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Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

11 July 2024 (*)

(Reference 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)

In Joined Cases C-554/21, C-622/21 and C-727/21,

THREE REQUESTS for a preliminary ruling under Article 267 TFEU from the Visoki trgovački sud (Commercial Court of Appeal, Croatia), made by decisions of 3 August 2021 (C-554/21), 21 September 2021 (C-622/21) and 10 November 2021 (C-727/21), received at the Court on 8 September 2021, 7 October 2021 and 30 November 2021, respectively, in the proceedings

Financijska agencija

v

HANN-INVEST d.o.o. (C-554/21),

MINERAL-SEKULINE d.o.o. (C-622/21),

and

UDRUGA KHL MEDVEŠČAK ZAGREB (C-727/21)

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal, C. Lycourgos, F. Biltgen and N. Piçarra, Presidents of Chambers, S. Rodin, I. Jarukaitis (Rapporteur), N. Jääskinen, N. Wahl, I. Ziemele, J. Passer, D. Gratsias and M.L. Arastey Sahún, Judges,

Advocate General: P. Pikamäe,

Registrar: M. Longar, Administrator,

having regard to the written procedure and further to the hearing on 5 June 2023,

after considering the observations submitted on behalf of:

– the Financijska agencija, by S. Pejaković, expert,

– the Croatian Government, by G. Vidović Mesarek, acting as Agent,

– the European Commission, by K. Herrmann, M. Mataija and P.J.O. Van Nuffel, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 October 2023,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of the second subparagraph of Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The requests have been made in three sets of proceedings. The first two, between the Financijska agencija (Financial Agency, Croatia), and HANN-INVEST d.o.o. (C-554/21) and MINERAL-SEKULINE d.o.o. (C-622/21), concern the recovery of the costs of that agency relating to its activities in the context of insolvency proceedings, and the third concerns an application made by UDRUGA KHL MEDVEŠČAK ZAGREB for the opening of court-supervised administration proceedings (C-727/21).

Legal context

The Law on judicial bodies

3 Article 14 of the Zakon o sudovima (Law on judicial bodies) (*Narodne novine*, br. 28/13, 33/15, 82/15, 82/16, 67/18, 126/19, 130/20) provides:

'1. In Croatia, judicial power is exercised by ordinary courts, specialised courts and the Vrhovni sud (Supreme Court, Croatia).

…

3. The specialised courts are the Trgovački sudovi (commercial courts, Croatia), the Upravni sudovi (administrative courts, Croatia), the Visoki trgovački sud (Commercial Court of Appeal, Croatia), the Visoki upravni sud (Administrative Court of Appeal, Croatia), the Visoki prekršajni sud (Higher Misdemeanour Court, Croatia) and the Visoki kazneni sud (Criminal Court of Appeal, Croatia).

4. The highest court in Croatia is the Vrhovni sud (Supreme Court).

…'

4 As set out in Article 24 of that law:

'The Visoki trgovački sud (Commercial Court of Appeal)

1. shall rule on appeals against decisions delivered at first instance by the Trgovački sudovi (commercial courts),

2. shall hear and determine conflicts of territorial jurisdiction between the Trgovački sudovi (commercial courts) and shall decide on the delegation of jurisdiction between those courts,

…'

5 Article 38 of that law states:

‘1. Section meetings shall be concerned with the examination of matters of interest to the work of that section – that is to say, in particular, the organisation of its internal activities, disputed points of law, the harmonisation of case-law and issues relevant to the application of the legislation in each field of law – and with monitoring the work and training of the judges, legal advisers and trainee judges assigned to that section.

2. At section meetings of the Županijski sud (County Court, Croatia), of the Visoki trgovački sud (Commercial Court of Appeal), of the Visoki upravni sud (Administrative Court of Appeal), of the Visoki kazneni sud (Criminal Court of Appeal) and of the Visoki prekršajni sud (Higher Misdemeanour Court), matters of common interest to the lower courts within the area of jurisdiction of those courts shall also be examined.

3. The section meetings of the Vrhovni sud (Supreme Court) shall be concerned with examining matters of common interest to some or all of the courts within the territory of the Republic of Croatia and with examining and giving an opinion on draft legislation in a specific legal field.’

