



Fact sheet

URGENT PRELIMINARY RULING PROCEDURE AND EXPEDITED PROCEDURE

In order to ensure that cases can be dealt with more expeditiously if required, Article 23a of the Statute of the Court of Justice of the European Union ¹ provides:

'The Rules of Procedure may provide for an expedited or accelerated procedure and, for references for a preliminary ruling relating to the area of freedom, security and justice, an urgent procedure.

Those procedures may provide, in respect of the submission of statements of case or written observations, for a shorter period than that provided for by Article 23, and, in derogation from the fourth paragraph of Article 20, for the case to be determined without a submission from the Advocate General.

In addition, the urgent procedure may provide for restriction of the parties and other interested persons mentioned in Article 23, authorised to submit statements of case or written observations and, in cases of extreme urgency, for the written stage of the procedure to be omitted.'

An expedited or accelerated procedure has existed since 2000 and is now governed by Article 105 et seq. of the Rules of Procedure of the Court of Justice ² in the case of references for a preliminary ruling, and by Article 133 et seq. of those Rules in the case of direct actions. ³ The

¹ Consolidated version of Protocol (No 3) on the Statute of the Court of Justice of the European Union, annexed to the Treaties, as amended.

² Rules of Procedure of the Court of Justice of 25 September 2012 (OJ 2012 L 265, p. 1), as amended on 18 June 2013 (OJ 2013 L 173, p. 65), 19 July 2016 (OJ 2016 L 217, p. 69) and 9 April 2019 (OJ 2019 L 111, p. 73).

³ It should be noted in that regard that Article 151 of the Rules of Procedure of the General Court of 4 March 2015 (OJ 2015 L 105, p. 1) also provides for the possibility of adjudicating under an expedited procedure, 'having regard to the particular urgency and the circumstances of the case'.

expedited procedure can be applied irrespective of the type of proceedings, if the nature of the case requires that it be dealt with within a short time.⁴

The request that a case be dealt with pursuant to an expedited procedure is made by the referring court or tribunal, in the case of a reference for a preliminary ruling, and by the applicant or the defendant, in the case of a direct action. The decision is taken by the President of the Court, after hearing the Judge-Rapporteur, the Advocate General and, where appropriate, the other party to the proceedings. Exceptionally, the President of the Court may also decide of his own motion to apply the expedited procedure. Until January 2019, the President of the Court ruled by order in response to any request for the expedited procedure. That practice was abandoned, however, and, since February 2019, the practice has been to mention briefly the reasons for acceptance or refusal in the decision which closes the proceedings.

The urgent preliminary ruling procedure is more recent, having been established in 2008 in response to the extension of the powers of the European Union and jurisdiction of the Court in the area of freedom, security and justice. Given the particularly sensitive nature of that field, it seemed necessary to introduce a specific exceptional procedure that would enable the interests at stake to be protected if necessary. Thus, unlike the expedited procedure, which can be applied in all areas of EU law and to any type of proceedings, the urgent preliminary ruling procedure, governed by Article 107 et seq. of the Rules of Procedure of the Court, is reserved for references for a preliminary ruling that raise questions in the areas covered by Title V of Part Three of the Treaty on the Functioning of the European Union (FEU Treaty), relating to the area of freedom, security and justice.

The decision as to whether or not to grant a request from a referring court or tribunal that a case be dealt with under the urgent preliminary ruling procedure is taken by a Chamber specially designated by the Court, and no reasons are given. However, if the request for an urgent preliminary ruling procedure is granted, the Court, when issuing its substantive ruling, will often summarise the arguments of the referring court or tribunal justifying the use of that procedure. Moreover, where the referring court or tribunal does not request the urgent preliminary ruling procedure but that procedure does, on the face of it, seem to be required, the President of the Court can ask the competent Chamber to consider the need for the reference to be determined pursuant to the urgent preliminary ruling procedure, which can then be applied of the Court's own motion.

It should further be noted that the provisions governing the expedited procedure and the urgent preliminary ruling procedure do not set out in detail the circumstances in which those procedures are intended to be used. Only the fourth paragraph of Article 267 TFEU expressly mentions a situation requiring the Court to act 'with the minimum of delay', that is where a question referred for a preliminary ruling is raised in a case with regard to a person in custody. In the absence of additional guidance, the purpose of this fact sheet is to present cases that are representative of the procedures applied by the Court and which enable the reasons that may justify the application of the urgent preliminary ruling procedure or of the expedited procedure to be better understood.

⁴ In the new Rules of Procedure of the Court of Justice, the expression 'within a short time' has replaced the 'exceptional urgency' referred to in the earlier Rules of Procedure.

I. The urgent preliminary ruling procedure

1. Scope of the urgent preliminary ruling procedure

Order of 22 February 2008, *Kozłowski* (C-66/08, not published, EU:C:2008:116) ⁵

In this case, which was brought in February 2008, the Oberlandesgericht Stuttgart (Higher Regional Court, Stuttgart, Germany) asked the Court to determine the reference for a preliminary ruling pursuant to the urgent preliminary ruling procedure (PPU), on the ground that the detention in Germany of the applicant in the main proceedings would shortly be coming to an end and, moreover, there was a possibility of his early release.

The President of the Court noted that the articles of the Rules of Procedure governing the PPU, the advance application of which was sought by the referring court, would not enter into force until 1 March 2008. Thus, since the present case had been brought before that date, it could not be dealt with under the PPU. However, the President of the Court decided that, on account of the spirit of cooperation between the national courts and the Court of Justice, the request for a PPU had to be interpreted as seeking a substantial reduction in the length of time taken to deal with the case and should be treated as a request for what was then the accelerated (now expedited) preliminary ruling procedure ⁶ (paragraphs 6 to 8).

Order of 6 May 2014, *G.* (C-181/14, EU:C:2014:740)

In this case, criminal proceedings had been brought in Germany against a person who sold herb mixes containing synthetic cannabinoids. At the material time (between 2010 and 2011), those substances did not come within the scope of the German law on narcotics, ⁷ although the Landgericht Itzehoe (Regional Court, Itzehoe, Germany) had applied the legislation relating to trade in medicinal products, ⁸ which transposes Directive 2001/83. ⁹ Thus, it had found that the sale of those products constituted the offence of marketing unsafe medicinal products and had, therefore, sentenced the defendant in that case to a term of imprisonment.

The Bundesgerichtshof (Federal Court of Justice, Germany), before which an appeal on a point of law was brought, considered that the resolution of the case in the main proceedings depended on whether the products at issue could indeed be classified as ‘medicinal products’, within the meaning of Directive 2001/83. It therefore referred a question to the Court of Justice in that respect. It also requested that the PPU be applied, stating that, if the Court were to answer that those products were not medicinal products, no criminal liability could have been found against the defendant in the case, so that he would have been wrongfully detained.

⁵ The [judgment of 17 July 2008, *Kozłowski* \(C-66/08, EU:C:2008:437\)](#) was presented in the 2008 Annual Report, p. 52.

⁶ See below, in Part II of this fact sheet, headed ‘The expedited procedure’, section 1.1. Nature and sensitivity of the area of interpretation covered by the reference for a preliminary ruling.

⁷ Betäubungsmittelgesetz (Law on narcotics).

⁸ Gesetz zur Änderung arzneimittelrechtlicher und anderer Vorschriften (Law amending the legislation governing medicinal products and other provisions) of 17 July 2009 (BGBl. 2009 I, p. 1990).

⁹ Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67).

The Court decided that it was not necessary to apply the PPU, on the ground that Directive 2001/83 was adopted on the basis of Article 95 EC, now Article 114 TFEU, which forms part of Title VII of Part Three of the FEU Treaty. The PPU is reserved for those references for a preliminary ruling which raise one or more questions in the fields referred to in Title V of Part Three of the FEU Treaty (paragraph 8). Nevertheless, the President of the Court decided, of his own motion, that the case should be dealt with under the expedited procedure.¹⁰

2. Reasons for the application of the urgent preliminary ruling procedure

2.1 Risk of deterioration of the parent/child relationship

Judgment of 22 December 2010, *Aguirre Zarraga* (C-491/10 PPU, EU:C:2010:828)

In this case, a Spanish national and a German national who were the parents of a young daughter had initiated divorce proceedings in Spain, the family's habitual place of residence. In that context, sole rights of custody in respect of their daughter had been provisionally awarded to the father, who appeared best placed to ensure that the child's family environment was maintained, the mother having expressed her wish to settle in Germany with her new partner. However, after having spent the summer at her mother's new residence in Germany, the child did not return to Spain. Several sets of proceedings were then initiated by the parents, in Spain and in Germany, seeking, respectively, the child's return to Spain, the recognition and enforcement of Spanish decisions in Germany and the definitive award of rights of custody.

In that context, the Oberlandesgericht Celle (Higher Regional Court, Celle, Germany) referred a number of questions to the Court of Justice concerning the interpretation of Article 42, headed 'Return of the child', of Regulation No 2201/2003.¹¹

The Court decided of its own motion that the reference for a preliminary ruling should be dealt with under the PPU. In that regard, it observed that it recognised the urgency of ruling in cases of child removal, in particular where the separation of a child from the parent to whom custody had previously been awarded, even if only provisionally, would be likely to bring about a deterioration of their relationship, or harm that relationship, and to cause psychological damage (paragraph 39). Applying that case-law to this particular case, the Court of Justice noted that the child had been separated from her father for more than 2 years and that, given the distance between the parents and their strained relationship, there was a real and serious risk that the child and her father would have absolutely no contact for the duration of the proceedings before the referring court. According to the Court of Justice, in those circumstances, the use of the ordinary procedure might cause serious, and perhaps irreparable, harm to the relationship between father and daughter and also further jeopardise the daughter's integration into the father's family and social environment in the event of any return to Spain (paragraph 40).

