COURT OF JUSTICE
OF THE EUROPEAN UNION

EN

Fact sheet

Independence of the Judiciary

Research and Documentation Directorate

curia.europa.eu

Preface

The Court of Justice's case-law on the principle of independence of the judiciary in EU law has been enriched over the years through a significant number of judgments. That case-law is characterised by the diversity of the areas covered, ranging from the procedures for appointing national judges to the presumption of innocence, with the principle being approached from multiple angles.

Initially, the case-law focused on the condition of the independence of national courts or tribunals which could refer questions for a preliminary ruling, in order to ensure the proper working of the preliminary ruling procedure, within the meaning of Article 267 TFEU. The criteria of independence established by the Court in its case-law on Article 267 TFEU have subsequently been applied in other contexts.

Thus, secondly, a significant number of judgments addressed the independence of the judiciary in the context of effective legal protection, within the meaning of the second subparagraph of Article 19(1) TEU [1] and of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'). [2] In the light of those provisions, the Court has ruled on the requirements to be met by national courts or tribunals which may rule on the application or interpretation of EU law in order to ensure, inter alia, respect for the rule of law as one of the Union values listed in Article 2 TEU. [3]

Finally, the requirements for the independence of the judiciary have been taken into account in cases relating to the area of freedom, security and justice, enshrined in Part Three, Title V TFEU, notably in the field of judicial cooperation in criminal matters (Articles 82 to 86 TFEU).

Taking those three aspects in turn, this fact sheet provides an overview of the case-law on the subject.

---

1 Pursuant to that provision, 'Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.'

2 Article 47 of the Charter enshrines the fundamental right to an effective remedy and access to an impartial tribunal.

3 Article 2 TEU provides: 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'

List of acts referred to

Judicial cooperation in civil matters

Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (OJ 2004 L 143, p. 15).

Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1).

Judicial cooperation in criminal matters

Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (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).

Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ 2016 L 65, p. 1).

Social policy

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ 2006 L 204, p. 23).

Principles, objectives and tasks of the Treaties

Commission Decision 2006/928/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (OJ 2006 L 354, p. 56).

Data protection

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1) ('the GDPR').

Table of contents

I. Independence of the national courts and tribunals with regard to the preliminary ruling procedure

The Court's case-law on the criteria of the independence of the judiciary developed initially around the interpretation of Article 267 TFEU, according to which only a 'court or tribunal' of a Member State has the right or, as the case may be, the obligation to make a reference to the Court of Justice for a preliminary ruling. The interpretation of that provision has provided the Court with the opportunity, when examining the admissibility of a request for a preliminary ruling, to define the concept of 'court or tribunal' and, in particular, that of 'the independence of the judiciary'. Independence is one of the requirements which the Court takes into account in determining whether a body making a reference is a 'court or tribunal' empowered to make a reference to the Court for a preliminary ruling. [4]

1. Meaning of 'court or tribunal' within the meaning of Article 267 TFEU

Judgment of 21 December 2023 (Grand Chamber), Krajowa Rada Sądownictwa (Continued holding of a judicial office) (C-718/21, EU:C:2023:1015)

(Reference for a preliminary ruling – Article 267 TFEU – Concept of 'court or tribunal' – Criteria – Izba Kontroli Nadzwyczajnej i Spraw Publicznych (Chamber of Extraordinary Control and Public Affairs) of the Sąd Najwyższy (Supreme Court, Poland) – Reference for a preliminary ruling from a panel of judges without the status of an independent and impartial tribunal previously established by law – Inadmissibility)

By letter of 30 December 2020, L.G., a judge within the Sąd Okręgowy w K. (Regional Court, K., Poland) notified the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland) ('the KRS') of his wish to continue to perform his duties beyond the normal retirement age. When the KRS declared that there was no need to rule on that application, because the time-limit for bringing it had expired, L.G. brought an appeal before the referring body. Having doubts as to whether a piece of national legislation which (i) makes the effectiveness of such a declaration by a judge subject to the authorisation of the KRS and (ii) lays down an absolute time limit in respect of that declaration is in line with the second subparagraph of Article 19(1) TEU, that body made a reference to the Court of Justice for a preliminary ruling.

That referring body was composed of three judges of the Izba Kontroli Nadzwyczajnej i Spraw Publicznych (Chamber of Extraordinary Control and Public Affairs; 'the Chamber

[4] See, for example, judgment of 11 June 1987, *X* (14/86, EU:C:1987:275), paragraph 7, judgment of 17 September 1997, *Dorsch Consult* (C-54/96, EU:C:1997:413), paragraph 23, and, more recently, judgment of 29 March 2022, *Getin Noble Bank* (C-132/20, EU:C:2022:235), paragraph 66, presented under heading II.1, 'Appointment'.

of Extraordinary Control'), established within the Sąd Najwyższy (Supreme Court, Poland) in connection with the 2017 reforms of the Polish judicial system. [5] Those three judges were appointed to that chamber on the basis of Resolution No 331/2018, adopted by the KRS on 28 August 2018 ('Resolution No 331/2018').

However, that resolution was annulled by a judgment handed down by the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland) on 21 September 2021. [6] In addition, in its judgment of 8 November 2021, *Dolińska-Ficek and Ozimek v. Poland* [7] ('the judgment in *Dolińska-Ficek and Ozimek v. Poland*'), the European Court of Human Rights ('the ECtHR') found a violation of the requirement of a 'tribunal established by law' laid down in Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, [8] due to the process which, on the basis of Resolution No 331/2018, had led to the appointment of the members of two three-judge adjudicating panels of the Chamber of Extraordinary Control.

In its judgment, the Court, sitting as the Grand Chamber, declared the request for a preliminary ruling inadmissible on the ground that the referring body did not constitute a 'court or tribunal' within the meaning of Article 267 TFEU.

The Court began by recalling that, in order to determine whether a body making a reference is a 'court or tribunal' within the meaning of Article 267 TFEU, the Court takes account of a number of factors, such as, inter alia, whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is *inter partes*, whether it applies rules of law and whether it is independent. In that regard, the Court had already noted that the Supreme Court as such meets those requirements and stated that, in so far as a request for a preliminary ruling emanates from a national court or tribunal, it must be presumed that that court or tribunal satisfies those requirements, irrespective of its actual composition. In the context of a preliminary ruling procedure, it is not for the Court of Justice, in view of the distribution of functions between itself and the national courts, to determine whether the order for reference was made in accordance with the rules of national law governing the organisation of the courts and their procedure.

However, that presumption may be rebutted where a final judicial decision handed down by a court or tribunal of a Member State or an international court or tribunal leads to the conclusion that the judge constituting the referring court is not an independent and impartial tribunal previously established by law for the purposes of the second

5 That chamber and another new chamber of the Supreme Court – the Izba Dyscyplinarna (Disciplinary Chamber) – were created under the ustawa o Sądzie Najwyższym (Law on the Supreme Court) of 8 December 2017, which entered into force on 3 April 2018.

6 That judgment was handed down following the judgment of 2 March 2021, *A.B. and Others* (*Appointment of judges to the Supreme Court – Actions*) (C-824/18, EU:C:2021:153), presented under heading II.1, 'Appointment'.

7 CE:ECHR:2021:1108JUD004986819.

8 Signed in Rome on 4 November 1950.

subparagraph of Article 19(1) TEU, read in the light of the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'). [9]

In that regard, the Court noted that the judgment in *Dolińska-Ficek and Ozimek v. Poland* of the ECtHR and the judgment of 21 September 2021 of the Supreme Administrative Court are final and relate specifically to the circumstances in which judges of the Chamber of Extraordinary Control were appointed on the basis of Resolution No 331/2018.

More specifically, in the judgment in *Dolińska-Ficek and Ozimek v. Poland* the ECtHR found, in essence, that the appointments of the members of the adjudicating panels of the Chamber of Extraordinary Control concerned had been made in manifest breach of fundamental national rules governing the procedure for the appointment of judges. While it is true that, of the six judges comprising the adjudicating panels of the Chamber of Extraordinary Control at issue in the cases which gave rise to that judgment, only one of them sits within the referring body, it is nevertheless clear from the grounds of that judgment that the assessments made by the ECtHR apply without distinction to all the judges of the Chamber of Extraordinary Control who were appointed to that chamber in similar circumstances and, in particular, on the basis of Resolution No 331/2018.

In addition, in the judgment of 21 September 2021, the Supreme Administrative Court annulled Resolution No 331/2018 by relying, inter alia, on findings and assessments that largely overlap with those set out in the judgment in *Dolińska-Ficek and Ozimek v. Poland*.

In the light of the findings and assessments arising from those two judgments and from its own case-law, the Court examined whether the presumption that the requirements of a 'court or tribunal' within the meaning of Article 267 TFEU are met must be held to be rebutted with regard to the referring body.

In that regard, the Court emphasised, in the first place, that the judges making up the referring body were appointed to the Chamber of Extraordinary Control on a proposal from the KRS – that is to say, from a body where, following the legislative amendments made in 2017 and 2018, [10] 23 of its 25 members had been designated by the executive and the legislature or were members of those branches of government. Admittedly, the fact that a body, such as the KRS, which is involved in the procedure for the appointment of judges is, for the most part, comprised of members chosen by the legislature cannot, in itself, give rise to any doubt as to the status of that body as a tribunal previously established by law or the independence of the judges appointed at the end of that procedure. However, the situation is different where that fact, combined with other relevant factors and the conditions under which those choices were made, leads to such

[9] See judgment of 29 March 2022, *Getin Noble Bank* (C-132/20, EU:C:2022:235, paragraph 72), presented under heading II.1, 'Appointment'.

[10] Article 9a of the ustawa o Krajowej Radzie Sądownictwa (Law on the National Council of the Judiciary) of 12 May 2011, as amended by the ustawa o zmianie ustawy o Krajowej Radzie Sądownictwa oraz niektórych innych ustaw (Law amending the Law on the National Council of the Judiciary and certain other laws) of 8 December 2017, which entered into force on 17 January 2018, and by the ustawa o zmianie ustawy – Prawo o ustroju sądów powszechnych oraz niektórych innych ustaw (Law amending the Law on the system of the ordinary courts and certain other laws) of 20 July 2018, which entered into force on 27 July 2018.

doubts being raised. The legislative amendments concerning the KRS were made at the same time as the adoption of a substantial reform of the Supreme Court, including, in particular, the creation, within that court, of two new chambers and the lowering of the retirement age of judges of that court. Those amendments therefore came at a time when it was expected that numerous judicial posts at the Supreme Court declared vacant or newly created would soon be available to be filled.

In the second place, the Chamber of Extraordinary Control thus created *ex nihilo* was assigned jurisdiction over particularly sensitive matters, such as electoral disputes and proceedings relating to the holding of referendums, as well as extraordinary appeals enabling final decisions of the ordinary courts or other chambers of the Supreme Court to be set aside.

In the third place, in parallel with the legislative amendments referred to above, the rules concerning the judicial remedies available against resolutions of the KRS proposing candidates for appointment to judicial posts at the Supreme Court were substantially amended, thereby undermining the effectiveness of such remedies. In that regard, the Court of Justice also emphasised that the restrictions introduced by those amendments concerned only appeals brought against resolutions of the KRS relating to applications for judicial posts at the Supreme Court, whereas the resolutions of the KRS relating to applications for judicial posts in other national courts remained subject to the general system of judicial review previously in force. [11]

In the fourth place, the Court of Justice had also already held in the judgment in *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)* [12] that, when the member of the Chamber of Extraordinary Control concerned by the case which gave rise to that judgment was appointed on the basis of Resolution No 331/2018, the Supreme Administrative Court, before which an action for annulment of that resolution had been brought, had ordered, on 27 September 2018, that the effects of that resolution be suspended. Those circumstances also pertain as regards the appointment of the three members sitting within the referring body. Thus the fact that the President of the Republic of Poland made the appointments at issue, as a matter of urgency and without waiting to take cognisance of the grounds of the order of 27 September 2018, on the basis of Resolution No 331/2018, even though that resolution had been suspended by that order, seriously undermined the principle of the separation of powers which characterises the operation of the rule of law.

In the fifth place, although the action for annulment of Resolution No 331/2018 had been brought before the Supreme Administrative Court and that court had stayed the

[11] Judgment of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)* (C-824/18, EU:C:2021:153, paragraphs 157, 162 and 164), presented under heading II.1, 'Appointment'.

[12] Judgment of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)* (C-487/19, EU:C:2021:798, presented under headings II.1, 'Appointment', and II.5, 'Transfer'.

proceedings pending the judgment of the Court of Justice in *A.B. and Others*, [13] the Polish legislature adopted a law providing for, inter alia, the exclusion of any future appeal against resolutions of the KRS proposing the appointment of judges to the Supreme Court and for the discontinuation of pending appeals of that nature. [14] As regards the amendments thus introduced by that law, the Court of Justice had already held that, particularly when viewed in conjunction with a set of other contextual factors, those amendments were such as to suggest that the Polish legislature acted with the specific intention of preventing any possibility of exercising judicial review of the resolutions concerned. [15]

In the sixth and last place, the Court explained that, while, admittedly, the effects of the judgment of 21 September 2021 of the Supreme Administrative Court referred to above did not relate to the validity and effectiveness of the presidential acts of appointment to the judicial posts concerned, the fact remains that the act by which the KRS puts forward a candidate for appointment to a judicial post at the Supreme Court is an essential condition for that candidate to be appointed to such a post by the President of the Republic of Poland.

In conclusion, the Court ruled that the consequence of all the factors – both systemic and circumstantial – referred to above, which characterised the appointment, within the Chamber of Extraordinary Control, of the three judges constituting the referring body, was that that body does not have the status of an independent and impartial tribunal previously established by law for the purposes of the second subparagraph of Article 19(1) TEU, read in the light of the second paragraph of Article 47 of the Charter, with the result that that panel does not constitute a 'court or tribunal' within the meaning of Article 267 TFEU. Those factors are such as to give rise to reasonable doubts in the minds of individuals as to the imperviousness of the persons concerned and the adjudicating panel on which they sit with regard to external factors, in particular the direct or indirect influence of the national legislature and executive, and their neutrality with respect to the interests before them. Those factors are thus capable of leading to a lack of appearance of independence or impartiality on the part of those judges and of that body, which is likely to undermine the trust which justice in a democratic society governed by the rule of law must inspire in those individuals.

---

13 Judgment of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)* (C-824/18, EU:C:2021:153), presented under heading II.1, 'Appointment'.

14 The ustawa o zmianie ustawy o Krajowej Radzie Sądownictwa oraz ustawy – Prawo o ustroju sądów administracyjnych (Law amending the Law on the National Council of the Judiciary and the Law on the system of administrative courts) of 26 April 2019, which entered into force on 23 May 2019.

15 Judgment of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)* (C-824/18, EU:C:2021:153, paragraphs 137 and 138), presented under heading II.1, 'Appointment'.

2. Right of independent national courts and tribunals to make a reference to the Court of Justice for a preliminary ruling

Judgment of 15 July 2021 (Grand Chamber), Commission v Poland (Disciplinary regime for judges) (C-791/19, EU:C:2021:596)

(Failure of a Member State to fulfil obligations – Disciplinary regime applicable to judges – Rule of law – Independence of judges – Effective legal protection in the fields covered by Union law – Second subparagraph of Article 19(1) TEU – Article 47 of the Charter of Fundamental Rights of the European Union – Disciplinary offences resulting from the content of judicial decisions – Independent disciplinary courts or tribunals established by law – Respect for reasonable time and the rights of the defence in disciplinary proceedings – Article 267 TFEU – Restriction of the right of national courts to submit requests for a preliminary ruling to the Court of Justice and of their obligation to do so)

In 2017, Poland adopted a new disciplinary regime concerning judges of the Sąd Najwyższy (Supreme Court, Poland) and judges of the ordinary courts. In the context of that legislative reform, a new chamber, the Izba Dyscyplinarna ('the Disciplinary Chamber'), was established within the Supreme Court. That chamber was made responsible, inter alia, for hearing disciplinary cases relating to judges of the Supreme Court and, on appeal, those relating to judges of the ordinary courts.

Taking the view that, by adopting that new disciplinary regime, Poland had failed to fulfil its obligations under EU law, [16] the European Commission brought an action for failure to fulfil obligations before the Court. The Commission submitted, in particular, that that disciplinary regime guarantees neither the independence nor the impartiality of the Disciplinary Chamber, which is made up exclusively of judges selected by the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland) ('the KRS'), a body which has 23 of its 25 members appointed by the political authorities.

In the judgment delivered in that case, the Court, sitting as the Grand Chamber, upheld the action for failure to fulfil obligations brought by the Commission. First, the Court found that the new disciplinary regime for judges undermines their independence. Secondly, that regime does not enable the judges concerned to comply, acting with complete independence, with their obligations under the preliminary ruling mechanism.

The Court found that, by allowing the right of courts and tribunals to submit requests for a preliminary ruling to the Court of Justice to be restricted by the possibility of triggering disciplinary proceedings, Poland had failed to fulfil its obligations under the second and third paragraphs of Article 267 TFEU. The provisions of national legislation from which it

[16] The Commission considered that Poland had failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU – which lays down the obligation, for the Member States, to provide remedies sufficient to ensure effective legal protection in the fields covered by Union law – and under the second and third paragraphs of Article 267 TFEU – which gives certain national courts the discretion (second paragraph) to make a reference for a preliminary ruling, and places others under the obligation (third paragraph) to do so.

follows that national judges may be exposed to disciplinary proceedings as a result of the fact that they have made a reference for a preliminary ruling to the Court of Justice cannot be accepted, because they undermine the effective exercise by the national judges concerned of the discretion or the obligation, provided by those provisions, to make a reference for a preliminary ruling to the Court of Justice, as well as the system of cooperation between the national courts and the Court of Justice thus established by the Treaties in order to secure uniformity in the interpretation of EU law and to ensure the full effect of that law. [17]

Judgment of 23 November 2021 (Grand Chamber), IS (Illegality of the order for reference) (C-564/19, EU:C:2021:949)

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Directive 2010/64/EU – Article 5 – Quality of the interpretation and translation – Directive 2012/13/EU – Right to information in criminal proceedings – Article 4(5) and Article 6(1) – Right to information about the accusation – Right to interpretation and translation – Directive 2016/343/EU – Right to an effective remedy and to a fair trial – Article 48(2) of the Charter of Fundamental Rights of the European Union – Article 267 TFEU – Second subparagraph of Article 19(1) TEU – Admissibility – Appeal in the interests of the law against a decision ordering a reference for a preliminary ruling – Disciplinary proceedings – Power of the higher court to declare the request for a preliminary ruling unlawful)

A judge of the Pesti Központi Kerületi Bíróság (Central District Court, Pest, Hungary) was seised of criminal proceedings brought against a Swedish national. At the first interview with the investigative authority, the accused, who does not speak Hungarian and was assisted by a Swedish-language interpreter, was informed of the suspicions against him. However, there is no information as to how the interpreter was selected, how that interpreter's competence was verified, or whether the interpreter and the accused understood each other. Indeed, Hungary does not have an official register of translators and interpreters and Hungarian law does not specify who may be appointed in criminal proceedings as a translator or interpreter, nor according to what criteria. Consequently, according to the referring judge, neither the lawyer nor the court was in a position to verify the quality of the interpretation. In those circumstances, he considered that the accused's right to be informed of his rights could be infringed, as well as his rights of defence.

Accordingly, the referring judge decided to ask the Court of Justice whether Hungarian law was compatible with Directive 2010/64, [18] on the right to interpretation and

[17] See also judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21, EU:C:2023:442), presented under heading II.7, 'Disciplinary liability'.

[18] Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ 2010 L 280, p. 1).

translation in criminal proceedings, and Directive 2012/13, [19] on the right to information in such proceedings. In the event of incompatibility, he also asked whether the criminal proceedings might be continued in the absence of the accused, as such proceedings are provided for under Hungarian law, in certain cases, where the accused is not present at the hearing.

Following that initial reference to the Court, the Kúria (Supreme Court, Hungary) ruled on an appeal in the interests of the law brought by the Hungarian Prosecutor General against the order for reference and held that order to be unlawful, without, however, altering its legal effects, on the ground, in essence, that the questions referred were not relevant and necessary for the resolution of the dispute concerned. On the same grounds as those underlying the decision of the Kúria (Supreme Court), disciplinary proceedings, which were subsequently discontinued, were brought against the referring judge. Since he was uncertain as to whether such proceedings and the decision of the Kúria (Supreme Court) were compatible with EU law and as to the impact of that decision on the action to be taken upon the criminal proceedings before him, the referring judge made a supplementary request for a preliminary ruling in that regard.

First of all, the Court, sitting as the Grand Chamber, held that the system of cooperation between the national courts and the Court of Justice, established by Article 267 TFEU, precludes a national supreme court from declaring, following an appeal in the interests of the law, that a request for a preliminary ruling submitted by a lower court is unlawful, without, however, altering the legal effects of the order for reference, on the ground that the questions referred are not relevant and necessary for the resolution of the dispute in the main proceedings. Such a review of legality is similar to the review carried out in order to determine whether a request for a preliminary ruling is admissible, for which the Court has exclusive jurisdiction. Furthermore, such a finding of illegality is liable, first, to weaken the authority of the answers that the Court will provide and, secondly, to limit the exercise of the national courts' jurisdiction to make a reference to the Court for a preliminary ruling and, consequently, is liable to restrict the effective judicial protection of the rights which individuals derive from EU law.

In such circumstances, the principle of the primacy of EU law requires the lower court to disregard the decision of the supreme court of the Member State concerned. That conclusion is in no way undermined by the fact that, subsequently, the Court may find that the questions referred for a preliminary ruling by that lower court are inadmissible.

In the second place, the Court held that EU law precludes disciplinary proceedings from being brought against a national judge on the ground that he or she has made a reference for a preliminary ruling to the Court of Justice, since the mere prospect of being the subject of such proceedings can undermine the mechanism provided for in Article 267 TFEU and judicial independence, which independence is essential to the

[19] Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ 2012 L 142, p. 1).

proper working of that mechanism. Moreover, such proceedings are liable to deter all national courts from making references for a preliminary ruling, which could jeopardise the uniform application of EU law.

Judgment of 21 December 2021 (Grand Chamber), Euro Box Promotion and Others (C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034)

(Reference for a preliminary ruling – Decision 2006/928/EC – Mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption – Legal nature and effects – Binding on Romania – Rule of law – Judicial independence – Second subparagraph of Article 19(1) TEU – Article 47 of the Charter of Fundamental Rights of the European Union – Fight against corruption – Protection of the European Union's financial interests – Article 325(1) TFEU – 'PFI' Convention – Criminal proceedings – Decisions of the Curtea Constituțională (Constitutional Court, Romania) concerning the legality of the taking of certain evidence and the composition of judicial panels in cases of serious corruption – Duty on national courts to give full effect to the decisions of the Curtea Constituțională (Constitutional Court) – Disciplinary liability of judges in case of non-compliance with such decisions – Power to disapply decisions of the Curtea Constituțională (Constitutional Court) that conflict with EU law – Principle of primacy of EU law)

The cases follow on from the reform of the judicial system with regard to combating corruption in Romania, which was the subject of a previous judgment of the Court. [20] That reform has been monitored at EU level since 2007 under the cooperation and verification mechanism established by Decision 2006/928 on the occasion of Romania's accession to the European Union ('the CVM').

In those cases, the question arose as to whether the application of the case-law arising from various decisions of the Curtea Constituțională a României (Constitutional Court, Romania; 'the Constitutional Court') on the rules of criminal procedure applicable to fraud and corruption proceedings was liable to infringe EU law, in particular the provisions of EU law intended to protect the financial interests of the European Union, the guarantee of judicial independence and the value of the rule of law, as well as the principle of the primacy of EU law.

In Cases C-357/19, C-547/19, C-811/19 and C-840/19, the Înalta Curte de Casaţie şi Justiţie (High Court of Cassation and Justice, Romania; 'the HCCJ') had convicted several persons, including former Members of Parliament and Ministers, of offences of VAT fraud, corruption and influence peddling, inter alia in connection with the management of European funds. The Constitutional Court set aside those decisions on the grounds of the unlawful composition of the panel of judges, stating, first, that the cases on which the HCCJ had ruled at first instance should have been heard by a panel specialised in

[20] Judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others* (C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393), presented under heading II.8, 'Personal liability, immunity and suspension'.

corruption [21] and, secondly, that in the cases on which the HCCJ had ruled on appeal, all the judges of the panel of judges should have been selected by drawing lots. [22]

In Case C-379/19, criminal proceedings had been brought before the Tribunalul Bihor (Regional Court, Bihor, Romania) against several persons accused of corruption offences and influence peddling. In the context of a request for the exclusion of evidence, that court was faced with the application of case-law of the Constitutional Court which declared the gathering of evidence in criminal proceedings with the participation of the Romanian intelligence service to be unconstitutional, resulting in the retroactive exclusion of the evidence concerned from the criminal proceedings. [23]

Against that background, the HCCJ and the Regional Court, Bihor referred questions for a preliminary ruling to the Court concerning the compliance of those decisions of the Constitutional Court with EU law. [24] First of all, the Regional Court, Bihor raised the issue of whether the CVM and the reports prepared by the Commission in accordance with that mechanism are binding. [25] Next, the HCCJ raised the issue of a possible systemic risk of impunity in the field of the fight against fraud and corruption. Lastly, those courts also asked whether the principles of the primacy of EU law and of judicial independence allowed them to disapply a decision of the Constitutional Court, whereas under Romanian law failure by judges to comply with a decision of the Constitutional Court constitutes a disciplinary offence.

The principle of the primacy of EU law precludes national courts from being prohibited, subject to disciplinary penalties, from disapplying decisions of the Constitutional Court that are contrary to EU law.