6 As set out in Article 39 of that law:

‘1. The president of a section or the president of the court concerned shall convene a meeting of that section whenever necessary and at least once every three months; he or she shall direct its work. Where the president of the court takes part in the work of a meeting of that section, he or she shall chair the meeting and participate in the decision-making process.

2. A meeting of all the judges of the court must be convened at the request of a section of that court or of one quarter of all the judges thereof.

3. At meetings of the judges of a court or of a section of that court, decisions shall be taken by a majority of the votes of the judges of that court or of the judges of that section.

4. Minutes of the meeting concerned shall be taken.

5. The president of a court, or of a section thereof, may also invite eminent academics and experts in a specific legal field to participate in the meeting of all the judges of that court or of that section.’

7 Article 40 of the Law on judicial bodies provides:

‘1. 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.

2. The legal position adopted at the meeting of all the judges or of a section of the Vrhovni sud (Supreme Court), of the Visoki trgovački sud (Commercial Court of Appeal), of the Visoki upravni sud (Administrative Court of Appeal), of the Visoki kazneni sud (Criminal Court of Appeal), of the Visoki prekršajni sud (Higher Misdemeanour Court) or at the meeting of a section of a Županijski sud (County Court) shall be binding on all the chambers or judges at second instance of the section or court concerned.

3. The president of a section may, where appropriate, invite university law professors, eminent academics or experts in a specific legal field to participate in the meeting of the section concerned.’

The Rules of Procedure of the Courts

8 Article 177(3) of the Sudski poslovnik (Rules of Procedure of the Courts) (*Narodne novine*, br. 37/14, 49/14, 8/15, 35/15, 123/15, 45/16, 29/17, 33/17, 34/17, 57/17, 101/18, 119/18, 81/19, 128/19, 39/20, 47/20, 138/20, 147/20, 70/21, 99/21 and 145/21) provides:

'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.'

The disputes in the main proceedings and the questions referred for a preliminary ruling

9 Three appeals are pending before the Visoki trgovački sud (Commercial Court of Appeal), the referring court. In Cases C-554/21 and C-622/21, the appeals concern orders dismissing claims by the Financial Agency for reimbursement of costs relating to its activities in the context of insolvency proceedings. In Case C-727/21, the appeal concerns an order rejecting the application to open court-supervised administration proceedings.

10 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 referring court judges signed their decisions and subsequently forwarded them to the Case-Law Registration Service, in accordance with Article 177(3) of the Rules of Procedure of the Courts.

11 However, the judge from that registration service ('the registrations judge') refused to register those 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 those decisions.

12 In Case C-554/21, that letter makes reference to cases in which, in similar circumstances, the referring court ruled differently, but also to another case in which it ruled in the same way as the judicial panel which gave judgment in the case in the main proceedings. The registrations judge concluded that the case in the main proceedings should be referred back to the chamber concerned and that, if that chamber were to maintain its decision, the case in the main proceedings would have to be examined at a 'section meeting'. In so doing, the registrations judge made registration of the judicial decision in that case subject to the adoption of a different approach, thus favouring one of the two conflicting trends observed in the case-law of the referring court, stating that, if that chamber did not re-examine the case concerned and alter the solution adopted, he would transmit that judicial decision for examination by the referring court's Section for Commercial Litigation and Other Disputes so that a 'legal position' on how to resolve cases of that type could be adopted.

13 In Case C-622/21, the letter from the registrations judge justifies the referral of the case in the main proceedings back to the chamber concerned on the basis of two decisions of the referring court adopting solutions that are in conflict with the solution adopted in the case in the main proceedings. The referring court states, however, that those decisions were adopted after the adoption of the decision in the case in the main proceedings. In reality, the procedure for registering the latter decision had been blocked and the decision would not be sent until those subsequent decisions, reflecting a different legal view, had been sent.

14 In Case C-727/21, it is clear from the registrations judge's letter that he is in disagreement with the legal interpretation adopted by the judicial panel which gave judgment in the main proceedings. However, that letter does not make reference to any other decision differing from that adopted by that judicial panel.