¹⁰ See below, in Part II of this fact sheet, headed 'The expedited procedure', section 1.2. Particular severity of the legal uncertainty to which the reference for a preliminary ruling relates.

¹¹ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).

Judgment of 22 December 2010, *Mercredi* (C-497/10 PPU, EU:C:2010:829)

The dispute in the main proceedings was between a British national and a French national, concerning the custody of their daughter. In this case, when the child was 2 months old, the mother and child had left the United Kingdom, where the child was habitually resident, for the island of Réunion (France), without the father having been told beforehand. That removal was, however, lawful, since the mother had been the only person with rights of custody at the time. Proceedings had subsequently been brought by the parents in the United Kingdom and in France, in particular, for a parental responsibility order and for the child's habitual residence to be fixed. Although a French court had ruled in favour of the mother on those points, the Court of Appeal (England & Wales) (Civil Division) (United Kingdom) considered that it was necessary to identify the court with jurisdiction under EU law, which entailed clarification, by the Court of Justice, of the test under Articles 8 and 10 of Regulation No 2201/2003 that enables the child's habitual residence to be determined.

The Court of Appeal (England & Wales) (Civil Division) therefore submitted a request for a preliminary ruling to the Court of Justice and requested that the PPU be applied. In support of the latter, it stated that, since the court with jurisdiction had not been identified, the applications made by the father for an order enabling him to maintain his relationship with his child could not be dealt with. The Court of Justice decided to apply the PPU, pointing out that the case concerned a child who was 16 months old and who had been separated from her father for more than a year. For the Court of Justice, given that the child was at a developmentally sensitive age, the continuation of that situation, an additional feature of which was the considerable distance between the places where the father and the child were living, might seriously harm their future relationship (paragraph 39).

Judgment of 26 April 2012, *Health Service Executive* (C-92/12 PPU, EU:C:2012:255) ¹²

In this case, the High Court (Ireland), before which proceedings had been brought by the authority with responsibility for children taken into public care in Ireland, had ordered the placement of a child of Irish nationality in a secure care institution in the United Kingdom, the country of the mother's residence. Clinical professionals had concluded that there was no institution in Ireland that could meet the child's specific protection needs.

Having been called upon to rule on the continuation of the child's placement in the institution concerned, the High Court asked the Court of Justice whether the decision it had adopted came within the scope of Regulation No 2201/2003 and whether that decision had to be recognised and declared enforceable in the requested Member State before it could be enforced in that Member State.

The High Court also asked that the PPU be applied, a request that was granted by the Court of Justice. In that regard, the High Court stated, first, that the child was detained for her own protection, against her will, in a secure care institution. Second, it pointed out that its jurisdiction depended on whether Regulation No 2201/2003 was applicable to the main proceedings and,

¹² This judgment was presented in the 2012 Annual Report, p. 26.

consequently, on the answers to the questions referred for a preliminary ruling. In addition, following a request by the Court of Justice for clarification,¹³ the High Court stated that the child's situation also called for urgent measures. She was approaching the age of majority, after which she would no longer be subject to the jurisdiction of that court. Furthermore, her condition required that she be placed in secure institutional care, for a short period, and that a programme involving structured and increasing liberty be introduced to enable her to be placed with her family in England (paragraph 49).

Order of 10 April 2018, CV(C-85/18 PPU, EU:C:2018:220)

The dispute in the main proceedings was between two Romanian nationals living in Portugal, and concerned the determination of their child's place of residence and of a maintenance allowance. After the couple had separated and the mother had left the common domicile, the child remained with his father. However, following the mother's application for custody of the child, the father had left for Romania, taking the child with him. Romanian courts, to which the mother had in the meantime applied for provisional custody, had then ordered that the child be returned to Portugal, because of the wrongful nature of the child's removal. Irrespective of that, the father had also made an application to the Judecătoria Oradea (Court of First Instance, Oradea, Romania) for the child's residence to be fixed at his domicile in Romania and for the mother to be ordered to pay a maintenance allowance.

The Judecătoria Oradea (Court of First Instance, Oradea) noted that it was required, first of all, to rule on the plea of lack of jurisdiction raised by the mother in those proceedings and that, in that context, it was necessary to obtain further information from the Court of Justice concerning the concept of 'habitual residence', in Article 8(1) of Regulation No 2201/2003.

The Court of Justice decided of its own motion that this reference for a preliminary ruling should be dealt with under the PPU. In that regard, it observed that it recognised the urgency of ruling in cases of child removal, in particular where the separation of a child from the parent would be likely to bring about a deterioration of their present or future relationship and to cause irreparable damage (paragraph 30). Applying that case-law to this case, the Court of Justice noted that the child, who was 7 years old, had lived for almost 2 years with his father in Romania and was separated from his mother who resided in Portugal and with whom he had only monthly telephone contact. According to the Court of Justice, in those circumstances and in the light of the fact that the child was at a developmentally sensitive age, the continuation of the situation could cause serious, and perhaps irreparable, harm to the relationship between the child and his mother. Moreover, since social and family integration was already fairly advanced in the Member State of the child's current residence, the continuation of that situation would be likely to further jeopardise his integration in the event of any return to Portugal (paragraphs 31 and 32).

2.2 Deprivation of liberty

¹³ Request made on the basis of Article 104(5) of the Rules of Procedure of the Court (now, after 25 September 2012, Article 101(1) of those Rules).

Judgment of 30 November 2009 (Grand Chamber), *Kadzoev* (C-357/09 PPU, EU:C:2009:741)

A person who had no identity documents and stated that he had been born in Chechnya was arrested by the Bulgarian authorities and detained, in a special detention facility for foreign nationals, pending execution of the deportation measure to which he was subject. However, for the purposes of executing that measure, documents enabling him to travel abroad had to be obtained. Three years later, those documents had still not been obtained. Furthermore, the person concerned had made applications for asylum and applications for his detention to be replaced by a less severe measure, which had all been rejected.

Against that background, the director of the administration responsible for that detention facility had commenced proceedings in the Administrativen sad Sofia-grad (Administrative Court, Sofia, Bulgaria) for a ruling of the court's own motion on the action to be taken with respect to that detention. The national court noted that, before the Bulgarian Law on foreign nationals was amended¹⁴ for the purpose of transposing Directive 2008/115,¹⁵ the duration of detention in a detention facility was not limited to any period. Moreover, it found that there was no transitional provision governing situations in which detention decisions had been taken before that amendment. Consequently, it decided to ask the Court of Justice about the interpretation of Article 15(4) to (6) of Directive 2008/115.

The referring court also requested that the PPU be applied, stating that the case raised the question whether the person concerned should be kept in detention or released. In that regard, if there was no 'reasonable prospect of removal' in his case, within the meaning of Article 15(4) of Directive 2008/115, it might be necessary to order his immediate release, in accordance with that provision (paragraphs 29 and 32). In view of the above, the Court of Justice decided to grant the PPU request.

Judgment of 17 March 2016, *Mirza* (C-695/15 PPU, EU:C:2016:188)¹⁶

A Pakistani national, from Serbia, had entered Hungary and lodged a first application for international protection there. However, since he had left the place of residence assigned to him by the Hungarian authorities, examination of his application had been discontinued on the ground that he had implicitly withdrawn it. He was subsequently taken in for questioning in the Czech Republic and, at the request of the Czech authorities, was taken back by Hungary, pursuant to the procedure provided for by Regulation No 604/2013¹⁷ ('the Dublin III Regulation'). The individual concerned then submitted a second application for international protection in Hungary and was held in detention while that application was examined. The application was rejected as inadmissible on the ground that Serbia had to be classified as a safe third country in this case. An order was made for the return and removal of the individual concerned.

14 *Zakon za chuzhdentsite v Republika Bgaria* (Law on foreign nationals in the Republic of Bulgaria) (DV No 153 of 1998), as amended on 15 May 2009 (DV No 36 of 2009).

15 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98).

16 This judgment was presented in the 2016 Annual Report, p. 36.

17 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31).

In that context, the Debreceni közigazgatási és munkaügyi bíróság (Administrative and Labour Court, Debrecen, Hungary), before which an action against the decision rejecting the second application for international protection had been brought, decided to refer certain questions to the Court of Justice concerning the circumstances in which a Member State may envisage sending an applicant to a safe third country, in accordance with Article 3(3) of the Dublin III Regulation, without analysing the substance of that person's application.

The referring court also requested that the PPU be applied, pointing out that the individual concerned was, until 1 January 2016, the subject of a detention order. In addition, in response to a request from the Court of Justice, the referring court stated that that order had been extended until the date of a final decision on his application for international protection or, in the absence of any such decision by 1 March 2016, until the latter date. However, again according to the referring court, after 1 March 2016, the detention order could be extended again for a period of 60 days, up to a total detention period of 6 months.

