



## Case study

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**Facts of the case:** Judge AB was appointed to the District Court X (Poland) on 4 December 2003.

On 3 April 2007, he was seconded to the District Court Y (Poland) where he currently sits.

Since 5 August 2021, AB has been employed on salary grade „five”.

AB’s monthly remuneration is calculated by multiplying his basic salary of 5 050.48 Polish zlotys (PLN) in 2022 and PLN 5 444.42 in January 2023 by a coefficient of 2.5, to which a 20% of the basic salary supplement for years of service is added.

**The main proceedings:** AB brought before The Sąd Rejonowy w Białymstoku (District Court, Białystok) an action against his employer, District Court Y, seeking payment of PLN 10 000 for the work that he performed from 1 July 2022 to 31 January 2023 and for statutory default interest on that sum. That amounts to the difference between the salary that AB received from 1 July 2022 to 31 January 2023 and the salary due to him pursuant to the mechanism in Article 91 of the Law relating to the organisation of the ordinary courts. According to AB, that difference is PLN 1 362.12 per month for the months of July to November 2022, PLN 1 053.90 for the month of December 2022 and PLN 2 135.50 for the month of January 2023.

The basis for AB’s claim is that the Laws laying down special provisions for the implementation of the budgetary laws for 2021, 2022 and 2023 do not comply with the Law on the organisation of the ordinary courts, the Constitution of the Republic of Poland and EU law since, by reducing his remuneration, they undermine the principle of judicial independence and create conditions that enable the legislature and the executive to influence the content of judicial decisions.

AB’s employer claims that it paid him in accordance with the law and that it cannot determine judges’ remuneration on its own initiative.

Both parties refer to the Government’s statement of reasons for the draft Laws laying down special provisions for the implementation of the budgetary laws for 2021, 2022 and 2023 but draw diametrically opposite conclusions therefrom.

AB highlights the „freezing” of judges’ salaries as compared to an increase in the remuneration of the directors of certain public entities (of between 40% to 60%).

AB’s employer refers to the absence of available resources other than those provided in its budget.



Article 91 of the Law relating to the organisation of the ordinary courts lays down the mechanism to calculate the basic salary of judges for a given year by reference to the average salary for the second quarter of the previous year.

This mechanism, which was introduced on 22 April 2009, seeks to ensure that the system for the remuneration of judges meets the standard required by Article 178(2) of the Constitution of the Republic of Poland.

The 2009 amendment aimed at ensuring that the calculation of judges' salaries was more objective and reduced the influence of other authorities in fixing the level of judges' basic salaries. Prior to that change, the system for calculating judges' salaries was based, inter alia, on a basic amount set out in the annual State budget.

**The Sąd Rejonowy w Białymstoku (District Court, Białystok) decides to stay the proceedings and to refer to the Court of Justice for a preliminary ruling.**

The referring court observes that „at the initiative of the executive, the mechanism for calculating judges' basic salary was amended three times by the Laws laying down special provisions for the implementation of the budgetary laws for the years 2021, 2022 and 2023.”

In 2021, judges' salaries were „frozen” and their basic salary was calculated by reference to the average salary for the second quarter of 2019, rather than by reference to the average salary for the second quarter of 2020.

In 2022, judges' basic salaries were calculated by reference to the average salary for the second quarter of 2020. This resulted in an increase by comparison to the average salary for the second quarter of 2021.

In 2023, judges' salaries were calculated on the basis of a fixed basic amount, rather than on the basis of the average salary for the second quarter of 2022.

The amendments to the 2021 State budget were due to the economic situation in Poland in the wake of the COVID-19 outbreak. The provisions relating to the 2022 State budget did not mention any particular circumstances, while those relating to the 2023 State budget refer to the significant budgetary impact of the COVID-19 pandemic and the Russian invasion of Ukraine.

In December 2022, the First President of the Sąd Najwyższy (Supreme Court, Poland), the President of the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland) and the Krajowa Rada Sądownictwa (National Council of the Judiciary; „the KRS”) brought separate actions before the Trybunał Konstytucyjny (Constitutional Court, Poland) to challenge the constitutionality of the budgetary provisions for judges' salaries in 2023.



The referring court shares the reservations expressed by the petitioners in those proceedings. It considers that a „freeze” for three years of the system for the calculation of judicial remuneration by reference to an objective parameter, namely, the average salary in the second quarter of the previous year, undermines the independence of the judiciary.