15 In that case in the main proceedings, following the refusal to register its first judicial decision, that judicial panel met to begin fresh deliberations, during which it reviewed the appeal and the opinion of the registrations judge before deciding not to alter the outcome arrived at previously. It therefore issued a new judicial decision and forwarded it to the Registration Service.

16 Favouring a different legal interpretation, the registrations judge transmitted that case to the referring court's Section for Commercial Litigation and Other Disputes so that the legal issue in dispute could be examined at a meeting of that section.

17 At that meeting, that section adopted a 'legal position' in which it accepted the outcome favoured by the registrations judge. Subsequently, the same case was referred back to the judicial panel concerned for it to give a ruling in accordance with that 'legal position'.

18 In all three cases, the referring court states that, pursuant to Article 177(3) of the Rules of Procedure of the Courts, in a case adjudicated upon at second instance, the court's task is considered to be completed only when the judicial decision concerned has been registered by the Registration Service. It is only after that decision is registered and subsequently sent to the parties that the case is deemed to be closed. Thus, according to the explanations provided by the referring court, although that judicial decision was adopted collegiately by a judicial panel, it is considered finalised only when it is confirmed by the registrations judge, who is appointed by the president of the court concerned, in his or her capacity as the person responsible for judicial administration in accordance with the annual schedule for the assignment of judges. The referring court also states that the parties have no knowledge of the involvement or name of the registrations judge and that, although the registration procedure is not provided for by law as a precondition for the adoption of a judicial decision, such a consequence follows from the practice of the courts of second instance based on the Rules of Procedure of the Courts.

19 The referring court considers that a judge such as the registrations judge, who is not known to the parties, whose role is not prescribed by the rules of procedure applicable to appeals and who, although not a higher court, may prompt the judicial panel responsible for the case to alter its decision, is capable of having a significant impact on judicial independence.

20 In Case C-554/21, the referring court adds that, despite one of its judicial panels departing from the case-law in an earlier decision on the same legal issue, the registrations judge had not acted, at the time of that departure, in the same way as in the case in the main proceedings and had approved and registered the decision which had departed from the case-law and thus allowed that decision to be sent to the parties, which, according to the referring court, demonstrates the appreciable influence that the registrations judge has on the independence of the judges making up the judicial panel having jurisdiction.

21 In Case C-622/21, the referring court points out that that influence is evidenced by the fact that the registrations judge decided, without submitting the issue to the meeting of the section concerned, to approve the registration and notification of judicial decisions adopted by other chambers after the adoption of the decision in the case in the main proceedings, and at the same time decided to delay registering the judicial decision in the case in the main proceedings and to refer it back to the chamber concerned, solely because he was in disagreement with the approach adopted in the latter decision.

22 In those two cases, the referring court states that the existence of a mechanism for registering judicial decisions has thus far been justified by the need to ensure consistency of the case-law. However, the manner in which the Registration Service proceeds after a judicial decision has been adopted is, in the view of the referring court, contrary to the independence of the judiciary. As evidenced by the circumstances surrounding the cases in the main proceedings, the Case-Law Registration Service selects which decisions will be notified by a court of second instance and decides when a decision departing from the case-law should be made public.

23 In Case C-727/21, the referring court also states, with regard to section meetings, that such meetings are not provided for by the Rules of Procedure of the Courts and that only registrations judges, section presidents or presidents of the court decide which items to place on the agenda of such meetings. The parties to the proceedings have no knowledge of the function of that meeting and cannot participate in it.

Yet, as set out in Article 40 of the Law on judicial bodies, the 'legal positions' adopted in a meeting of a section of a higher court will be binding on all of the judges or chambers of that section in the specific proceedings they deal with. The referring court therefore considers that this quasi-legislative role of the judicial sections is contrary to the tripartite separation of powers, the rule of law and the principle of the independence of the judiciary. It states, however, that the 'legal positions' adopted at meetings of judges of the courts of second instance are not binding on higher courts and that, in many situations, supreme courts have, when examining appeals brought before them, adopted different 'legal positions' from those adopted by courts of second instance.