The Court of Justice recalled its case-law according to which it is appropriate to take into account the fact that the person concerned is deprived of his liberty and that the question whether he may continue to be held in custody depends on the outcome of the dispute in the main proceedings. Moreover, it pointed out that that person's situation must be assessed as it stood at the time when consideration was given to whether the reference should be dealt with under the PPU (paragraph 34). Applying that case-law here, the Court of Justice noted that, in this case, the criteria were fulfilled. The individual's continued detention depended on the outcome of the case in the main proceedings, which concerned the lawfulness of the rejection of his application for international protection (paragraph 35). Consequently, the Court of Justice acceded to the PPU request.

Judgment of 1 June 2016, *Bob-Dogi* (C-241/15, EU:C:2016:385) ¹⁸

A Hungarian court had issued a European arrest warrant against a Romanian national, in order to commence criminal proceedings. The individual concerned had then been arrested in Romania and had appeared before the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania), which was responsible for deciding whether he was to be remanded in custody and surrendered to the Hungarian judicial authorities. In that context, the Curtea de Apel Cluj (Court of Appeal, Cluj) had ordered his immediate release, but also that he be subject to supervision measures.

The Curtea de Apel Cluj (Court of Appeal, Cluj), querying the interpretation of Article 8(1)(c) of Framework Decision 2002/584, ¹⁹ and, more specifically, the consequences of the fact that no national arrest warrant had been issued prior to and separately from the European arrest warrant, decided to submit a request for a preliminary ruling to the Court of Justice.

¹⁸ This judgment was presented in the 2016 Annual Report, p. 44.

¹⁹ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States — Statements made by certain Member States on the adoption of the Framework Decision (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24).

It also requested that the PPU be applied, pointing out that although the individual concerned was not then in custody, he was nevertheless subject to supervision measures, which restricted his personal freedom. The Court of Justice decided that, in those circumstances, there was no need to grant that request. However, the President of the Court gave the case priority over others, pursuant to Article 53(3) of the Rules of Procedure (paragraphs 27 to 29).

Judgment of 25 July 2018 (Grand Chamber), *Minister for Justice and Equality (Deficiencies in the justice system)* (C-216/18 PPU, EU:C:2018:586) ²⁰

After Polish courts had issued a number of European arrest warrants, the person to whom those warrants related was arrested in Ireland and placed in custody, pending a decision on his surrender to the Polish judicial authorities. The person concerned was brought before the High Court (Ireland) and informed it that he did not consent to his being surrendered, on the ground that this would expose him to a real risk of a denial of justice, in view of the recent legislative reforms of the Polish system of justice.

In that context, the High Court considered the consequences of those legislative reforms, which led the Commission to adopt, on 20 December 2017, a reasoned proposal inviting the Council to determine, on the basis of Article 7(1) TEU, that there was a clear risk of a serious breach by the Republic of Poland of the rule of law. ²¹ It then asked the Court of Justice a number of questions on the approach to be taken by an executing authority, under Article 1(3) of Framework Decision 2002/584, where there is a real risk of breach of the right of access to an independent tribunal as a result of general or systemic deficiencies so far as concerns the independence of the issuing Member State's judiciary.

The High Court also requested that the reference for a preliminary ruling be determined pursuant to the PPU, a request that was granted by the Court of Justice. As regards the criterion relating to urgency, the Court of Justice recalled its settled case-law on the point and then applied it to the case. In that regard, it stated that the person concerned was in custody and that his continued detention depended on the outcome of the main proceedings, the deprivation of liberty having been ordered in the context of the execution of the European arrest warrants (paragraphs 29 and 30).

Judgment of 12 February 2019, *TC* (C-492/18 PPU, EU:C:2019:108)

Pursuant to a European arrest warrant issued by the competent authorities of the United Kingdom, a British national was arrested in the Netherlands and placed in custody. The 60-day period, under Article 17(3) of Framework Decision 2002/584, within which the decision to execute the European arrest warrant must be taken, started to run from that point. Shortly before the 60-day period expired, the rechtbank Amsterdam (District Court, Amsterdam, Netherlands) ordered that that time limit be extended by 30 days, in accordance with Article 17(4) of Framework Decision 2002/584, and that the British national concerned be kept in

²⁰ This judgment was presented in the 2018 Annual Report, p. 67.

²¹ Commission's reasoned proposal of 20 December 2017 submitted in accordance with Article 7(1) of the Treaty on European Union regarding the rule of law in Poland (COM(2017) 835 final).

detention. However, the rechtbank Amsterdam (District Court, Amsterdam) subsequently stayed the proceedings indefinitely, pending the reply by the Court of Justice to the request for a preliminary ruling submitted in *RO* (C-327/18 PPU).²² In parallel, since 90 days had elapsed since his arrest, the British national applied for his detention to be suspended.

In that context, the rechtbank Amsterdam (District Court, Amsterdam) considered the continued detention of the person concerned in the light of Framework Decision 2002/584 and Article 6 of the Charter of Fundamental Rights of the European Union (‘the Charter’), which provides for the right to liberty and security. Under the national legislation at issue,²³ such a person must be released once 90 days have elapsed since his arrest. However, the legislation has been interpreted as allowing detention to continue when the executing judicial authority decides to refer a question to the Court of Justice for a preliminary ruling or to await the reply to a request for a preliminary ruling submitted by another executing judicial authority. In both situations, the 90-day period must then be deemed to be suspended.

The rechtbank Amsterdam (District Court, Amsterdam) requested that the reference for a preliminary ruling be dealt with under the PPU, arguing that the person concerned was being held in custody in the Netherlands solely on the basis of the European arrest warrant, and that it could not determine the application for suspension of his detention until the Court of Justice had ruled on that reference. The Court of Justice recalled its settled case-law, according to which it is necessary to take into account the fact that the person concerned is being deprived of his liberty and that the question whether he may continue to be held in custody depends on the outcome of the dispute in the main proceedings, since his situation must be assessed as it stands at the time when consideration is given to the request that the reference be dealt with under the PPU. In this case, the Court of Justice considered that the criteria were fulfilled and therefore decided to apply the PPU (paragraphs 30 and 31).

Subsequently, however, the rechtbank Amsterdam (District Court, Amsterdam) informed the Court of Justice that it had ordered the suspension, subject to conditions, of detention until delivery of the decision on the British national’s surrender to the United Kingdom. The referring court had calculated that the 90-day period had expired, even taking into account the period during which that 90-day period had been suspended. In those circumstances, the Court of Justice considered that the urgency had ceased to apply and that, accordingly, it was no longer necessary that the case be dealt with in accordance with the PPU.

2.3 Risk of interference with fundamental rights

Judgment of 16 February 2017, *C. K. and Others* (C-578/16 PPU, EU:C:2017:127)

In this case, a Syrian national and an Egyptian national had entered the territory of the European Union by means of a visa issued by the Republic of Croatia, before submitting applications for asylum to the Republic of Slovenia. The Slovenian authorities had then sent a request to the Croatian authorities to take charge of them, the Republic of Croatia being the Member State

²² This case gave rise to the [judgment of 19 September 2018, *RO* \(C-327/18 PPU, EU:C:2018:733\)](#).

²³ Overleveringswet (Law on the surrender of sentenced persons) (Stb. 2004, No 195).

responsible for examining their applications, in accordance with the Dublin III Regulation. The Republic of Croatia acceded to that request. However, since the Syrian national was pregnant, the transfer to Croatia had to be postponed until the birth of the child. Subsequently, the individuals concerned objected to that transfer, claiming that it would have negative consequences for the state of health of the Syrian national, which were also likely to affect the wellbeing of her newborn child, and, moreover, that they had been victims of racially motivated remarks and abuse in Croatia. The transfer decision was initially annulled at first instance, before being confirmed on appeal by the Vrhovno sodišče (Supreme Court, Slovenia). However, the Ustavno sodišče (Constitutional Court, Slovenia), to which the individuals concerned appealed, set aside the judgment of Vrhovno sodišče (Supreme Court) and referred the case back to it.

Against that background, the Vrhovno sodišče (Supreme Court) asked the Court of Justice to clarify the discretionary clause provided for in Article 17 of the Dublin III Regulation, which, by way of derogation, allows a Member State to examine an application for international protection lodged with it, even if such examination is not its responsibility under the criteria laid down by that regulation.

The referring court also requested that the PPU be applied, stating that, taking into account the state of health of the Syrian national, the question of her status should be resolved as rapidly as possible. In that regard, the Court of Justice found that the possibility that the appellants might be transferred to Croatia before the end of an ordinary preliminary ruling procedure could not be ruled out. In response to a request to the referring court for clarification,²⁴ the latter indicated that even though the first-instance court had ordered the suspension of enforcement of the decision to transfer the persons concerned, there was no judicial measure suspending the enforcement of that decision at the then current stage of the national proceedings (paragraphs 49 and 50). Consequently, the Court of Justice granted the request for the PPU.

Judgment of 7 March 2017 (Grand Chamber), *X and X* (C-638/16 PPU, EU:C:2017:173)²⁵

A couple of Syrian nationals and their three children living in Syria had submitted applications for humanitarian visas, based on Article 25(1)(a) of Regulation No 810/2009²⁶ ('Visa Code'), at the Belgian Embassy in Lebanon before returning to Syria. The purpose of the applications was to obtain visas with limited territorial validity, to enable the family to leave Syria and ultimately to apply for asylum in Belgium. The applicants stated that one of them had been abducted by a terrorist group and tortured, and finally released following the payment of a ransom. They emphasised the deterioration of the security situation in Syria generally, and that they were at risk of persecution because they belonged to the Orthodox Christian community. Their applications were refused on the ground, inter alia, that they intended to stay more than 90 days in Belgium and that Belgian diplomatic posts are not among the authorities to which a foreign national can submit an application for asylum.

