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Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

13 July 2023 (*)

(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)

In Joined Cases C-615/20 and C-671/20,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland), made by decisions of 18 November 2020 and 9 December 2020, received at the Court on those dates respectively, in criminal proceedings against

YP and Others (C-615/20),

M.M. (C-671/20),

intervening parties:

Prokuratura Okręgowa w Warszawie,

Komisja Nadzoru Finansowego and Others (C-615/20),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal (Rapporteur), E. Regan and L.S. Rossi, Presidents of Chambers, M. Ilešič, N. Piçarra, I. Jarukaitis, A. Kumin, N. Jääskinen, I. Ziemele, J. Passer, Z. Csehi and O. Spineanu-Matei, Judges,

Advocate General: A.M. Collins,

Registrar: M. Siekierzyńska, Administrator,

having regard to the written procedure and further to the hearing on 28 June 2022,

after considering the observations submitted on behalf of:

– the Prokuratura Okręgowa w Warszawie, represented by S. Bańko, M. Dubowski and A. Reczka,

– YP, represented by B. Biedulski, adwokat,

– the Polish Government, represented by B. Majczyna, K. Straś and S. Żyrek, acting as Agents,

– the Belgian Government, represented by M. Jacobs, C. Pochet and L. Van den Broeck, acting as Agents,

– the Danish Government, represented by J. Farver Kronborg, J. Nymann-Lindegren, V. Pasternak Jørgensen and M. Søndahl Wolff, acting as Agents,

– the Netherlands Government, represented by M.K. Bulterman, A.M. de Ree and C.S. Schillemans, acting as Agents,

– the Finnish Government, represented by H. Leppo, acting as Agent,

– the Swedish Government, represented by A. Runeskjöld and H. Shev, acting as Agents,

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

after hearing the Opinion of the Advocate General at the sitting on 15 December 2022,

gives the following

Judgment

1 The requests for a preliminary ruling concern the interpretation of Article 2 and the second subparagraph of Article 19(1) TEU, of Article 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’), of the principle of the primacy of EU law, of the principle of sincere cooperation laid down in Article 4(3) TEU and of the principle of legal certainty.

2 Those requests have been made, first, in the context of criminal proceedings brought by the Prokuratura Okręgowa w Warszawie (Regional Public Prosecutor’s Office, Warsaw, Poland) against YP and others for various offences and, secondly, in proceedings between the same Regional Public Prosecutor’s Office and M.M. concerning the creation of a compulsory mortgage over real property owned by the latter.

Legal context

The Constitution

3 Article 45(1) of the Konstytucja Rzeczypospolitej Polskiej (Constitution of the Republic of Poland; 'the Constitution') provides:

'Everyone is entitled to a fair and public hearing, without undue delay, by an independent and impartial tribunal with jurisdiction.'

4 Under Article 179 of the Constitution, the President of the Republic is to appoint judges, on a proposal from the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland) ('the NCJ'), for an indefinite period.

5 Article 180 of the Constitution provides:

'1. Judges shall be irremovable.

2. A judge may not be dismissed, suspended from office, moved to another jurisdiction or another function against his or her will except in accordance with a judicial decision and only in cases provided for by law.

…'

6 Article 181 of the Constitution provides:

'A judge may be held criminally liable or be deprived of liberty only with the prior consent of a court determined by law. …'

The Law on the Supreme Court

7 The ustawa o Sądzie Najwyższym (Law on the Supreme Court), of 8 December 2017 (Dz. U. of 2018, item 5), inter alia created, within the Sąd Najwyższy (Supreme Court, Poland), a new chamber called the Izba Dyscyplinarna (Disciplinary Chamber) ('the Disciplinary Chamber'), referred to in Article 3(5) of that law.

8 The ustawa o zmianie ustawy – Prawo o ustroju sądów powszechnych, ustawy o Sądzie Najwyższym oraz niektórych innych ustaw (Law amending the Law relating to the organisation of the ordinary courts, the Law on the Supreme Court and certain other laws) of 20 December 2019 (Dz. U. of 2020, item 190), which entered into force on 14 February 2020, amended the Law on the Supreme Court, inter alia by inserting a new point 1a into Article 27(1) of the latter law.