24 In those circumstances, the Visoki trgovački sud (Commercial Court of Appeal) decided to stay the proceedings and to refer the following question, which is worded identically in Cases C-554/21, C-622/21 and C-727/21, to the Court of Justice for a preliminary ruling:

'[Is] the rule laid down in the second part of the first sentence and in the second sentence of Article 177(3) of the [Rules of Procedure of the Courts], which provides that "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 court office, after the case has been returned by the Registration Service[, that the Registration Service] shall be required to return the case file to the court office as promptly as possible after receipt thereof [and that] the decision shall then be notified within a further period of eight days", [to] be considered compatible with Article 19(1) TEU and Article 47 of the [Charter]?'

25 In addition, in Case C-727/21, the Visoki trgovački sud (Commercial Court of Appeal) decided to refer a second question to the Court of Justice for a preliminary ruling:

'Is Article 40(2) of the [Law on judicial bodies], which provides that "the legal position adopted at the meeting of all the judges or of a section of the Vrhovni sud (Supreme Court), of the Visoki trgovački sud [Commercial Court of Appeal[, of the Visoki upravni sud [Administrative Court of Appeal], of the Visoki kazneni sud [Criminal Court of Appeal], [of the] Visoki prekršajni sud [Higher Misdemeanour Court] [or at] the meeting of a section of a Županijski sud [County Court] shall be binding on all the chambers or judges at second instance of that section or court" compatible with Article 19(1) TEU and Article 47 of the [Charter]?'

Procedure before the Court

26 By decisions of the President of the Court of 8 November and 15 November 2021, Cases C-554/21 and C-622/21 were stayed pending the decision closing the proceedings in Case C-361/21, *PET-PROM*.

27 By decision of the President of the Court of 4 February 2022, Case C-727/21 was stayed pending receipt of the referring court's response in Case C-361/21, *PET-PROM*, as regards the status of the main proceedings in that case, in the light of the information provided by the referring court in Case C-727/21.

28 By decision of the President of the Court of 14 March 2022, the proceedings were resumed in Cases C-554/21, C-622/21 and C-727/21, in view of the fact that the existence of the dispute in the main proceedings giving rise to Case C-361/21 raised doubts. By decision of the President of the Court of the same date, Cases C-554/21, C-622/21 and C-727/21 were joined for the purposes of the written and oral parts of the procedure and the judgment.

The jurisdiction of the Court

29 As a preliminary point, it should be recalled that, according to settled case-law, it is for the Court itself to examine the circumstances in which cases are referred to it by the national court in order to assess whether it has jurisdiction or whether the request submitted to it is admissible (judgment of 22 March 2022, *Prokurator Generalny (Disciplinary Chamber of the Supreme Court – Appointment)*, C-508/19, EU:C:2022:201, paragraph 59 and the case-law cited).

30 In that regard, the Court notes, in the first place, that, in the context of a request for a preliminary ruling under Article 267 TFEU, the Court may interpret EU law only within the limits of the powers conferred upon it (judgment 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, paragraph 77 and the case-law cited).

31 The scope of the Charter, in so far as the action of the Member States is concerned, is defined in Article 51(1) thereof, according to which the provisions of the Charter are addressed to the Member States when they are implementing EU law. That provision confirms settled case-law, which states that the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by EU law, but not outside such situations (judgment 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, paragraph 78 and the case-law cited).

32 In the present case, as regards, more specifically, Article 47 of the Charter, the referring court has not provided any indication that the disputes in the main proceedings concern the interpretation or application of a rule of EU law being implemented at national level.

33 Therefore, in the present cases, the Court does not have jurisdiction to interpret Article 47 of the Charter per se.

34 In the second place, it should be borne in mind that, under the second subparagraph of Article 19(1) TEU, Member States are to provide remedies sufficient to ensure effective legal protection for individual parties in the fields covered by Union law. It is therefore for the Member States to establish a system of legal remedies and procedures ensuring effective judicial review in those fields (judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraph 32 and the case-law cited).

35 As regards the scope *ratione materiae* of the second subparagraph of Article 19(1) TEU, that provision refers to 'the fields covered by Union law', irrespective of whether the Member States are implementing Union law (see, to that effect, judgments of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraph 29, and of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraph 33 and the case-law cited).

36 The second subparagraph of Article 19(1) TEU is intended, inter alia, to apply to any national body which can rule, as a court or tribunal, on questions concerning the interpretation or application of EU law and which therefore fall within the fields covered by that law (judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraph 34 and the case-law cited).

