

5. Must the second subparagraph of Article 19(1) TEU and the general principle of the right to a fair trial before a court or tribunal previously established by law be interpreted as meaning that the court of last instance of a Member State must reject an application for the transfer of a case file concerning a case in which a question has been referred for a preliminary ruling to the Court of Justice where such an application has been lodged by a person appointed to a judicial post under national legislation and in circumstances that result in a court or tribunal being formed which does not meet the requirements of independence and impartiality and is not a court established by law, without first having to exhaust the procedure referred to in the question referred for a preliminary ruling in Case C-508/19 or in the judgment of the Court of Justice of 19 November 2019, C-585/18, C-624/18 and C-625/18, *A.K. and Others*?

**Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 22 September 2020 —
M.F. v J.M.**

(Case C-509/20)

(2021/C 44/27)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Applicant: M.F.

Defendant: J.M.

Questions referred

1. Must Article 279 TFEU and Article 160(2) of the Rules of Procedure of the Court of Justice, in conjunction with Articles 4(3) and 19(1) TEU and the first and second indents of point 1 of the operative part of the order of the Court of Justice of 8 April 2020 in Case C-791/19 R, *Commission v Republic of Poland*, be interpreted as meaning that a request from the President of the Izba Dyscyplinarna Sądu Najwyższego (Disciplinary Chamber of the Supreme Court) concerning the transfer of the case file in a case relating to the establishment of the non-existence of a service relationship of a Supreme Court judge must be rejected as submitted by an entity which may not take any action until Case C-791/19 R has been resolved, due to the suspension of the application of Article 3(5), Article 27 and Article 73(1) of the Ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym (Law of 8 December 2017 on the Supreme Court) (consolidated text: Dz. U. of 2019, item 825, as amended)?
2. Must Article 2 and Article 4(2), in conjunction with Article 19 TEU and the right to a fair trial, be interpreted as meaning that:
 - (a) the national court is required to disapply the prohibition on ‘challenging the authority of the courts’ and on ‘the courts determining or assessing the lawfulness of a judge’s appointment or of his or her resulting authority to perform judicial tasks’, such as that laid down in Article 29(2) and (3) of the Law of 8 December 2017 on the Supreme Court, since the European Union’s respect for the constitutional identity of the Member States does not entitle the national legislature to enact solutions which undermine the fundamental values and principles of the European Union?
 - (b) the constitutional identity of a Member State must not result in the deprivation of the right to a fair trial before an independent court or tribunal established by law where the appointment procedure preceding the delivery of the document of appointment included the irregularities described in the questions referred for a preliminary ruling in Cases C-487/19 and C-508/19, and the prior judicial review of that procedure was deliberately prevented in a manner that is clearly contrary to the national constitution?
3. Must Article 2 and Article 4(2), in conjunction with Article 19 TEU and the right to a fair trial as well as Article 267 TFEU, be interpreted as meaning that the content of the concept of the constitutional identity of a Member State, as regards the right to a fair trial, may be determined in a manner binding on the court or tribunal of final instance of a Member State only within the framework of a dialogue between the Court of Justice and that court or other national courts (for instance, the constitutional court) conducted using the preliminary ruling procedure?

4. Must Article 19 TEU, in conjunction with Article 267 TFEU and the general principle of the right to a fair trial before a court or tribunal previously established by law, be interpreted as meaning that the court of final instance of a Member State is to reject an application for the transfer of a case file concerning a case in which a question has been referred for a preliminary ruling to the Court of Justice where such an application has been lodged by a person appointed to a judicial post under national legislation and in circumstances that result in a court or tribunal being formed which does not meet the requirements of independence and impartiality and is not a court established by law, without first having to exhaust the procedure referred to in the question referred for a preliminary ruling in Case C-508/19 or in the judgment of the Court of Justice of 19 November 2019, C-585/18, C-624/18 and C-625/18, *A. K. and Others*?

**Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 13 October 2020 —
B.S. v T.D., M.D., P.K., J.L., M.Ł., O.N., Skarb Państwa — Sąd Najwyższy**

(Case C-511/20)

(2021/C 44/28)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Applicant: B.S.

Defendants: T.D., M.D., P.K., J.L., M.Ł., O.N., Skarb Państwa — Sąd Najwyższy

Questions referred

1. Must Article 279 TFEU and Article 160(2) of the Rules of Procedure of the Court of Justice, in conjunction with Articles 4(3) and 19(1) TEU and the first and second indents of paragraph 1 of the operative part of the order of the Court of Justice of 8 April 2020 in Case C-791/19 R, *Commission v Republic of Poland*, be interpreted as meaning that the President of the Izba Dyscyplinarna Sądu Najwyższego (Disciplinary Chamber of the Supreme Court) may not, until Case C-791/19 R has been resolved, request the transfer of a case file concerning the establishment of the non-existence of a service relationship of a Supreme Court judge due to the suspension of the application of Article 3(5), Article 27 and Article 73(1) of the Ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym (Law of 8 December 2017 on the Supreme Court) (consolidated text: Dz. U. of 2019, item 825, as amended)?
2. Must the second subparagraph of Article 19(1) TEU, in conjunction with Article 2 and Article 4(3) TEU and the right to a fair trial, be interpreted as meaning that a national court ruling in a case concerning the establishment of the non-existence of a service relationship of a national court judge by reason of serious irregularities during the appointment procedure is required to order interim measures and to prohibit the defendant in such a case from ruling on all other cases falling within the scope of EU law, on pain of such rulings being invalid, as well as to order other bodies to refrain from assigning cases to such a defendant or from assigning him to adjudicating panels?