The Court pointed out that, in its case-law on the EEC Treaty, it laid down the principle of the primacy of Community law, understood to enshrine the precedence of Community law over the law of the Member States. In that regard, the Court has held that the establishment by the EEC Treaty of the Community's own legal system, accepted by the Member States on a basis of reciprocity, means, as a corollary, that they cannot accord precedence over that legal system to a unilateral and subsequent measure or rely on rules of national law of any kind against the law stemming from the EEC Treaty, without depriving the latter law of its character as Community law and without the legal basis of the Community itself being called into question. In addition, the executive force of Community law cannot vary from one Member State to another in deference to subsequent domestic laws without jeopardising the attainment of the objectives of the EEC Treaty or giving rise to discrimination on grounds of nationality prohibited by that

21 Judgment of 3 July 2019, No 417/2019.
22 Judgment of 7 November 2018, No 685/2018.
23 Judgments of 16 February 2016, No 51/2016, of 4 May 2017, No 302/2017 and of 16 January 2019, No 26/2019.
24 Article 2 and the second subparagraph of Article 19(1) TEU, Article 325(1) TFEU, Article 2 of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, signed in Brussels on 26 July 1995 and annexed to the Council Act of 26 July 1995 (OJ 1995 C 316, p. 48), and Decision 2006/928.
25 According to the judgment of the Constitutional Court of 6 March 2018, No 104/2018, Decision 2006/928 cannot constitute a benchmark in the context of a review of constitutionality.

treaty. The Court has thus held that the EEC Treaty, albeit concluded in the form of an international agreement, constitutes the constitutional charter of a Community based on the rule of law and that the essential characteristics of the Community legal order thus established are, in particular, its primacy over the law of the Member States and the direct effect of a whole series of provisions which are applicable to their nationals and to the Member States themselves.

The Court noted that those essential characteristics of the legal order of the European Union and the importance of compliance with that legal order have been confirmed by the ratification, without reservation, of the Treaties amending the EEC Treaty and, in particular, the Treaty of Lisbon. When that treaty was adopted, the conference of representatives of the governments of the Member States was keen to state expressly, in its Declaration No 17 concerning primacy, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, that, in accordance with the settled case-law of the Court, the Treaties and the law adopted by the European Union on the basis of the Treaties have primacy over the law of Member States, under the conditions laid down by that case-law.

The Court added that, since Article 4(2) TEU provides that the Union is to respect the equality of Member States before the Treaties, the European Union can respect such equality only if the Member States are unable, under the principle of the primacy of EU law, to rely on, as against the EU legal order, a unilateral measure, whatever its nature. In that context, the Court also noted that, in the exercise of its exclusive jurisdiction to give a definitive interpretation of EU law, it is for it to clarify the scope of the principle of the primacy of EU law in the light of the relevant provisions of EU law, since that scope cannot turn on the interpretation of provisions of national law or on the interpretation of provisions of EU law by a national court which is at odds with the interpretation given by the Court.

The Court recalled that the effects of the principle of the primacy of EU law are binding on all the bodies of a Member State, without provisions of domestic law, including constitutional provisions, being able to prevent that. National courts are required to disapply, on their own authority, any national rule or practice contrary to a provision of EU law which has direct effect, without having to request or await the prior setting aside of that national rule or practice by legislative or other constitutional means.

Moreover, for national judges, not being exposed to disciplinary proceedings or penalties for having exercised the discretion to make a reference for a preliminary ruling under Article 267 TFEU, which is exclusively within their jurisdiction, constitutes a guarantee that is essential to their independence. Thus, if a national judge of an ordinary court were to find, in the light of a judgment of the Court, that the case-law of the national constitutional court is contrary to EU law, that national judge's disapplication of that constitutional case-law cannot trigger his or her disciplinary liability.

II. Independence of the judges and national courts and tribunals with jurisdiction to apply EU law

In numerous judgments, delivered following both preliminary ruling proceedings and infringement proceedings, the Court interpreted Article 19 TEU and Article 47 of the Charter in conjunction with Article 2 TEU, according to which the European Union is founded, inter alia, on the value of the rule of law. That framework of primary law afforded the Court the opportunity to set out in detail the requirements stemming from the principle of the independence of the judiciary, which is binding on national courts and tribunals, from the time of the appointment of judges through to their retirement. The present chapter sets out the case-law of the Court of Justice at the various stages of the careers of judges.

It follows from that case-law that there are two aspects to the principle of independence. The first aspect, which is external, presumes that the judiciary is protected against any external intervention or pressure liable to jeopardise the independent judgment of its members as regards proceedings before them. The second aspect, which is internal, is linked to impartiality and seeks to ensure a level playing field for the parties to the proceedings and their respective interests with regard to the subject matter of those proceedings. [26]

1. Appointment

Judgment of 19 November 2019 (Grand Chamber), A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court) (C-585/18, C-624/18 and C-625/18, EU:C:2019:982)

(Reference for a preliminary ruling –Directive 2000/78/EC – Equal treatment in employment and occupation – Non-discrimination on the ground of age –Lowering of the retirement age of judges of the Sąd Najwyższy (Supreme Court, Poland) — Article 9(1) – Right to a remedy –Article 47 of the Charter of Fundamental Rights of the European Union — Effective judicial protection – Principle of judicial independence – Creation of a new chamber of the Sąd Najwyższy (Supreme Court) with jurisdiction inter alia for cases of retiring the judges of that court – Chamber formed by judges newly appointed by the President of the Republic of Poland on a proposal of the National Council of the Judiciary –Independence of that council –Power to disapply national legislation not in conformity with EU law –Primacy of EU law)

In its judgment, delivered in an expedited procedure, the Grand Chamber of the Court of Justice held that the right to an effective remedy, enshrined in Article 47 of the Charter

[26] Judgments of 19 September 2006, *Wilson* (C-506/04, EU:C:2006:587), paragraphs 50 to 52; of 31 January 2013, *D. and A.* (C-175/11, EU:C:2013:45), paragraph 96; and, recently, of 21 December 2023, *Krajowa Rada Sądownictwa (Continued holding of a judicial office)* (C-718/21, EU:C:2023:1015), paragraph 61, presented under heading I.1, 'Meaning of "court or tribunal" within the meaning of Article 267 TFEU'.

of Fundamental Rights of the European Union and reaffirmed, in a specific field, by Directive 2000/78, precludes cases concerning the application of EU law from falling within the exclusive jurisdiction of a court which is not an independent and impartial tribunal. The Court considered that that is the case where the objective circumstances in which such a court was formed, its characteristics and the means by which its members have been appointed are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of that court to external factors, in particular, as to the direct or indirect influence of the legislature and the executive and its neutrality with respect to the interests before it. Those factors may thus lead to that court not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society must inspire in subjects of the law. It is for the referring court to determine, in the light of all the relevant factors established before it, whether that does in fact apply to the new Disciplinary Chamber of the Sąd Najwyższy (Supreme Court, Poland). If that is the case, the principle of the primacy of EU law thus requires it to disapply the provision of national law which reserves exclusive jurisdiction to the Disciplinary Chamber to hear and rule on cases of the retiring of judges of the Supreme Court, so that those cases may be examined by a court which meets the requirements of independence and impartiality and which, were it not for that provision, would have jurisdiction in the relevant field.

In the cases pending before the referring court, three Polish judges (of the Supreme Administrative Court and of the Supreme Court) relied on, inter alia, infringements of the prohibition on discrimination on the ground of age in employment, on account of their early retirement pursuant to the New Law of 8 December 2017 on the Supreme Court. Despite the fact that, following an amendment in 2018, that law no longer concerns judges who, like the applicants in the main proceedings, were already serving members of the Supreme Court when that law entered into force and that therefore those applicants in the main proceedings were maintained in their posts or reinstated, the referring court considered that it was still faced with a problem of a procedural nature. Although such cases would ordinarily fall within the jurisdiction of the Disciplinary Chamber, as newly created within the Supreme Court, the referring court asked whether, on account of concerns relating to the independence of that chamber, it was required to disapply national rules on the allocation of jurisdiction and, if necessary, rule itself on the substance of those cases.

In the first place, having confirmed that, in the present cases, both Article 47 of the Charter of Fundamental Rights and the second subparagraph of Article 19(1) TEU were applicable, the Court stated that the requirement that courts be independent forms part of the essence of the right to effective judicial protection and the fundamental right to a fair trial, rights which are 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. Next, it set out, in detail, its case-law on the scope of the requirement that courts must be independent and held, in particular, that, in accordance with the

principle of the separation of powers, which characterises the operation of the rule of law, the independence of the judiciary must be ensured in relation to the legislature and the executive.

In the second place, the Court noted the specific factors which must be examined by the referring court in order to allow it to ascertain whether the Disciplinary Chamber of the Supreme Court offers sufficient guarantees of independence.

First, the Court stated that the mere fact that the judges of the Disciplinary Chamber were appointed by the President of the Republic does not give rise to a relationship of subordination to the political authorities or to doubts as to the former's impartiality, if, once appointed, they are free from influence or pressure when carrying out their role. Furthermore, the prior participation of the Krajowa Rada Sądownictwa (National Council of the Judiciary), which is responsible for proposing judicial appointments, is objectively capable of circumscribing the President of the Republic's discretion, provided, however, that that body is itself sufficiently independent of the legislature, the executive and the President of the Republic. In that respect, the Court added that regard must be had to relevant points of law and fact relating both to the circumstances in which the members of the new Polish National Council of the Judiciary are appointed and the way in which that body actually exercises its role of ensuring the independence of the courts and of the judiciary. The Court also stated that it would be necessary to ascertain the scope for the judicial review of proposals of the National Court of the Judiciary in so far as the President of the Republic's appointment decisions are not per se amenable to such judicial review.

Second, the Court referred to other factors that more directly characterise the Disciplinary Chamber. For example, it stated that, in the specific circumstances resulting from the – highly contentious – adoption of the provisions of the New Law on the Supreme Court which the Court declared to be contrary to EU law in its judgment of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)* (C-619/18, EU:C:2019:531), [27] it was relevant to note that the Disciplinary Chamber had been granted exclusive jurisdiction to rule on cases of the retiring of judges of the Supreme Court resulting from that law, that that chamber must be constituted solely of newly appointed judges and that that chamber appears to enjoy a particularly high degree of autonomy within the Supreme Court. As a general point, the Court reiterated on several occasions that, although each of the factors examined, taken in isolation, is not necessarily capable of calling into question the independence of that chamber, that may, however, not be true once they are taken together.

[27] Judgment presented under heading II.9, 'Irremovability of judges and retirement age'.

Judgment of 2 March 2021 (Grand Chamber), A.B. and Others (Appointment of judges to the Supreme Court – Actions) (C-824/18, EU:C:2021:153)

(Reference for a preliminary ruling – Article 2 and the second subparagraph of Article 19(1) TEU – Rule of law – Effective judicial protection – Principle of judicial independence – Procedure for appointment to a position as judge at the Sąd Najwyższy (Supreme Court, Poland) – Appointment by the President of the Republic of Poland on the basis of a resolution emanating from the National Council of the Judiciary – Lack of independence of that council – Lack of effectiveness of the judicial remedy available against such a resolution – Judgment of the Trybunał Konstytucyjny (Constitutional Court, Poland) repealing the provision on which the referring court's jurisdiction is based – Adoption of legislation declaring the discontinuance of pending cases by operation of law and precluding in the future any judicial remedy in such cases – Article 267 TFEU – Option and/or obligation for national courts to make a reference for a preliminary ruling and to maintain that reference – Article 4(3) TEU – Principle of sincere cooperation − Primacy of EU law – Power to disapply national provisions which do not comply with EU law)

By resolutions adopted in August 2018, the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland; 'the KRS') decided not to present to the President of the Republic of Poland proposals for the appointment of five persons ('the appellants') to positions as judges at the Sąd Najwyższy (Supreme Court, Poland) and to put forward other candidates for those positions. The appellants lodged appeals against those resolutions before the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland), the referring court. Such appeals were governed at that time by the Law on the National Council of the Judiciary ('the Law on the KRS'), as amended by a law of July 2018. Under those rules, it was provided that unless all the participants in a procedure for appointment to a position as judge at the Supreme Court challenged the relevant resolution of the KRS, that resolution would become final with respect to the candidate presented for that position, so that the latter could be appointed by the President of the Republic. Moreover, any annulment of such a resolution on appeal of a participant not put forward for appointment could not lead to a fresh assessment of that participant's situation for the purposes of any assignment of the position concerned. In addition, under those rules, such an appeal could not be based on an allegation that there was an incorrect assessment of the candidates' fulfilment of the criteria taken into account when a decision on the presentation of the proposal for appointment was made. In its initial request for a preliminary ruling, the referring court, taking the view that such rules preclude in practice any effectiveness of the appeal lodged by a participant who was not put forward for appointment, decided to refer questions to the Court on whether those rules complied with EU law.

After that initial referral, the Law on the KRS was once again amended, in 2019. Pursuant to that reform, it became impossible to lodge appeals against decisions of the KRS concerning the proposal or non-proposal of candidates for appointment to judicial positions at the Supreme Court. Moreover, that reform declared any such appeals still pending were to be discontinued by operation of law, de facto depriving the referring

court of its jurisdiction to rule on that type of appeal and of the possibility of obtaining an answer to the questions that it had referred to the Court for a preliminary ruling. Accordingly, in its complementary request for a preliminary ruling, the referring court submitted a question to the Court for a preliminary ruling on whether those new rules were compatible with EU law.

In the first place, the Court, sitting as the Grand Chamber, held, first of all, that both the system of cooperation between the national courts and the Court of Justice established in Article 267 TFEU and the principle of sincere cooperation laid down in Article 4(3) TEU preclude legislative amendments, such as those, cited above, effected in 2019 in Poland, where it is apparent that they had the specific effect of preventing the Court from ruling on questions referred for a preliminary ruling, such as those put by the referring court, and of precluding any possibility for a national court to repeat in the future similar questions. The Court stated, in that regard, that it was for the referring court to assess, taking account of all the relevant factors and, in particular, the context in which the Polish legislature adopted those amendments, whether that was the case here.

Next, the Court considered that the Member States' obligation to provide remedies sufficient to ensure effective legal protection for individuals in the fields covered by EU law, provided for in the second subparagraph of Article 19(1) TEU, may also preclude that same type of legislative amendment. That is the case where it is apparent – which, again, it is for the referring court to assess on the basis of all the relevant factors – that those amendments are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of the judges appointed on the basis of the KRS resolutions to external factors, in particular, to the direct or indirect influence of the legislature and the executive, and as to their neutrality with respect to the interests brought before them. Such amendments would then be liable to lead to those judges not being seen to be independent or impartial, with the consequence of prejudicing the trust which justice in a democratic society governed by the rule of law must inspire in subjects of the law.

In reaching that conclusion, the Court recalled that the guarantees of independence and impartiality required under EU law presuppose the existence of rules governing the appointment of judges. Moreover, the Court drew attention to the decisive role of the KRS in the process of appointment to a position as judge at the Supreme Court, since the act of proposition that it adopts is an essential condition for a candidate to be appointed subsequently. Thus, the degree of independence enjoyed by the KRS in respect of the Polish legislature and the executive may be relevant in order to ascertain whether the judges which it selects will be capable of meeting the requirements of independence and impartiality. Furthermore, the Court stated that the possible absence of any legal remedy in the context of a process of appointment to judicial office at a national supreme court may prove to be problematic where all the relevant contextual factors characterising such an appointment process in the Member State concerned may give rise to systemic doubts in the minds of individuals as to the independence and

impartiality of the judges appointed at the end of that process. In that regard, the Court specified that if the referring court were, on the basis of all the relevant factors that it mentioned in its order for reference and, in particular, of the legislative amendments that have recently affected the process of appointing members of the KRS, to conclude that the KRS does not offer sufficient guarantees of independence, the existence of a judicial remedy available to unsuccessful candidates would be necessary in order to help safeguard the process of appointing the judges concerned from direct or indirect influence and, ultimately, to prevent the doubts referred to above from arising.

Lastly, the Court held that if the referring court reaches the conclusion that the 2019 legislative amendments were adopted in breach of EU law, the principle of the primacy of EU law requires the referring court to disapply those amendments, whether they are of a legislative or constitutional origin, and to continue to assume the jurisdiction previously vested in it to hear disputes referred to it before those amendments were made.

In the second place, the Court took the view that the second subparagraph of Article 19(1) TEU precludes legislative amendments, such as those, cited above, made in 2018 in Poland, where it is apparent that they are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of the judges thus appointed to external factors, and as to their neutrality with respect to the interests before them and, thus, may lead to those judges not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society governed by the rule of law must inspire in subjects of the law.

It is ultimately for the referring court to rule on whether that is the case here. With regard to the considerations which the referring court will have to take into account in that regard, the Court stated that the national provisions concerning the judicial remedy available in the context of a process of appointment to judicial office at a national supreme court may prove to be problematic in light of the requirements arising from EU law where they undermine the effectiveness of the appeal procedure which existed until then. The Court observed, first, that, following the 2018 legislative amendments, the appeal in question is devoid of any real effectiveness and offers no more than an appearance of a judicial remedy. Secondly, the Court stated that, in this instance, the contextual factors associated with all the other reforms that have recently affected the Supreme Court and the KRS must also be taken into account. In that regard, the Court noted, in addition to the doubts previously mentioned in relation to the independence of the KRS, the fact that the 2018 legislative amendments were made very shortly before the KRS in its new composition was called upon to decide on applications, such as those of the appellants, submitted in order to fill numerous judicial positions at the Supreme Court which had been declared vacant or newly created as a result of the entry into force of various amendments to the Law on the Supreme Court.

Lastly, the Court specified that, if the referring court reaches the conclusion that the 2018 legislative amendments infringe EU law, it will be for that court, under the principle

of the primacy of that law, to disapply those amendments and to apply instead the national provisions previously in force while itself exercising the review envisaged by those latter provisions.

Judgment of 20 April 2021 (Grand Chamber), Repubblika (C-896/19, EU:C:2021:311)

(Reference for a preliminary ruling – Article 2 TEU – Values of the European Union – Rule of law – Article 49 TEU – Accession to the European Union – No reduction in the level of protection of the values of the European Union – Effective judicial protection – Article 19 TEU – Article 47 of the Charter of Fundamental Rights of the European Union – Scope – Independence of the members of the judiciary of a Member State – Appointments procedure – Power of the Prime Minister – Involvement of a judicial appointments committee)

Repubblika is an association whose purpose is to promote the protection of justice and the rule of law in Malta. Following the appointment, in April 2019, of new members of the judiciary, that association brought an *actio popularis* before the Prim'Awla tal-Qorti Ċivili – Ġurisdizzjoni Kostituzzjonali (First Hall of the Civil Court, sitting as a Constitutional Court, Malta), with a view, in particular, to challenging the procedure for the appointment of members of the Maltese judiciary, as governed by the Constitution. [28] The constitutional provisions concerned, which had remained unchanged from the time of their adoption in 1964 until a reform in 2016, confer on Il-Prim Ministru (Prime Minister, Malta) the power to submit to the President of the Republic the appointment of a candidate to such office. In practice, the Prime Minister thus has a decisive power in the appointment of members of the Maltese judiciary, which, according to Repubblika, raises doubts as to the independence of those judges and magistrates. Nevertheless, the candidates must satisfy certain conditions, also laid down by the Constitution and, since the 2016 reform, a Judicial Appointments Committee has been established, which is charged with assessing candidates and providing an opinion to the Prime Minister.

In that context, the referring court decided to refer questions to the Court of Justice on the conformity of the Maltese system for appointing members of the judiciary with EU law and, more specifically, with the second subparagraph of Article 19(1) TEU and with Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'). The second subparagraph of Article 19(1) TEU, it should be recalled, requires Member States to provide remedies sufficient to ensure effective judicial protection in the fields covered by EU law, while Article 47 of the Charter sets out the right to an effective remedy for any litigant relying, in a given case, on a right that he or she derives from EU law.

The Court, sitting as the Grand Chamber, held that EU law does not preclude national constitutional provisions such as the provisions of Maltese law on the appointment of members of the judiciary. It does not appear that those provisions might lead to those

[28] Articles 96, 96A and 100 of the Maltese Constitution.

members of the judiciary not being seen to be independent or impartial, the consequence of which would be to undermine the trust which justice in a democratic society governed by the rule of law must inspire in individuals.

First, the Court stated that the second subparagraph of Article 19(1) TEU is intended to apply in the case at issue, since the action seeks to challenge the conformity with EU law of provisions of national law governing the procedure for the appointment of members of the judiciary called upon to rule on questions relating to the application or interpretation of EU law and which it is alleged are liable to affect judicial independence. In so far as Article 47 of the Charter is concerned, the Court stated that, although it is not applicable as such [29] inasmuch as Repubblika does not rely on a subjective right that it derives from EU law, it must nonetheless be taken into consideration for the purposes of interpreting the second subparagraph of Article 19(1) TEU.

Secondly, the Court held that the second subparagraph of Article 19(1) TEU does not preclude national provisions which confer on a Prime Minister a decisive power in the process for appointing members of the judiciary, while providing for the involvement, in that process, of an independent body tasked, in particular, with assessing candidates for judicial office and providing an opinion to that Prime Minister.

In order to reach that conclusion, the Court first pointed out, generally, that amongst the requirements of effective judicial protection which must be satisfied by national courts that are liable to rule on the application or interpretation of EU law, the independence of the judiciary is of fundamental importance, in particular to the EU legal order, in a number of respects. It is essential to the proper working of the preliminary ruling procedure, laid down in Article 267 TFEU, which may be activated only by an independent court or tribunal. Furthermore, it forms part of the essence of the fundamental right to effective judicial protection and to a fair trial provided for in Article 47 of the Charter.

Next, the Court recalled its recent case-law, [30] in which it clarified the guarantees of judicial independence and impartiality, required under EU law. Those guarantees presuppose, inter alia, rules that are such as to dispel any reasonable doubt in the minds of individuals as to the imperviousness of members of the judiciary to external factors, in particular to direct or indirect influence from the legislature or the executive, and to their neutrality with respect to the interests before them.

Lastly, the Court pointed out that, under Article 49 TEU, the European Union is composed of States which have freely and voluntarily committed themselves to the common values referred to in Article 2 TEU, such as the rule of law, which respect those values and undertake to promote them. A Member State cannot therefore amend its

---

29 In accordance with Article 51(1) of the Charter.

30 See, for example, judgments of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)* (C-585/18, C-624/18 and C-625/18, EU:C:2019:982), and of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)* (C-824/18, EU:C:2021:153), presented under this heading.

legislation, particularly in regard to the organisation of justice, in such a way as to bring about a reduction in the protection of the value of the rule of law, a value which is given concrete expression by, inter alia, Article 19 TEU. Against that backdrop, the Member States are required to refrain from adopting rules which would undermine the independence of the judiciary.

Having clarified those points, the Court held, first, that the creation in 2016 of the Judicial Appointments Committee serves, on the contrary, to reinforce the guarantee of judicial independence in Malta in comparison with the situation arising from the constitutional provisions which were in force when Malta acceded to the European Union. In that connection, the Court stated that, in principle, the involvement of such a body may be such as to contribute to rendering more objective the process for appointing members of the judiciary, by circumscribing the leeway available to the Prime Minister in the exercise of the power conferred on him or her in that regard, provided that that body is sufficiently independent. In the present case, the Court found that there is a series of rules which appear to be such as to guarantee that independence.

Secondly, the Court pointed out that, although the Prime Minister has a certain power in the appointment of members of the judiciary, the exercise of that power is circumscribed by the requirements of professional experience, laid down in the Constitution, which must be satisfied by candidates for judicial office. Moreover, although the Prime Minister may decide to submit to the President of the Republic the appointment of a candidate not put forward by the Judicial Appointments Committee, the Prime Minister is then required to communicate his or her reasons to, in particular, the legislature. According to the Court, provided that the Prime Minister exercises that power only in exceptional circumstances and adheres to strict and effective compliance with the obligation to state reasons, that power is not such as to give rise to legitimate doubts concerning the independence of the candidates selected.

Judgment of 6 October 2021 (Grand Chamber), W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment) (C-487/19, EU:C:2021:798)

(Reference for a preliminary ruling – Rule of law – Effective legal protection in the fields covered by EU law – Second subparagraph of Article 19(1) TEU – Principles of the irremovability of judges and judicial independence – Transfer without consent of a judge of an ordinary court – Action – Order of inadmissibility made by a judge of the Sąd Najwyższy (Izba Kontroli Nadzwyczajnej i Spraw Publicznych) (Supreme Court (Chamber of Extraordinary Control and Public Affairs), Poland) – Judge appointed by the President of the Republic of Poland on the basis of a resolution of the National Council of the Judiciary, despite a court decision ordering that the effects of that resolution be suspended pending a preliminary ruling of the Court – Judge not constituting an independent and impartial tribunal previously established by law – Primacy of EU law – Possibility of finding such an order of inadmissibility to be null and void)

In August 2018, the judge W.Ż., who held office in a regional court in Poland, was transferred without his consent from the division of the court to which he had been assigned to another division of that court. He brought an action against that transfer before the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland; 'the KRS'), which resulted in a resolution that there was no need to adjudicate. In November 2018, W.Ż. challenged that resolution before the Sąd Najwyższy (Supreme Court, Poland), also seeking the recusal of all the judges comprising the chamber that was to hear his appeal, namely the Izba Kontroli Nadzwyczajnej i Spraw Publicznych (Chamber of Extraordinary Control and Public Affairs, Poland; 'the Chamber of Extraordinary Control'). He considered that, in view of the manner in which they were appointed, the members of that chamber did not offer the necessary guarantees of independence and impartiality.

In that regard, the Sąd Najwyższy (Izba Cywilna) (Supreme Court (Civil Division), Poland), which was required to rule on that application for recusal, stated, in its order for reference, that appeals had been brought before the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland) against Resolution No 331/2018 of the KRS, proposing to the President of the Republic the list of new judges of the Chamber of Extraordinary Control. However, notwithstanding the suspension of the effects of that resolution ordered by that court, the President of the Republic had appointed to the positions of judge of that chamber some of the candidates put forward in that resolution.

In March 2019, although, first, those proceedings before the Supreme Administrative Court were still pending and, secondly, that court had made a reference to the Court of Justice for a preliminary ruling concerning another resolution of the KRS proposing to the President of the Republic a list of candidates for posts as judges of the Supreme Court, [31] a new judge was appointed to the Chamber of Extraordinary Control ('the judge of the Chamber of Extraordinary Control') on the basis of Resolution No 331/2018. Ruling as a single judge, without having access to the case file and without hearing W.Ż., that new judge made an order ('the order at issue') dismissing as inadmissible the latter's action against the resolution of the KRS declaring that there was no need to adjudicate.

The referring court asked the Court whether a judge appointed in such circumstances may be regarded as an independent and impartial tribunal previously established by law, within the meaning, in particular, of the second subparagraph of Article 19(1) TEU, and requested the Court to specify the possible implications for the order at issue if that judge were found not to have that status.