²⁴ Request made on the basis of Article 101(1) of the Rules of Procedure of the Court of Justice.

²⁵ This judgment was presented in the 2017 Annual Report, p. 41.

²⁶ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ 2009 L 243, p. 1), as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013 (OJ 2013 L 182, p. 1).

The Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium), before which an action was brought against that refusal, then questioned the extent of Member States' discretion in that respect, notably having regard to the obligations arising from the Charter and, in particular, from Article 4 (prohibition of torture and inhuman or degrading treatment or punishment) and Article 18 (right to asylum). It thus referred a number of questions to the Court of Justice for a preliminary ruling.

The Conseil du contentieux des étrangers (Council for asylum and immigration proceedings) also requested that the case be dealt with under the PPU. To that end, it referred to the serious armed conflict in Syria, the young age of the applicants' children, their particular vulnerability, associated with their belonging to the Orthodox Christian community, and the fact that the matter had been brought before it in the course of an 'emergency' suspension procedure. In that regard, it stated that the present reference for a preliminary ruling had had the effect of staying the main proceedings (paragraphs 30 and 31).

The Court of Justice granted the request for the PPU. In so doing, it pointed out that it was not disputed that, at least at the time when the PPU request was examined, the applicants were facing a real risk of being subjected to inhuman and degrading treatment. According to the Court of Justice, that had to be regarded as an element of urgency justifying the application of the PPU (paragraph 33).

Order of 27 September 2018, *FR(C-422/18 PPU, not published, EU:C:2018:784)*

A Nigerian national had made an application for asylum in Italy. In support of that application, he claimed to have been forced to leave his country of origin because the national authorities had discovered that he was in a homosexual relationship and that, for that reason, he was at risk of being arrested and detained. Following the refusal of his application for asylum by the competent authority and confirmation of that refusal by the Tribunale di Milano (District Court, Milan, Italy), the Nigerian national, on the one hand, brought an appeal in cassation and, on the other, filed an application for interim measures with the Tribunale di Milano (District Court, Milan) for suspension of enforcement of its decision. Under the national legislation,²⁷ the Tribunale di Milano (District Court, Milan) is required to determine such an application for suspension by assessing whether or not the grounds of appeal raised in the appeal against its decision are well founded, and not by assessing whether or not there is a risk that serious and irreparable harm might be caused to the applicant by the enforcement of that decision.

The Tribunale di Milano (District Court, Milan) asked the Court of Justice about the compatibility of that national legislation with the provisions of Directive 2013/32,²⁸ read in the light of Article 47 of the Charter, which guarantees a right to an effective remedy.

²⁷ Decreto legislativo n. 25 — Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato (Legislative Decree No 25 implementing Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status) of 25 January 2008 (GURI No 40, of 16 February 2008), as amended by decreto-legge n. 13 — Disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonché per il contrasto dell'immigrazione illegale (Decree-Law No 13 Urgent measures concerning the acceleration of international protection procedures and for combating illegal immigration) of 17 February 2017 (GURI No 40, of 17 February 2017), converted into law, with amendments, by Law No 46, of 13 April 2017.

²⁸ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

The Tribunale di Milano (District Court, Milan) also sought the application of the PPU. In that regard, it stated that the applicant was required to leave Italy immediately and that he could be removed to Nigeria at any moment, where he would be exposed to a serious risk of being subjected to the death penalty, torture or other inhuman or degrading punishments or treatment. In addition, the referring court emphasised that the Court's answer to the question raised was likely to have a decisive influence on whether the applicant could stay in Italy pending the outcome of his appeal in cassation (paragraphs 24 and 25). In that context, the Court of Justice noted that the possibility of the applicant being removed to Nigeria before the end of an ordinary preliminary ruling procedure could not be ruled out, and therefore decided to grant the request for a PPU (paragraph 27).

Judgment of 17 October 2018, *UD(C-393/18 PPU, EU:C:2018:835)*

Following her marriage to a British national, a Bangladeshi national had been granted a visa enabling her to live in the United Kingdom. The couple had subsequently travelled to Bangladesh during the Bangladeshi national's pregnancy. Their daughter was born there and had never been to the United Kingdom, the father having returned there alone. According to the mother's claims, which were disputed by the father, the father had tricked her into giving birth in a third country and coerced her into remaining in that country with the child, without access to gas, electricity or clean water, without income and in a community that stigmatised her. Accordingly, the mother commenced proceedings in the High Court of Justice (England & Wales), Family Division (United Kingdom) for an order that the child be made a ward of that court and that she and the child return to the United Kingdom.

First of all, the High Court of Justice (England & Wales), Family Division, considered it necessary to resolve the issue of its jurisdiction to make a decision concerning the child, which involved determining whether the child's habitual residence, for the purposes of Article 8(1) of Regulation No 2201/2003, could be considered to be in the United Kingdom, even though she had never been to that Member State. Further, the High Court of Justice (England & Wales), Family Division, queried whether the circumstances of the case, notably the father's behaviour and the breach of the fundamental rights of the mother or of the child, had an effect on that concept of 'habitual residence'.

The referring court also requested that the reference for a preliminary ruling be dealt with under the PPU, a request that was granted by the Court of Justice. In that regard, the Court stated at the outset that, in the event that the father's coercion of the mother is established, the child's current welfare would be seriously compromised. Any delay in taking judicial decisions relating to the child would prolong the situation and would thereby risk causing serious, possibly irreparable, harm to that child's development. Next, the Court noted that, in the event of a possible return to the United Kingdom, such a delay would also risk being detrimental to the child's integration in her new family and social environment. Last, the Court pointed out that the very young age of the child (1 year and 2 months at the date of the order for reference) made her stimulation and development particularly delicate (paragraphs 26 and 27).

II. The expedited procedure

1. Reasons for the application of the expedited procedure

1.1 Nature and sensitivity of the area of interpretation covered by the reference for a preliminary ruling

Order of 22 February 2008, *Kozłowski* (C-66/08, not published, EU:C:2008:116) ²⁹

The case in the main proceedings concerned a Polish national who had been residing for a number of years, albeit not continuously and probably illegally, in Germany, where he was then serving a prison sentence. This Polish national was the subject of a European arrest warrant that had been issued by a Polish court for the purposes of execution of a sentence of imprisonment previously imposed on him. In that context, the Oberlandesgericht Stuttgart (Higher Regional Court, Stuttgart, Germany), which was required to rule on the surrender of the person concerned to the Polish judicial authorities, considered the interpretation of the residence or domicile condition in Article 4(6) of Framework Decision 2002/584. That provision lays down a ground for optional non-execution of a European arrest warrant if the requested person 'is staying in, or is a national or a resident of the executing Member State' and that State undertakes to execute the foreign sentence.

The Oberlandesgericht Stuttgart (Higher Regional Court, Stuttgart) also requested that the reference for a preliminary ruling be dealt with under the PPU, on the ground that the Polish national's detention in Germany would shortly be coming to an end and, moreover, there was a possibility of his early release.

Having indicated that the request for the PPU, which was inapplicable in this case, should be treated as a request for the accelerated (now expedited) procedure to be applied, ³⁰ the President of the Court noted that the case raised issues of interpretation pertaining to a sensitive area of activity of the European legislature and to key aspects of the functioning of the European arrest warrant, on which the Court of Justice was being called upon to rule for the first time. The interpretation sought could have general consequences, both for the authorities called upon to cooperate in the context of the European arrest warrant and for the rights of requested persons, who were in a situation of uncertainty. Accordingly, the President of the Court considered that a prompt response would enable the executing judicial authority to rule in the best possible circumstances on the request for surrender submitted to it, thus giving it the opportunity to comply, with the minimum of delay, with its obligations under Framework Decision 2002/584 (paragraphs 11 and 12). He therefore ordered that the case be dealt with under the accelerated procedure.

1.2 Particular severity of the legal uncertainty to which the reference for a preliminary ruling relates

²⁹ The [judgment of 17 July 2008, *Kozłowski* \(C-66/08, EU:C:2008:437\)](#) was presented in the 2008 Annual Report, p. 52.

³⁰ See above, in Part I of this fact sheet, headed 'The urgent preliminary ruling procedure', section 1. Scope of the urgent preliminary ruling procedure.

Order of 4 October 2012, *Pringle* (C-370/12, not published, EU:C:2012:620) ³¹

This case arose in the context of the creation of the European Stability Mechanism (EMS), following the financial crisis which affected the euro area in 2010. The purpose of this international financial institution is to mobilise funding and provide stability support to the benefit of the Member States of the euro area which are experiencing, or are threatened by, severe financing problems. In this case, a member of the Irish Parliament brought proceedings against the Government of Ireland. He pleaded the invalidity of Decision 2011/199 ³² and claimed, moreover, that, by ratifying, approving or accepting the Treaty establishing the European Stability Mechanism, concluded on 2 February 2012, ³³ Ireland would undertake obligations incompatible with the Treaties on which the European Union was founded.