9 Under Article 27(1) of the Law on the Supreme Court, as amended:

'The following cases shall fall within the jurisdiction of the Disciplinary Chamber:

(1) disciplinary proceedings:

…

(b) examined by the [Sąd Najwyższy (Supreme Court)] in connection with disciplinary proceedings under the following laws:

…

– [The ustawa – Prawo o ustroju sądów powszechnych (Law on the organisation of the ordinary courts), of 27 July 2001 (Dz. U. of 2001, No 98, item 1070)],

– …

…

(1a) cases relating to authorisation to initiate criminal proceedings against judges, trainee judges, prosecutors and deputy prosecutors or to place them in provisional detention;

…'

The Law on the ordinary courts

10 Article 41b of the Law on the organisation of the ordinary courts, mentioned in paragraph 9 above, as amended by the Law of 20 December 2019, referred to in paragraph 8 above ('the Law on the ordinary courts'), provides:

'1. The authority competent to examine a complaint or a request concerning the activity of a court shall be the president of the court.

…

3. The authority competent to examine a complaint concerning the activity of the president of a [Sąd Rejonowy (district court, Poland)], the president of a [Sąd Okręgowy (regional court, Poland)] or the president of a [Sąd Apelacyjny (court of appeal, Poland)] shall be, respectively, the president of the [Sąd Okręgowy (regional court)], the president of the [Sąd Apelacyjny (court of appeal)] and the [NCJ].'

11 Article 42a of the Law on the ordinary courts states:

'1. In the context of the activities of the courts or the organs of the courts, it shall not be permissible to call into question the legitimacy of the [courts], the constitutional organs of the State or the organs responsible for reviewing and protecting the law.

2. An ordinary court or other authority cannot establish or assess the legality of the appointment of a judge or of the authority to perform judicial tasks that derives from that appointment.'

12 Article 47a(1) of that law provides:

'Cases shall be assigned to judges and trainee judges at random according to the specific categories of cases, with the exception of the assignment of cases to a duty judge.'

13 Under Article 47b of that law:

‘1. A change in the composition of a court is authorised only where that court cannot examine the case in its current composition or where there is a lasting obstacle to the examination of the case by that court in its current composition. The provisions of Article 47a shall apply, *mutatis mutandis*.

…

3. The decisions referred to [in paragraph 1] … are to be taken by the President of that court or by a judge authorised by him or her.’

14 Article 80 of the Law on the ordinary courts provides:

‘1. A judge shall not be detained or prosecuted without the authorisation of the disciplinary court with jurisdiction. …

…

2c. The disciplinary court shall adopt a resolution authorising a judge to be prosecuted if there is a sufficiently justified suspicion that he or she has committed the offence. The resolution shall contain the decision whose subject matter is the authorisation to prosecute the judge and the grounds of that decision.

…’

15 Article 107(1) of that law reads as follows:

‘A judge shall be accountable, at the disciplinary level, for breach of professional obligations (disciplinary offences), including in cases of:

…

(2) acts or omissions of such a kind as to prevent or seriously undermine the functioning of a judicial authority;

(3) 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;

…’

16 Under Article 110(2a) of that law:

‘… The cases referred to in Article 80 … shall be decided upon, at first instance, by the [Sąd Najwyższy (Supreme Court)], sitting as a single judge of the Disciplinary Chamber and, at second instance, by the [Sąd Najwyższy (Supreme Court)], sitting in a formation of three judges of the Disciplinary Chamber.’

17 Article 129(1) to (3) of that law is worded as follows:

‘1. The disciplinary court may suspend from duty a judge against whom disciplinary … proceedings have been initiated, and may also do so if it adopts a decision authorising the initiation of criminal proceedings against the judge concerned.

2. If the disciplinary court adopts a decision authorising the initiation of criminal proceedings against a judge for an intentional offence prosecuted by the Public Prosecutor, it shall automatically suspend the judge from his or her duties.

3. When suspending a judge from his or her duties, the disciplinary court shall reduce the amount of his or her remuneration by 25% to 50%, for the duration of that suspension; …'

The Criminal Code

18 Article 241(1) of the kodeks karny (Criminal Code) provides that 'any person who makes public, without authorisation, the information relating to the criminal investigation before such information has been revealed in the judicial proceedings is liable to a fine, to community service, or to a custodial sentence of up to two years'.