In its Grand Chamber judgment, the Court ruled on the circumstances which must be taken into account by a national court in order to find that, in the procedure for the

[31] Namely, the case which gave rise to the judgment of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)* (C-824/18, EU:C:2021:153), presented under this heading.

appointment of a judge, there are irregularities such as to prevent that court from being regarded as an independent and impartial tribunal previously established by law, within the meaning of the second subparagraph of Article 19(1) TEU, and on the consequences which, in such a case, the principle of the primacy of EU law entails for a decision such as the order at issue, made by such a judge.

The Court found, inter alia, that the appointment of the judge of the Chamber of Extraordinary Control in breach of the final decision of the Supreme Administrative Court ordering the suspension of the effects of Resolution No 331/2018 of the KRS, without awaiting the judgment of the Court of Justice in *A.B. and Others (Appointment of judges to the Supreme Court – Actions)* (C-824/18), [32] undermined the effectiveness of the preliminary ruling system laid down by Article 267 TFEU. When that appointment was made, the reply awaited from the Court in that case was capable of requiring the Supreme Administrative Court, if necessary, to annul Resolution No 331/2018 of the KRS in its entirety.

As regards the other circumstances surrounding the appointment of the judge of the Chamber of Extraordinary Control, the Court also noted that it had recently held that certain circumstances mentioned by the referring court, relating to the changes in 2017 affecting the composition of the KRS, were liable to give rise to reasonable doubts concerning the independence of that body. [33] Furthermore, that appointment and the order at issue were made even though the referring court was seised of an application for recusal in respect of all the judges then sitting in the Chamber of Extraordinary Control.

Viewed together, the above-mentioned circumstances are, subject to the referring court's final assessments, capable of leading to the conclusion that the appointment of the judge of the Chamber of Extraordinary Control was made in clear disregard of the fundamental rules governing the appointment of judges at the Supreme Court. The same circumstances may also lead the referring court to conclude that the conditions in which that appointment took place undermined the integrity of the outcome of the appointment process, by serving to create, in the minds of individuals, reasonable doubts and a lack of appearance of independence or impartiality on the part of the judge of the Chamber of Extraordinary Control likely to prejudice the trust which justice in a democratic society governed by the rule of law must inspire in individuals.

Consequently, the Court held that, by virtue of the second subparagraph of Article 19(1) TEU and the principle of the primacy of EU law, a national court hearing an application for recusal, such as that at issue in the main proceedings, must, where such a consequence is essential in view of the procedural situation at issue in order to ensure the primacy of EU law, declare an order such as the order at issue to be null and void, if

---

[32] Judgment presented under this heading.

[33] See, to that effect, judgment of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)*, (C-791/19, EU:C:2021:596), paragraphs 104 to 108, presented under heading II.7, 'Disciplinary liability'.

it follows from all the conditions and circumstances in which the process of appointment of the judge who made that order took place that that judge does not constitute an independent and impartial tribunal previously established by law, within the meaning of that provision.

Judgment of 22 March 2022, Prokurator Generalny (Disciplinary Chamber of the Supreme Court - Appointment) (C-508/19, EU:C:2022:201)

(Reference for a preliminary ruling – Article 267 TFEU – Interpretation sought by the referring court necessary to enable it to give judgment – Concept – Disciplinary proceedings brought against a judge of an ordinary court – Designation of the disciplinary court having jurisdiction to hear those proceedings by the President of the Disciplinary Chamber of the Sąd Najwyższy (Supreme Court, Poland) – Civil action for a declaration that a service relationship does not exist between the President of that disciplinary chamber and the Supreme Court – Lack of jurisdiction of the referring court to review the validity of the appointment of a Supreme Court judge and inadmissibility of such an action under national law – Inadmissibility of the request for a preliminary ruling)

In January 2019, disciplinary proceedings were initiated against M.F., a judge at the Sąd Rejonowy w P. (Regional Court of P., Poland), for alleged delays in handling the cases on which that judge was called upon to rule. J.M., in his capacity as President of the Sąd Najwyższy (Supreme Court, Poland) responsible for the work of the disciplinary chamber of the latter court, designated the Sąd Dyscyplinarny przy Sądzie Apelacyjnym w … (Disciplinary Court at the Court of Appeal of …, Poland) to hear those disciplinary proceedings.

Being of the view that J.M.'s appointment in that disciplinary chamber was vitiated by several irregularities, M.F. brought an action before the Supreme Court for a declaration that a service relationship did not exist between J.M. and that court, while also asking the latter to stay the disciplinary proceedings brought against M.F. One of the chambers of the Supreme Court, the Izba Pracy i Ubezpieczeń Społecznych (Labour and Social Insurance Chamber; 'the referring court') was then instructed to examine those requests.

The referring court, after observing that a judge's mandate reflects a legal relationship governed by public law, and not by civil law, and that an action such as that at issue in the main proceedings is, thus, not capable of falling within the scope of the Code of Civil Procedure, still wonders whether the principle of effective judicial protection, which is enshrined in EU law, and the Member States' duty, under the second subparagraph of Article 19(1) TEU, to ensure that the courts and tribunals in its legal system which may rule in the fields covered by EU law meet the requirements arising from that principle and, in particular, that relating to their independence, their impartiality and the fact that they must be established by law, have the effect of conferring on it the power, which it

does not have under Polish law, to find, in the main proceedings, that the defendant concerned does not have a mandate of judge.

In its judgment, delivered by the Grand Chamber, the Court of Justice found that the request for a preliminary ruling was inadmissible. It pointed out in that regard that, while, in the context of its duties under Article 267 TFEU, its role is to supply all courts or tribunals in the European Union with the information on the interpretation of EU law which is necessary to enable them to settle genuine disputes which are brought before them, the questions referred to the Court in the present reference for a preliminary ruling went beyond the scope of those duties.

The Court recalled that the questions referred by a national court or tribunal must meet an objective need for the purpose of settling disputes brought before it and that the cooperation between the Court and the national courts provided for in Article 267 TFEU thus presupposes, in principle, that the referring court has jurisdiction to rule on the dispute in the main proceedings, so that it cannot be regarded as purely hypothetical. While the Court has recognised that this may be different in certain exceptional circumstances, such a solution cannot be adopted in the case at issue.

First, the referring court itself observed that when it is seised of a civil action for a declaration that a legal relationship does not exist, it lacks, under national law, the jurisdiction which would enable it to rule on the lawfulness of the instrument of appointment at issue.

Secondly, the civil action brought by M.F. seeks, in fact, to challenge not so much the existence of a service relationship between J.M. and the Supreme Court or that of rights and obligations deriving from such a relationship, but rather the decision by which J.M. designated the disciplinary court as having jurisdiction to hear the disciplinary proceedings brought against M.F., proceedings which, moreover, the latter requested the referring court to stay as an interim measure. Thus, the questions referred to the Court relate intrinsically to a dispute other than that in the main proceedings, to which the latter is merely incidental. In order to answer them, the Court would be obliged to have regard to the particulars of that other dispute rather than to confine itself to the configuration of the dispute in the main proceedings, as required by Article 267 TFEU.

Thirdly, the Court noted that, in the absence of a direct right of action against J.M.'s appointment as President of the Disciplinary Chamber of the Supreme Court or against J.M.'s decision designating the disciplinary court in charge of examining that dispute, M.F. could have raised before that court an objection alleging a possible infringement, arising from the decision at issue, of her right to have the said dispute determined by an independent and impartial tribunal previously established by law. The Court recalled, moreover, in that respect, that it had held that the provisions of the Law on the ordinary courts, inasmuch as they confer on the President of the disciplinary chamber of the Supreme Court the discretionary power to designate the disciplinary tribunal with territorial jurisdiction to hear disciplinary proceedings in respect of judges of the

ordinary courts, do not meet the requirement derived from the second subparagraph of Article 19(1) TEU that such cases must be examined by a tribunal 'established by law'. [34] That provision, in that it lays down such a requirement, must also be regarded as having direct effect, with the result that the principle of primacy of EU law requires a disciplinary court so designated to disapply the national provisions pursuant to which that designation was made and, consequently, declare that it has no jurisdiction to hear the dispute before it.

Fourthly, the Court also stated that, here, the action in the main proceedings seeks, in essence, to obtain a form of *erga omnes* invalidation of J.M.'s appointment to the office of judge, even though national law does not authorise, and has never authorised, all subjects of the law to challenge the appointment of judges by means of a direct action for annulment or invalidation of such an appointment.

Judgment of 29 March 2022 (Grand Chamber), Getin Noble Bank (C-132/20, EU:C:2022:235)

(Reference for a preliminary ruling – Admissibility – Article 267 TFEU – Concept of 'court or tribunal' – Article 19(1) TEU – Article 47 of the Charter of Fundamental Rights of the European Union – Rule of law – Effective judicial protection – Principle of judicial independence – Tribunal previously established by law – Judicial body, a member of which was appointed for the first time to the position of judge by a political body within the executive branch of an undemocratic regime – Way in which the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland) operates – Unconstitutionality of the law on the basis of which that council was composed – Whether that body is to be considered to be an impartial and independent court or tribunal within the meaning of EU law)

In 2017, in Poland, several consumers brought an action before the competent regional court concerning the allegedly unfair nature of a term in the loan agreement which they had concluded with Getin Noble Bank, a bank. Since they had not obtained full satisfaction either at first instance or on appeal, the appellants brought an appeal before the Sąd Najwyższy (Supreme Court, Poland), the referring court.

In order to examine the admissibility of the appeal brought before it, that court is required, in accordance with national law, to determine whether the composition of the panel of judges which delivered the judgment under appeal was lawful. In that context, sitting as a single judge, the referring court raised the question whether the composition of the appellate court was consistent with EU law. In its view, the independence and impartiality of the three appeal judges could be called into question by reason of the circumstances in which they were appointed to the office of judge.

[34] Judgment of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)* (C-791/19, EU:C:2021:596, paragraph 176), presented under headings I.2, 'Right of independent national courts and tribunals to make a reference to the Court of Justice for a preliminary ruling' and II.7, 'Disciplinary liability'.

In that regard, the referring court, first, referred to the circumstance that the initial appointment of one of the judges (FO) to such a position was effected by decision of a body of the undemocratic regime that was in place in Poland before its accession to the European Union and that that judge was maintained in that position after the end of that regime, without having sworn a new oath and still benefiting from the length of service acquired when that regime was in place. [35] Secondly, the referring court claimed that the judges concerned were appointed to the appellate court on a proposal of the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland; 'the KRS'): one of them, in 1998, when the resolutions of that body were not substantiated and no legal remedy was available against them, and the other two, in 2012 and 2015, when, according to the Trybunał Konstytucyjny (Constitutional Court, Poland), the KRS did not operate transparently and its composition was contrary to the Constitution.

By its Grand Chamber judgment, the Court held, in essence, that the principle of effective judicial protection of the rights which individuals derive from EU law [36] must be interpreted as meaning that the irregularities alleged by the referring court with regard to the appeal judges at issue are not in themselves such as to give rise to reasonable and serious doubts, in the minds of individuals, as to the independence and impartiality of those judges, nor, therefore, to call into question the status of an independent and impartial tribunal, previously established by law, of the panel of judges in which they sit.

As a preliminary point, the Court rejected the plea of inadmissibility according to which the single judge of the Polish Supreme Court, called upon to examine the admissibility of the appeal brought before that court, was not entitled to refer questions to the Court for a preliminary ruling in view of the flaws in his own appointment, which called into question his independence and impartiality. In so far as a reference for a preliminary ruling emanates from a national court or tribunal, it must be presumed that it meets the requirements laid down by the Court to constitute a 'court or tribunal' within the meaning of Article 267 TFEU. Such a presumption may nevertheless be rebutted where a final judicial decision handed down by a national or international court would lead to the conclusion that the court constituting the referring court is not an independent and impartial tribunal established by law. Since the Court has no information to rebut such a presumption, the request for a preliminary ruling is therefore admissible.

Next, the Court examined the two parts of the questions referred.

By the first part, the referring court asked whether the second subparagraph of Article 19(1) TEU and Article 47 of the Charter preclude a panel of judges in which a judge who, like FO, began their career under the communist regime and was maintained in their post after the end of that regime from being considered to be an independent and impartial tribunal.

---

[35] It will be referred to below as 'circumstances predating accession'.

[36] Principle to which the second subparagraph of Article 19(1) TEU refers, and which is affirmed in Article 47 of the Charter, and by Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29). The latter reaffirms, in Article 7(1) and (2), the right to an effective remedy to which consumers who consider themselves wronged by those terms are entitled.

In that regard, after acknowledging that it has jurisdiction to rule on that question, [37] the Court states that, although the organisation of justice in the Member States falls within the competence of the latter, they are required, in the exercise of that competence, to comply with their obligations under EU law, including the obligation to ensure observance of the principle of effective judicial protection.

As regards the impact on a judge's independence and impartiality of the circumstances prior to accession, relied on by the referring court vis-à-vis judges such as FO, the Court pointed out that, at the time of Poland's accession to the European Union, it was considered that, in principle, its judicial system was consistent with EU law. In addition, the referring court did not provide any specific explanation as to how the conditions for FO's initial appointment would enable undue influence to be exercised on him currently. Thus, the circumstances surrounding his initial appointment could not in themselves be considered to be such as to give rise to reasonable and serious doubts, in the minds of individuals, as to the independence and impartiality of that judge, in the subsequent exercise of his judicial duties.

By their second part, the questions referred seek to ascertain, in essence, whether the second subparagraph of Article 19(1) TEU, Article 47 of the Charter and Article 7(1) and (2) of Directive 93/13 preclude a panel of judges connected with the court or tribunal of a Member State in which a judge sits whose initial appointment to a judicial position or subsequent appointment to a higher court occurred either upon selection as a candidate for the position of judge by a body composed on the basis of legislative provisions subsequently declared unconstitutional by the constitutional court of that Member State ('the first circumstance at issue') or after selection as a candidate for the position of judge by a body lawfully composed but following a procedure that was neither transparent nor public and against which no legal remedy was available ('the second circumstance at issue') from being considered to be an independent and impartial tribunal previously established by law.

In that regard, the Court observed that not every error that may take place during the procedure for the appointment of a judge is of such a nature as to cast doubts on the independence and impartiality of that judge.

In the case under consideration, as regards the first circumstance at issue, the Court noted that the Constitutional Court did not rule on the independence of the KRS when it declared unconstitutional the composition of that body at the time of the appointment of the two judges other than FO to the panel of judges who delivered the judgment under appeal before the referring court. That declaration of unconstitutionality is therefore not capable, per se, of calling into question the independence of that body or raising doubts, in the minds of individuals, as to the independence of those judges, with

[37] It is settled case-law that the Court has jurisdiction to interpret EU law only as regards its application in a new Member State with effect from the date of that State's accession to the European Union. In the case at issue, even though it relates to circumstances predating accession to the European Union by Poland, the question referred concerns a situation which did not produce all its effects before that date since FO, appointed as a judge before accession, is currently a judge and performs duties corresponding to that office.

regard to external factors. Moreover, no specific evidence capable of substantiating such doubts was put forward by the referring court to that effect.

The same conclusion must be drawn in the case of the second circumstance at issue. It is not apparent from the order for reference that the KRS, in its composition after the end of the Polish undemocratic regime, lacked independence from the executive and the legislature.

In those circumstances, those two circumstances do not establish an infringement of the fundamental rules applicable to the appointment of judges. Thus, provided that the irregularities relied on do not create a real risk that the executive could exercise undue discretionary powers undermining the integrity of the outcome of the judicial appointment process, EU law does not preclude a panel of judges in which the judges concerned sit from being considered to be an independent and impartial tribunal established by law.

Judgment of 9 January 2024 (Grand Chamber), G. and Others (Appointment of judges to the ordinary courts in Poland) (C-181/21 and C-269/21, EU:C:2024:1)

(Reference for a preliminary ruling – Article 267 TFEU – Possibility for the referring court to take account of the preliminary ruling of the Court – Interpretation sought by the referring court necessary to enable it to give judgment – Independence of the judiciary – Conditions for the appointment of judges of the ordinary courts – Possibility of challenging an order which has definitively ruled on an application for the grant of interim measures – Possibility of removing a judge from a panel of judges of the court – Inadmissibility of the requests for a preliminary ruling)

By its judgment, the Court, sitting as the Grand Chamber, ruled that two requests for a preliminary ruling submitted by Polish judges, which questioned whether the composition of the panel of judges, in the cases in the main proceedings, complied with the requirements inherent in an independent and impartial tribunal within the meaning of EU law, were inadmissible.

In the first case (C-181/21), a panel of three judges at the Sąd Okręgowy w Katowicach (Regional Court, Katowice, Poland) was appointed to examine a complaint against an order dismissing a consumer's objection to an order for payment. The Judge-Rapporteur in charge of that case expressed doubts as to the status of that panel of judges as a 'court', in view of the circumstances in which Judge A.Z. was appointed to the Regional Court, Katowice, Judge A.Z. also being part of that panel. The Judge-Rapporteur's concerns related, inter alia, to the status and method of operation of the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland; 'the KRS' [38]), which is involved in such an appointment procedure.

[38] In its composition after 2018.

As regards Case C-269/21, a panel of three judges sitting within the Sąd Okręgowy w Krakowie (Regional Court, Kraków, Poland) examined the complaint lodged by a bank against an order by which a panel consisting of a single judge in that same court had granted an application for interim measures brought by consumers. The three-judge bench set aside the order under appeal, dismissed the application in its entirety and referred the case back to the single-judge bench. That panel consisting of a single judge had doubts as to the compatibility with EU law of the composition of the panel of judges which ruled on the bank's complaint and, consequently, as to the validity of its decision. The panel of three judges comprised Judge A.T., appointed to the Regional Court of Krakow in 2021, following a procedure involving the KRS.

In that context, the Judge-Rapporteur in the first case and the single-judge formation in the second case, decided to refer questions to the Court for a preliminary ruling seeking to ascertain, in essence, whether, in the light of the particular circumstances in which the appointments of Judges A.Z. and A.T. were made, the panels in which those judges sit meet the requirements inherent in an independent and impartial tribunal previously established by law, within the meaning of EU law, and whether EU law [39] requires such judges to be excluded of the court's own motion from the examination of the cases in question.

At the outset, the Court recalled that it is clear from both the wording and the scheme of Article 267 TFEU that a national court or tribunal is not empowered to bring a matter before the Court by way of a request for a preliminary ruling unless, inter alia, a case is pending before that national court in which the latter is called upon to give a decision which is capable of taking account of the preliminary ruling. [40]

The Court then noted that, although it is true that every court is obliged to verify whether, in its composition, it constitutes an independent and impartial tribunal previously established by law, within the meaning, in particular, of the second subparagraph of Article 19(1) TEU, where a serious doubt arises on that point, the fact remains that the necessity, within the meaning of Article 267 TFEU, of the interpretation sought from the Court for a preliminary ruling means that the referring judge must be able, alone, to infer the consequences of that interpretation by assessing, in the light of that interpretation, the lawfulness of the appointment of another judge to the same panel and, where appropriate, by removal of the latter from the bench.

That is not the case, in that respect, of the referring judge in Case C-181/21 since it is not apparent from the order for reference or from the documents before the Court that, under the rules of national law, the judge which made the reference for a preliminary ruling in that case could, alone, act in that way. The interpretation of the provisions of EU law sought in Case C-181/21 does not therefore meet an objective need linked to a

---

[39] See Article 2 and Article 19(1) TEU, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union.

[40] Judgment of 22 March 2022, *Prokurator Generalny (Disciplinary Chamber of the Supreme Court – Appointment)* (C-508/19, EU:C:2022:201, paragraph 62 and the case-law cited), presented under this heading.

decision which the referring judge might take, alone, in the case in the main proceedings.

As regards Case C-269/21, the Court noted that the referring court itself points out that the order made by the panel of three judges which varied its own decision and rejected the application for interim measures made by the consumers concerned is no longer subject to appeal and must therefore be regarded as final under Polish law. Although it relied on the legal uncertainty which surrounds that order due to doubts as to the lawfulness of the composition of the panel which issued it, the referring court did not, however, put forward any provision of Polish procedural law which would confer on it the competence to carry out, moreover in a formation of one sole judge, an examination of the conformity, in particular with EU law, of a final order given on such a request by a panel of three judges. It was also apparent from the file before the Court that the order made by the panel of three judges was binding on the referring judge and that the latter did not have jurisdiction to order the 'removal' of a judge forming part of the panel of judges which made that order or to call that order into question.

Thus, the Court found that the referring court in Case C-269/21 did not have jurisdiction, under the rules of national law, to assess the legality, in the light, in particular, of EU law, of the panel of three judges which made the order definitively ruling on the application for interim measures and, in particular, the conditions for the appointment of Judge A.T., and to call into question, where appropriate, that order.

Since the request for the grant of interim measures by the applicants in the main proceedings was rejected in its entirety, that request was definitively dealt with by the panel of three judges. The questions referred in Case C-269/21 therefore relate intrinsically to a stage in the procedure in the main proceedings which has been definitively closed and is separate from the main proceedings, which remains the only stage pending before the referring court. The questions referred do not therefore correspond to an objective need inherent in the resolution of that dispute, but seek to obtain from the Court a general assessment, disconnected from the needs of that dispute, of the procedure for the appointment of ordinary judges in Poland.

2. Ethics

Judgment of 5 June 2023 (Grand Chamber), Commission v Poland (Independence and private life of judges) (C-204/21, EU:C:2023:442)

(Failure of a Member State to fulfil obligations – Second subparagraph of Article 19(1) TEU – Article 47 of the Charter of Fundamental Rights of the European Union – Rule of law – Effective legal protection in the fields covered by EU law – Independence of judges – Article 267 TFEU – Possibility of making a reference to the Court for a preliminary ruling – Primacy of EU law – Jurisdiction in relation to the lifting of the immunity from criminal prosecution of judges and in the field of employment law, social security and retirement of judges of the Sąd Najwyższy (Supreme

Court, Poland) conferred on the Disciplinary Chamber of that court – National courts prohibited from calling into question the legitimacy of the constitutional courts and bodies or from establishing or assessing the lawfulness of the appointment of judges or their judicial powers – Verification by a judge of compliance with certain requirements relating to the existence of an independent and impartial tribunal previously established by law classified as a 'disciplinary offence' – Exclusive jurisdiction to examine questions relating to the lack of independence of a court or judge conferred on the Extraordinary Review and Public Affairs Chamber of the Sąd Najwyższy (Supreme Court) – Articles 7 and 8 of the Charter of Fundamental Rights – Rights to privacy and the protection of personal data – Regulation (EU) 2016/679 – Article 6(1), first subparagraph, points (c) and (e), and Article 6(3), second subparagraph – Article 9(1) – Sensitive data – National legislation requiring judges to make a declaration as to whether they belong to associations, foundations or political parties, and to the positions held within those associations, foundations or political parties, and providing for the placing online of the data contained in those declarations)

In 2017, two new chambers were established within the Sąd Najwyższy (Supreme Court, Poland), namely the Izba Dyscyplinarna (Disciplinary Chamber) and the Izba Kontroli Nadzwyczajnej i Spraw Publicznych (Extraordinary Review and Public Affairs Chamber).

By a law of 20 December 2019 amending the Law on the Supreme Court, which entered into force in 2020, those two chambers were granted new jurisdiction, in particular, to authorise the initiation of criminal proceedings against judges or to place them in provisional detention. [41] For its part, the Extraordinary Review and Public Affairs Chamber was granted exclusive jurisdiction to examine complaints and questions of law relating to the independence of a court or a judge. [42] In addition, under that amending law, the Supreme Court, including the latter chamber, may not call into question the legitimacy of the courts, the constitutional organs of the State and the organs responsible for reviewing and protecting the law, or establish or assess the lawfulness of the appointment of a judge. [43] That law also clarifies the concept of disciplinary fault on the part of judges. [44]

The same amending law also amended the Law relating to the organisation of the ordinary courts, by introducing similar provisions to those amending the Law on the Supreme Court. [45] It also determines the regime applicable to any criminal proceedings

41 Amended Law on the Supreme Court, Article 27(1).

42 Thus the Extraordinary Review and Public Affairs Chamber has jurisdiction, in particular, concerning the exclusion of judges or complaints alleging a lack of independence of a court or a judge, and to hear actions for a declaration that court decisions are unlawful, where that unlawfulness consists in the calling into question of the status of the person appointed to a judicial post who adjudicated in the case (Amended Law on the Supreme Court, Article 26(2) to (6)). It also has exclusive jurisdiction to examine questions of law in relation to the independence of a court or a judge arising before the Supreme Court (Amended Law on the Supreme Court, Article 82(2) to (5)).

43 Amended Law on the Supreme Court, Article 29(2) and (3).

44 A judge of the Supreme Court shall be accountable, at the disciplinary level, for breach of professional obligations, including in cases of manifest and flagrant breach of legal rules, acts or omissions of such a kind as to prevent or seriously undermine the functioning of a judicial authority or acts calling into question the existence of the employment relationship of a judge, the effectiveness of the appointment of a judge or the legitimacy of a constitutional organ of the Republic of Poland (Amended Law on the Supreme Court, Article 72(1)).

45 Thus, Article 42a of the amended Law relating to the ordinary courts contains the wording of Article 29(2) and (3) of the amended Law on the Supreme Court, while Article 107(1) contains the wording of Article 72(1) of the amended Law on the Supreme Court (see above).

initiated against judges of the ordinary courts. [46] It requires them, furthermore, as well as judges of the Supreme Court, to make declarations concerning membership of associations, non-profit foundations and political parties, including for periods preceding the taking-up of their office and provides that that information be published online. [47] A large number of those new provisions also apply to the administrative courts. [48]

Considering that, by adopting that new disciplinary regime, the Republic of Poland had failed to fulfil its obligations under EU law, [49] the European Commission brought an action for failure to fulfil obligations before the Court of Justice under Article 258 TFEU.

In the judgment delivered in that case, the Court, sitting as the Grand Chamber, upheld the action brought by the Commission. It found that those new national provisions undermine the independence of judges guaranteed by the second subparagraph of Article 19(1) TEU in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and, moreover, infringe, first, the obligations imposed on national courts in the context of the preliminary ruling procedure and, secondly, the principle of primacy of EU law. In addition, the provisions establishing declaratory mechanisms in respect of judges and the online publication of the data thus collected infringe the right to respect for private life and the right to the protection of personal data enshrined in the Charter and the GDPR.