37 This is true of the referring court, which may be called upon to rule on questions relating to the application or interpretation of EU law and, as a 'court or tribunal' within the meaning of EU law, comes under the Croatian judicial system in the 'fields covered by Union law', within the meaning of the second subparagraph of Article 19(1) TEU, so that that court must meet the requirements of effective judicial protection (see, by analogy, judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraph 35 and the case-law cited).

38 Consequently, the Court has jurisdiction to interpret the second subparagraph of Article 19(1) TEU in the present cases.

Admissibility of the requests for a preliminary ruling

39 As set out in settled case-law, the procedure provided for in Article 267 TFEU is an instrument of cooperation between the Court of Justice and the national courts, by means of which the Court provides the national courts with the points of interpretation of EU law which they need in order to decide the

disputes before them. The justification for a reference for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute (judgment of 22 March 2022, *Prokurator Generalny (Disciplinary Chamber of the Supreme Court – Appointment)*, C-508/19, EU:C:2022:201, paragraph 60 and the case-law cited).

40 As is apparent from the actual wording of Article 267 TFEU, the question referred for a preliminary ruling must be 'necessary' to enable the referring court to 'give judgment' in the case before it (judgment of 22 March 2022, *Prokurator Generalny (Disciplinary Chamber of the Supreme Court – Appointment)*, C-508/19, EU:C:2022:201, paragraph 61 and the case-law cited).

41 In the present case, the referring court states that the three judicial panels responsible for the cases in the main proceedings are faced, in Cases C-554/21 and C-622/21, with the instructions of the registrations judge and, in Case C-727/21, with the obligation to give a ruling in accordance with a 'legal position' from the meeting of that court's Section for Commercial Litigation and Other Disputes. It states that those instructions and that 'legal position' refer to the content of decisions previously taken by those three judicial panels and that compliance with them is a precondition for the definitive closure of the cases in the main proceedings and for the registration and notification of those decisions to the parties. By its questions referred for a preliminary ruling, it seeks specifically to ascertain whether the second subparagraph of Article 19(1) TEU is to be interpreted as precluding 'interventions', such as those at issue in the main proceedings, in the judicial activity of a judicial panel, by other persons performing a function within that court. Consequently, the Court's answer to the questions referred for a preliminary ruling is necessary to enable the referring court to close the three cases in the main proceedings definitively.

42 In the light of the foregoing considerations, it must be held that the requests for a preliminary ruling are admissible.

Consideration of the questions referred

43 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether the second subparagraph of Article 19(1) TEU must be interpreted as precluding national law from providing for a mechanism internal to a national court or tribunal pursuant to which, first, a judicial decision may be sent to the parties for the purpose of closing the case concerned only if a registrations judge, who is not part of the judicial panel which adopted that decision, approves the content of that decision and, second, a section meeting of that national court or tribunal is empowered to adopt 'legal positions' which are binding on all of the chambers or judges of that court or tribunal.

44 As a preliminary point, it should be recalled that, although the organisation of justice in the Member States, in particular, the establishment, composition, powers and functioning of national courts, falls within the competence of those States, the fact remains that, when exercising that competence, the Member States are required to comply with their obligations deriving from EU law and, in particular, from Article 19 TEU (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 63 and the case-law cited).

45 In that regard, the principle of effective judicial protection referred to in the second subparagraph of Article 19(1) TEU is a general principle of EU law which has been enshrined, inter alia, in Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), to which the second paragraph of Article 47 of the Charter corresponds (see, to that effect, 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 219 and the case-law cited). That latter provision must, therefore, be duly taken into consideration for the purpose of interpreting the second subparagraph of Article 19(1) TEU (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, paragraph 102 and the case-law cited).

46 Moreover, in so far as the Charter sets out rights corresponding to rights guaranteed under the ECHR, Article 52(3) of the Charter is intended to ensure the necessary consistency between the rights contained in the Charter and the corresponding rights guaranteed under the ECHR, without thereby adversely affecting the autonomy of EU law. According to the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17), the second paragraph of Article 47 of the Charter corresponds to Article 6(1) ECHR. The Court must, accordingly, ensure that its interpretation in the present cases ensures a level of protection which does not disregard that guaranteed by Article 6(1) ECHR, as interpreted by the European Court of Human Rights (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, paragraph 123 and the case-law cited).

