Committee (KOS).

Genesis of the case: Judge Dagmara Pawełczyk-Woicka, President of the Regional Court in Krakow, issued a decision on 27 August 2018 by which Judge Waldemar Żurek was transferred from the 2nd Civil Appeal Division (the division that considers appeals and complaints against first-instance decisions) to the 1st Civil Division of the Regional Court in Krakow (first instance division) against his will. In the judge's opinion, this decision constituted obvious harassment (for his activities in defence of the rule of law), which demoted him to a division located hierarchically lower than the Regional Court in Krakow. The judge appealed against this decision to the new National Council of the Judiciary, which rejected his appeal. The judge appealed further against the resolution of the neo-NCJ to the Labour and Social Security Chamber of the Supreme Court, acknowledging that neither the Extraordinary Control and Public Affairs Chamber nor the Disciplinary Chamber (which, according to the applicable Act on the Supreme Court, could formally have the jurisdiction to consider appeals against resolutions of the NCJ) are courts in the meaning of constitutional and treaty standards. The judge also applied for the exclusion of everyone from the Extraordinary Control and Public Affairs Chamber and the Disciplinary Chamber from adjudicating in his case. On 19 November 2018, the First President of the Supreme Court, Prof. Małgorzata Gersdorf, specified that the Civil Chamber has the jurisdiction to consider this petition to exclude the neo-judges.

Despite setting the date for the hearing of the Civil Chamber of the Supreme Court for 8 March 2019 (regarding the consideration of the petition for exclusion), that same morning Aleksander Stępkowski, who had been appointed to the Extraordinary Control and Public Affairs Chamber, disregarded the petition for exclusion that had been submitted and the date set for the hearing of the bench in the Civil Chamber and **issued a decision on his own** (without having the case files, which were in the Civil Chamber) rejecting Judge Żurek's appeal against the resolution of the neo-KRS (which was a substantive 'judgment' in the case). Consequently, on 21 May 2019, a bench of 7 judges of the Civil Chamber submitted a request for a preliminary ruling to the CJEU (namely a preliminary legal question before considering the petition for exclusion) on **whether a single-person membership of the Extraordinary Control and Public Affairs Chamber of the Supreme Court appointed in gross violation of the law is an independent and impartial court which has been previously established by law in accordance with European standards**. As stated in the justification: *'In the opinion of the Supreme Court, despite the consideration of the resolution of the National Council of the Judiciary on judicial nominations not having being completed and despite the resolution withholding the execution of the resolution of the NCJ, Aleksander Stępkowski's appointment to office in the Supreme Court is a deliberate breach of the law.'* The Supreme Court mentioned a number of breaches in the procedure of appointing people such as Aleksander Stępkowski to

the office of judge under the new procedure. In particular, this means that President Duda decided to make the nomination even though the matter of the selection of candidates by the National Council of the Judiciary had not been completed and the the resolution of the neo-NCJ on the choice of candidates (including A. Stępkowski) had been explicitly suspended by the Supreme Administrative Court. Furthermore, there were other violations, such as, for instance, the fact that the recruitment to new judicial positions was conducted on the basis of an announcement of the President of the Republic of Poland on vacant judicial positions in the Supreme Court, which did not have a so-called countersignature of the Prime Minister, even though an announcement on such a matter is not a presidential prerogative in accordance with Article 144, para. 3 of the Polish Constitution. Therefore, such an announcement and the entire recruitment process are invalid.

'A Polish and European judge, Waldemar Żurek, whose case became the basis for proceedings before the CJEU, **found himself in Josef K.'s position from *The Trial* by Franz Kafka**. He appealed against the decision of the politicised court president to the politicised neo-NCJ and then to the Supreme Court, where his appeal was dismissed, without the case files, by Aleksander Stępkowski on his own, being a person nominated to the Supreme Court with the involvement of the neo-NCJ in gross violation of the law. This is a kind of closed loop created by the rulers. This is not a court and this is not a judgment in the meaning of the Treaty criteria. However, the whole of the Polish judiciary is currently relying on the heroism of the individual and the courage of individual judges, as the systemic protection of their independence has been completely dismantled. Poland does not ensure that the EU principle of effective judicial protection will be implemented,' say the lawyers from 'Free Courts'.

When examining the question that was referred for a preliminary ruling in this case, the CJEU **will assess the status of the next, new chamber after the Disciplinary Chamber, which was established in the Supreme Court by the current executive authority, as well as its members**. The status of the Disciplinary Chamber was prejudged in the judgment in A.K. (of 19 November 2019) and the resolution of the three combined Chambers of the Supreme Court of 23 January 2020 issued in its implementation. Its operation was additionally suspended on the basis of the interim measure of the CJEU of 8 April 2020 in the case of a complaint of the European Commission regarding the model of disciplinary liability for judges in Poland (C-791/19).

The **decision** of the CJEU of these doubts is important not only with respect to Aleksander Stępkowski, but **also with respect to other people adjudicating in the Extraordinary Control and Public Affairs Chamber and other chambers of the Supreme Court** appointed in the new procedure.

The further steps taken by the Polish authorities resulting in the destruction of the judiciary are inciting a legal reaction at European level, which should result in stopping this breach of the rule of law and give grounds for its subsequent reconstruction.