In that context, the Supreme Court (Ireland) referred the matter to the Court of Justice and requested that the accelerated procedure be applied, stating that the timely ratification of the EMS Treaty by Ireland was of the utmost importance for other members of the European Stability Mechanism and, in particular, for those in need of financial assistance. Although in the interim Ireland, like all other Member States who were signatories of the EMS Treaty, had ratified that treaty, the President of the Court of Justice indicated that it was apparent from the questions referred for a preliminary ruling in the case that there was uncertainty as to the validity of that treaty. Emphasising the exceptional circumstances of the financial crisis surrounding the conclusion of that treaty, the President of the Court of Justice ruled that the use of the accelerated procedure was necessary in order to remove as soon as possible that uncertainty, which adversely affected the objective of the EMS Treaty, namely to maintain the financial stability of the euro area (paragraphs 6 to 8).

Orders of 15 February 2017, *Mengesteab* (C-670/16, not published, EU:C:2017:120) ³⁴ and ***Jafari* (C-646/16, not published, EU:C:2017:138)** ³⁵

In *Mengesteab* (C-670/16), an Eritrean national had applied to the German authorities for asylum and was then issued with a certificate of registration, since German law ³⁶ distinguishes, in that regard, between the initial asylum request, giving rise to the issuing of such a certificate, and the lodging of a formal application for asylum. When the Eritrean national was finally able to lodge a formal application for asylum, 9 months later, the German authorities had asked the Italian authorities to take charge of him, the Italian Republic being the Member State responsible for examining his application, pursuant to the Dublin III Regulation. Consequently, his asylum application was rejected as inadmissible and it was ordered that he be transferred to Italy. Proceedings were brought against that transfer decision in the Verwaltungsgericht Minden (Administrative Court, Minden, Germany) which queried, first, whether an asylum applicant can

³¹ The [judgment of 27 November 2012, *Pringle* \(C-370/12, EU:C:2012:756\)](#) was presented in the 2012 Annual Report, p. 49.

³² European Council Decision 2011/199/EU of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro (OJ 2011 L 91, p. 1).

³³ The Treaty establishing the European Stability Mechanism was concluded in Brussels (Belgium) on 2 February 2012 between the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Grand Duchy of Luxembourg, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Republic of Finland. It entered into force on 27 September 2012.

³⁴ The [judgment of 26 July 2017, *Mengesteab* \(C-670/16, EU:C:2017:587\)](#) was presented in the 2017 Annual Report, p. 43.

³⁵ The [judgment of 26 July 2017, *Jafari* \(C-646/16, EU:C:2017:586\)](#) was presented in the 2017 Annual Report, p. 44.

³⁶ Asylgesetz (Law on asylum), in the version published on 2 September 2008 (BGBl. 2008 I, p. 1798).

rely on the expiry of the period for making the take charge request, and, second, the detailed rules for calculating that period. In accordance with Article 21(1) of the Dublin III Regulation, in the event of non-compliance with the deadlines prescribed, responsibility for examining the application is transferred to the Member State in which it was lodged. However, the Verwaltungsgericht Minden (Administrative Court, Minden) noted that such delays were extremely common in Germany, due to the unusual increase in the number of asylum seekers from 2015.

In *Jafari* (C-646/16), the members of an Afghan family had crossed the border between Serbia and Croatia. The Croatian authorities had then organised transport for them to the Slovenian border, with the aim of helping them to travel to other Member States in order to make an application for international protection there, which the family did in Austria. However, in so far as the Dublin III Regulation provides that the responsibility is to be assumed by the Member State whose external border has been crossed irregularly, the Austrian authorities had requested the Croatian authorities to take charge of the individuals concerned. The family's applications had therefore been rejected and it was ordered that they be transferred to Croatia. The Verwaltungsgerichtshof (Supreme Administrative Court, Austria) before which those decisions were challenged, asked the Court of Justice how the criteria relating to the issuing of residence documents or visas and to entry or stay, provided for in Articles 12 and 13 of the Dublin III Regulation, were to be applied.

Both referring courts requested that the expedited procedure be applied, and their requests were granted by the President of the Court.

In both cases, the President of the Court began by recalling that, in the normal course of events, the large number of persons or legal situations potentially concerned by the decision to be made by a national court after it has made a reference for a preliminary ruling to the Court of Justice does not, in itself, constitute an exceptional circumstance that would justify the use of an expedited procedure (orders of 15 February 2017, *Mengesteab*, C-670/16, not published, EU:C:2017:120, paragraph 10, and *Jafari*, C-646/16, not published, EU:C:2017:138, paragraph 10).

Nevertheless, he added that that consideration could not, in these cases, be decisive, since the number of cases concerned by the questions referred for a preliminary ruling was such that the uncertainty as to their outcome risked impairing the functioning of the system established by the Dublin III Regulation and, in consequence, weakening the Common European Asylum System introduced by the EU legislature under Article 78 TFEU. These cases had arisen in an unprecedented situation in which an exceptionally high number of asylum applications had been registered in Germany, in Austria and, more generally, in the European Union, in circumstances similar to those at issue. Moreover, these cases raised issues of interpretation that were directly linked to that situation and which related to key aspects of the system established by the Dublin III Regulation, on which the Court was called upon to rule for the first time. The Court's answer was therefore likely to have widespread repercussions for the national authorities required to cooperate in order to apply that regulation (orders of 15 February 2017, *Mengesteab*, C-670/16, not published, EU:C:2017:120, paragraphs 11 to 13, and *Jafari*, C-646/16, not published, EU:C:2017:138, paragraphs 11 to 13).

For the President of the Court, it followed that the uncertainty as to the determination of the Member State responsible for examining asylum applications such as that at issue in the main proceedings meant that the competent national authorities were unable to adopt the administrative and budgetary measures necessary to ensure, in accordance with the requirements of EU law and the international commitments of the Member States concerned, that those applications were examined and the asylum applicants for which they might be responsible were received. In that exceptional crisis situation, the use of the expedited procedure was necessary in order to remove as soon as possible the uncertainty that was detrimental to the proper functioning of the Common European Asylum System, which contributes to compliance with Article 18 of the Charter (orders of 15 February 2017, *Mengesteab*, C-670/16, not published, EU:C:2017:120, paragraphs 15 and 16, and *Jafari*, C-646/16, not published, EU:C:2017:138, paragraphs 14 and 15).

Order of 28 February 2017, *M.A.S. and M.B.* (C-42/17, not published, EU:C:2017:168) ³⁷

A question of constitutionality was brought before the Corte costituzionale (Constitutional Court, Italy) by two Italian courts which were considering a possible breach of the principle of legality in the event that the rule in *Taricco and Others* ³⁸ was applied in criminal proceedings pending before them. It will be recalled that, in that judgment, the Court of Justice found that, in two situations which it identified, the Italian limitation rules applicable to tax infringements relating to value added tax (VAT) were liable to have an adverse effect on the fulfilment of the Member States' obligations under Article 325(1) and (2) TFEU. Consequently, the Court of Justice held that, in those situations, the national court had to give full effect to Article 325(1) and (2) TFEU, if need be by disapplying the relevant provisions of national law.

In accordance with the rule stated in that judgment, in this case, the Italian courts considered that they should not take into account the limitation period laid down in the Codice penale (Italian Criminal Code) and should, therefore, give judgment on the substance of the cases. However, the Corte costituzionale (Constitutional Court) expressed doubts as to whether that approach was compatible with the principle that offences and penalties must be defined by law, as enshrined in the Italian Constitution and interpreted by that court, since that principle requires that rules of criminal law are precisely determined and that they cannot be retroactive.

The Corte costituzionale (Constitutional Court) requested that its reference for a preliminary ruling be dealt with under the expedited procedure, claiming that a situation of profound uncertainty had arisen as to how EU law should be interpreted, that that uncertainty was weighing on the pending criminal proceedings and that it was urgent that it be removed (paragraph 6). In that regard, the President of the Court of Justice stated that a response within a short time would remove that uncertainty and that, in so far as that uncertainty affected fundamental issues of national constitutional law and EU law, the application of the expedited procedure was warranted (paragraphs 8 and 9).

³⁷ The [judgment of 5 December 2017, *M.A.S. and M.B.* \(C-42/17, EU:C:2017:936\)](#) was presented in the 2017 Annual Report, p. 31.

³⁸ [Judgment of 8 September 2015 \(C-105/14, EU:C:2015:555\)](#).

Orders of 26 September 2018, *Zakład Ubezpieczeń Społecznych* (C-522/18, not published, EU:C:2018:786) and of 15 November 2018, *Commission v Poland* (C-619/18, EU:C:2018:910)

These two cases relate to the compatibility of a new Polish law³⁹ with EU law. The Polish law, which entered into force on 3 April 2018, lowered the retirement age of members of the Sąd Najwyższy (Supreme Court, Poland) from 70 to 65 years, and set the conditions under which those members may, in some circumstances, be authorised to continue to carry out their duties. In that regard, the law provides, first, that it is to apply to judges in post who were appointed to the Sąd Najwyższy (Supreme Court) before the date of its entry into force and, second, that the President of the Republic of Poland is to have the discretion to extend the period of judicial activity of those judges beyond the age of 65.