47 That said, it should be recalled that every Member State must, in accordance with the second subparagraph of Article 19(1) TEU, ensure that the bodies which are called upon, as 'courts or tribunals' within the meaning of EU law, to rule on questions relating to the application or interpretation of EU law and which thus come within its judicial system in the fields covered by EU law, meet the requirements of effective judicial protection, including that of independence (judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 40 and the case-law cited).

48 Accordingly, 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.

49 In that regard, it should be recalled, first, that 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 hearing, 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 (judgment of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraph 58 and the case-law cited).

50 In accordance with settled case-law, the requirement that courts be independent has two aspects to it. The first aspect, which is external in nature, requires that the court concerned exercise its 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, thus being protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions (judgment 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, paragraph 121).

51 The second aspect, which is internal in nature, is linked to 'impartiality' and seeks to ensure that an equal distance is maintained from the parties to the proceedings and their respective interests with regard to the subject matter of those proceedings. That aspect requires objectivity and the absence of any interest in the outcome of the proceedings apart from the strict application of the rule of law (judgment 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, paragraph 122).

52 Those guarantees of independence and impartiality require rules as regards, inter alia, the composition of the body concerned, in order to dispel any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before

it (see, to that effect, judgment 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, paragraph 123).

53 In that regard, it is necessary that judges are protected from external intervention or pressure liable to jeopardise their independence. The rules applicable to the status of judges and the performance of their duties must, in particular, be such as to preclude not only any direct influence, in the form of instructions, but also types of influence which are more indirect and which are liable to have an effect on the decisions of the judges concerned, and thus preclude a lack of appearance of independence or impartiality on their part likely to prejudice the trust which justice in a democratic society governed by the rule of law must inspire in individuals (judgment of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraph 60 and the case-law cited).

54 Although the 'external' aspect of independence is intended essentially to preserve the independence of the courts from the legislature and the executive in accordance with the principle of the separation of powers which characterises the operation of the rule of law, that aspect must also be understood as aiming to safeguard judges against undue influence from within the court concerned (see, to that effect, ECtHR, 22 December 2009, *Parlov-Tkalčić* v. *Croatia*, CE:ECHR:2009:1222JUD002481006, § 86).

55 In the second place, bearing in mind the inextricable links which exist between the guarantees of judicial independence and judicial impartiality as well as that of access to a tribunal previously established by law (see, to that effect, judgment of 21 December 2023, *Krajowa Rada Sądownictwa (Continued holding of a judicial office)*, C-718/21, EU:C:2023:1015, paragraph 59 and the case-law cited), the second subparagraph of Article 19(1) TEU also requires the existence of a tribunal 'previously established by law'. That phrase, which reflects, inter alia, the principle of the rule of law, concerns not only the legal basis for the very existence of the court concerned, but also the composition of the bench in each case (see, to that effect, judgments of 26 March 2020, *Review Simpson* v *Council and HG* v *Commission*, C-542/18 RX-II and C-543/18 RX-II, EU:C:2020:232, paragraph 73, and of 22 March 2022, *Prokurator Generalny (Disciplinary Chamber of the Supreme Court – Appointment)*, C-508/19, EU:C:2022:201, paragraph 73). That principle means, inter alia, that it is only the judicial panel responsible for the case that is to take the decision closing the proceedings.

56 The purpose of the phrase 'previously established by law' is to prevent the organisation of the judicial system from being left to the discretion of the executive and to ensure that that matter is governed by a law. Nor, moreover, in codified law countries, can the organisation of the judicial system be left to the discretion of the judicial authorities, which does not, however, rule out conferring on them a certain power to interpret the relevant national legislation (see, to that effect, judgment of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraph 168 and the case-law cited).

57 A 'tribunal established by law' is characterised by its judicial function, that is to say determining matters within its competence on the basis of rules of law and after proceedings conducted in a prescribed manner. It must therefore, in addition to the independence and impartiality of its members, also satisfy other conditions, in particular the existence of guarantees offered by the procedure before it (see, to that effect, ECtHR, 22 June 2000, *Coëme and Others* v. *Belgium*, CE:ECHR:2000:0622JUD003249296, § 99).