It amounts to a threat of a permanent, repeated and consistent reduction of judges’ remuneration with a view to subordinating the judiciary to the executive and legislature. That threat is particularly evident in the light of the recent rule of law crisis in Poland. It is, moreover, completely incomprehensible given the stable financial situation of the Polish State. The referring court also considers that the alteration of the rules for determining judges’ remuneration to the latter’s detriment - particularly when compared to the increase in the cost of living - may have a negative impact on initiatives to improve the functioning of the courts. There is a significant risk that judges would bring a large number of actions to challenge the level of the salaries that they received in 2021, 2022 and 2023.

## **Legal context**

### **European Union law**

#### **Article 2 TEU**

*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.*

#### **Second subparagraph of Article 19 (1) TEU**

*Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.*

#### **Article 47 CFR**

*Right to an effective remedy and to a fair trial*

*Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.*

*Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.*

### **Polish law**

#### **Article 178 of the Konstytucja Rzeczypospolitej Polskiej (Constitution of the Republic of Poland)**

*1. Judges, within the exercise of their office, shall be independent and subject only to the Constitution and statutes.*



*2. Judges shall be provided with appropriate conditions for work and granted remuneration consistent with the dignity of their office and the scope of their duties.*

**Article 91 of the ustawa - Prawo o ustroju sądów powszechnych (Law on the organisation of the ordinary courts) of 27 July 2001**

*Paragraph 1c. The basis for setting the basic salary of judges for a particular year shall be the average salary during the second quarter of the previous year published in the 'Monitor Polski' Journal of Laws by the President of the Central Statistical Office [...], subject to Paragraph 1d.*

*Paragraph 1d. If the average salary referred to in Paragraph 1c is lower than the average salary published for the second quarter of the preceding year, this shall be adopted as the basis for setting the basic salary of a judge at the previous rate.*

*Paragraph 2. The basic salary for a judge shall be expressed in grades, the level of which shall be determined through the application of multipliers to the basis for determining the basic salary referred to in Paragraph 1c. The basic salary grades for individual judicial posts and the multipliers used to determine the level of the basic salary for judges in individual grades are set out in the annex to this Law.*

**The ustawa o szczególnych rozwiązaniach służących realizacji ustawy budżetowej na rok 2022 (Law of 17 December 2021 on specific arrangements for implementing the budget law for 2022)**

**Article 8**

*1. For 2022, the basis for setting the basic salary of judges referred to in Article 91(1c) of the Law of 27 July 2001 on the organisation of the ordinary courts (Dz. U. of 2020, item 2072, and of 2021, items 1080 and 1236) shall be the average remuneration in the second quarter of 2020, published in the communication of the President of the Główny Urząd Statystyczny (Central Statistics Office, Poland).*

*2. The basis referred to in paragraph 1 shall be increased by PLN 26.*

*3. Where separate provisions refer to the basis for determining the basic salary of judges referred to in Article 91(1c) of the Law of 27 July 2001 on the organisation of the ordinary courts, this shall correspond, for 2022, to the average remuneration in the second quarter of 2020, published in the communication of the President of the Główny Urząd Statystyczny (Central Statistics Office), plus PLN 26.*

*4. Where separate provisions refer to the remuneration of judges, that remuneration shall, for 2022, correspond to the remuneration determined in accordance with paragraphs 1 and 2.*

**The ustawa o szczególnych rozwiązaniach służących realizacji ustawy budżetowej na rok 2023 (Law of 1 December 2022 on specific arrangements for implementing the budget law for 2023).**

**Article 8**

*1. For 2023, the basis for determining the basic salary of judges referred to in Article 91(1c) of the Ustawa z dnia 27 lipca 2001 r. - Prawo o ustroju sądów powszechnych (Law of 27 July 2001 on the organisation of the ordinary courts) (Dz. U. of 2020, item 2072, as amended) shall be PLN 5 444.42.*

*2. Where separate provisions refer to the basis for determining the basic salary of judges referred to in Article 91(1c) of the Ustawa z dnia 27 lipca 2001 r. - Prawo o ustroju sądów*



*powszechnych (Law of 27 July 2001 on the organisation of the ordinary courts), for 2023, the amount thereof shall be PLN 5 444.42.*

**Questions:**

1. You are the Polish Court. Draft the content of the question(s) submitted to the ECJ.
2. Are there ECJ relevant decisions you can refer to?



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