As regards, first, the jurisdiction of the Court to rule on the complaints raised by the Commission concerning the infringements of the provisions of Article 19(1) TEU, in conjunction with Article 47 of the Charter, and of the principle of primacy of EU law, the Court recalled that the European Union is founded on values which are common to the Member States [50] and that respect for those values is a prerequisite for accession to the European Union. [51] The European Union is thus composed of States which have freely

---

46 See Article 80 and Article 129(1) to (3) of the amended Law relating to the ordinary courts.

47 Article 88a of the amended Law relating to the ordinary courts states in paragraphs (1) and (4) that:
'1. A judge shall be required to submit a written declaration mentioning:
(1) his or her membership of an association, including the name and registered office of the association, the positions held and the period of membership;
(2) the position held within a body of a non-profit foundation, including the name and registered office of the foundation and the period during which the position was held;
(3) his or her membership of a political party prior to his or her appointment to a judge's post and his or her membership of a political party during his or her term of office before 29 December 1989, including the name of that party, the positions held and the period of membership.
...
4. The information contained in the declarations referred to in paragraph 1 shall be public and published in the *Biuletyn Informacji Publicznej* [(Public Information Bulletin)] ....'
As regards judges of the Supreme Court, see Article 45(3) of the amended Law on the Supreme Court.

48 See inter alia Article 5(1a) and (1b), Article 8(2), Article 29(1) and Article 49(1) of the amended Law relating to the administrative courts.

49 The Commission considered that the Republic of Poland had failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU – which requires Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law – under Article 47 of the Charter – relating to the right to an effective remedy and to an independent and impartial tribunal previously established by law – under the second and third paragraphs of Article 267 TFEU – which provides for the option (second paragraph), for some national courts, and the obligation (third subparagraph), for others, to make a reference for a preliminary ruling – under the principle of primacy of EU law and under Articles 7 and 8 of the Charter and points (c) and (e) of the first subparagraph of Article 6(1), Article 6(3) and Article 9(1) of the GDPR, relating to the right to privacy and the right to protection of personal data.

50 Article 2 TEU.

51 Article 49 TEU.

and voluntarily committed themselves to those values, respect for those values and their promotion being the fundamental premise on which mutual trust between the Member States is based. Compliance by a Member State with those values is thus a condition for the enjoyment of all the rights deriving from the application of the Treaties to that Member State and cannot be reduced to an obligation which a candidate State is required to comply with in order to accede to the European Union and which it may disregard after its accession. The Court noted, in that regard, that Article 19 TEU gives concrete expression to the value of the rule of law set out in Article 2 TEU [52] and provides that it is for the Member States to establish a system of legal remedies and procedures ensuring for individuals compliance with their right to effective judicial protection in the fields covered by EU law. The Court held, consequently, that the requirements arising from respect for values and principles such as the rule of law, effective judicial protection and judicial independence are not capable of affecting the national identity of a Member State, within the meaning of Article 4(2) TEU.

The Court thus emphasised that, in choosing their respective constitutional model, the Member States are required to comply, inter alia, with the requirement that the courts be independent stemming from Article 2 and the second subparagraph of Article 19(1) TEU, and that they are thus required, in particular, to ensure that, in the light of the value of the rule of law, any regression of their laws on the organisation of justice is prevented, by refraining from adopting rules which would undermine the independence of judges.

Furthermore, the Court recalled, in that regard, that the second subparagraph of Article 19(1) TEU, interpreted in the light of Article 47 of the Charter, which imposes on the Member States a clear and precise obligation as to the result to be achieved and which is not subject to any condition, in particular as regards the independence and impartiality of the courts called upon to interpret and apply EU law and the requirement that those courts be previously established by law, has direct effect, in accordance with the principle of primacy of EU law, which means that any provision, case-law or national practice contrary to those provisions of EU law must be disapplied. Given that the Court has exclusive jurisdiction to give a definitive interpretation of EU law, it is therefore, as required, for the national constitutional court concerned, where appropriate, to alter its own case-law which is incompatible with EU law, as interpreted by the Court. Consequently, the Court declared that it has jurisdiction to examine the complaints raised by the Commission.

Turning, secondly, to the substance of the complaints raised by the Commission, the Court held that, by adopting provisions imposing on judges an obligation to communicate information relating to their activities within associations and non-profit foundations, and to their membership of a political party, before their appointment, and

[52] See, in that regard, judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses* (C-64/16, EU:C:2018:117, paragraph 32), presented under heading II.3, 'Remuneration'.

by providing for the publication of that information, [53] the Republic of Poland had infringed the right to respect for private life and the right to the protection of personal data guaranteed by the Charter [54] and by the GDPR. [55]

In that regard, after having concluded that the GDPR was applicable and, more specifically, that so were points (c) and (e) of the first subparagraph of Article 6(1) and Article 9(1) of that regulation, the Court found that the objectives put forward by the Republic of Poland in support of the provisions at issue, consisting of reducing the risk that judges may be influenced, in the performance of their duties, by considerations relating to private or political interests, and reinforcing the confidence of individuals as regards the existence of such impartiality, fall within an objective of general interest recognised by the European Union within the meaning of Article 52(1) of the Charter or a legitimate public interest objective within the meaning of the GDPR. [56] The Court recalled, however, that, while such an objective may therefore authorise limitations on the exercise of the rights guaranteed in Articles 7 and 8 of the Charter, that is only the case, in particular, where those limitations genuinely meet such an objective and are proportionate to it.

Examining the necessity of the measures at issue, the Court noted that the Republic of Poland had not provided clear and concrete explanations as to why the publication of information relating to a judge's membership of a political party before his or her appointment and during the exercise of his or her term of office as a judge before 29 December 1989 would be such as to currently contribute to strengthening the right of individuals to have their case heard by a court meeting the requirement of impartiality. Having regard to the particular context in which the amending law and those measures were adopted, the Court considered, moreover, that those measures were, in fact, adopted for the purpose, inter alia, of harming the professional reputation of the judges concerned and the perception of them by individuals. Accordingly, those measures are inappropriate for the purpose of attaining the legitimate objective alleged in the present case.

As regards other information, relating to judges' current or past membership of an association or non-profit foundation, the Court considered that it cannot be ruled out, a priori, that the fact of placing such information online might contribute to revealing the existence of possible conflicts of interest liable to influence the impartial performance by judges of their duties in the handling of individual cases, since such transparency may, moreover, contribute, more generally, to strengthening the confidence of individuals in that impartiality and in justice. It noted, however, first, that, in the present case, the personal data concerned relate in particular to periods prior to the date from which a judge is required to make the declaration required. The Court held that, in the

[53] Article 88a of the amended Law relating to the ordinary courts, Article 45(3) of the amended Law on the Supreme Court and Article 8(2) of the amended Law relating to the administrative courts.
[54] Article 7 and Article 8(1) of the Charter.
[55] Points (c) and (e) of the first subparagraph of Article 6(1), Article 6(3) and Article 9(1) of the GDPR.
[56] Within the meaning of Article 6(3) and Article 9(2)(g) of the GDPR.

absence of a temporal limitation as regards the previous periods concerned, it cannot be considered that the measures at issue are limited to what is strictly necessary for the purposes of helping to strengthen the right of individuals to have their case heard by a court meeting the requirement of impartiality. Secondly, as regards the balance to be struck between the objective of general interest pursued and the rights at issue, the Court found, first of all, that the placing online of the named information at issue is, depending on the object of the associations or non-profit foundations concerned, liable to reveal information on certain sensitive aspects of the private life of the judges concerned, in particular their religious or philosophical beliefs. It observed, next, that the processing of the personal data at issue results in those data being made freely accessible on the internet to the general public and, consequently, to a potentially unlimited number of persons. It noted, lastly, that, in the particular context in which the measures at issue were adopted, the placing online of those data is liable to expose the judges concerned to risks of undue stigmatisation, by unjustifiably affecting the perception of those judges by individuals and the public in general, and to the risk that the progress of their careers would be unduly hampered. In those circumstances, the Court concluded that processing of personal data such as that at issue constitutes a particularly serious interference with the fundamental rights of the persons concerned in respect of their private life and in the protection of their personal data.

Weighing the seriousness of that interference against the importance of the alleged objective of general interest, the Court found that, having regard to the general and specific national context in which the measures at issue were adopted and the particularly serious consequences liable to stem from them for the judges concerned, the result of that weighing exercise is not balanced. In comparison with the *status quo ante* resulting from the pre-existing national legal framework, the placing online of the personal data concerned represents a potentially significant interference with the fundamental rights guaranteed in Article 7 and Article 8(1) of the Charter, without that interference being capable, in the case at issue, of being justified by any benefits that might result from it in terms of preventing conflicts of interest on the part of judges and an increase in confidence in their impartiality.

3. Remuneration

Judgment of 27 February 2018 (Grand Chamber), Associação Sindical dos Juízes Portugueses (C-64/16, EU:C:2018:117)

(Reference for a preliminary ruling – Article 19(1) TEU – Legal remedies – Effective judicial protection – Judicial independence – Charter of Fundamental Rights of the European Union – Article 47 – Reduction of remuneration in the national public administration – Budgetary austerity measures)

The Portuguese legislature temporarily reduced, as from October 2014, the remuneration of a series of office holders and employees performing duties in the public sector, including judges of the Tribunal de Contas (Court of Auditors, Portugal). A 2015 law gradually brought to an end, as from 1 January 2016, those measures to reduce remuneration.

The Associação Sindical dos Juízes Portugueses (Trade Union of Portuguese Judges; 'the ASJP'), acting on behalf of the members of the above-mentioned court, brought an action against those budgetary measures before the Supremo Tribunal Administrativo (Supreme Administrative Court, Portugal). The ASJP considered that the salary reduction measures infringed the 'principle of judicial independence', enshrined not only in the Portuguese Constitution but also in EU law.

According to the Supreme Administrative Court, the measures for the temporary reduction in the amount of public sector remuneration were based on mandatory requirements for reducing the Portuguese State's excessive budget deficit imposed on the Portuguese Government by the European Union in return, inter alia, for financial assistance to that Member State. The Supreme Administrative Court noted, however, that the Portuguese State is also obliged to comply with the general principles of EU law, which include the principle of judicial independence, applicable both to Courts of the European Union and national courts. According to the Supreme Administrative Court, the effective judicial protection of the rights stemming from the EU legal order is ensured, primarily, by the national courts. The latter must implement that protection in accordance with the principles of independence and impartiality. The Supreme Administrative Court stressed that the independence of judicial bodies depends on the guarantees that attach to their members' status, including in terms of remuneration. It therefore asked the Court of Justice whether the principle of judicial independence precludes the application of general salary-reduction measures to members of a Member State's judiciary, where such measures are, as in the case at issue, linked to requirements to eliminate an excessive budget deficit and to an EU financial assistance programme.

In its judgment, the Court, sitting as the Grand Chamber, first emphasised that Article 19 TEU, which gives concrete expression to the value of the rule of law stated in Article 2 TEU, entrusts the responsibility for ensuring judicial review in the EU legal order not only to the Court of Justice but also to national courts and tribunals. It recalled that the very existence of effective judicial review designed to ensure compliance with EU law is of the essence of the rule of law. Every Member State must therefore ensure that the bodies which, as 'courts or tribunals' within the meaning of EU law, come within its judicial system in the fields covered by that law, meet the requirements of effective judicial protection. Accordingly, since the Court of Auditors may rule, as a court or tribunal, on questions concerning the application or interpretation of EU law, Portugal must ensure that that court meets the requirements essential to effective judicial protection.

The Court noted in that regard that, in order for that protection to be ensured, maintaining such a court of tribunal's independence is essential, as confirmed by the second subparagraph of Article 47 of the Charter, which refers to access to an 'independent' tribunal as one of the requirements linked to the fundamental right to an effective remedy. The guarantee of independence is required not only at EU level, but also at the level of the Member States as regards national courts. That concept of independence presupposes, in particular, that the body concerned exercises its judicial functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, and that it is protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions. According to the Court, the receipt of a level of remuneration commensurate with the importance of the functions they carry out constitutes a guarantee essential to judicial independence.

The Court nevertheless found that the salary-reduction measures at issue had not been applied only to the members of the Court of Auditors and were therefore in the nature of general measures seeking a contribution from all members of the national public administration to the austerity effort. In addition, those measures were temporary and were brought definitively to an end on 1 October 2016. Therefore, the Court ruled that the second subparagraph of Article 19(1) TEU does not preclude the application of general salary-reduction measures, such as those at issue in the main proceedings, linked to requirements to eliminate an excessive budget deficit and to an EU financial assistance programme.

4. Secondment

Judgment of 16 November 2021 (Grand Chamber), Prokuratura Rejonowa w Mińsku Mazowieckim and Others (C-748/19 to C-754/19, EU:C:2021:931)

(References for a preliminary ruling – Rule of law – Independence of the judiciary – Second subparagraph of Article 19(1) TEU – National legislation providing the possibility for the Minister for Justice to second judges to higher courts and to terminate those secondments – Adjudicating panels in criminal cases including judges seconded by the Minister for Justice – Directive (EU) 2016/343 – Presumption of innocence)

In connection with seven criminal cases pending before it, the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland) questioned whether the composition of the adjudicating panels called upon to rule on those cases was in line with EU law, having regard to the presence in those panels of a judge seconded in accordance with a

decision of the Minister for Justice pursuant to the Law on the organisation of the ordinary courts. [57]

According to that court, under the Polish rules relating to the secondment of judges, the Minister for Justice may assign a judge, by way of secondment, to a higher criminal court on the basis of criteria which are not officially known, without the secondment decision being amenable to judicial review. In addition, that minister may terminate that secondment at any time without such termination being subject to criteria that are predefined by law or having to be accompanied by a statement of reasons.

In that context, the referring court decided to question the Court of Justice as to whether the rules referred to above are in line with the second subparagraph of Article 19(1) TEU [58] and as to whether those rules undermine the presumption of innocence applicable to criminal proceedings resulting from, inter alia, Directive 2016/343.

By its judgment, delivered by the Grand Chamber, the Court ruled that the second subparagraph of Article 19(1) TEU, read in the light of Article 2 TEU, and Directive 2016/343 [59] preclude provisions of national legislation pursuant to which the Minister for Justice of a Member State may, on the basis of criteria which have not been made public, second a judge to a higher criminal court for a fixed or indefinite period and may, at any time, by way of a decision which does not contain a statement of reasons, terminate that secondment, irrespective of whether that secondment is for a fixed or indefinite period.

As a preliminary point, the Court found that the Polish ordinary courts, which include the Sąd Okręgowy w Warszawie (Regional Court, Warsaw), fall within the Polish judicial system in the 'fields covered by Union law', within the meaning of the second subparagraph of Article 19(1) TEU. To guarantee that such courts can ensure the effective legal protection required under that provision, maintaining their independence is essential. Compliance with the requirement of independence means, inter alia, that the rules relating to the secondment of judges must provide the necessary guarantees in order to prevent any risk of that secondment being used as a means of exerting political control over the content of judicial decisions.

In that regard, the Court emphasised that, although the fact that the Minister for Justice may not second judges without their consent constitutes an important procedural safeguard, there are, however, a number of factors which, in the referring court's view, empower that minister to influence those judges and may give rise to doubts concerning their independence. Analysing those various factors, the Court stated, first of all, that in order to avoid arbitrariness and the risk of manipulation, the decision relating to the secondment of a judge and the decision terminating that secondment must be taken on the basis of criteria known in advance and must contain an appropriate statement of

---

[57] Ustawa – Prawo o ustroju sądów powszechnych (Law on the organisation of the ordinary courts) of 27 July 2001, in the version applicable to the disputes in the main proceedings (Dz. U. of 2019, item 52).

[58] Pursuant to that provision, 'Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law'.

[59] Article 6 (1) and (2) of Directive 2016/343.

reasons. In addition, as the termination of the secondment of a judge without that judge's consent may have effects similar to those of a disciplinary penalty, it should be possible for such a measure to be legally challenged in accordance with a procedure which fully safeguards the rights of the defence. Furthermore, noting that the Minister for Justice also occupies the position of Public Prosecutor General, the Court found that that minister has thus, in any given criminal case, power over both the public prosecutor attached to the ordinary court and the seconded judges, which is such as to give rise to reasonable doubts in the minds of individuals as to the impartiality of those seconded judges. Lastly, the seconded judges in the adjudicating panels called upon to rule in the disputes in the main proceedings also occupy the positions of deputies of the Disciplinary Officer for Ordinary Court Judges, who is the person responsible for investigating disciplinary proceedings brought against judges. The combination of those two roles, in a context where the deputies of the Disciplinary Officer for Ordinary Court Judges are also appointed by the Minister for Justice, is such as to give rise to reasonable doubts in the minds of individuals as to the imperviousness of the other members of the adjudicating panels concerned to external factors.

Taken together, those various facts are, subject to the final assessments which are to be carried out by the referring court, such as may lead to the conclusion that the Minister for Justice has, on the basis of criteria which are not known, the power to second judges to higher courts and to terminate their secondment, without being required to give reasons for that decision, with the result that, during the period of those judges' secondment, they are not provided with the guarantees and the independence which all judges should normally enjoy in a State governed by the rule of law. Such a power cannot be considered compatible with the obligation to comply with the requirement of independence.

5. Transfer

Judgment of 6 October 2021 (Grand Chamber), W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment) (C-487/19, EU:C:2021:798)

(Reference for a preliminary ruling – Rule of law – Effective legal protection in the fields covered by EU law – Second subparagraph of Article 19(1) TEU – Principles of the irremovability of judges and judicial independence – Transfer without consent of a judge of an ordinary court – Action – Order of inadmissibility made by a judge of the Sąd Najwyższy (Izba Kontroli Nadzwyczajnej i Spraw Publicznych) (Supreme Court (Chamber of Extraordinary Control and Public Affairs), Poland) – Judge appointed by the President of the Republic of Poland on the basis of a resolution of the National Council of the Judiciary, despite a court decision ordering that the effects of that resolution be suspended pending a preliminary ruling of the Court – Judge not constituting an independent and impartial tribunal previously established by law – Primacy of EU law – Possibility of finding such an order of inadmissibility to be null and void)

In the judgment, the factual and legal context of which has been set out above, [60] the Court found that an ordinary court such as a Polish regional court forms part of the Polish system of legal remedies in the 'fields covered by EU law' within the meaning of the second subparagraph of Article 19(1) TEU. In order for such a court to be able to ensure the effective legal protection required by that provision, the preservation of its independence is essential. A transfer of a judge without consent is potentially capable of undermining the principles of irremovability of judges and judicial independence. It is capable of affecting the scope of the activities allocated to the judge concerned and the handling of cases entrusted to him and of having significant consequences for that judge's life and career; it may therefore constitute a way of controlling the content of judicial decisions and producing effects similar to those of a disciplinary sanction. Consequently, the requirement of judicial independence requires the system applicable to transfers not consented to by judges to provide the necessary guarantees to prevent that independence from being jeopardised by direct or indirect external intervention. Such transfer measures, which can be decided only on legitimate grounds relating in particular to the distribution of available resources, should therefore be open to challenge before the courts, in accordance with a procedure fully safeguarding the rights of the defence.

6. Promotion

Judgment of 7 September 2023 (Grand Chamber), Asociaţia 'Forumul Judecătorilor din România' (C-216/21, EU:C:2023:628)

(Reference for a preliminary ruling – Decision 2006/928/EC – Mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption – Article 2 TEU – Second subparagraph of Article 19(1) TEU – Rule of law – Charter of Fundamental Rights of the European Union – Article 47 – Independence of judges – National legislation altering the scheme for the promotion of judges)

In 2019, the Consiliul Superior al Magistraturii (Supreme Council of the Judiciary, Romania) ('the SCM') approved a reform of the procedure for the promotion of judges to higher courts. The 'Forum of Judges of Romania' Association and an individual challenged that reform before the Curtea de Apel Ploieşti (Court of Appeal, Ploiești, Romania).

The applicants in the main proceedings submitted that the replacement of the old written examinations with an assessment of candidates' work and conduct by the president and members of the higher court concerned made the promotion scheme subjective and discretionary. The Court of Appeal, Ploiești asked the Court whether such a reform is compatible with the principle of the independence of judges.

[60] With regard to the factual and legal context of the dispute, see heading II.1, 'Appointment'.

In its judgment, the Court held that a piece of national legislation relating to the scheme for the promotion of judges is required to ensure compliance with the principle of the independence of judges.

In that context, the Court also held that EU law does not preclude, in principle, the promotion of judges to a higher court from being based on an assessment of their work and conduct by a board composed of the president and members of that higher court. However, the substantive conditions and procedural rules governing the adoption of decisions relating to promotion must be such that they cannot give rise to reasonable doubts, in the minds of individuals, as to the independence and impartiality of the judges concerned, once they have been promoted.

The Court noted that the promotion procedure for judges serving in the lower courts in Romania consists of two stages. The first stage, which allows 'on-the-spot' promotion without changing the court to which judges are assigned, is based on a written competition designed to assess the candidates' theoretical knowledge and practical skills. The second stage, known as 'effective promotion', allows candidates who have already been promoted 'on the spot' to be effectively assigned to a higher court.

It is only in the context of that second stage that the assessment is carried out by a board composed, for each court of appeal, of its president and of four of its members, appointed by the Section for Judges of the SCM.

Even though, according to the Court of Appeal, Ploiești, the reform of the second stage is likely to lead to power being concentrated in the hands of certain members of the assessment board, and, in particular, its president, it cannot, however, be regarded as being, as such, incompatible with EU law.

It is for the Court of Appeal, Ploiești to ascertain whether that concentration of power, taken in isolation or combined with other factors, is liable to offer, in practice, the persons on whom it is conferred the ability to influence the decisions of the judges concerned, and thus create a lack of independence or an appearance of partiality on their part likely to prejudice the trust which justice in a democratic society governed by the rule of law must inspire in individuals. In the Court's view, the file before it did not contain any material capable of establishing that such a potential concentration of power could, in itself, confer, in practice, such an ability to influence; nor does it point to any other factor which could, combined with that concentration of power, produce effects which would be such as to give rise to doubts, in the minds of individuals, as to the independence of the judges who have been promoted.

Regarding the substantive conditions governing the adoption of decisions relating to effective promotion and, in particular, the assessment of candidates' work and conduct, that is based on criteria which appear to be relevant for the purposes of assessing their professional merits. Those criteria seem to be the subject of objective assessments based on verifiable information.

As for the procedural rules governing the adoption of those decisions, they do not appear to be such as to jeopardise the independence of the judges promoted. The assessment board must state the reasons for its assessments and the candidate concerned may challenge them before the Section for Judges of the SCM.

7. Disciplinary liability

Judgment of 26 March 2020 (Grand Chamber), Miasto Łowicz and Prokurator Generalny (C-558/18 and C-563/18, EU:C:2020:234)

(References for a preliminary ruling – Second subparagraph of Article 19(1) TEU – Rule of law – Effective judicial protection in the fields covered by Union law – Principle of judicial independence – Disciplinary regime applicable to national judges – Jurisdiction of the Court – Article 267 TFEU – Admissibility – Interpretation necessary for the referring court to be able to give judgment – Meaning)

By its judgment, the Court, sitting as the Grand Chamber, declared the requests for a preliminary ruling made by the Sąd Okręgowy w Łodzi (Regional Court, Łódź, Poland) and by the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland) to be inadmissible. By those two requests, the referring courts in essence asked the Court of Justice whether the new Polish legislation relating to the disciplinary regime for judges was compatible with the right of individuals to effective judicial protection, guaranteed in the second subparagraph of Article 19(1) TEU.

The first case (C-558/18) originated from a dispute between the town of Łowicz in Poland and the State Treasury concerning a request for payment of public funding. The referring court stated that it was likely that the decision which it was going to take in that case would be unfavourable to the State Treasury. The second case (C-563/18) concerned criminal proceedings brought against three persons for offences committed in 2002 and 2003, and the referring court had to consider granting them an exceptional reduction in their sentences given that they had collaborated with the criminal authorities by admitting the charges against them. Both requests for a preliminary ruling expressed fears that such decisions would lead to disciplinary proceedings being brought against the single judge presiding in each of the cases. The national courts referred to the 2017 legislative reforms that had taken place in Poland, which, in their view, call into question the objectivity and impartiality of disciplinary proceedings relating to judges and have an impact on the independence of the Polish courts. Highlighting in particular the considerable influence which the Minister for Justice has in disciplinary proceedings relating to the judges of the ordinary courts, the referring judges pointed to the lack of adequate safeguards accompanying that influence. For those courts, the disciplinary procedures thus conceived confer on the legislative and

executive branches a means of ousting judges whose decisions do not suit them, thereby influencing the court judgments which they must deliver.

After confirming that it had jurisdiction to interpret the second subparagraph of Article 19(1) TEU, the Court ruled on the admissibility of both requests for a preliminary ruling. In that regard, it first of all observed that, under Article 267 TFEU, the preliminary ruling sought must be 'necessary' to enable the referring court 'to give judgment'. It also pointed out that, under that provision as interpreted by the case-law of the Court, a national court or tribunal is not empowered to bring a matter before the Court by way of a request for a preliminary ruling unless a case is pending before it in which it is called upon to give a decision which is capable of taking account of the preliminary ruling. Highlighting the specific nature of its role in references for a preliminary ruling, that is to say, helping the referring court to resolve the specific dispute pending before that court, the Court of Justice then stated that there must be a connecting factor between that dispute and the provision of EU law for which an interpretation is sought. That connecting factor must be such that that interpretation is objectively required for the decision to be taken by the referring court.

In the case in point, the Court found, first, that the disputes in the main proceedings were not connected with Union law, in particular with the second subparagraph of Article 19(1) TEU to which the questions referred for a preliminary ruling relate. It therefore held that the referring courts were not called upon to apply that law in order to rule on the substance of those disputes. Secondly, noting that it had indeed already held to be admissible questions concerning the interpretation of procedural provisions of EU law which the referring court concerned was required to apply in order to deliver its judgment, [61] the Court stated that that was not the scope of the questions referred in the two cases. Thirdly, the Court stated that an answer to those questions did not appear capable of providing the referring courts with an interpretation of EU law which would allow them to resolve procedural questions of national law before being able to rule, as appropriate, on the substance of the disputes in the main proceedings. [62] Accordingly, the Court held that it was not apparent from the orders for reference that there was a connecting factor between the provision of EU law to which the questions referred for a preliminary ruling related and the disputes in the main proceedings, which made it necessary to have the interpretation sought so that the referring courts could, by applying the guidance provided by such an interpretation, deliver their respective judgments. It therefore found that the questions referred were general in nature, so that the requests for a preliminary ruling had to be declared inadmissible.