58 Those guarantees include, in the third place, the principle that the parties should be heard, which is an integral part of the right to a fair hearing and to effective judicial protection (see, to that effect, judgments of 17 December 2009, *Review M* v *EMEA*, C-197/09 RX-II, EU:C:2009:804, paragraph 59; of 16 October 2019, *Glencore Agriculture Hungary*, C-189/18, EU:C:2019:861, paragraph 61; of 29 April 2021, *Bank BPH*, C-19/20, EU:C:2021:341, paragraph 92; and of 10 February 2022, *Bezirkshauptmannschaft Hartberg-Fürstenfeld (Limitation period)*, C-219/20, EU:C:2022:89, paragraph 46). That principle means, in particular, that the parties must be able to debate and be heard on all matters of fact and of law which will determine the outcome of the proceedings (judgments of 2 December 2009, *Commission* v *Ireland and*

Others, C-89/08 P, EU:C:2009:742, paragraph 56, and of 17 December 2009, *Review M* v *EMEA*, C-197/09 RX-II, EU:C:2009:804, paragraph 41).

59 The requirements referred to in paragraphs 47 to 58 above thus presuppose, inter alia, the existence of rules concerning the composition of judicial panels which are transparent and known to litigants and which are such as to preclude any undue interference in the decision-making process relating to a given case by persons from outside the judicial panel responsible for that case before whom the parties have not been able to put forward their arguments.

60 While it is of course for the referring court to apply all of the principles referred to above, the Court may, however, in the framework of the judicial cooperation provided for by Article 267 TFEU and on the basis of the material in the case file, provide the referring court with an interpretation of EU law which may be useful to it in assessing the effects of one or other of its provisions (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, paragraph 133 and the case-law cited).

61 As regards the intervention of the registrations judge at issue in the main proceedings, it is apparent from the documents before the Court that Article 177(3) of the Rules of Procedure of the Courts does not provide that that judge is empowered to review the content of a judicial decision in any way or to prevent it from being formally delivered and served on the parties if that judge is not in agreement with its content.

62 It is also apparent from those documents that such power is also not provided for in the Law on judicial bodies, in particular Article 40(2) thereof, which concerns the binding nature of the 'legal positions' of section meetings.

63 However, according to the information provided by the referring court and as the facts of the three cases in the main proceedings illustrate, those provisions appear, in practice, to be applied in such a way that the role of the registrations judge goes beyond the registration function.

64 While that judge cannot substitute his or her own assessment for that of the judicial panel responsible for the case in question, he or she can, in fact, block the 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 by referring 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, by inviting the president of the relevant section to convene a section meeting for the purpose of adopting a 'legal position', which will be binding on that judicial panel.

65 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.

66 First, as is apparent from paragraphs 61 and 62 above, the national legislation at issue in the main proceedings does not appear to make provision for such intervention of the registrations judge.

67 Second, 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. That judge is therefore able to influence the content of judicial decisions delivered by judicial panels of which he or she does not form part.

68 Third, 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. Thus, in the dispute in the main proceedings giving rise to Case C-554/21, the registrations judge found that the judicial decision before him was consistent with one other earlier

decision, but not with two other earlier decisions, and favoured one of the two conflicting legal approaches. In the dispute in the main proceedings giving rise to Case C-622/21, the registrations judge justified the referral of the case back to the relevant judicial panel on the basis of decisions which, after the decision at issue in the main proceedings in that case, favoured a contrary view. In the dispute in the main proceedings giving rise to Case C-727/21, it was on the ground that he did not share the legal view expressed in the decision at issue in the main proceedings that the registrations judge, without referring to any earlier decision, referred the case back to the relevant judicial panel, which had, however, referred, in its own decision, to an earlier decision which had adopted a similar approach.

69 In the light of the foregoing, a practice such as that at issue in the main proceedings, 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, is incompatible with the requirements inherent in the right to effective judicial protection.