In *Zakład Ubezpieczeń Społecznych* (C-522/18), the Sąd Najwyższy (Supreme Court), sitting in ordinary composition, had, prior to giving judgment, referred certain questions to the extended composition of that court. At the preliminary stage of examining those questions, the Sąd Najwyższy (Supreme Court) noted that the terms of office of two of the members of that court sitting in extended composition were potentially affected by that law. Nevertheless, the Sąd Najwyższy (Supreme Court), sitting in extended composition, expressed doubts as to the compatibility of that law with EU law, notably as regards possible breaches of the principles of the rule of law, the irremovability and independence of judges, and the principle of non-discrimination on grounds of age. It further considered that clarification by the Court of Justice was necessary and sent it a request for a preliminary ruling. It also requested that the expedited procedure be applied, submitting that the interpretation of EU law sought was essential in order for it to be able to exercise its jurisdiction legally and in accordance with the principle of legal certainty (order of 26 September 2018, *Zakład Ubezpieczeń Społecznych*, C-522/18, not published, EU:C:2018:786, paragraph 12).

In parallel, in *Commission v Poland* (C-619/18), the Commission brought an action under Article 258 TFEU for failure to fulfil obligations against the Republic of Poland, claiming that, by adopting that law, the Republic of Poland had failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU and Article 47 of the Charter. The Commission also requested that the case be determined pursuant to an expedited procedure, expressing doubts as to the ability of the Sąd Najwyższy (Supreme Court) to continue to rule in compliance with the fundamental right of any individual to have access to an independent court (order of 15 November 2018, *Commission v Poland*, C-619/18, EU:C:2018:910, paragraph 20).

The President of the Court of Justice granted both requests, emphasising the seriousness of the uncertainties of the referring court and of the Commission and indicating that a response within a short time would remove those uncertainties.

As regards the seriousness of the uncertainties, the President of the Court noted that these were affecting important issues of EU law related, in particular, to judicial independence, and concerned the possible consequences of the interpretation of that law for the composition and the very functioning of the Polish supreme court. In that regard, first, the President of the Court recalled that the requirement of judicial independence forms part of the essence of the

³⁹ Ustawa o Sądzie Najwyższym (Law on the Sąd Najwyższy (Supreme Court)) of 8 December 2017 (Dz. U. of 2018, heading 5).

fundamental right to a fair trial, a right which is of cardinal importance as a guarantee that all the rights which individuals derive from EU law will be protected and that the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law, will be safeguarded. Second, the President of the Court pointed out that the uncertainties in the present cases were also liable to have an effect on the working of the system of judicial cooperation embodied by the preliminary ruling mechanism provided for in Article 267 TFEU, the keystone of the EU judicial system. The independence of the national courts, particularly those ruling, like the Sąd Najwyższy (Supreme Court), at last instance, is essential (orders of 26 September 2018, *Zakład Ubezpieczeń Społecznych*, C-522/18, not published, EU:C:2018:786, paragraph 15, and of 15 November 2018, *Commission v Poland*, C-619/18, EU:C:2018:910, paragraphs 21, 22 and 25).

It should, moreover, be noted that, in his order in *Commission v Poland*,⁴⁰ the President of the Court also responded to the allegations of the Republic of Poland that the application of an expedited procedure would affect its rights of defence. The Republic of Poland was critical of the fact that the defendant State is required to present all its arguments in a single pleading and that the procedure does not call for a reply and a rejoinder. It also argued that the Commission had delayed in bringing the action before the Court and that that delay could not be remedied by such a restriction of its procedural rights (paragraph 17). The President of the Court observed that, under the expedited procedure, the application initiating proceedings and the defence may indeed be supplemented by a reply and a rejoinder only if the President of the Court, after hearing the Judge-Rapporteur and the Advocate General, considers this to be necessary. However, should the lodging of a reply not be authorised, it is not apparent, in the absence of such a reply and therefore of arguments supplementing and developing those appearing in the application to which the defendant had all the opportunities to reply in its defence, how the defendant could claim that its rights of defence are affected by the fact that it was not in a position to lodge a rejoinder. Furthermore, the President of the Court recalled that proceedings for a declaration of failure to fulfil obligations before the Court are preceded by a pre-litigation procedure during which the parties have the opportunity to set out and develop the line of argument which they may subsequently be called upon to expound before the Court (paragraphs 23 and 24).

Order of 19 October 2018, *Wightman and Others* (C-621/18, EU:C:2018:851)⁴¹

This case was brought following the notification, on 29 March 2017, by the Prime Minister (United Kingdom), of the intention of the United Kingdom of Great Britain and Northern Ireland to withdraw from the European Union, pursuant to Article 50 TEU. In that context, the petitioners in the main proceedings — including one member of the Parliament of the United Kingdom of Great Britain and Northern Ireland, two members of the Scottish Parliament (United Kingdom) and three members of the European Parliament — lodged a petition for judicial review seeking a declaratory specifying whether, when and how that notification could unilaterally be revoked.

⁴⁰ [Order of 15 November 2018 \(C-619/18, EU:C:2018:910\)](#).

⁴¹ The [judgment of 10 December 2018, *Wightman and Others* \(C-621/18, EU:C:2018:999\)](#), delivered by the Full Court, was presented in the 2018 Annual Report, p. 13.

The Court of Session, Inner House, First Division (Scotland) (United Kingdom), before which an appeal against the refusal of that petition was brought, acceded to the request of the petitioners in the main proceedings that a request for a preliminary ruling be made. Unlike the court at first instance, it considered that it was neither academic nor premature to ask the Court of Justice whether it is possible for a Member State unilaterally to revoke the notification given under Article 50(2) TEU in advance of the expiry of the two-year period referred to in that article, and to remain in the European Union. It considered, on the contrary, that an answer from the Court of Justice would clarify the options open to the members of parliament when casting their vote in these matters.

The Court of Session, Inner House, First Division (Scotland) requested that the expedited procedure be applied. It emphasised the urgency of its request in the light of, first, the two-year timetable running from 29 March 2017 which was imposed on that withdrawal procedure and, second, the fact that the parliamentary consideration and voting on that subject within the Parliament of the United Kingdom had of necessity to take place well in advance of 29 March 2019.

The President of the Court considered that the referring court had set out grounds that undeniably indicated that there was a need to make a ruling urgently. In that respect, the President of the Court recalled that, where a case raises serious uncertainties which affect fundamental issues of national constitutional law and EU law, it may be necessary, having regard to the particular circumstances of the case, to deal with it within a short time. Thus, given that the implementation of Article 50 TEU was of fundamental importance for the United Kingdom and for the constitutional order of the European Union, the particular circumstances in this case were, according to the President of the Court, such as to justify the case being dealt with within a short time (paragraphs 10 and 11).

1.3 Risk of interference with fundamental rights

Order of 15 July 2010, *Purrucker* (C-296/10, not published, EU:C:2010:446)

The dispute in the main proceedings was between a German national and a Spanish national concerning rights of custody of their twin children. Less than a year after the children were born, the parents had separated and had signed an agreement before a notary confirming the mother's wish to return to her country of origin with the children. However, ultimately she had taken only one of the children to Germany, as the other child had had to remain in Spain temporarily with the father for medical reasons. The family's situation had not changed since then.

Several sets of proceedings were commenced by each of the parents. Thus, in Spain, the father applied for, and obtained, provisional measures, although it is conceivable that those proceedings may be regarded as substantive proceedings concerned with the award of rights of custody of the children. He then sought, in Germany, enforcement of the Spanish decision granting those measures, those proceedings having given rise to the judgment in *Purrucker*.⁴²

⁴² [Judgment of 15 July 2010 \(C-296/09, EU:C:2010:437\)](#). This judgment was presented in the 2010 Annual Report, p. 52.

At the same time, the mother brought a substantive action in Germany, relating to rights of custody of both children, which was assigned to the Amtsgericht Stuttgart (Local Court, Stuttgart, Germany).

That court then referred to the Court of Justice the issue whether, in the context of the application of Article 19(2) of Regulation No 2201/2003, which organises cases of *lis pendens* in matters of parental responsibility, the court seised of an application for provisional measures (in this case, the Spanish court) must be regarded as the 'court first seised' vis-à-vis a court of another Member State before which a substantive action has been brought with the same object (in this case, the Amtsgericht Stuttgart (Local Court, Stuttgart)).

The Amtsgericht Stuttgart (Local Court, Stuttgart) also requested that what was then the accelerated (now expedited) procedure be applied, stating that the disputed issue of the jurisdiction of the two courts seised of the same case, in different Member States, had resulted, notwithstanding the duration of the proceedings, in it not being possible thus far to examine the substantive issue itself. Those circumstances, according to the referring court, were influencing the conduct of the parties in a way that was detrimental to the family relationship of the children. The children had not had any personal contact between themselves or with the other parent for 3 years. In addition, the referring court indicated that the German national's care of the child, notably medical care and school registration, depended on the child's legal situation. That care was, however, being adversely affected by the doubt as to the validity and recognition in Germany of the provisional measure adopted with regard to custody by the Spanish court. Given those circumstances, and in view of the time that had already elapsed because of the various proceedings under way, the President of the Court held that it was appropriate for the referring court to obtain the answers to the questions referred with the minimum of delay, which therefore justified initiation of the accelerated procedure (paragraphs 7 to 9).