Finally, the Court observed that provisions of national law which expose national judges to disciplinary proceedings as a result of the fact that they submitted a reference to the

---

61 Judgment of the Court of 17 February 2011, *Weryński* (C-283/09, EU:C:2011:85).

62 Judgment of the Court of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)* (Joined Cases C-585/18, C-624/18 and C-625/18, EU:C:2019:982), presented under heading II.1, 'Appointment'.

Court for a preliminary ruling cannot be permitted. [63] Indeed, such a prospect of disciplinary proceedings is likely to undermine the effective exercise by the national judges concerned of the discretion to refer questions to the Court and of the functions of the court responsible for the application of EU law entrusted to them by the Treaties. In that regard, the Court made it clear that not being exposed to such disciplinary proceedings or measures for that reason also constitutes a guarantee essential to their independence.

Judgment of 15 July 2021 (Grand Chamber), Commission v Poland (Disciplinary regime for judges) (C-791/19, EU:C:2021:596)

(Failure of a Member State to fulfil obligations – Disciplinary regime applicable to judges – Rule of law – Independence of judges – Effective legal protection in the fields covered by Union law – Second subparagraph of Article 19(1) TEU – Article 47 of the Charter of Fundamental Rights of the European Union – Disciplinary offences resulting from the content of judicial decisions – Independent disciplinary courts or tribunals established by law – Respect for reasonable time and the rights of the defence in disciplinary proceedings – Article 267 TFEU – Restriction of the right of national courts to submit requests for a preliminary ruling to the Court of Justice and of their obligation to do so)

In the judgment, the factual and legal context of which has been set out above, [64] the Court, sitting as the Grand Chamber, upheld the action for failure to fulfil obligations brought by the Commission. First, the Court found that the new disciplinary regime for judges undermines their independence. Secondly, that regime does not enable the judges concerned to comply, acting with complete independence, with their obligations under the preliminary ruling mechanism.

The Court found that Poland had failed to fulfil its obligations, under the second subparagraph of Article 19(1) TEU, to provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.

The Court recalled that, according to its settled case-law, the second subparagraph of Article 19(1) TEU and the requirement that judges be independent arising from it mean that the disciplinary regime applicable to judges of the national courts which come within their judicial systems in the fields covered by EU law must provide the necessary guarantees in order to prevent any risk of such a regime being used as a system of political control of the content of judicial decisions, which presupposes, inter alia, rules that define the forms of conduct amounting to disciplinary offences, that provide for the intervention of an independent body in accordance with a procedure which fully safeguards the rights enshrined in Articles 47 and 48 of the Charter of Fundamental

---

63 Order of the President of the Court of 1 October 2018, *Miasto Łowicz and Prokuratura Okręgowa* (Joined Cases C-558/18 and C-563/18, EU:C:2018:923).

64 As regards the factual and legal context of the dispute, see heading I.2, 'Right of independent national courts to make a reference to the Court of Justice for a preliminary ruling'.

Rights of the European Union, in particular the rights of the defence, and that lay down the possibility of bringing legal proceedings challenging the decisions of disciplinary bodies.

However, according to the Court, Poland had, in the first place, failed to guarantee the independence and impartiality of the Disciplinary Chamber and had thereby undermined the independence of judges by failing to ensure that disciplinary proceedings brought against them would be reviewed by a body offering such guarantees. In accordance with the principle of the separation of powers, the independence of the judiciary must be ensured in relation to the legislature and the executive. Nevertheless, under the 2017 legislative reform, the process for appointing judges to the Sąd Najwyższy (Supreme Court, Poland) and, in particular, for appointing the members of the Disciplinary Chamber of the Supreme Court was essentially determined by the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland; 'the KRS') – a body which was significantly reorganised by the Polish executive and legislature. The Court also noted that the Disciplinary Chamber was to be made up exclusively of new judges selected by the KRS who were not already sitting within the Supreme Court and who would benefit from, inter alia, a very high level of remuneration and a particularly high degree of organisational, functional and financial autonomy in comparison with the conditions prevailing in the other judicial chambers of that court. All of those factors are such as to give rise to reasonable doubts in the minds of individuals as to the imperviousness of that disciplinary body to the direct or indirect influence of the Polish legislature and executive, as well as its neutrality with respect to the interests before it.

The Court noted, in the second place, while taking into account, in that regard, the fact that the independence and impartiality of the Disciplinary Chamber are thus not guaranteed, that Poland had allowed the content of judicial decisions to be classified as a disciplinary offence as regards judges of the ordinary courts. Recalling the need to avoid the disciplinary regime being used in order to exert political control over judicial decisions or to exert pressure on judges, the Court noted that, in the case at issue, the new disciplinary regime for judges, which did not meet the requirements of clarity and precision as regards the forms of conduct likely to trigger the liability of judges, also undermined the independence of those judges.

In the third place, Poland had also failed to guarantee that disciplinary cases brought against judges of the ordinary courts would be examined within a reasonable time, thereby once again undermining the independence of those judges. According to the new disciplinary regime, a judge who has been the subject of disciplinary proceedings closed by a final ruling could, once again, be subject to such proceedings in the same case, such that that judge would permanently remain under the potential threat of such proceedings. In addition, the new procedural rules applicable to disciplinary proceedings concerning judges were liable to restrict the rights of defence of accused judges. Under those new rules, actions relating to the appointment of a judge's defence counsel and

the conduct of the defence by that counsel would not suspend the proceedings, not to mention the fact that the proceedings could continue despite the justified absence of the judge or his or her defence counsel. Moreover, the new procedural rules referred to above could, especially where, as in the present case, they are applied in the context of a disciplinary regime displaying the shortcomings already noted above, increase the risk of the disciplinary regime being used as a system of political control of the content of judicial decisions.

In the fourth place, the Court found that, by conferring on the President of the Disciplinary Chamber referred to above the discretionary power to designate the disciplinary tribunal with jurisdiction at first instance in disciplinary cases relating to judges of the ordinary courts, Poland had failed to guarantee that such cases would be examined by a tribunal 'established by law' as is also required by the second subparagraph of Article 19(1) TEU.

Judgment of 21 December 2021 (Grand Chamber), Euro Box Promotion and Others (C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034)

(Reference for a preliminary ruling – Decision 2006/928/EC – Mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption – Legal nature and effects – Binding on Romania – Rule of law – Judicial independence – Second subparagraph of Article 19(1) TEU – Article 47 of the Charter of Fundamental Rights of the European Union – Fight against corruption – Protection of the European Union's financial interests – Article 325(1) TFEU – 'PFI' Convention – Criminal proceedings – Decisions of the Curtea Constituțională (Constitutional Court, Romania) concerning the legality of the taking of certain evidence and the composition of judicial panels in cases of serious corruption – Duty on national courts to give full effect to the decisions of the Curtea Constituțională (Constitutional Court) – Disciplinary liability of judges in case of non-compliance with such decisions – Power to disapply decisions of the Curtea Constituțională (Constitutional Court) that conflict with EU law – Principle of primacy of EU law)

In the judgment, the factual and legal context of which has been set out above, [65] the Court ruled on the compatibility with EU law of the application of case-law of the Curtea Constituțională (Constitutional Court, Romania).

EU law does not preclude decisions of the Constitutional Court from binding the ordinary courts, provided that the independence of the Constitutional Court in relation, in particular, to the legislative and executive is guaranteed. However, that law precludes national judges from incurring disciplinary liability due to any disapplication of such decisions.

[65] As regards the factual and legal context of the dispute, see heading I.2, 'Right of independent national courts to make a reference to the Court of Justice for a preliminary ruling'.

First, since the existence of effective judicial review designed to ensure compliance with EU law is of the essence of the rule of law, any court called upon to apply or interpret EU law must satisfy the requirements of effective judicial protection. For that to be the case, maintaining the independence of the courts is essential. In that regard, it is necessary that judges are protected against external intervention or pressure liable to impair their independence. In addition, in accordance with the principle of the separation of powers which characterises the operation of the rule of law, the independence of the judiciary must in particular be ensured in relation to the legislature and the executive.

Secondly, even though EU law does not require the Member States to adopt a particular constitutional model governing the relationship between the various branches of the State, the Court noted that the Member States must nevertheless comply, inter alia, with the requirements of judicial independence stemming from EU law. In those circumstances, decisions of the Constitutional Court may bind the ordinary courts provided that national law guarantees the independence of the Constitutional Court in relation, in particular, to the legislative and executive. On the other hand, if national law does not guarantee that independence, EU law precludes such national rules or national practice, since such a constitutional court is not in a position to ensure the effective judicial protection required by EU law.

Thirdly, for the purposes of safeguarding judicial independence, the disciplinary regime must provide the necessary guarantees in order to prevent any risk of that regime being used as a system of political control of the content of judicial decisions. In that regard, the fact that a judicial decision contains a possible error in the interpretation and application of the rules of national and EU law, or in the assessment of facts and the appraisal of the evidence, cannot, in itself, trigger the disciplinary liability of the judge concerned. The triggering of the disciplinary liability of a judge as a result of a judicial decision should be limited to entirely exceptional cases and governed by guarantees designed to avoid any risk of external pressure on the content of judicial decisions. National legislation under which any failure to apply the decisions of the Constitutional Court by judges of the ordinary courts is such as to give rise to their disciplinary liability does not comply with those conditions.

Judgment of 22 February 2022 (Grand Chamber), RS (Effects of the decisions of a constitutional court) (C-430/21, EU:C:2022:99***)***

(Reference for a preliminary ruling – Rule of law – Independence of the judiciary – Second subparagraph of Article 19(1) TEU – Article 47 of the Charter of Fundamental Rights of the European Union – Primacy of EU law – Lack of jurisdiction of a national court to examine the conformity with EU law of national legislation found to be constitutional by the constitutional court of the Member State concerned – Disciplinary proceedings)

The Court was called upon to rule on the principle of judicial independence, enshrined in the second subparagraph of Article 19(1) TEU, read in conjunction, in particular, with the

principle of primacy of EU law, in a context in which an ordinary court of a Member State has no jurisdiction, under national law, to examine the conformity with EU law of national legislation that has been held to be constitutional by the constitutional court of that Member State, and the national judges adjudicating are exposed to disciplinary proceedings and penalties if they decide to carry out such an examination.

In the case at issue, RS was convicted following criminal proceedings in Romania. His wife then lodged a complaint concerning, inter alia, several judges in respect of offences allegedly committed during those criminal proceedings. Subsequently, RS brought an action before the Curtea de Apel Craiova (Court of Appeal, Craiova, Romania) seeking to challenge the excessive duration of the criminal proceedings instituted in response to that complaint.

In order to rule on that action, the Court of Appeal, Craiova, considered that it had to assess the compatibility with EU law [66] of the national legislation establishing a specialised section of the Public Prosecutor's Office responsible for investigations of offences committed within the judicial system, such as that commenced in the case at issue. However, in the light of the judgment of the Curtea Constituțională (Constitutional Court, Romania), [67] delivered after the Court's judgment in *Asociaţia 'Forumul Judecătorilor din România' and Others*, [68] the Court of Appeal, Craiova, would not have jurisdiction, under national law, to carry out such an examination of compatibility. By its judgment, the Romanian Constitutional Court rejected as unfounded the plea of unconstitutionality raised in respect of several provisions of the above-mentioned legislation, while emphasising that, when that court declares national legislation consistent with the provision of the Constitution which requires compliance with the principle of the primacy of EU law, [69] an ordinary court has no jurisdiction to examine the conformity of that national legislation with EU law.

In that context, the Court of Appeal, Craiova, decided to refer the matter to the Court of Justice in order to clarify, in essence, whether EU law precludes a national judge of the ordinary courts from having no jurisdiction to examine whether legislation is consistent with EU law, in circumstances such as those of the case at issue, and disciplinary penalties from being imposed on that judge on the ground that he or she has decided to carry out such an examination.

---

66 Specifically, the second subparagraph of Article 19(1) TEU and the Annex to Decision 2006/928.

67 Judgment No 390/2021 of 8 June 2021.

68 Judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others* (C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393), presented under heading II.8, 'Personal liability, immunity and suspension', in which the Court held, inter alia, that the legislation at issue is contrary to EU law where the creation of such a specialised section is not justified by objective and verifiable requirements relating to the sound administration of justice and is not accompanied by specific guarantees identified by the Court (see point 5 of the operative part of that judgment).

69 In its judgment No 390/2021, the Romanian Constitutional Court held that the legislation at issue complied with Article 148 of the Constituția României (Romanian Constitution).

The Court, sitting as the Grand Chamber, found such national rules or practices to be contrary to EU law. [70]

First of all, the Court found that the second subparagraph of Article 19(1) TEU does not preclude national rules or a national practice under which the ordinary courts of a Member State, under national constitutional law, are bound by a decision of the constitutional court of that Member State finding that national legislation is consistent with that Member State's constitution, provided that national law guarantees the independence of that constitutional court from, in particular, the legislature and the executive. However, the same cannot be said where the application of such national rules or a national practice entails excluding any jurisdiction of those ordinary courts to assess the compatibility with EU law of national legislation which such a constitutional court has found to be consistent with a national constitutional provision providing for the primacy of EU law.

Next, the Court pointed out that compliance with the obligation of national courts to apply in full any provision of EU law having direct effect is necessary, in particular, in order to ensure respect for the equality of Member States before the Treaties – which precludes the possibility of relying on, as against the EU legal order, a unilateral measure, whatever its nature – and constitutes an expression of the principle of sincere cooperation set out in Article 4(3) TEU, which requires any provision of national law which may be to the contrary to be disapplied, whether the latter is prior to or subsequent to the EU legal rule having direct effect.

In that context, the Court recalled that it had already held, first, that the legislation at issue falls within the scope of Decision 2006/928 and that it must, therefore, comply with the requirements arising from EU law, in particular from Article 2 and Article 19(1) TEU. [71] Secondly, both the second subparagraph of Article 19(1) TEU and the specific benchmarks in the areas of judicial reform and the fight against corruption set out in the annex to Decision 2006/928 are formulated in clear and precise terms and are not subject to any conditions, and they therefore have direct effect. [72] It follows that if it is not possible to interpret the national provisions in a manner consistent with the second subparagraph of Article 19(1) TEU or those benchmarks, the ordinary Romanian courts must disapply those national provisions of their own motion.

In that regard, the Court pointed out that the ordinary Romanian courts have as a rule jurisdiction to assess the compatibility of Romanian legislative provisions with those provisions of EU law, without having to make a request to that end to the Romanian Constitutional Court. However, they are deprived of that jurisdiction where the

---

[70] In the light of the second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 and Article 4(2) and (3) TEU, with Article 267 TFEU and with the principle of the primacy of EU law.

[71] Judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others* (C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19), paragraphs 183 and 184, presented under heading II.8, 'Personal liability, immunity and suspension'.

[72] Judgment in *Asociaţia 'Forumul Judecătorilor din România' and Others*, cited above, paragraphs 249 and 250, and judgment of 21 December 2021, *Euro Box Promotion and Others* (C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034), paragraph 253 (presented in the same section).

Romanian Constitutional Court has held that those national legislative provisions are consistent with a national constitutional provision providing for the primacy of EU law, in that those ordinary courts are required to comply with that judgment of that constitutional court. However, such a national rule or practice would preclude the full effectiveness of the rules of EU law at issue, in so far as it would prevent the ordinary court called upon to ensure the application of EU law from itself assessing whether those national legislative provisions are compatible with EU law.

In addition, the application of such a national rule or practice would undermine the effectiveness of the cooperation between the Court of Justice and the national courts established by the preliminary ruling mechanism, by deterring the ordinary court called upon to rule on the dispute from submitting a request for a preliminary ruling to the Court of Justice, in order to comply with the decisions of the constitutional court of the Member State concerned.

The Court emphasised that those findings are all the more relevant in a situation in which a judgment of the constitutional court of the Member State concerned refuses to give effect to a preliminary ruling given by the Court, on the basis, inter alia, of the constitutional identity of that Member State and of the contention that the Court has exceeded its jurisdiction. The Court pointed out that it may, under Article 4(2) TEU, be called upon to determine that an obligation of EU law does not undermine the national identity of a Member State. By contrast, that provision has neither the object nor the effect of authorising a constitutional court of a Member State, in disregard of its obligations under EU law, to disapply a rule of EU law, on the ground that that rule undermines the national identity of the Member State concerned as defined by the national constitutional court. Thus, if the constitutional court of a Member State considers that a provision of secondary EU law, as interpreted by the Court, infringes the obligation to respect the national identity of that Member State, it must make a reference to the Court for a preliminary ruling, in order to assess the validity of that provision in the light of Article 4(2) TEU, the Court alone having jurisdiction to declare an EU act invalid.

In addition, the Court emphasised that since the Court alone has exclusive jurisdiction to provide the definitive interpretation of EU law, the constitutional court of a Member State cannot, on the basis of its own interpretation of provisions of EU law, validly hold that the Court has delivered a judgment exceeding its jurisdiction and, therefore, refuse to give effect to a preliminary ruling from the Court.

Furthermore, on the basis of its earlier case-law, [73] the Court made it clear that Article 2 and the second subparagraph of Article 19(1) TEU preclude national rules or a national practice under which a national judge may incur disciplinary liability for any failure to comply with the decisions of the national constitutional court and, in particular, for

[73] Judgment in *Euro Box Promotion and Others*, cited above.

having refrained from applying a decision by which that court refused to give effect to a preliminary ruling delivered by the Court.

Judgment of 11 May 2023 (First Chamber), Inspecţia Judiciară (C-817/21, EU:C:2023:391)

(Reference for a preliminary ruling – Rule of law – Judicial independence – Second subparagraph of Article 19(1) TEU – Decision 2006/928/EC – Independence of the judiciary – Disciplinary proceedings – Judicial Inspectorate – Chief Inspector with powers of regulation, selection, assessment, appointment and disciplinary investigation)

In Romania, a party in several criminal proceedings filed a number of disciplinary complaints with the competent Judicial Inspectorate against certain judges and prosecutors involved. Since all of those complaints were the subject of decisions to take no further action, that party lodged a complaint against the Chief Inspector, in respect of which it was also decided to take no further action. She then turned to the Curtea de Apel Bucureşti (Court of Appeal, Bucharest, Romania) to challenge those decisions to take no further action, claiming, inter alia, that it was impossible to bring disciplinary proceedings on account of the concentration of powers in the hands of the Chief Inspector. Such a concentration of powers was, in her opinion, contrary to EU law.

The Court of Appeal, Bucharest, referred a question to the Court of Justice in that regard.

By its judgment, the Court confirmed its case-law [74] according to which, while the organisation of justice is a matter for the Member States, the exercise of that power must comply with EU law. As such, the disciplinary regime applicable to the judges who may be called upon to apply EU law must provide the necessary guarantees in order to prevent any risk of its being used as an instrument of political control over their activities.

The rules governing the organisation and operation of a body competent to conduct disciplinary investigations and to bring disciplinary proceedings against judges and prosecutors must, consequently, comply with the requirements arising from EU law and, in particular, that of the rule of law.

In order to verify that this is indeed the case, the Court specified that it is for the referring court to assess the Romanian legislation as such and in its national legal and factual context.

As to the relevant factors for the purposes of carrying out that assessment, the Court noted that, under Romanian law, disciplinary action intended to punish abuses committed by the Chief Inspector can be initiated only by a member of staff whose career depends, to a large extent, on the decisions of the Chief Inspector. In addition,

[74] Judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others* (C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19), presented under heading II.8, 'Personal liability, immunity and suspension'.

the decisions relating to the Chief Inspector can be reviewed by the Deputy Chief Inspector, who has been appointed by the Chief Inspector and whose term of office will end at the same time as that of the latter. Such a disciplinary regime appears, subject to verification to be carried out by the Court of Appeal, Bucharest, capable of preventing, in practice, disciplinary proceedings from being brought effectively against the Chief Inspector, even if the latter were to be the subject of properly substantiated complaints.

The decision to take no further action with regard to a complaint against the Chief Inspector may be subject to review which could lead, where appropriate, to the annulment of the decision to take no further action. It is, however, for the Court of Appeal, Bucharest, to assess the extent to which the powers available to the Romanian courts in that regard are capable of allowing disciplinary proceedings to be brought effectively against the Chief Inspector and complaints directed against the latter to be handled efficiently and impartially.

The Court noted, in that respect, that if that court were to conclude that the Chief Inspector's actions cannot, in the context of the legislation at issue in the main proceedings, be the subject of genuine and effective control, the view would have to be taken that that legislation is not designed in such a way that there can be no reasonable doubt, in the minds of individuals, that the powers and functions of the Inspecţia Judiciară (Judicial Inspectorate) will not be used as an instrument to exert pressure on, or political control over, judicial activity.

As to the national legal and factual context, it appeared that the powers of the Chief Inspector have been strengthened in the wider context of the reforms concerning the organisation of the Romanian judiciary the purpose or effect of which is to reduce the guarantees of independence and impartiality of Romanian judges. Moreover, it appeared that the Chief Inspector is closely linked to the executive or the legislature. Last, account also had to be taken of the Chief Inspector's actual practice in the exercise of his or her powers that can be used for the purpose of political control over judicial activity.

Subject to verification to be carried out by the Court of Appeal, Bucharest, it therefore appeared that the elements of the legal and factual context brought to the attention of the Court tended to corroborate, rather than invalidate, a possible finding that the legislation at issue is not designed in such a way that there can be no reasonable doubt, in the minds of individuals, that the powers and functions of the Judicial Inspectorate will not be used as an instrument to exert pressure on, or political control over, judicial activity.

Judgment of 5 June 2023 (Grand Chamber), Commission v Poland (Independence and private life of judges) (C-204/21, EU:C:2023:442)

(Failure of a Member State to fulfil obligations – Second subparagraph of Article 19(1) TEU – Article 47 of the Charter of Fundamental Rights of the European Union – Rule of law – Effective

legal protection in the fields covered by EU law – Independence of judges – Article 267 TFEU – Possibility of making a reference to the Court for a preliminary ruling – Primacy of EU law – Jurisdiction in relation to the lifting of the immunity from criminal prosecution of judges and in the field of employment law, social security and retirement of judges of the Sąd Najwyższy (Supreme Court, Poland) conferred on the Disciplinary Chamber of that court – National courts prohibited from calling into question the legitimacy of the constitutional courts and bodies or from establishing or assessing the lawfulness of the appointment of judges or their judicial powers – Verification by a judge of compliance with certain requirements relating to the existence of an independent and impartial tribunal previously established by law classified as a 'disciplinary offence' – Exclusive jurisdiction to examine questions relating to the lack of independence of a court or judge conferred on the Extraordinary Review and Public Affairs Chamber of the Sąd Najwyższy (Supreme Court) – Articles 7 and 8 of the Charter of Fundamental Rights – Rights to privacy and the protection of personal data – Regulation (EU) 2016/679 – Article 6(1), first subparagraph, points (c) and (e), and Article 6(3), second subparagraph – Article 9(1) – Sensitive data – National legislation requiring judges to make a declaration as to whether they belong to associations, foundations or political parties, and to the positions held within those associations, foundations or political parties, and providing for the placing online of the data contained in those declarations)

In the judgment, the factual and legal context of which has been set out above, [75] the Court held, in the first place, that, by conferring on the Disciplinary Chamber of the Sąd Najwyższy (Supreme Court, Poland), whose independence and impartiality are not guaranteed, jurisdiction to hear and determine cases having a direct impact on the status of judges and trainee judges, such as cases concerning the lifting of the criminal immunity of judges and in the field of employment law, social security and retirement of judges of the Supreme Court, Poland had failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU.

In that regard, the Court held that the legal order of the Member State concerned must include guarantees capable of preventing any risk of political control of the content of judicial decisions or pressure and intimidation against judges which could, inter alia, lead to an appearance of a lack of independence or impartiality on their part capable of prejudicing the trust which justice in a democratic society governed by the rule of law must inspire in individuals. [76] It is thus essential, as the Court has held previously with regard to the rules applicable to the disciplinary regime for judges, [77] that, having regard to the major consequences likely to result from them both for the career progress of judges and their living conditions, decisions authorising the initiation of criminal proceedings against them, their arrest and detention, and the reduction of their remuneration, or decisions relating to essential aspects of the employment, social

[75] With regard to the factual and legal context of the dispute, see heading II.2, 'Ethics'. That judgment is also presented under heading II.10, 'Jurisdiction to review the independence of the judiciary'.

[76] See, to that effect, judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others* (C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 216), presented under heading II.8, 'Personal liability, immunity and suspension'.

[77] See, to that effect, judgment of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)* (C-791/19, EU:C:2021:596, paragraph 80), presented under this heading.

security or retirement law schemes applicable to those judges, be adopted or reviewed by a body which itself satisfies the guarantees inherent in effective judicial protection, including that of independence.

In the second place, the Court found that, by adopting the provisions under which the examination of compliance with the EU requirements relating to an independent and impartial tribunal previously established by law may be classified as a 'disciplinary offence', [78] Poland had failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU, read in conjunction with Article 47 of the Charter, and under Article 267 TFEU.

In that regard, the Court recalled that the fundamental right to a fair trial means inter alia that every court is obliged to check whether, as composed, it constitutes such a tribunal where a serious doubt arises on that point. It also noted that national courts, in various other circumstances, may be obliged to review compliance with the above-mentioned requirements and that such a review may relate in particular to whether an irregularity vitiating the procedure for the appointment of a judge could lead to an infringement of that fundamental right. In those circumstances, the fact that a national court performs the tasks entrusted to it by the Treaties and complies with its obligations under those Treaties, by giving effect to provisions such as the second subparagraph of Article 19(1) TEU and Article 47 of the Charter, cannot, by definition, be regarded as a disciplinary offence without those provisions of EU law being infringed *ipso facto*.