70 As regards intervention in the form of a section meeting such as that at issue in the main proceedings, it is apparent from the wording of Article 40(1) and (2) of the Law on judicial bodies that a meeting of a section or of judges of a court may be convened where there are, inter alia, differences in interpretation between sections, chambers or judges of that court on questions relating to the application of the law and that, subsequently, that meeting formulates a 'legal position' which is binding on all of the chambers or judges of that section or court.

71 Furthermore, it is apparent from the explanations provided by the referring court that such a section meeting may be convened by a president of a section at the request of the registrations judge where the latter does not consent to the registration of the judicial decision transmitted to him or her by the judicial panel responsible for the case concerned, at least where that panel intends to maintain its decision after having reviewed that decision as required by that judge.

72 According to those explanations, all of the judges of the section concerned may participate in that meeting, including the judges sitting in the case concerned and the registrations judge. In that regard, it should be noted that, even if, as is apparent from the case file relating to Case C-727/21, the judge(s) of the relevant judicial panel appear to have participated in the section meeting in question, the majority of the judges who participated in that section meeting are other judges who are members of the court concerned but do not form part of that judicial panel. Furthermore, as set out in Article 40(3) of the Law on judicial bodies, 'university law professors, eminent academics or experts in a specific field of law', who are persons from outside the court concerned, may, under certain conditions, participate in such a section meeting and therefore in a judicial process.

73 It is also apparent from those explanations that it is not for a section meeting to give a final ruling on the case referred to it or to propose a concrete solution in that case. However, even though a 'legal position' of that section meeting is formulated more or less in the abstract and is binding on all judges, that meeting, in order to put forward that legal position, interprets the law in the light of specific cases.

74 According to Article 40(2) of the Law on judicial bodies, the judicial panel which adopted the judicial decision in the case referred to the section meeting is required to respect the 'legal position' of the section meeting if that decision has not yet been registered or sent. The registrations judge, who, in practice, is tasked with ensuring that 'legal positions' adopted by the section meeting concerned are respected, may thus refuse to register the 'new' judicial decision adopted by that judicial panel if it departs from that 'legal position'.

75 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.

76 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 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.

77 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. While it is true that Article 40(1) of the Law on judicial bodies provides for a section meeting to 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', it is apparent from the description of the facts set out in the order for reference in Case C-727/21 that the section meeting concerned was convened simply on the ground that the registrations judge did not share the legal view of the judicial panel having jurisdiction, without any reference even being made to any decision reflecting a departure from that legal view in relation to previous judicial decisions.

78 Second, it appears from the case file before the Court in Case C-727/21 that, like the intervention of the registrations judge, 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.

79 In the light of the foregoing, 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 previously adopted, even though that section meeting also includes judges other than those belonging to that judicial panel and, as the case may be, persons from outside the court concerned, before whom the parties do not have the opportunity to put forward their arguments, is incompatible with the requirements inherent in the right to effective judicial protection and to a fair hearing.

80 It must also be pointed out 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.

81 In the light of all of the foregoing considerations, the answer to the questions referred is that the second subparagraph of Article 19(1) TEU must be interpreted as precluding national law from providing for a mechanism internal to a national court pursuant to which:

– the judicial decision adopted by the judicial panel responsible for the case may be sent to the parties for the purpose of closing the case concerned only if its content has been approved by a registrations judge who is not a member of that judicial panel;

– a section meeting of that court has the power to compel, by putting forward a 'legal position', the judicial panel responsible for a case to alter the content of the judicial decision which it previously adopted, even though that section meeting also includes judges other than those belonging to that judicial panel and, as the case may be, persons from outside the court concerned, before whom the parties do not have the opportunity to put forward their arguments.

Costs

82 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

The second subparagraph of Article 19(1) TEU

must be interpreted as precluding national law from providing for a mechanism internal to a national court pursuant to which:

– **the judicial decision adopted by the judicial panel responsible for the case may be sent to the parties for the purpose of closing the case concerned only if its content has been approved by a registrations judge who is not a member of that judicial panel;**

– **a section meeting of that court has the power 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 previously adopted, even though that section meeting also includes judges other than those belonging to that judicial panel and, as the case may be, persons from outside the court concerned, before whom the parties do not have the opportunity to put forward their arguments.**

[Signatures]

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* Language of the case: Croatian.