Order of 9 September 2011, *Dereci and Others* (C-256/11, not published, EU:C:2011:571) ⁴³

In this case, five third-country nationals wished to live in Austria with family members (spouse, children or parents), who were Union citizens residing in Austria with Austrian citizenship. However, those Union citizens had never exercised their right of free movement. In addition, and unlike some of the third-country nationals concerned, they were not maintained by those third-country nationals. The applications for residence authorisations submitted by the five third-country nationals were rejected and, in four of the five cases, those rejections were coupled with an expulsion order and individual removal orders.

The Verwaltungsgerichtshof (Supreme Administrative Court, Austria), before which the case had come in that context, thus queried whether the indications given by the Court of Justice in its judgment in *Ruiz Zambrano* ⁴⁴ could be applied to one or more of the applicants in the main proceedings.

⁴³ The [judgment of 15 November 2011, *Dereci and Others* \(C-256/11, EU:C:2011:734\)](#) was presented in the 2011 Annual Report, p. 21.

⁴⁴ [Judgment of 8 March 2011 \(C-34/09, EU:C:2011:124\)](#).

The Verwaltungsgerichtshof (Supreme Administrative Court) requested that what was then the accelerated (now expedited) procedure be applied to its reference for a preliminary ruling. In support of that request, it invoked the existence of orders for the removal from Austria of most of the applicants in the main proceedings, which, were they to be enforced, would adversely affect those applicants personally, as well as the members of their family. In that regard, it stated that at least one of the applicants had been denied the suspensory effect of the appeal brought against his expulsion order and that the individual removal order could therefore be implemented at any time. In general terms, it emphasised that the threat of imminent removal faced by the applicants deprived them of the opportunity to lead a normal family life, since it put them in a situation of uncertainty. Moreover, the Verwaltungsgerichtshof (Supreme Administrative Court) indicated that both it and the Austrian administrative authorities were dealing with a large number of similar cases and that an increase in that type of case was to be expected in the near future as a result of the judgment in *Ruiz Zambrano*.⁴⁵

The President of the Court of Justice decided to grant the request for the accelerated procedure to be applied. In so doing, he recalled, first of all, that the right to respect for family life is among the fundamental rights protected in the Community legal order and has been reaffirmed in Article 7 of the Charter. He went on to point out that the Court's answer to the questions referred was such as to remove the uncertainty affecting the applicants in the main proceedings and that, consequently, a reply within a very short period would help to bring a swifter end to that uncertainty which was preventing them from leading a normal family life (paragraphs 16 and 17).

Order of 6 May 2014, *G.* (C-181/14, EU:C:2014:740)

In this case, presented above,⁴⁶ the Court rejected the referring court's request for the PPU to be applied. Nevertheless, the President of the Court decided of his own motion that the case should be dealt with under the expedited procedure. He considered that this was necessary if a person's continued detention depended solely on the answer to be given to the question referred by the referring court. In that regard, he recalled, in particular, that the fourth paragraph of Article 267 TFEU provides that, if the case pending before the national court concerns a person in custody, the Court is to act with the minimum of delay (paragraphs 10 and 11).

Order of 5 June 2014, *Sánchez Morcillo and Abril García* (C-169/14, EU:C:2014:1388)

In this case, certain individuals had obtained a loan from a bank, the loan being secured by a mortgage in respect of their principal dwelling. Owing to their failure to fulfil their obligation to pay the monthly loan repayments, mortgage enforcement proceedings were initiated, in order to achieve a forced sale of the property concerned. The individuals concerned had then raised an objection to those enforcement proceedings and, following their dismissal, had appealed to the Audiencia Provincial de Castellón (Provincial Court, Castellón, Spain).

⁴⁵ [Judgment of 8 March 2011 \(C-34/09, EU:C:2011:124, paragraphs 12, 13 and 15\)](#).

⁴⁶ See above, in Part I of this fact sheet, headed, 'The urgent preliminary ruling procedure', section 1. Scope of the urgent preliminary ruling procedure.

The Audiencia Provincial de Castellón (Provincial Court, Castellón) stated that, although Spanish civil procedure⁴⁷ allows appeals to be made against the decision which, while upholding the objection raised by a debtor, brings the mortgage enforcement proceedings to an end, it does not allow the debtor whose objection was dismissed to appeal against the decision at first instance ordering the continuation of the enforcement procedure. However, that court expressed doubts as to the compatibility of that national legislation with the objective of consumer protection pursued by Directive 93/13,⁴⁸ and with the right to an effective remedy as enshrined in Article 47 of the Charter. In that regard, it noted that allowing the debtors to appeal could prove even more critical given that some of the terms of the loan contract at issue could be considered to be ‘unfair’ within the meaning of Directive 93/13.

In that context, the Audiencia Provincial de Castellón (Provincial Court, Castellón) requested that the expedited procedure be applied, stating that the answer to be provided by the Court could have significant consequences for litigation in Spain. In the context of the economic crisis, a large number of natural persons were subject to mortgage enforcement measures in respect of their dwellings. Furthermore, as regards the applicants in the main action specifically, since the objection they raised did not have suspensive effect, their dwellings were liable to be sold at auction before the Court had even handed down its ruling (paragraphs 7 and 8).

The President of the Court indicated that it was true, according to settled case-law, that the large number of persons or legal situations potentially affected by the decision that a referring court had to deliver after bringing a matter before the Court for a preliminary ruling did not, in itself, constitute an exceptional circumstance that would justify the use of the expedited procedure. However, in the present case, beyond the number of affected debtors, the risk for the owner of losing his main dwelling put him and his family in a particularly precarious situation. That circumstance was exacerbated by the fact that, if it were found that the enforcement proceedings were based on a loan contract containing unfair terms that was deemed null and void by the national court, the annulment of the enforcement proceedings related to that loan would provide the debtor with protection of a purely compensatory nature and would not enable the earlier situation, in which he was the owner of his dwelling, to be restored. In the light of those circumstances and in view of the fact that an answer from the Court within the shortest possible time might significantly limit the risk of the dwelling of the persons concerned being lost, the President of the Court granted the request for the expedited procedure to be applied (paragraphs 10 to 13).

Order of 1 February 2016, *Davis and Others* (C-698/15, not published, EU:C:2016:70)⁴⁹

In this case, a number of individuals disputed the lawfulness of United Kingdom legislation⁵⁰ empowering the Secretary of State for the Home Department (United Kingdom) to require public

⁴⁷ Ley 1/2013, de medidas para reforzar la protección a los deudores hipotecarios, reestructuración de deuda y alquiler social (Law 1/2013 laying down measures to strengthen the protection of mortgage debtors, debt restructuring and social rents) of 14 May 2013 (BOE No 116, of 15 May 2013, p. 36373), amending the Ley de enjuiciamiento civil (Code of Civil Procedure) of 7 January 2000 (BOE No 7, of 8 January 2000, p. 575), which was itself amended by decreto-ley 7/2013 de medidas urgentes de naturaleza tributaria, presupuestarias y de fomento de la investigación, el desarrollo y la innovación (Decree Law 7/2013 introducing urgent fiscal and budgetary measures and promoting research, development and innovation) of 28 June 2013 (BOE No 155, of 29 June 2013, p. 48767).

⁴⁸ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

⁴⁹ The [judgment of 21 December 2016, *Tele2 Sverige and Watson and Others* \(C-203/15 and C-698/15, EU:C:2016:970\)](#) was presented in the 2016 Annual Report, p. 59.

telecommunications operators to retain all electronic communications data for a maximum period of 12 months, retention of the content of the communications being excluded, however. The individuals concerned maintained that that national legislation was incompatible with Articles 7 and 8 of the Charter and that it did not comply with the requirements laid down by the judgment in *Digital Rights Ireland and Others*,⁵¹ in which the Court declared Directive 2006/24⁵² invalid. Their applications having been granted at first instance, the Secretary of State for the Home Department brought an appeal before the Court of Appeal (England and Wales) (Civil Division) (United Kingdom), which then referred a number of questions to the Court of Justice, concerning the scope of the judgment in *Digital Rights Ireland and Others*.⁵³

In that context, the referring court also requested that the expedited procedure be applied. In support of that request, it indicated that it would be desirable to join the request for a preliminary ruling to, or direct that it be heard with, the reference for a preliminary ruling in *Tele2 Sverige* (C-203/15), then pending before the Court. Moreover, it explained that the United Kingdom legislation in question was to expire on 31 December 2016 and that there was uncertainty as to the scope of the judgment in *Digital Rights Ireland and Others*⁵⁴ with regard to any legislation that might be adopted by the Member States in the field of the retention of electronic communications data (paragraph 9).

After finding that the legislation at issue was liable to cause serious interference with the fundamental rights laid down in Articles 7 and 8 of the Charter, the President of the Court observed that an answer within a short time might indeed be able to dispel the uncertainty experienced by the referring court as regards the possibility of such interference and any possible justification for it. In addition, for the President of the Court, the fact that there was a time limit on the relevant legislation being in force also justified, in the light of the spirit of cooperation that characterises the relationship between the courts of the Member States and the Court, an urgent reply (paragraphs 10 to 12). For those reasons, the President of the Court decided that the case should be determined pursuant to the expedited procedure.