The Court observed, first of all, that the definitions of the disciplinary offences at issue are very broad and imprecise, so that they cover situations in which the judges have to examine whether they themselves, the court in which they sit, other judges or other courts satisfy the requirements arising from the provisions of the second subparagraph of Article 19(1) TEU and Article 47 of the Charter. Nor do the national provisions at issue ensure that the liability of the judges concerned for the judicial decisions which they are called upon to give is strictly limited to completely exceptional cases and, consequently, that the disciplinary regime applicable to judges cannot be used in order to exert political control over judicial decisions. Furthermore, in the light of the particular conditions and context in which those national provisions were adopted, the Court pointed out that the terms chosen by the Polish legislature clearly echo a series of questions which led various Polish courts to make a reference to the Court for a preliminary ruling as regards the compatibility with the second subparagraph of Article 19(1) TEU and Article 47 of the Charter of various legislative amendments in 2019 affecting the organisation of justice in Poland. The Court considered, consequently, that the risk that those national provisions might be interpreted in such a way that the disciplinary regime applicable to judges might be used in order to prevent the national courts concerned from making certain findings required of them by EU law and

[78] Points 2 and 3 of Article 107(1) of the amended Law relating to the ordinary courts and points 1 to 3 of Article 72(1) of the amended Law on the Supreme Court.

influence the judicial decisions of those courts, thus undermining the independence of those judges, was established, and that those provisions of EU law were therefore infringed in that respect. Those national provisions also infringe Article 267 TFEU in that they create a risk of disciplinary penalties being imposed on national judges for having made references to the Court for a preliminary ruling.

As regards, more specifically, the disciplinary offence based on the 'manifest and flagrant breach of legal rules' by Supreme Court judges, [79] the Court considered that the national provision providing for it also undermines the independence of those judges since it does not prevent the disciplinary regime applicable to those judges from being used for the purpose of creating pressure and a deterrent effect likely to influence the content of their decisions. That provision also limits the obligation of the Supreme Court to refer questions to the Court for a preliminary ruling in terms of the possibility of initiating disciplinary proceedings.

In the third place, the Court held that, by adopting provisions prohibiting any national court from reviewing compliance with the requirements arising from EU law relating to the guarantee of an independent and impartial tribunal previously established by law, [80] the Republic of Poland had failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU, read in conjunction with Article 47 of the Charter, and the principle of primacy of EU law.

In that regard, the Court specified that those national provisions prohibit not only 'establish[ing]', but also 'assess[ing]', in the light of their 'lawfulness', both the 'appointment' itself and the 'power to carry out tasks in relation to the administration of justice that derives from that appointment'. In addition, those provisions prohibit any 'calling into question' of the 'legitimacy' of 'courts and tribunals' and of the 'constitutional organs of the State and the organs responsible for reviewing and protecting the law'. Such formulations are capable, especially in the particular context in which they were adopted, of leading to the result that a series of acts which the courts concerned are nevertheless required to adopt, in accordance with the obligations incumbent on them in order to ensure compliance with the second subparagraph of Article 19(1) TEU and Article 47 of the Charter, may, by reason of their content or effects, fall within the prohibitions thus laid down. Moreover, since those national provisions are capable of preventing the Polish courts from disapplying provisions contrary to those two provisions of EU law, which have direct effect, they are also liable to infringe the principle of the primacy of EU law.

---

79 Point 1 of Article 72(1) of the amended Law on the Supreme Court.

80 Article 42a(1) and (2) and Article 55(4) of the amended Law relating to the ordinary courts, Article 26(3) and Article 29(2) and (3) of the amended Law on the Supreme Court, and Article 5(1a) and (1b) of the amended Law relating to the administrative courts.

8. Personal liability, judicial immunity and suspension

Judgment of 18 May 2021 (Grand Chamber), Asociația 'Forumul Judecătorilor din România' and Others (C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393)

(Reference for a preliminary ruling – Treaty of Accession of the Republic of Bulgaria and Romania to the European Union – Act concerning the conditions of accession to the European Union of the Republic of Bulgaria and Romania – Articles 37 and 38 – Appropriate measures – Mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption – Decision 2006/928/EC – Legal nature and effects of the cooperation and verification mechanism and of the reports established by the Commission on the basis of that mechanism – Rule of law – Judicial independence – Second subparagraph of Article 19(1) TEU – Article 47 of the Charter of Fundamental Rights of the European Union – Laws and government emergency ordinances adopted in Romania in the course of 2018 and 2019 concerning the organisation of the judicial system and the liability of judges – Interim appointment to management positions of the Judicial Inspectorate – Establishment of a section within the Public Prosecutor's Office for the investigation of offences committed within the judicial system – Financial liability of the State and personal liability of judges in the event of judicial error)

Six requests for a preliminary ruling were brought before the Court of Justice by Romanian courts in proceedings between legal persons or natural persons and authorities or bodies such as the Inspecţia Judiciară (Judicial Inspectorate, Romania), the Consiliul Superior al Magistraturii (Supreme Council of the Judiciary, Romania) and the Parchetul de pe lângă Înalta Curte de Casaţie şi Justiţie (prosecutor's office attached to the High Court of Cassation and Justice, Romania).

The disputes in the main proceedings followed on from a wide-ranging reform in the field of justice and the fight against corruption in Romania, a reform which has been monitored at EU level since 2007 under the cooperation and verification mechanism established by Decision 2006/928 on the occasion of Romania's accession to the European Union ('the CVM').

In the context of the negotiations for its accession to the European Union, Romania had, in the course of 2004, adopted three laws, known as 'the Justice Laws', on the rules governing judges and prosecutors, on the organisation of the judicial system and on the Supreme Council of the Judiciary, with the aim of improving the independence and effectiveness of the judicial system. Between 2017 and 2019, amendments were made to those Justice Laws by laws and government emergency ordinances adopted on the basis of the Romanian Constitution. The applicants in the main proceedings disputed whether some of those legislative amendments were compatible with EU law. In support of their actions, they referred to certain opinions and reports drawn up by the European Commission on progress in Romania under the CVM, opinions and reports which, in their view, were critical of the provisions adopted by Romania between 2017 and 2019 in

the light of the requirements of the effectiveness of the fight against corruption and the guarantee of the independence of the judiciary.

In that context, the referring courts were uncertain as to the legal nature and effects of the CVM and the scope of the reports drawn up by the Commission under it. According to those courts, the content, nature and duration of that mechanism should be regarded as falling within the scope of the Treaty of Accession and the requirements set out in those reports should be binding on Romania. In that regard, however, the referring courts mentioned national case-law according to which EU law would not take precedence over the Romanian constitutional order and Decision 2006/928 could not constitute a reference provision in the context of a review of constitutionality, since that decision was adopted before Romania's accession to the European Union and had not been interpreted by the Court in terms of whether its content, nature and duration fall within the scope of the Treaty of Accession.

After finding that the legislation governing the organisation of justice in Romania falls within the scope of Decision 2006/928, the Court pointed out that the very existence of effective judicial review, designed to ensure compliance with EU law, is the essence of the value of the rule of law, which is protected by the Treaty on European Union. The Court emphasised next that every Member State must ensure that the bodies which, as 'courts or tribunals', come within its judicial system in the fields covered by EU law meet the requirements of effective judicial protection. Since the national legislation at issue applies to the ordinary courts which are called upon to rule on questions relating to the application or interpretation of EU law, that national legislation must therefore meet those requirements. In that regard, maintaining the independence of the judges in question is essential, in order to protect them from external intervention or pressure, and thus preclude any direct influence but also types of influence which are more indirect and which are liable to have an effect on the decisions of the judges concerned.

Lastly, as regards the rules governing the disciplinary regime for judges, the Court found that the requirement of independence means that the necessary guarantees must be provided in order to prevent that regime being used as a system of political control of the content of judicial decisions. National legislation cannot, therefore, give rise to doubts, in the minds of individuals, that the powers of a judicial body responsible for conducting disciplinary investigations and bringing disciplinary proceedings against judges and prosecutors might be used as an instrument to exert pressure on, or political control over, the activity of those judges and prosecutors.

In the light of those general considerations, the Court held that national legislation is likely to give rise to such doubts where, even temporarily, it has the effect of allowing the government of the Member State concerned to make appointments to the management positions of the body responsible for conducting disciplinary investigations and bringing disciplinary proceedings against judges and prosecutors, by disregarding the ordinary appointment procedure laid down by national law.

- The creation of a special prosecution section with exclusive competence for offences committed by judges

In the light of those same general considerations, the Court examined whether national legislation providing for the creation of a specialised section of the public prosecutor's office with exclusive competence to investigate offences committed by judges and prosecutors is compatible with EU law. The Court clarified that, in order to be compatible with EU law, such legislation must, first, be justified by objective and verifiable requirements relating to the sound administration of justice and, secondly, ensure that that section cannot be used as an instrument of political control over the activity of those judges and prosecutors and that the section exercises its competence in compliance with the requirements of the Charter of Fundamental Rights of the European Union ('the Charter'). If it fails to fulfil those requirements, that legislation could be perceived as seeking to establish an instrument of pressure and intimidation with regard to judges, which would prejudice the trust of individuals in justice. The Court added that the national legislation at issue cannot have the effect of contravening Romania's specific obligations under Decision 2006/928 in the area of the fight against corruption.

It is for the national court to ascertain that the reform which resulted, in Romania, in the creation of a specialised section of the public prosecutor's office responsible for investigating judges and prosecutors and the rules relating to the appointment of prosecutors assigned to that section are not such as to make the section open to external influences. As regards the Charter, it is for the national court to ascertain that the national legislation at issue does not prevent the case of the judges and prosecutors concerned being heard within a reasonable time.

- The State's financial liability and the personal liability of judges for a judicial error

The Court held that national legislation governing the financial liability of the State and the personal liability of judges in respect of the damage caused by a judicial error can be compatible with EU law only in so far as the engagement, in an action for indemnity, of a judge's personal liability for such a judicial error is limited to exceptional cases and is governed by objective and verifiable criteria, arising from requirements relating to the sound administration of justice, and also by guarantees designed to avoid any risk of external pressure on the content of judicial decisions. To that end, clear and precise rules defining the conduct which may give rise to the personal liability of judges are essential, in order to guarantee the independence inherent in their task and to avoid exposing them to the risk that their personal liability may be incurred solely because of their decision. The fact that a decision contains a judicial error cannot, in itself, suffice to render the judge concerned personally liable.

As regards the detailed rules for putting in issue the personal liability of judges, the national legislation must provide clearly and precisely the necessary guarantees ensuring that neither the investigation to determine whether the conditions and

circumstances which may give rise to such liability are satisfied nor the action for indemnity appears capable of being converted into an instrument of pressure on judicial activity. In order to ensure that such detailed rules cannot have a chilling effect on judges in the performance of their duty to adjudicate with complete independence, the authorities empowered to initiate and conduct that investigation and bring that action must themselves be authorities which act objectively and impartially, and the substantive conditions and detailed procedural rules must be such as not to give rise to reasonable doubts concerning the impartiality of those authorities. Similarly, it is important that the rights enshrined in the Charter, in particular the rights of defence of a judge, should be fully respected and that the body with jurisdiction to rule on the personal liability of a judge should be a court. In particular, a finding of judicial error cannot be binding in the action for indemnity brought by the State against the judge concerned when that judge was not heard during the previous proceedings seeking to establish the financial liability of the State.

Judgment of 13 July 2023 (Grand Chamber), YP and Others (Lifting of a judge's immunity and his or her suspension from duties) (C-615/20 and C-671/20, EU:C:2023:562)

(References for a preliminary ruling – Second subparagraph of Article 19(1) TEU – Rule of law – Effective legal protection in the fields covered by Union law – Independence of judges – Primacy of EU law – Article 4(3) TEU – Duty of sincere cooperation – Lifting of a judge's immunity from prosecution and his or her suspension from duties ordered by the Izba Dyscyplinarna (Disciplinary Chamber) of the Sąd Najwyższy (Supreme Court, Poland) – Lack of independence and impartiality on the part of that chamber – Alteration of the composition of the court formation called on to adjudicate on a case which up to that time had been entrusted to that judge – Prohibitions on national courts calling into question the legitimacy of a court, on undermining its functioning or on assessing the legality or effectiveness of the appointment of judges or of their judicial powers, subject to disciplinary penalties – Obligation on the courts concerned and the bodies which have power to designate and modify the composition of court formations to disapply the measures lifting immunity and suspending the judge concerned – Obligation on the same courts and bodies to disapply the national provisions providing for those prohibitions)

Case C-615/20

On the basis of an indictment from the Prokuratura Okręgowa w Warszawie (Warsaw Regional Public Prosecutor's Office, Poland), YP and other defendants were prosecuted before the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland) on the grounds of a series of criminal offences. That case was assigned to a single-judge formation of that court, composed of Judge I.T.

When that case was at a very advanced stage of the proceedings, the Prokuratura Krajowa Wydział Spraw Wewnętrznych (National Public Prosecutor's Office, Internal

Affairs Division, Poland), on 14 February 2020, applied to the Disciplinary Chamber of the Sąd Najwyższy (Supreme Court, Poland) [81] for leave to prosecute Judge I.T. for having, in December 2017, allowed media representatives to record footage and sounds during a hearing and during the delivery of the decision in the case concerned and the oral statement of reasons for it and, in so doing, allegedly disclosed information deriving from the investigation procedure of the Warsaw Regional Public Prosecutor's Office in the case at issue.

By a resolution of 18 November 2020 ('the resolution at issue'), the Disciplinary Chamber authorised the initiation of criminal proceedings against Judge I.T., suspended him from his duties and reduced the amount of his remuneration by 25% for the duration of that suspension.

The referring court, which is the formation of the Warsaw Regional Court hearing the criminal proceedings initiated, inter alia, against YP and on which Judge I.T. sits as a single Judge, noted that the resolution at issue was such as to prevent it from being able to continue those proceedings. In that context, it decided to stay the proceedings to ask the Court of Justice, in essence, about the compatibility with EU law of national provisions which confer on a body, whose independence and impartiality are not guaranteed, jurisdiction to authorise the initiation of criminal proceedings against judges of the ordinary courts and, where such authorisation is issued, to suspend the judges concerned from their duties and to reduce their remuneration during that suspension. Its questions seek, in essence, to determine whether, having regard to the provisions and principles of EU law, [82] the single Judge who comprises that court is still justified in continuing the examination of the case in the main proceedings notwithstanding the resolution at issue, which suspended him from his duties.

Case C-671/20

Another set of criminal proceedings between the Warsaw Regional Public Prosecutor's Office and M.M., who was also charged with various criminal offences, concerned a decision by that public prosecutor's office to order the creation of a compulsory mortgage over a building belonging to M.M. The latter brought an action against that decision before the Warsaw Regional Court, within which court the case linked to that action was initially assigned to Judge I.T.

Following the adoption of the resolution at issue, which, inter alia, suspended Judge I.T. from his duties, the President of the Warsaw Regional Court instructed the President of the Chamber in which Judge I.T. sat to change the composition of the court formation in

[81] The Law on the Supreme Court, of 8 December 2017, established within the Sąd Najwyższy (Supreme Court, Poland), a new disciplinary chamber known as the Izba Dyscyplinarna ('the Disciplinary Chamber'). By a law of 20 December 2019 amending the Law on the Supreme Court, which entered into force in 2020, new powers were conferred on that chamber, in particular to authorise the initiation of criminal proceedings against judges or to place them in provisional detention (Article 27(1)(1a)).

[82] Namely Article 47 of the Charter of Fundamental Rights of the European Union, Article 2 TEU and the second subparagraph of Article 19(1) TEU laying down the principle of the rule of law and the requirements of effective legal protection, and the principles of primacy, sincere cooperation and legal certainty.

the cases which had been assigned to that judge, with the exception of the case in which Judge I.T. had submitted to the Court the request for a preliminary ruling forming the subject of Case C-615/20. Consequently, that Chamber President adopted an order reassigning the cases initially assigned to Judge I.T., including the case relating to M.M.

According to the referring court, namely another single-Judge formation of the Warsaw Regional Court to which that case had been reassigned, those events showed that the President of that court had conceded that the resolution at issue is binding by taking the view that the suspension of Judge I.T. from his duties prevented that case from being examined by that judge or that there was a lasting obstacle to such an examination.

That court raised the issue of whether an act such as the resolution at issue is binding and whether the other court formations designated as a result of the execution of that resolution are legitimate. It stated, moreover, that national provisions adopted in 2019 prohibited it, subject to disciplinary measures, from examining the binding nature of that resolution. Its questions to the Court sought, in essence, to determine whether, having regard to the provisions and principles of EU law, [83] it may, without any risk of disciplinary liability to the single Judge sitting on it, regard the resolution at issue as non-binding, so that it is not justified in adjudicating on the case in the main proceedings which was re-assigned to it following that resolution, and to determine whether that case must therefore be assigned back to the judge initially hearing it.

In its judgment delivered in the Joined Cases, the Court, sitting as the Grand Chamber, referred to the guidance contained in its case-law, [84] in particular in the judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)*. [85] It held, in essence, that the second subparagraph of Article 19(1) TEU precludes national provisions which allow a body such as the Disciplinary Chamber, whose independence and impartiality are not guaranteed, to lift a judge's immunity, to suspend him or her from his or her duties and to reduce his or her remuneration. It also made clear, in the light of the principle of the primacy of EU law and of the principle of sincere cooperation laid down in Article 4(3) TEU, the consequences of such a conclusion for the national court with respect to an act such as the resolution at issue entailing, in breach of the second subparagraph of Article 19(1) TEU, the suspension of a judge sitting as a single Judge from his or her duties, and for the judicial bodies with power to designate and modify the compositions of the formations of that national court.

In the first place, the Court ruled that the second subparagraph of Article 19(1) TEU precludes national provisions which confer on a body, whose independence and impartiality are not guaranteed, jurisdiction to authorise the initiation of criminal

---

83 Namely Article 2 and the second subparagraph of Article 19(1) TEU and the principles of primacy, sincere cooperation and legal certainty.

84 Relating to the lack of independence and impartiality of the Disciplinary Chamber established by the 2017 Law on the Supreme Court, as amended, in the context of the 2019 reform of the Polish judicial system.

85 Judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21, EU:C:2023:442), the factual and legal context of the dispute having been presented under heading II.2, 'Ethics'. That judgment is also presented under headings II.7, 'Disciplinary liability', and II.10, 'Jurisdiction to review the independence of the judiciary'.

proceedings against judges of the ordinary courts and, where such authorisation is issued, to suspend the judges concerned from their duties and to reduce their remuneration during that suspension.

The Court observed in that regard that, since those two references for a preliminary ruling had been made, it had delivered the judgment in *Commission* v *Poland (Independence and private life of judges)* in which it held, inter alia, that by conferring on the Disciplinary Chamber, whose independence and impartiality are not guaranteed, [86] jurisdiction to hear and determine cases having a direct impact on the status of judges and the performance of their office, such as applications for authorisation to initiate criminal proceedings against judges, Poland had failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU. [87]

In the aforementioned judgment, the Court had pointed out that the mere prospect, for judges, of running the risk that authorisation to prosecute them might be sought and obtained from a body whose independence is not guaranteed is liable to affect their own independence and that the same is true of risks that such a body may decide whether to suspend them from their duties and reduce their remuneration. [88]

In the case at issue, the resolution at issue was adopted with regard to Judge I.T., [89] on the basis of national provisions which the Court, in the aforementioned judgment, had held to be contrary to the second subparagraph of Article 19(1) TEU inasmuch as they confer on such a body jurisdiction to adopt acts such as that resolution.

If the authorities of the Member State concerned are under a duty to amend national provisions which have been the subject of a judgment establishing a failure to fulfil obligations to make them conform with the requirements of EU law, the courts of that Member State, for their part, have an obligation to ensure, when performing their duties, that the Court's judgment is complied with, which means, in particular, that those national courts must take account, if need be, of the elements of law contained in that judgment in order to determine the scope of the provisions of EU law which they have the task of applying. Consequently, the referring court in Case C-615/20 is required, in the case in the main proceedings, to draw all the appropriate conclusions from the guidance in the judgment in *Commission* v *Poland (Independence and private life of judges)*.

In the second place, the Court interpreted the second subparagraph of Article 19(1) TEU, the principle of primacy of EU law and the principle of sincere cooperation as meaning:

---

86 In paragraph 102 of the judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21, EU:C:2023:442), cited above, the Court, on the basis of its earlier case-law (paragraph 112 of the judgment of 15 July 2021, *Commission* v *Poland*, *(Disciplinary regime for judges)* (C-791/19, EU:C:2021:596), presented under heading II.7, 'Disciplinary liability')), reiterated its finding that the Disciplinary Chamber does not meet the requirement of independence and impartiality.

87 Judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)*, cited above, operative part 1.

88 Judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)*, cited above, paragraph 101.

89 That is to say, an ordinary court which may be called on to rule, under the second subparagraph of Article 19(1) TEU, on questions linked to the application or interpretation of EU law.

– first, that a formation of a national court, seised of a case and composed of a single Judge – against whom a body, whose independence and impartiality are not guaranteed, has adopted a resolution authorising the initiation of criminal proceedings and ordering that that judge be suspended from his or her duties and that his or her remuneration be reduced – is justified in disapplying such a resolution which precludes the exercise of its jurisdiction in that case, and

– secondly, that the judicial bodies which have power to designate and modify the composition of the formations of that national court must also disapply that resolution which precludes the exercise of that jurisdiction by that court formation.

It observed in that connection that, pursuant to settled case-law, [90] the principle of the primacy of EU law imposes a duty, inter alia, on any national court called upon within the exercise of its jurisdiction to apply provisions of EU law to give full effect to the requirements of EU law in the dispute brought before it by disapplying, as required, of its own motion, any national rule or practice that is contrary to a provision of EU law with direct effect, without it having to request or await the prior setting aside of that national rule or practice by legislative or other constitutional means. Compliance with that obligation constitutes an expression of the principle of sincere cooperation.

The second subparagraph of Article 19(1) TEU, interpreted in the light of Article 47 of the Charter of Fundamental Rights, [91] has direct effect which means that any national provision, case-law or practice contrary to those provisions of EU law, as interpreted by the Court, must be disapplied. [92]

Even in the absence of national legislative measures having brought to an end a failure to fulfil obligations established by the Court, the national courts must take all measures to facilitate the full application of EU law in accordance with the dicta in the judgment establishing that failure to fulfil obligations. They must, moreover, under the principle of sincere cooperation, nullify the unlawful consequences of an infringement of EU law.

To satisfy those obligations, a national court must disapply an act such as the resolution at issue which, in breach of the second subparagraph of Article 19(1) TEU, ordered the suspension of a judge from his or her duties where such a consequence is essential in view of the procedural situation at issue in order to ensure the primacy of EU law. [93]

Lastly, the Court pointed out that, where an act such as the resolution at issue was adopted by a body which does not constitute an independent and impartial tribunal within the meaning of EU law, no consideration relating to the principle of legal certainty

---

90 See, to that effect, judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)* (C-430/21, EU:C:2022:99), paragraph 53 and the case-law cited, and paragraph 55 and the case-law cited, presented under heading II.7, 'Disciplinary liability'.

91 Which imposes on the Member States a clear and precise obligation as to the result to be achieved and which is not subject to any conditions, in particular as regards the independence and impartiality of the courts called upon to interpret and apply EU law and the requirement that those courts must be previously established by law.

92 Judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21, EU:C:2023:442), paragraph 78 and the case-law cited, presented under heading II.7, 'Disciplinary liability'.

93 See, to that effect, judgment of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)* (C-487/19, EU:C:2021:798), paragraphs 159 and 161, presented under headings II.1, 'Appointment', and II.5, 'Transfer'.

or the alleged finality of that resolution can be successfully relied on in order to prevent the referring court and the judicial bodies with power to designate and modify the composition of the formations of the national court from disapplying such a resolution. [94]

The Court observed, in that regard, that the main proceedings in Case C-615/20 had been stayed by the referring court, pending the judgment in the case in question. In that context, the continuation of those proceedings by the judge comprising the single-Judge formation of the referring court, especially at the advanced stage which those particularly complex proceedings had reached, did not appear to be capable of undermining legal certainty. On the contrary, it seemed to be such as to allow the handling of the case in the main proceedings to result in a decision which complies, first, with the requirements arising from the second subparagraph of Article 19(1) TEU and, secondly, with the right of the individuals concerned to a fair trial within a reasonable period.

In those circumstances, the referring court in Case C-615/20 was justified in disapplying the resolution at issue in order to be able to continue the examination of the case in the main proceedings in its existing composition without the judicial bodies with power to designate and modify the composition of the formations of the national court being able to prevent that continued examination.

In the third place, the Court interpreted the second subparagraph of Article 19(1) TEU and the principles of the primacy of EU law and of sincere cooperation in connection with the situation of a formation of a national court, such as the referring court in Case C-671/20, to which a case which hitherto had been assigned to another formation of that national court had been reassigned as a result of an act of the Disciplinary Chamber such as the resolution at issue, in order to determine, in particular, whether that referring court must, in the instant case, disapply that resolution and refrain from continuing to examine that case.

It pointed out in that regard that the obligation for the national courts to disapply a resolution resulting, in breach of the second subparagraph of Article 19(1) TEU, in the suspension of a judge from his or her duties, where that is essential in view of the procedural situation at issue in order to ensure the primacy of EU law, falls, in particular, on the court formation to which the case would have been reassigned on account of such a resolution. That court formation must, as a result, refrain from hearing and determining that case. That obligation also binds the bodies which have power to designate and modify the composition of the formations of that national court and those bodies must, accordingly, assign that case back to the formation which was initially seised of it.

---

[94] See, to that effect, judgment in *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, paragraph 160, cited above.

In the case at issue, no consideration relating to the principle of legal certainty or linked to an alleged finality of that resolution can successfully be relied upon.

The Court observed in that connection that, in Case C-671/20 and unlike in other cases assigned to Judge I.T. – which would also have been reassigned to other court formations in the meantime, but the examination of which would have been continued and even, in some cases, concluded by the adoption of a decision by those new formations – the main proceedings were stayed pending delivery of the judgment at issue. In those circumstances, the resumption of those proceedings by Judge I.T. would appear to be such as to enable those proceedings, notwithstanding the delay caused by the resolution at issue, to result in a decision that complies both with the requirements stemming from the second subparagraph of Article 19(1) TEU and from those stemming from the right of the individual concerned to a fair trial.

Consequently, the Court interpreted the second subparagraph of Article 19(1) TEU and the principles of the primacy of EU law and of sincere cooperation as meaning that:

– first, a formation of a national court, to which a case which hitherto had been assigned to another formation of that court has been reassigned – as a result of a resolution adopted by a body whose independence and impartiality are not guaranteed and which authorised the initiation of criminal proceedings against the single Judge comprising the latter formation and ordered his or her suspension from duties and a reduction in his or her remuneration – and which has decided to suspend the handling of that case pending a decision by the Court on a preliminary ruling, must disapply that resolution and refrain from continuing to examine that case, and,

– secondly, the judicial bodies which have power to designate and modify the composition of the formations of that national court are required, in such a situation, to assign that case back to the formation initially hearing it.