1.4 Risk of serious environmental damage

Order of 13 April 2016, *Pesce and Others* (C-78/16 and C-79/16, not published, EU:C:2016:251)⁵⁵

In order to prevent the spread of the bacterium *Xylella fastidiosa*, the Servizio Agricoltura della Regione Puglia (Puglia Region Department for Agriculture, Italy) had ordered several owners of agricultural holdings to cut down the olive trees planted on their land, which were deemed to be infected by that bacterium, and all the host plants within a radius of 100 metres of those olive trees. The owners had brought an action for annulment of those uprooting decisions,

⁵⁰ Data Retention and Investigatory Powers Act 2014.

⁵¹ [Judgment of 8 April 2014 \(C-293/12 and C-594/12, EU:C:2014:238\)](#).

⁵² Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54).

⁵³ [Judgment of 8 April 2014 \(C-293/12 and C-594/12, EU:C:2014:238\)](#).

⁵⁴ [Judgment of 8 April 2014 \(C-293/12 and C-594/12, EU:C:2014:238\)](#).

⁵⁵ The [judgment of 9 June 2016, *Pesce and Others* \(C-78/16 and C-79/16, EU:C:2016:428\)](#) was presented in the 2016 Annual Report, p. 26.

on the ground that Implementing Decision 2015/789,⁵⁶ on which those decisions were based, was inconsistent with the principle of proportionality and the precautionary principle and was vitiated by a failure to state reasons.

In those circumstances, the Tribunale amministrativo regionale per il Lazio (Regional Administrative Tribunal, Lazio, Italy), before which those actions were brought, decided temporarily to suspend the implementation of the national measures at issue and to ask the Court of Justice about the conformity of Implementing Decision 2015/789 with EU law.

The national court also requested that its reference for a preliminary ruling be dealt with under the expedited procedure. In support of that request, it emphasised the gravity of the repercussions of implementing the plant uprooting decisions, to the detriment not only of the applicants in the main proceedings but also of the countryside as a whole, of economic activity, groundwater quality, the agrifood chain and of public health. Similarly, those decisions could not be described as provisional, given that they would have a definitive and irreversible impact on the ecosystem of the plants concerned (paragraph 8).

The President of the Court granted the request for the expedited procedure to be applied. He found, first, that extending the suspension of implementation of the uprooting decisions at issue could contribute to the spread of the *Xylella* bacterium in the European Union and, second, that the implementation of those decisions was liable to have irremediable consequences for the ecosystem and to cause irreversible damage to the applicants (paragraph 9).

Order of 11 October 2017, *Commission v Poland* (C-441/17, not published, EU:C:2017:794)

The Commission requested the Court to declare that the Republic of Poland had failed to fulfil some of its obligations under Directives 92/43⁵⁷ ('the Habitats Directive') and 2009/147⁵⁸ ('the Birds Directive'), as a result of forest management operations envisaged in the Białowieża Forest ('Puszcza Białowieska'), one of the best preserved natural forests in Europe, which is included on the World Heritage List of the United Nations Educational, Scientific and Cultural Organisation (Unesco). Specifically, referring to the spread of a harmful insect (the spruce bark beetle), the Minister Środowska (Minister for the Environment, Poland) had approved an amendment of the forest management plan, allowing an increase in the harvesting of timber, and operations in the areas in which any intervention had until then been excluded. Against that background, the removal of numerous trees had begun.

In this case, in the first place, the President of the Court had already accepted the Commission's request that the case be given priority treatment. In the second place, pursuant to Article 160(7) of the Rules of Procedure of the Court of Justice, the Vice-President ordered the Republic of Poland to suspend implementation of the forest management operations concerned pending adoption of an order terminating the proceedings for interim measures brought by

⁵⁶ Commission Implementing Decision (EU) 2015/789 of 18 May 2015 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et al.) (OJ 2015 L 125, p. 36).

⁵⁷ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7).

⁵⁸ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7).

the Commission.⁵⁹ In spite of this, the President of the Court also decided of his own motion to apply the expedited procedure. In that regard, he found that the dispute between the Commission and the Republic of Poland brought to light imminent and potentially serious risks to the environment. On the one hand, according to the Republic of Poland, extending the suspension of those forest management operations could contribute to the spread of the harmful insect, leading to significant upheaval in the ecosystem of the Białowieża forest and, accordingly, engendering environmental damage liable to represent a direct threat to human life and health. On the other hand, according to the Commission, the implementation of those operations was liable to result in irreversible effects on the natural habitats and animal species covered by the Habitats and Birds directives, for the conservation of which the Puszcza Białowieska Natura 2000 site had been designated. In those circumstances, the President of the Court considered that a reply within a short time as to the conformity of those forest management operations with EU law was likely to mitigate the risks that could result either from the extension of their suspension or from their implementation (paragraphs 12 to 14).

2. Relationship between the expedited procedure in infringement proceedings and interim measures

Order of 11 October 2017, *Commission v Poland* (C-441/17, not published, EU:C:2017:794)

As presented above,⁶⁰ the Commission brought infringement proceedings against the Republic of Poland, seeking a declaration that the Republic of Poland had failed to fulfil its obligations under the Habitats and Birds directives. In that context, the Commission made an application pursuant to Article 279 TFEU and Article 160(2) of the Rules of Procedure of the Court for the adoption of interim measures pending the judgment of the Court ruling on the substance.

The Commission also requested, under Article 160(7) of the Rules of Procedure of the Court, that those interim measures be granted even before the observations of the Republic of Poland had been submitted, owing to the risk of serious and irreparable harm to the habitats and the integrity of the Puszcza Białowieska Natura 2000 site. The Vice-President of the Court granted that request and ordered the Republic of Poland to suspend, save in the event of a threat to public safety, implementation of the forest management operations concerned pending adoption of an order terminating the proceedings for interim measures ([order of 27 July 2017, *Commission v Poland*, C-441/17 R, not published, EU:C:2017:622](#)).

As regards the relationship between the application for interim measures and the expedited procedure applied of the President of the Court's own motion, the President of the Court stated that, while it was true that the Court was still seised of the application for interim measures, the fact remained that the subject matter and the conditions triggering that application and those triggering the expedited procedure were not identical. In this instance, it appeared, without prejudice to the order terminating the proceedings for interim relief, that the

⁵⁹ See below, still in Part II of this fact sheet, headed 'The expedited procedure', the section headed '2. Relationship between the expedited procedure in infringement proceedings and interim measures'.

⁶⁰ See above, still in Part II of this fact sheet, headed 'The expedited procedure', the section headed '1.4. Risk of serious environmental damage'.

nature of the present case justified the application of the expedited procedure (for the reasons set out above in section 1.4. Risk of serious environmental damage) (paragraphs 15 and 16).

Order of 15 November 2018, Commission v Poland (C-619/18, EU:C:2018:910)

As presented above,⁶¹ the Commission brought infringement proceedings against the Republic of Poland seeking a declaration that, by adopting the recent law on the Sąd Najwyższy (Supreme Court, Poland), the Republic of Poland had failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU and Article 47 of the Charter. In that context, the Commission made an application pursuant to Article 279 TFEU and Article 160(2) of the Rules of Procedure of the Court for the adoption of interim measures pending the judgment of the Court ruling on the substance.

In addition, the Commission requested, pursuant to Article 160(7) of the Rules of Procedure of the Court, that those interim measures be adopted even before the observations of the Republic of Poland had been submitted, owing to the immediate risk of serious and irreparable harm with regard to the principle of effective judicial protection in the context of the application of EU law. The Vice-President of the Court granted that request. Thus, she ordered the Republic of Poland, immediately and until delivery of the order terminating the proceedings for interim measures, first, to suspend the application of certain provisions of the Law on the Sąd Najwyższy (Supreme Court); second, to take all necessary measures to ensure that the judges of the Sąd Najwyższy (Supreme Court) concerned by that law could perform their duties in the positions held, while continuing to enjoy the same status and the same rights and working conditions as they did on the date on which that law entered into force; third, to refrain from adopting any measure concerning the appointment of judges to the Sąd Najwyższy (Supreme Court), and from any measure concerning the appointment of a new First President of that court or indicating the person tasked with leading that court in its First President's stead; fourth, to inform the Commission every month of all the measures adopted in order to comply with that order ([order of 19 October 2018, Commission v Poland, C-619/18 R, not published, EU:C:2018:852](#)).

As regards the relationship between the application for interim measures and the expedited procedure, applied of the President of the Court's own motion, the President of the Court found that while it was true that the Court was still seised of an application for interim relief, the Vice-President of the Court had adopted the provisional measures sought by the Commission, which would be effective until delivery of the order closing the interlocutory proceedings. Consequently, the President of the Court stated that if the Court were to maintain, in the order to be made, the provisional measures adopted pending its delivery, the Republic of Poland would itself have every interest in the procedure on the substance in the present case being closed within a short time, in order that those measures could be ended and the questions raised by the case become the subject of a final decision. The President of the Court also made clear that, in any event, the subject matter and the conditions triggering an application for interim relief and those triggering the expedited procedure were not identical. In

⁶¹ See above, still in Part II of this fact sheet, headed 'The expedited procedure', the section headed '1.2. Particular severity of the legal uncertainty to which the reference for a preliminary ruling relates'.

the present case it appeared, without prejudice to the decisions to be taken in the order terminating the proceedings for interim relief, that the nature of the present case justified the application of the expedited procedure (for the reasons set out above in section 1.2. Particular severity of the legal uncertainty to which the reference for a preliminary ruling relates) (paragraphs 26 to 28).