So far as concerns, in the fourth place, the national provisions and the case-law of a constitutional court as mentioned by the referring court in Case C-671/20, [95] which would preclude the latter court from being able to rule on the lack of binding force of an act such as the resolution at issue and, if necessary, from disapplying it, even though it is required to do so having regard to the answers given by the Court to its other questions, the Court observed that the fact that a national court performs the tasks entrusted to it by the Treaties and complies with its obligations thereunder, by giving effect to provisions such as the second subparagraph of Article 19(1) TEU, cannot be prohibited or regarded as a disciplinary offence on the part of judges sitting in such a court. [96]

---

[95] Article 42a(1) and (2) of the Law on the ordinary courts of 27 July 2001, as amended by the Law of 20 December 2019, imposes *inter alia* on those courts prohibitions on calling into question the lawfulness of courts or on assessing the legality of the appointment of a judge or his or her authority to perform judicial tasks. Point 3 of Article 107(1) of that law makes a disciplinary offence, inter alia, any act of judges of the ordinary courts which calls into question the effectiveness of the appointment of a judge.

[96] See, to that effect, judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21, EU:C:2023:442), paragraph 132, presented under heading II.7, 'Disciplinary liability'.

Likewise, in the light of the direct effect of the second subparagraph of Article 19(1) TEU, the principle of the primacy of EU law requires national courts to disapply any national case-law contrary to that provision of EU law as interpreted by the Court. Thus, in the event that, following judgments delivered by the Court, a national court finds that the case-law of a constitutional court is contrary to EU law, the fact that such a national court disapplies that constitutional case-law, in accordance with the principle of the primacy of EU law, cannot give rise to its disciplinary liability. [97]

Consequently, the second subparagraph of Article 19(1) TEU and the principles of the primacy of EU law and of sincere cooperation must be interpreted as precluding:

– first, national provisions which prohibit a national court, subject to disciplinary sanctions being imposed on the judges who comprise that court, from examining whether an act adopted by a body whose independence and impartiality are not guaranteed and which has authorised the initiation of criminal proceedings against a judge and ordered his or her suspension from duties and a reduction in his or her remuneration is binding and, if necessary, from disapplying that act, and,

– secondly, case-law of a constitutional court under which the acts appointing judges cannot be the subject of judicial review, inasmuch as that case-law is liable to preclude that examination.

9. Irremovability of judges and retirement age

Judgment of 24 June 2019 (Grand Chamber), Commission v Poland (Independence of the Supreme Court) (C-619/18, EU:C:2019:531)

(Failure of a Member State to fulfil obligations – Second subparagraph of Article 19(1) TEU – Rule of law – Effective judicial protection in the fields covered by Union law – Principles of the irremovability of judges and judicial independence – Lowering of the retirement age of Supreme Court judges – Application to judges in post – Possibility of continuing to carry out the duties of judge beyond that age subject to obtaining authorisation granted by discretionary decision of the President of the Republic)

In its judgment, the Court, sitting as the Grand Chamber, upheld the action for failure to fulfil obligations brought by the Commission against the Republic of Poland and seeking a declaration that, first, by providing that the measure consisting in lowering the retirement age of judges of the Sąd Najwyższy (Supreme Court) is to apply to judges in post who had been appointed to that court before 3 April 2018 and, secondly, by granting the President of the Republic discretion to extend the period of judicial activity

[97] See, to that effect, judgment in *Commission* v *Poland (Independence and private life of judges)* (C-204/21, EU:C:2023:442), paragraph 132, cited above.

of judges of that court beyond the newly fixed retirement age, that Member State had failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU.

The Commission had argued that, by those measures, the Republic of Poland had infringed the principle of judicial independence and, in particular, the principle of the irremovability of judges, and had thus failed to comply with the Member States' obligations resulting from the aforementioned provision.

In its judgment, the Court, in the first place, ruled on the applicability and scope of the second subparagraph of Article 19(1) TEU. In that respect, it observed that that provision requires all Member States to provide remedies that are sufficient to ensure effective legal protection, within the meaning in particular of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), in the fields covered by EU law. More specifically, every Member State must, under the second subparagraph of Article 19(1) TEU, ensure that the bodies which, as 'courts or tribunals' within the meaning of EU law, come within its judicial system in the fields covered by EU law and which, therefore, may be called upon to rule on questions concerning the application or interpretation of that law, meet the requirements of effective judicial protection, which in the case in point applies to the Polish Supreme Court. Furthermore, the Court stated that, in order to ensure that that court is in a position to offer such protection, maintenance of its independence is essential, as confirmed by the second paragraph of Article 47 of the Charter. The requirement that courts be independent, which is inherent in the task of adjudication, forms part of the essence of the right to effective judicial protection and the fundamental right to a fair trial, 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.

In the second place, the Court clarified the scope of that requirement. In that regard, it stated that the guarantees of independence and impartiality which arise from it require rules, particularly as regards the composition of the bodies concerned, the appointment, length of service and grounds for abstention, rejection and dismissal of the members of which they consist, which are such as to dispel any reasonable doubt in the minds of individuals as to the imperviousness of those bodies to external factors and their neutrality with respect to the interests before them. In particular, that freedom of the judges from all external intervention or pressure, which is essential, requires certain guarantees appropriate for protecting the individuals who have the task of adjudicating in a dispute, such as guarantees against removal from office. That principle of irremovability requires, among other things, that judges can remain in post provided that they have not reached the obligatory retirement age or until the expiry of their mandate, where that mandate is for a fixed term. While it is not wholly absolute, there can be no exceptions to that principle unless they are warranted by legitimate and compelling grounds, subject to the principle of proportionality. In the case in question, the Court found that the reform being challenged results in judges in post within the

Supreme Court prematurely ceasing to carry out their judicial functions and that it can therefore be acceptable only if it is justified by a legitimate objective, if it is proportionate in the light of that objective and inasmuch as it is not such as to give rise, in the minds of individuals, to reasonable doubts such as those mentioned above. However, the Court held that the application of the measure lowering the retirement age of Supreme Court judges to the judges in post within that court did not meet those conditions because, in particular, it is not justified by a legitimate objective. Accordingly, the Court ruled that that application undermined the principle of the irremovability of judges, which is essential to their independence.

Finally, the Court ruled on the discretion, granted by the New Law on the Supreme Court to the President of the Republic, to extend the period of judicial activity of judges of that court beyond the new retirement age fixed in that law. The Court stated that, although it is for the Member States alone to decide whether or not they will authorise such an extension, the fact remains that, where those Member States choose such a mechanism, they are required to ensure that the conditions and procedure to which such an extension is subject are not such as to undermine the principle of judicial independence. In that connection, the fact that an organ of the State such as the President of the Republic is entrusted with the power to decide whether or not to grant an extension is admittedly not sufficient in itself to conclude that that principle has been undermined. However, it is important to be satisfied that the substantive conditions and detailed procedural rules governing the adoption of those decisions are such that they cannot give rise to reasonable doubts, in the minds of individuals, as to the independence of the judges concerned. To that end, it is necessary, in particular, that those conditions and procedural rules should be designed in such a way that those judges are protected from potential temptations to give in to external intervention or pressure that is liable to jeopardise their independence. Such procedural rules must thus, in particular, make it possible to preclude not only any direct influence, in the form of instructions, but also types of more indirect influence which are liable to have an effect on the decisions of the judges concerned. As regards the new Law on the Supreme Court, the Court stated that that law provides that the extension of the period of judicial activity of the judges of that court is now subject to a decision of the President of the Republic, which is discretionary, for which reasons need not be stated and which cannot be challenged in judicial proceedings. As regards the intervention, provided for by that law, of the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland) before the President of the Republic takes a decision, the Court noted that the intervention of such a body, in the context of a procedure for extending the period during which a judge carries out his or her duties beyond the normal retirement age, may, admittedly, be such, in principle, as to contribute to making that procedure more objective. However, that will be the case only in so far as certain conditions are satisfied, in particular in so far as that body is itself independent of the legislative and executive authorities and independent of the authority to which it is required to deliver its opinion, and in so far as that opinion is delivered on the basis of objective and relevant criteria and is properly reasoned, such

as to be appropriate for the purposes of providing objective information upon which that authority can take its decision. In the case in point, the Court considered it sufficient to state that in the light of, inter alia, their failure to state reasons, the opinions delivered by the National Council of the Judiciary are not such as to be apt to provide objective clarification in regard to the exercise of the power conferred on the President of the Republic by the new Law on the Supreme Court, with the result that that power is capable of giving rise to reasonable doubts, particularly in the minds of individuals, as to the imperviousness of the judges concerned to external factors and as to their neutrality with respect to any interests before them.

Judgment of 5 November 2019 (Grand Chamber), Commission v Poland (Independence of ordinary courts) (C-192/18, EU:C:2019:924)

(Failure of a Member State to fulfil obligations – Second subparagraph of Article 19(1) TEU – Rule of law – Effective judicial protection in the fields covered by EU law – Principles of the irremovability of judges and judicial independence – Lowering of the retirement age of judges of the ordinary Polish courts – Possibility of continuing to carry out the duties of judge beyond the newly set age, by authorisation of the Minister for Justice – Article 157 TFEU – Directive 2006/54/EC – Articles 5(a) and 9(1)(f) – Prohibition of discrimination based on sex in matters of pay, employment and occupation – Establishment of different retirement ages for men and women holding the position of judge of the ordinary Polish courts or of the Sąd Najwyższy (Supreme Court, Poland) or that of public prosecutor in Poland)

In its judgment, the Court, sitting as the Grand Chamber, upheld the action for failure to fulfil obligations brought by the Commission against the Republic of Poland and held that that Member State had failed to fulfil its obligations under EU law, first, by establishing a different retirement age for male and female judges and public prosecutors in Poland and, secondly, by lowering the retirement age of judges of the ordinary courts while conferring on the Minister for Justice the power to extend the period of service of those judges.

A Polish law of 12 July 2017 lowered the retirement age of judges of the ordinary courts and public prosecutors, and the age for early retirement of judges of the Sąd Najwyższy (Supreme Court), to 60 years for women and 65 years for men, whereas those ages were previously set at 67 years for both sexes. In addition, that law conferred on the Minister for Justice the power to extend the period of active service of judges of the ordinary courts beyond the new retirement ages thus set, which differ according to sex. Since the Commission took the view that those rules were contrary to EU law, [98] it brought an action for failure to fulfil obligations before the Court.

[98] Article 157 TFEU, Article 5(a) and Article 9(1)(f) of Directive 2006/54, and the second subparagraph of Article 19(1) TEU, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union.

In the first place, the Court ruled on the differences thus introduced by that law so far as concerns the retirement ages applying respectively to female judges and public prosecutors and to male judges and public prosecutors. In that regard, it pointed out, first of all, that the retirement pensions to which those judges and public prosecutors are entitled fall within Article 157 TFEU, under which each Member State is to ensure that the principle of equal pay for men and women for equal work is applied. The pension schemes at issue also fall within the scope of the provisions of Directive 2006/54 that are devoted to equal treatment in occupational social security schemes. Next, the Court held that that law introduced directly discriminatory conditions based on sex, in particular as regards the time when the persons concerned may have actual access to the advantages provided for by the pension schemes concerned. Finally, it rejected the Republic of Poland's argument that the differences thus laid down between female judges and public prosecutors and male judges and public prosecutors regarding the age at which they have access to a retirement pension constitute a measure of positive discrimination. Those differences do not offset the disadvantages to which the careers of female public servants are exposed by helping them in their professional life and by providing a remedy for the problems which they may encounter in the course of their career. The Court accordingly concluded that the legislation at issue infringed Article 157 TFEU and Directive 2006/54.

In the second place, the Court examined the measure consisting in conferring upon the Minister for Justice the power to decide whether or not to authorise judges of the ordinary courts to continue to carry out their duties beyond the new retirement age, as lowered. In the light, in particular, of the judgment of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)*, [99] it first of all adopted a position on the applicability and scope of the second subparagraph of Article 19(1) TEU, which obliges the Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law. It stated that the ordinary Polish courts may be called upon to rule on questions connected with EU law, and they must therefore meet the requirements inherent in such protection. In order to ensure that they are in a position to offer that protection, maintaining their independence is essential.

In accordance with settled case-law, such independence requires that the court concerned exercise its functions wholly autonomously and in an impartial manner. In that regard, the Court observed that the fact that an organ, such as the Minister for Justice, is entrusted with the power to decide whether or not to grant an extension to the period of judicial activity beyond the normal retirement age is, admittedly, not sufficient in itself to conclude that the principle of independence has been undermined. However, it found that the substantive conditions and detailed procedural rules governing that decision-making power are, in the case in point, such as to give rise to reasonable doubts as to the imperviousness of the judges concerned to external factors

[99] Judgment of the Court of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)* (C-619/18, EU:C:2019:531), presented under this heading.

and as to their neutrality. First, the criteria on the basis of which the Minister is called upon to adopt his decision are too vague and unverifiable, and that decision does not need to state reasons and cannot be challenged in court proceedings. Secondly, the length of the period for which the judges are liable to continue to wait for the decision of the Minister falls within the latter's discretion.

Furthermore, in accordance with equally established case-law, the necessary imperviousness of judges to all external intervention or pressure requires certain guarantees appropriate for protecting the individuals who have the task of adjudicating in a dispute, such as guarantees against removal from office. That principle of irremovability requires, among other things, that judges can remain in post provided that they have not reached the obligatory retirement age or until the expiry of their mandate, where that mandate is for a fixed term. While it is not wholly absolute, there can be no exceptions to that principle unless they are warranted by legitimate and compelling grounds, subject to the principle of proportionality. In the case in point, the combination of the measure lowering the normal retirement age of judges of the ordinary courts and of the measure consisting in conferring upon the Minister for Justice the discretion to authorise them to continue to carry out their duties beyond the new retirement age thus set, for 10 years in the case of female judges and 5 years in the case of male judges, fails to comply with the principle of irremovability. That combination of measures is such as to create, in the minds of individuals, reasonable doubts regarding the fact that the new system might actually have been intended to enable the Minister to remove, once the newly set normal retirement age was reached, certain groups of judges while retaining other judges in post. Furthermore, as the Minister's decision is not subject to any time limit and the judge concerned remains in post until the decision is adopted, any decision of the Minister in the negative may be adopted after the person concerned has been retained in post beyond the new retirement age.

10. Jurisdiction to review the independence of the judiciary

Judgment of 5 June 2023 (Grand Chamber), Commission v Poland (Independence and private life of judges) (C-204/21,* EU:C:2023:442*)

(Failure of a Member State to fulfil obligations – Second subparagraph of Article 19(1) TEU – Article 47 of the Charter of Fundamental Rights of the European Union – Rule of law – Effective legal protection in the fields covered by EU law – Independence of judges – Article 267 TFEU – Possibility of making a reference to the Court for a preliminary ruling – Primacy of EU law – Jurisdiction in relation to the lifting of the immunity from criminal prosecution of judges and in the field of employment law, social security and retirement of judges of the Sąd Najwyższy (Supreme Court, Poland) conferred on the Disciplinary Chamber of that court – National courts prohibited from calling into question the legitimacy of the constitutional courts and bodies or from establishing or assessing the lawfulness of the appointment of judges or their judicial powers –

Verification by a judge of compliance with certain requirements relating to the existence of an independent and impartial tribunal previously established by law classified as a 'disciplinary offence' – Exclusive jurisdiction to examine questions relating to the lack of independence of a court or judge conferred on the Extraordinary Review and Public Affairs Chamber of the Sąd Najwyższy (Supreme Court) – Articles 7 and 8 of the Charter of Fundamental Rights – Rights to privacy and the protection of personal data – Regulation (EU) 2016/679 – Article 6(1), first subparagraph, points (c) and (e), and Article 6(3), second subparagraph – Article 9(1) – Sensitive data – National legislation requiring judges to make a declaration as to whether they belong to associations, foundations or political parties, and to the positions held within those associations, foundations or political parties, and providing for the placing online of the data contained in those declarations)

In the judgment, the factual and legal context of which has been set out above, [100] the Court ruled that, by conferring on the Extraordinary Review and Public Affairs Chamber of the Sąd Najwyższy (Supreme Court, Poland) exclusive jurisdiction to examine complaints and questions of law concerning the lack of independence of a court or a judge, [101] Poland had failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU, read in conjunction with Article 47 of the Charter, and under Article 267 TFEU and the principle of primacy of EU law.

In that regard, the Court stated that the reorganisation and centralisation of jurisdiction at issue related to certain constitutional and procedural requirements arising from the second subparagraph of Article 19(1) TEU and Article 47 of the Charter, compliance with which must be guaranteed across all the substantive areas of application of EU law and before all national courts seised of cases falling within those areas. In that regard, those provisions are closely linked to the principle of the primacy of EU law, the implementation of which by national courts contributes to ensuring the effective protection of the rights which EU law confers on individuals.

In that context, in so far as, in particular, any national court called upon to apply EU law is obliged to check whether, as composed, it constitutes an independent and impartial tribunal established by law, where serious doubt appears on that point, and since such courts must also, in certain circumstances, be able to verify whether an irregularity vitiating the procedure for the appointment of a judge could lead to an infringement of the fundamental right to such a tribunal, the review, by national courts, of compliance with those requirements is precluded from falling, in a general and indiscriminate manner, within the jurisdiction of a single national body, all the more so if that body cannot, under national law, examine certain aspects inherent in those requirements. In the case at issue, the Court found that the purpose of the national provisions at issue is to reserve to a single body the overall review of the requirements relating to the

[100] With regard to the factual and legal context of the dispute, see heading II.2, 'Ethics'. The judgment is also presented under heading II.7, 'Disciplinary liability'.

[101] Article 26(2) and (4) to (6) and Article 82(2) to (5) of the amended Law on the Supreme Court and Article 10 of the Law amending the Law on the Supreme Court.

independence of all courts and judges, of both the judicial and administrative order, by depriving of their powers, in that regard, the national courts which previously had jurisdiction to carry out the various types of review required by EU law and to apply the case-law of the Court. It again emphasised the particular context of the reorganisation of judicial powers at issue carried out by the amending law, which is characterised by the fact that the Polish judges are, moreover, prevented from making certain findings and assessments which they are required to make under EU law.

The Court concluded that the conferral on a single national body of the power to verify compliance with the fundamental right to effective judicial protection, where the need for such verification may arise before any national court, is, combined with the introduction of various prohibitions and disciplinary offences, liable to weaken the effectiveness of the review of observance of that fundamental right. By thus preventing the other courts without distinction from doing what is necessary in order to ensure the observance of the right of individuals to effective judicial protection by disapplying, where appropriate, national rules contrary to the requirements of EU law, the national provisions at issue also infringe the principle of the primacy of EU law. Furthermore, since the very fact of conferring exclusive jurisdiction on the Extraordinary Review and Public Affairs Chamber of the Supreme Court to settle certain questions relating to the application of the second subparagraph of Article 19(1) TEU and Article 47 of the Charter is such as to prevent or discourage other courts from making a reference to the Court for a preliminary ruling, the national provisions at issue also infringe Article 267 TFEU.

III. Independence of the decision-making process in proceedings for the application of EU law

Judgment of 11 July 2024 (Grand Chamber), Hann-Invest and Others (C-554/21, C-622/21 and C-727/21,* EU:C:2024:594*)

(References for a preliminary ruling – Second subparagraph of Article 19(1) TEU – Effective legal protection in the fields covered by Union law – Independence of the judiciary – Tribunal previously established by law – Fair hearing – Case-law Registration Service – National legislation providing for a registrations judge to be established in courts of second instance having, in practice, the power to stay the delivery of a judgment, to give instructions to judicial panels and to request that a section meeting be convened – National legislation providing for the power, for meetings of a section or of all judges of a court, to put forward binding 'legal positions', including for cases which have already been deliberated)

The Grand Chamber of the Court of Justice found that a mechanism internal to a national court providing for the intervention, in the decision-making process of the

judicial panel responsible for a case, of other judges of the court concerned in order to ensure the consistency of its case-law, is incompatible with the requirements inherent in the right to effective legal protection and to a fair hearing.

Questions were referred to the Court on that issue by the Visoki trgovački sud (Commercial Court of Appeal, Croatia), before which three appeals had been brought against orders issued in insolvency proceedings. The referring court, sitting as judicial panels of three judges, examined those three appeals and dismissed them unanimously, thereby upholding the judgments delivered at first instance. The judges of that court signed their judgments and subsequently forwarded them to the Case-law Registration Service. [102]

However, the judge from that registration service ('the registrations judge') refused to register those three judicial decisions and referred them back to the respective judicial panels, together with a letter stating that he was not in agreement with the approaches adopted. In two of those cases (C-554/21 and C-622/21), the registrations judge referred to other decisions of the referring court adopting different approaches from those adopted in the cases in the main proceedings. In the third case (C-727/21), he stated that he was not in agreement with the legal interpretation adopted by the judicial panel, but did not make reference to any other judicial decision.

Thereafter, in Case C-727/21, the judicial panel met to begin fresh deliberations. After reviewing the appeal and the opinion of the registrations judge, it decided not to alter the outcome arrived at previously. It therefore issued a new judicial decision and forwarded it to the Registration Service.

Favouring a different legal approach, the registrations judge transmitted that case in the main proceedings to the referring court's Section for Commercial Litigation and Other Disputes. That section then adopted a 'legal position' in which it accepted the outcome favoured by the registrations judge. The same case in the main proceedings was then referred back to the judicial panel concerned for it to give a ruling in accordance with that 'legal position'.

Harbouring doubts as to the compliance with EU law of a mechanism providing for the intervention, in its decision-making process, of the registrations judge and other judges of a court adopting 'legal positions', the referring court decided to make a reference to the Court of Justice for a preliminary ruling.

The Court stated, first of all, that any national measure or practice intended to avoid or resolve conflicts in case-law, and thus to ensure the legal certainty inherent in the principle of the rule of law, must comply with the requirements stemming from the second subparagraph of Article 19(1) TEU.

---

[102] Pursuant to Article 177(3) of the Sudski poslovnik (Rules of Procedure of the Courts), which states: 'A case before a court of second instance shall be deemed to be closed on the date on which the decision is sent from the office of the judge concerned, after the case has been returned by the Registration Service. The Registration Service shall be required to return the case file to the office of that judge as promptly as possible after receipt thereof. That decision shall then be notified within a further period of eight days.'

In the first place, it examined, in the light of those requirements, the practice according to which the judicial decision adopted by the judicial panel responsible for the case may be regarded as final and sent to the parties only if its content has been approved by a registrations judge who does not form part of that judicial panel.

In that regard, it pointed out that, while the registrations judge cannot substitute his or her own assessment for that of the judicial panel responsible for the case, he or she can, in fact, block registration of the judicial decision adopted and thus hinder the completion of the decision-making process and the notification of that decision to the parties. He or she is thus able to refer the case back to that judicial panel for a re-examination of that decision in the light of his or her own legal observations and, if he or she continues to be in disagreement with that judicial panel, invite the president of the relevant section to convene a section meeting for the purpose of adopting a 'legal position', which will be binding, inter alia, on that judicial panel. The effect of such a practice is to allow the registrations judge to intervene in the case in question, and that intervention may lead to that judge influencing the final outcome in that case.

However, first, the national legislation at issue in the main proceedings does not appear to make provision for such intervention of the registrations judge. Secondly, that intervention occurs after the judicial panel to which the case concerned has been assigned has, following its deliberations, adopted its judicial decision, even though that judge is not a member of that judicial panel and did not therefore participate in the earlier stages of the proceedings which led to that decision being taken. Thirdly, the power of the registrations judge to intervene does not even appear to be circumscribed by clearly stated objective criteria which reflect a specific justification and are capable of preventing the exercise of discretion.

In view of those circumstances, the Court found that the registrations judge's intervention is incompatible with the requirements inherent in the right to effective judicial protection.

In the second place, the Court examined the national legislation which allows a section meeting of a national court to compel, by putting forward a 'legal position', the judicial panel responsible for the case to alter the content of the judicial decision which it had previously adopted, even though that section meeting also includes judges other than those of that judicial panel and, as the case may be, persons outside of the court concerned before whom the parties do not have the opportunity to put forward their arguments.

In that regard, it stated that intervention in the form of the section meeting in fact allows a group of judges participating in that section meeting to intervene in the final resolution of a case that has previously been deliberated and decided upon by the judicial panel having jurisdiction but that has not yet been registered and sent. The prospect that, in the event that that judicial panel maintains a legal view that is contrary to that of the registrations judge, its judicial decision will be subject to review by a

section meeting, and the obligation on that judicial panel to respect, after deliberations which have concluded, the 'legal position' set out by that section meeting, are likely to influence the final content of that decision.

First, it is not apparent that the power of the section meeting to intervene at issue in the main proceedings is sufficiently circumscribed by objective criteria that are applied as such. In particular, it is not apparent from the provision governing the convening of a section meeting [103] that that meeting may be convened, as in Case C-727/21, simply on the ground that the registrations judge did not share the legal view of the judicial panel having jurisdiction. Secondly, the convening of a section meeting and the formulation by that section meeting of a 'legal position' that is binding, inter alia, on the judicial panel responsible for that case, are not at any stage brought to the attention of the parties. The parties do not therefore seem to have the possibility of exercising their procedural rights before such a section meeting.

In the light of the foregoing, the Court found that the national legislation at issue is incompatible with the requirements inherent in the right to effective judicial protection and to a fair hearing.

The Court went on to state that, in order to avoid or resolve conflicts in case-law and thus to ensure the legal certainty inherent in the principle of the rule of law, a procedural mechanism which allows a judge of a national court, who is not a member of the judicial panel with jurisdiction, to refer a case to a panel of that court sitting in extended composition is not contrary to the requirements stemming from the second subparagraph of Article 19(1) TEU, provided that the case has not yet been deliberated by the judicial panel initially designated, that the circumstances in which such a referral may be made are clearly set out in the applicable legislation and that the referral does not deprive the persons concerned of the possibility of participating in the proceedings before the panel sitting in extended composition. In addition, the judicial panel initially designated can always decide to make such a referral.

IV. Independence of national courts and tribunals in fields relating to the area of freedom, security and justice

In its case-law on the area of freedom, security and justice, the Court has had the opportunity, on several occasions, to interpret the criteria established regarding the requirement that a 'court or tribunal' be independent.

[103] Article 40(1) of the Zakon o sudovima (Law on judicial bodies) provides that a section meeting or a meeting of judges shall be convened where it is found that there are differences in interpretation between sections, chambers or judges regarding questions relating to the application of the law or where a chamber or a judge of a section departs from the legal position previously adopted.

In particular, that case-law has been handed down in the field of judicial cooperation in civil matters, as regards the concept of 'court or tribunal' for the purposes of the recognition and enforcement of judgments.

In criminal matters, the Court has in particular examined the scope of the concept of 'judicial authority' in the event of a refusal to execute a European arrest warrant on the ground of a real risk of breach of the fundamental right to an independent tribunal in the issuing Member State.

1. Judicial cooperation in civil matters

Judgments of 9 March 2017 (Second Chamber), Zulfikarpašić (C-484/15, EU:C:2017:199), and Pula Parking (C-551/15, EU:C:2017:193)

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EU) No 1215/2012 – Temporal and material scope – Civil and commercial matters – Enforcement proceedings relating to the recovery of an unpaid public parking debt – Included – Concept of 'court' – Notary who has issued a writ of execution based on an 'authentic document')

Facts in Case C-484/15

Mr Ibrica Zulfikarpašić is a Croatian lawyer who brought an application for enforcement before a notary against one of his clients, Mr Slaven Gajer, on the ground that the latter had failed to pay for legal services provided to him. On the basis of that application, the notary issued a writ of execution which, in the absence of any opposition on the part of the client, became definitive.

Mr Zulfikarpašić then applied to a notary, pursuant to the Regulation on the European Enforcement Order, [104] for certification of that writ of execution as a European Enforcement Order. According to that regulation, judgments of 'courts' on uncontested claims may be certified as European Enforcement Orders, which must be recognised and enforced in all Member States.

The notary, however, refused to certify the writ on the ground that the claim at issue was not uncontested within the meaning of the regulation. In accordance with Croatian law, he referred the case to the Općinski sud u Novom Zagrebu – Stalna služba u Samoboru (Municipal Court of New Zagreb – Samobor Permanent Service, Croatia). That court asked the Court of Justice whether the concept of a 'court' used in the regulation also includes notaries in Croatia (first part of the question referred) and whether a European Enforcement Order may be issued on the basis of such a writ of execution (second and third parts of the question referred).

Facts in Case C-551/15

[104] Regulation No 805/2004.

Pula Parking, a company owned by the town of Pula (Croatia) carries out the administration of the public pay-parking spaces in that town. That company was seeking from Mr Sven Klaus Tederahn, who was domiciled in Germany, the payment of a parking ticket which it had issued to him. On the basis of accounting documents demonstrating the existence of a debt connected to the amount indicated on that ticket, a notary had issued a writ of execution against Mr Tederahn.

However, following an appeal lodged by Mr Tederahn against that writ, the case was referred to the Općinski sud u Puli-Pola (Municipal Court of Pula, Croatia). That court, in essence, asked the Court of Justice whether such enforcement proceedings come within the scope of the Regulation on the recognition and enforcement of judgments in civil and commercial matters [105] (the first question referred) and whether notaries in Croatia, acting in the context of enforcement proceedings on the basis of an 'authentic document', come within the concept of a 'court' for the purposes of that regulation (second question referred).

With regard to the classification of notaries in Croatia as 'courts' for the purposes of the aforementioned regulations, the Court stated that compliance with the principle of mutual trust between Member States in the area of judicial cooperation in civil matters requires that judgments of national authorities of a Member State, the enforcement of which is sought in another Member State, must be delivered in court proceedings which offer guarantees of independence and impartiality and respect the principle of *audi alteram partem*. In that regard, however, the Court found that the procedure under which notaries in Croatia issue a writ of execution on the basis of an 'authentic document', such as the invoice issued by Mr Zulfikarpašić to his client or the accounting records presented by Pula Parking, is not *inter partes*.

First, the request of the creditor seeking the issuing of such a writ is not communicated to the debtor and, secondly, the writ itself is served on the debtor only after it has been adopted. Consequently, in Croatia, notaries acting within the scope of the powers conferred on them by national law in enforcement proceedings on the basis of an 'authentic document' cannot come within the concept of a 'court' within the meaning of the two regulations mentioned above.

[105] Regulation No 1215/2012.

2. Judicial cooperation in criminal matters

2.1. European arrest warrant

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

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Police and judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Article 1(3) – Surrender procedures between Member States – Conditions for execution – Charter of Fundamental Rights of the European Union – Article 47 – Right of access to an independent and impartial tribunal)

LM, a Polish national, was the subject of three European arrest warrants issued by Polish courts for the purpose of prosecuting him for trafficking in narcotic drugs. After being arrested in Ireland on 5 May 2017 he did not consent to his surrender to the Polish authorities, on the ground that, on account of the reforms of the Polish system of justice, he ran a real risk of not receiving a fair trial in Poland.

The Court of Justice held in its judgment in *Aranyosi and Căldăraru* [106] that, where the executing judicial authority finds that there exists, for the individual who is the subject of a European arrest warrant, a real risk of inhuman or degrading treatment within the meaning of the Charter of Fundamental Rights of the European Union ('the Charter'), the execution of that warrant must be postponed. However, such postponement is possible only after a two-stage examination. First, the executing judicial authority must find that there is a real risk of inhuman or degrading treatment in the issuing Member State on account, inter alia, of systemic deficiencies. Secondly, that authority must ascertain that there are substantial grounds for believing that the individual concerned by the European arrest warrant will be exposed to such a risk. The existence of systemic deficiencies does not necessarily imply that, in a specific case, the individual concerned will be subject to inhuman or degrading treatment in the event that he is surrendered.

In the case at issue, the High Court (Ireland) asked the Court of Justice whether the executing judicial authority, when dealing with an application for surrender liable to lead to a breach of the requested person's fundamental right to a fair trial, must, in accordance with the judgment in *Aranyosi and Căldăraru*, find, first, that there is a real risk of breach of that fundamental right on account of deficiencies in the Polish system of justice and, secondly, that the person concerned is exposed to such a risk, or whether it is sufficient for it to find that there are deficiencies in the Polish system of justice, without having to assess whether the individual concerned is actually exposed to them. The High Court also asked the Court of Justice what information and guarantees it must,

[106] Judgment of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198).

as the case may be, obtain from the issuing judicial authority in order to discount that risk.

Those questions fall within the context of the changes made by the Polish Government to the system of justice, 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, [107] that there is a clear risk of a serious breach by Poland of the rule of law. [108]

In its judgment, the Court observed first of all that refusal to execute a European arrest warrant is an exception to the principle of mutual recognition underlying the European arrest warrant mechanism and that that exception must accordingly be interpreted strictly.

The Court then held that the existence of a real risk that the person in respect of whom a European arrest warrant has been issued will suffer a breach of his fundamental right to an independent tribunal and, therefore, of the essence of his fundamental right to a fair trial is capable of permitting the executing judicial authority to refrain, by way of exception, from giving effect to the European arrest warrant. In that connection, the Court pointed out that maintaining the independence of judicial authorities is essential in order to ensure the effective judicial protection of individuals, including in the context of the European arrest warrant mechanism.

It follows that, where the person in respect of whom a European arrest warrant has been issued pleads, in order to oppose his surrender to the issuing judicial authority, that there are systemic or generalised deficiencies, which, according to him, are liable to affect the independence of the judiciary in the issuing Member State and his fundamental right to a fair trial, the executing judicial authority must, as a first step, assess, on the basis of material that is objective, reliable, specific and properly updated, whether there is a real risk, connected with a lack of independence of the courts of the issuing Member State on account of deficiencies of that kind, of such a right being breached in the issuing Member State.

The Court considered that information in a reasoned proposal recently addressed by the Commission to the Council on the basis of Article 7(1) TEU was particularly relevant for the purposes of that assessment.

Also, the Court pointed out that the requirement that courts be independent and impartial has two aspects. Thus, it is necessary for the bodies concerned (i) to exercise their functions wholly autonomously, shielded from external interventions or pressure, and (ii) to be impartial, which entails maintaining an equal distance from the parties to the proceedings and their respective interests. According to the Court, those guarantees

---

[107] Article 7(1) TEU provides: 'On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2.'

[108] Proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law of 20 December 2017, (COM(2017) 835 final.

of independence and impartiality require rules, particularly as regards the composition of courts and the appointment, length of service and grounds for abstention, rejection and dismissal of their members. The requirement of independence also means that the disciplinary regime governing their members must display the necessary guarantees in order to prevent any risk of that regime being used as a system of political control of the content of judicial decisions.

If the executing judicial authority considers, having regard to those requirements of independence and impartiality, that there is, in the issuing Member State, a real risk of breach of the fundamental right to a fair trial, it must, as a second step, assess specifically and precisely whether, in the particular circumstances of the case, there are substantial grounds for believing that, following his surrender, the requested person will run that risk. That specific assessment is also necessary where, as in the case at issue, the issuing Member State has been the subject of a reasoned proposal of the Commission seeking a determination by the Council that there is a clear risk of a serious breach by that Member State of the values referred to in Article 2 TEU [109] and the executing judicial authority considers that it possesses material showing that there are systemic deficiencies in the light of those values.

In order to determine whether the requested person will run a real risk, the executing judicial authority must examine to what extent the systemic or generalised deficiencies are liable to have an impact at the level of the courts with jurisdiction over the requested person's case. If that examination shows that those deficiencies are liable to affect the courts concerned, the executing judicial authority must then assess whether, having regard to his personal situation, as well as to the nature of the offence for which he is being prosecuted and the factual context that form the basis of the European arrest warrant, there are substantial grounds for believing that the individual concerned will run a real risk of breach of his fundamental right to an independent tribunal and, therefore, of the essence of his fundamental right to a fair trial.

Furthermore, the executing judicial authority must request from the issuing judicial authority any supplementary information that it considers necessary for assessing whether there is such a risk. In that context, the issuing judicial authority may provide any objective material on any changes to the conditions for protecting the guarantee of judicial independence, material which may rule out the existence of that risk for the individual concerned.

If, after examining all those matters, the executing judicial authority considers that there is a real risk that the individual concerned will suffer in the issuing Member State a breach of his fundamental right to an independent tribunal and, therefore, of the

[109] Article 2 TEU provides: 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'

essence of his fundamental right to a fair trial, it must refrain from giving effect to the European arrest warrant relating to him.

Judgment of 17 December 2020 (Grand Chamber), Openbaar Ministerie (Independence of the issuing judicial authority) (C-354/20 PPU and C-412/20 PPU, EU:C:2020:1033)

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Police and judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Article 1(3) – Article 6(1) – Surrender procedures between Member States – Conditions for execution – Charter of Fundamental Rights of the European Union – Second paragraph of Article 47 – Right of access to an independent and impartial tribunal – Systemic or generalised deficiencies – Concept of 'issuing judicial authority' – Taking into consideration of developments after the European arrest warrant concerned has been issued – Obligation of the executing judicial authority to determine specifically and precisely whether there are substantial grounds for believing that the person concerned will run a real risk of breach of his or her right to a fair trial if he or she is surrendered)

In August 2015 and February 2019, European arrest warrants ('EAWs') were issued by Polish courts against two Polish nationals for the purposes of conducting a criminal prosecution and executing a custodial sentence, respectively. Since the persons concerned were in the Netherlands, the officier van justitie (representative of the public prosecution service, Netherlands), acting in accordance with Netherlands law, referred the requests for execution of those EAWs to the rechtbank Amsterdam (District Court, Amsterdam, Netherlands).

However, that court had doubts as to whether it should accede to those requests. More specifically, it raised the question of the implications of the judgment in *Minister for Justice and Equality (Deficiencies in the system of justice)*, [110] which was delivered against the backdrop of the reforms of the Polish judicial system. In that judgment, the Court had held that, by way of exception, the execution of an EAW may be refused if it is established that the person concerned might, if he or she is surrendered to the Member State which issued the EAW, sustain a breach of his or her right to an independent tribunal, which is an essential component of the right to a fair trial. [111] Nevertheless, such a refusal is possible only following a two-step examination: having assessed in a general manner whether there is objective evidence of a risk of breach of that right, on account of systemic or generalised deficiencies concerning the independence of the issuing Member State's judiciary, the executing judicial authority must then determine to what extent such deficiencies are liable to have an actual impact on the situation of the person concerned if he or she is surrendered to the judicial authorities of that Member State.

[110] Judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, (C-216/18 PPU, EU:C:2018:586), presented under this heading.

[111] That right is guaranteed in the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union.

On account of developments between 2019 and 2021, [112] some of which occurred after the issue of the EAWs in question, the District Court, Amsterdam considered that the deficiencies in the Polish system of justice were such that the independence of all Polish courts and, consequently, the right of all individuals in Poland to an independent tribunal were no longer ensured. In that context, it was uncertain whether that finding was sufficient in itself to justify a refusal to execute an EAW issued by a Polish court, without there being any need to examine the impact of those deficiencies in the particular circumstances of the case.

In the context of the urgent preliminary ruling procedure, the Court, sitting as the Grand Chamber, answered that point in the negative, thus confirming its case-law established in the judgment in *Minister for Justice and Equality (Deficiencies in the system of justice)*.

In the first place, the Court held that systemic or generalised deficiencies affecting the independence of the issuing Member State's judiciary, however serious, are not sufficient on their own to enable an executing judicial authority to consider that all the courts of that Member State fail to fall within the concept of an 'issuing judicial authority' of an EAW, [113] a concept which implies, in principle, that the authority concerned acts independently.

In that regard, first, the Court observed that such deficiencies do not necessarily affect every decision that those courts may be led to adopt. The Court went on to state that, although limitations may in exceptional circumstances be placed on the principles of mutual trust and mutual recognition which underpin the operation of the EAW mechanism, denial of the status of 'issuing judicial authority' to all the courts of the Member State concerned by those deficiencies would lead to a general exclusion of the application of those principles in connection with the EAWs issued by those courts. Moreover, such an approach would have other very significant consequences since it would imply, inter alia, that the courts of that Member State would no longer be able to submit references to the Court for preliminary rulings. [114] Lastly, the Court stated that its recent case-law according to which the public prosecutors' offices of certain Member States fail, in the light of their subordinate relationship to the executive, to provide sufficient guarantees of independence to be regarded as 'issuing judicial authorities' [115] cannot be transposed to Member States' courts. In a Union based on the rule of law, the

---

[112] Alongside other factors, the referring court mentioned in particular the Court's recent case-law in the area (judgments of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)* (C-585/18, C-624/18 and C-625/18, EU:C:2019:982), presented under heading II.1, 'Appointment'; of 26 March 2020, *Miasto Łowicz and Prokurator Generalny* (C-558/18 and C-563/18, EU:C:2020:234), presented under heading II.7, 'Disciplinary liability'; and of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)* (C-791/19, EU:C:2021:596), presented under headings I.2, 'Right of independent national courts and tribunals to make a reference to the Court of Justice for a preliminary ruling' and II.7, 'Disciplinary liability').

[113] Within the meaning of Article 6(1) of Framework Decision 2002/584, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24).

[114] That approach would mean that no court of the issuing Member State would any longer be considered to satisfy the requirement of independence inherent in the concept of 'court or tribunal' within the meaning of Article 267 TFEU.

[115] See, in particular, judgment of 27 May 2019, *OG and PI (Public Prosecutor's Office in Lübeck and in Zwickau)* (C-508/18 and C-82/19 PPU, EU:C:2019:456).

requirement that courts be independent precludes by its very nature any relationship of that type with the executive.

In the second place, the Court stated that the existence of or an increase in systemic or generalised deficiencies concerning the independence of the issuing Member State's judiciary, which are indicative of a risk of breach of the right to a fair trial, does not however permit the presumption [116] that the person in respect of whom an EAW has been issued will actually run such a risk if he or she is surrendered. Thus, the Court maintained the requirement of a two-step examination set out in the judgment in *Minister for Justice and Equality (Deficiencies in the system of justice)* and stated that the finding of such deficiencies must indeed prompt the executing judicial authority to exercise vigilance but cannot dispense it from conducting, in accordance with the second step of that examination, a specific and precise assessment of the risk in question. That assessment must take account of the situation of the requested person, the nature of the offence in question and the factual context which forms the basis of the EAW, such as statements by public authorities which are liable to interfere with the way in which the individual case is handled. The Court pointed out in that regard that a general suspension of the EAW mechanism with regard to a Member State, which would make it permissible to refrain from carrying out such an assessment and to refuse automatically to execute EAWs issued by that Member State, is possible only if the European Council formally declares that the Member State fails to respect the principles on which the Union is based. [117]

Furthermore, the Court specified that, where an EAW is issued for the purposes of criminal proceedings, the executing judicial authority must, where appropriate, take account of systemic or generalised deficiencies concerning the independence of the issuing Member State's judiciary which may have arisen after the EAW concerned was issued and assess to what extent those deficiencies are liable to have an impact at the level of that Member State's courts with jurisdiction over the proceedings to which the person concerned will be subject. Where an EAW is issued with a view to the surrender of a requested person for the execution of a custodial sentence or a detention order, the executing judicial authority must examine to what extent the systemic or generalised deficiencies which existed in the issuing Member State at the time of issue of the EAW have, in the particular circumstances of the case, affected the independence of the court of that Member State which imposed the custodial sentence or detention order the execution of which is the subject of that EAW.

[116] Under Article 1(3) of the EAW Framework Decision.
[117] That procedure is provided for in Article 7(2) TEU.

Judgment of 22 February 2022 (Grand Chamber), Openbaar Ministerie (Tribunal established by law in the issuing Member State) (C-562/21 PPU and C-563/21 PPU, EU:C:2022:100)

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Article 1(3) – Surrender procedures between Member States – Conditions for execution – Charter of Fundamental Rights of the European Union – Second paragraph of Article 47 – Fundamental right to a fair trial before an independent and impartial tribunal previously established by law – Systemic or generalised deficiencies – Two-step examination – Criteria for application – Obligation of the executing judicial authority to determine, specifically and precisely, whether there are substantial grounds for believing that the person in respect of whom a European arrest warrant has been issued, if surrendered, runs a real risk of breach of his or her fundamental right to a fair trial before an independent and impartial tribunal previously established by law)

Two European arrest warrants ('EAWs') [118] were issued in April 2021 by Polish courts against two Polish nationals for the purposes, respectively, of executing a custodial sentence and of conducting a criminal prosecution. Since the persons concerned were in the Netherlands and did not consent to their surrender, the Rechtbank Amsterdam (District Court, Amsterdam, Netherlands) received requests to execute those EAWs.

That court had doubts concerning its obligation to uphold those requests. In that respect, it noted that since 2017 there have been in Poland systemic or generalised deficiencies affecting the fundamental right to a fair trial, [119] and in particular the right to a tribunal previously established by law, resulting, inter alia, from the fact that Polish judges are appointed on application of the Krajowa Rada Sądownictwa (the Polish National Council of the Judiciary; 'the KRS'). According to the resolution adopted in 2020 by the Sąd Najwyższy (Supreme Court, Poland), the KRS, since the entry into force of a law on judicial reform on 17 January 2018, is no longer an independent body. [120] In so far as the judges appointed on application of the KRS may have participated in the criminal proceedings that led to the conviction of one of the persons concerned or may be called upon to hear the criminal case of the other person concerned, the referring court considers that there is a real risk that those persons, if surrendered, would suffer a breach of their right to a tribunal previously established by law.

In those circumstances, that court asked the Court of Justice whether the two-step examination, [121] enshrined by the Court in the context of a surrender on the basis of the

---

[118] Within the meaning of Framework Decision 2002/584, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24).

[119] Guaranteed in the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union.

[120] The referring court also refers to the judgment of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)* (C-791/19, EU:C:2021:596, paragraphs 108 and 110), presented under headings I.2, 'Right of independent national courts and tribunals to make a reference to the Court of Justice for a preliminary ruling' and II.7, 'Disciplinary liability'.

[121] As a first step in that examination, the executing judicial authority must assess whether there is a real risk of breach of the fundamental rights in the light of the general situation of the issuing Member State; as a second step, that authority must determine, specifically and precisely, whether there is a real risk that the requested person's fundamental right will be undermined, having regard to the circumstances of the case. See judgments of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)* (C-216/18 PPU, EU:C:2018:586), and of 17 December 2020, *Openbaar Ministerie (Independence of the issuing judicial authority)* (C-354/20 PPU and C-412/20 PPU, EU:C:2020:1033), presented under this heading.

EAWs, under the guarantees of independence and impartiality inherent in the fundamental right to a fair trial, is applicable where the guarantee, also inherent in that fundamental right, of a tribunal previously established by law is at issue.

The Court, sitting as the Grand Chamber and ruling under the urgent preliminary ruling procedure, answered in the affirmative and specified the detailed rules for applying that examination.

The Court held that, where the executing judicial authority called upon to decide on the surrender of a person in respect of whom an EAW has been issued has evidence of systemic or generalised deficiencies concerning the independence of the judiciary in the issuing Member State, in particular as regards the procedure for the appointment of the members of the judiciary, it may refuse that surrender, under Framework Decision 2002/584, [122] only if it finds that, in the particular circumstances of the case, there are substantial grounds for believing that there has been a breach – or, in the event of surrender, there is a real risk of breach – of the fundamental right of the person concerned to a fair trial before an independent and impartial tribunal previously established by law.

In that regard, the Court stated that the right to be judged by a tribunal 'established by law' encompasses, by its very nature, the judicial appointment procedure. Thus, as a first step in the examination seeking to assess whether there is a real risk of breach of the fundamental right to a fair trial, connected in particular with a failure to comply with the requirement for a tribunal previously established by law, the executing judicial authority must carry out an overall assessment, on the basis of any factor that is objective, reliable, specific and properly updated concerning the operation of the judicial system in the issuing Member State and, in particular, the general context of judicial appointment in that Member State. The information contained in a reasoned proposal addressed by the European Commission to the Council on the basis of Article 7(1) TEU, the above-mentioned resolution of the Sąd Najwyższy (Supreme Court) and the relevant case-law of the Court [123] and of the European Court of Human Rights [124] are such factors. By contrast, the fact that a body, such as the KRS, which is involved in the judicial appointment procedure, is made up, for the most part, of members representing or chosen by the legislature or the executive, is not sufficient to justify a refusal to surrender.

---

[122] See, to that effect, Article 1(2) and (3) of Framework Decision 2002/584, under which, first, the Member States are to execute any EAW on the basis of the principle of mutual recognition and in accordance with the provisions of that framework decision and, secondly, the framework decision is not to have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 TEU.

[123] Judgments of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)* (C-585/18, C-624/18 and C-625/18, EU:C:2019:982); of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)* (C-824/18, EU:C:2021:153), presented under heading II.1, 'Appointment'; of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)* (C-791/19, EU:C:2021:596), presented under headings I.2, 'Right of independent national courts and tribunals to make a reference to the Court of Justice for a preliminary ruling' and II.7, 'Disciplinary liability'; and of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)* (C-487/19, EU:C:2021:798), presented under headings II.1, 'Appointment' and II.5, 'Transfer'.

[124] ECtHR, 22 July 2021, *Reczkowicz v. Poland* (CE:ECHR:2021:0722JUD004344719).

As a second step in that examination, it is for the person in respect of whom an EAW has been issued to adduce specific evidence to suggest that systemic or generalised deficiencies in the judicial system had a tangible influence on the handling of his or her criminal case or are liable, in the event of surrender, to have such an influence. Such evidence can be supplemented, as appropriate, by information provided by the issuing judicial authority.

In that respect, as regards, first, an EAW issued for the purposes of executing a custodial sentence or detention order, the executing judicial authority must take account of the information relating to the composition of the panel of judges who heard the criminal case or any other circumstance relevant to the assessment of the independence and impartiality of that panel. It is not sufficient, in order to refuse surrender, that one or more judges who participated in those proceedings were appointed on application of a body such as the KRS. The person concerned must, in addition, provide information relating to, inter alia, the procedure for the appointment of the judges concerned and their possible secondment, which would lead to a finding that the composition of that panel of judges was such as to affect that person's fundamental right to a fair trial. Furthermore, account must be taken of the fact that it may be possible, for the person concerned, to request the recusal of the members of the panel of judges for breach of his or her fundamental right to a fair trial, the fact that that person may exercise that option as well as the outcome of the request for recusal.

Secondly, where an EAW has been issued for the purposes of conducting a criminal prosecution, the executing judicial authority must take account of the information relating to the personal situation of the person concerned, the nature of the offence for which that person is prosecuted, the factual context surrounding that EAW or any other circumstance relevant to the assessment of the independence and impartiality of the panel of judges likely to be called upon to hear the proceedings in respect of that person. Such information may also relate to statements made by public authorities which could have an influence on the specific case. By contrast, the fact that the identity of the judges who will be called upon eventually to hear the case of the person concerned is not known at the time of the decision on surrender or, when their identity is known, that those judges were appointed on application of a body such as the KRS is not sufficient to refuse that surrender.

2.2. Presumption of innocence

Judgment of 16 November 2021 (Grand Chamber), Prokuratura Rejonowa w Mińsku Mazowieckim and Others (C-748/19 to C-754/19, EU:C:2021:931)

(References for a preliminary ruling – Rule of law – Independence of the judiciary – Second subparagraph of Article 19(1) TEU – National legislation providing the possibility for the Minister for Justice to second judges to higher courts and to terminate those secondments – Adjudicating

panels in criminal cases including judges seconded by the Minister for Justice – Directive (EU) 2016/343 – Presumption of innocence)

In the judgment, the factual and legal context of which has been set out above, [125] the Court observed that, as regards the presumption of innocence applicable to criminal proceedings, respect for which is intended to be ensured by Directive 2016/343, [126] it presupposes that the judge is free of any bias and any prejudice when examining the criminal liability of the accused. The independence and impartiality of judges are therefore essential conditions for guaranteeing the presumption of innocence. However, in the case at issue, it appeared that, in the circumstances referred to above, the independence and impartiality of judges and, accordingly, the presumption of innocence could be jeopardised.

[125] With regard to the factual and legal context of the dispute, see heading II.4, 'Secondment'.
[126] See recital 22 and Article 6 of Directive 2016/343.

COURT OF JUSTICE
OF THE EUROPEAN UNION

Research and Documentation Directorate

July 2024