The Code of Criminal Procedure

19 Article 439(1) of the kodeks postępowania karnego (Code of Criminal Procedure) states:

'Irrespective of the scope of the appeal and the grounds of appeal put forward and the impact of the infringement on the content of the ruling, the appeal court shall set aside the ruling under appeal:

(1) if a person who is not authorised to give a ruling or is incapable of doing so or who is excluded from ruling pursuant to Article 40 has taken part in the ruling;

(2) if the composition of the court was inappropriate or one of its members was not present throughout the duration of the hearing;

…'

The main proceedings and the questions referred for a preliminary ruling

Case C-615/20

20 On the basis of an indictment, dated 7 February 2017, from the Warsaw Regional Public Prosecutor's Office, YP and 13 other defendants are being prosecuted before the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland) on the grounds of a series of offences which have caused harm to 229 victims. That case was assigned to a single-Judge formation of that court, composed of Judge I.T. The file in the main proceedings has a total of 197 volumes and more than a hundred hearings have already taken place before that judge, during which the defendants, the victims and more than 150 witnesses were heard. On the date on which the request for a preliminary ruling in Case C-615/20 was lodged, the proceedings were close to their final stage, with only a few witnesses and experts still to be heard.

21 On 14 February 2020, the Prokuratura Krajowa Wydział Spraw Wewnętrznych (National Public Prosecutor's Office, Internal Affairs Division, Poland) applied to the Disciplinary Chamber for leave to prosecute Judge I.T. for having 'on 18 December 2017, in Warsaw, as agent of the State … publicly breached his duties … and exceeded his powers …, in so far as he authorised media representatives to record footage and sounds during the hearing before the [Sąd Okręgowy w Warszawie (Regional Court, Warsaw)] in the case … and during the delivery of the decision in that case and the oral statement of the reasons for it, and in so doing disclosed to persons who were not authorised, without the lawful consent of the authorised person, information derived from the

investigation procedure of the Warsaw Regional Public Prosecutor's Office in the case …, which he had obtained in the course of his duties, and, consequently, that he acted to the detriment of the public interest, which constitutes an offence within the meaning of Article 231(1) of the Criminal Code, read in conjunction with Article 266(2), Article 241(1) and Article 11(2) of that code'.

22 On 9 June 2020, the Disciplinary Chamber, ruling at first instance as a single Judge, refused that request. Following an action brought by the National Public Prosecutor's Office, that chamber, ruling at second instance in a formation of three judges, authorised by a resolution of 18 November 2020 ('the resolution at issue') the initiation of criminal proceedings against Judge I.T., suspended that judge from his duties and reduced the amount of his remuneration by 25% for the duration of that suspension.

23 The referring court, which is the formation of the Sąd Okręgowy w Warszawie (Regional Court, Warsaw) currently hearing the criminal proceedings referred to in paragraph 20 above and on which Judge I.T. sits as a single Judge, notes that the resolution at issue is such as to prevent that formation from being able to continue those proceedings.

24 In those circumstances, the Sąd Okręgowy w Warszawie (Regional Court, Warsaw) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must EU law – in particular Article 47 of [the Charter] and the right to an effective remedy before a tribunal and the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law expressed therein – be interpreted as precluding [national provisions such as Article 80, Article 110(2a) and Article 129 of the Law on the ordinary courts and Article 27(1)(1a) of the Law on the Supreme Court], which [allow the Disciplinary Chamber] to lift a judge's immunity and suspend a judge from his or her duties, and thus to effectively prevent a judge from ruling on the cases assigned to him or her, particularly since:

(a) the [Disciplinary Chamber] is not a "tribunal" within the meaning of Article 47 of the Charter, Article 6 of the [Convention on Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950] and Article 45(1) of the [Constitution] (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);

(b) members of the [Disciplinary Chamber] have particularly close links to the legislature and the executive (order of 8 April 2020, *Commission* v *Poland*, C-791/19 R, EU:C:2020:277);

(c) the Republic of Poland was obliged to suspend the application of certain provisions of the Law on the Supreme Court concerning the [Disciplinary Chamber] and to refrain from referring cases pending before that Chamber to a [formation] whose composition does not meet the requirements of independence (order of 8 April 2020, *Commission* v *Poland*, C-791/19 R, EU:C:2020:277)?

(2) Must EU law – in particular Article 2 TEU and the value of the rule of law expressed therein and the requirements for effective legal protection under the second subparagraph of Article 19(1) TEU – be interpreted as meaning that "the rules governing the disciplinary regime of those who have the task of adjudicating" also cover provisions relating to the criminal prosecution or detention of a judge of a national court, such as Article 181 of the [Constitution] in conjunction with Articles 80 and 129 of the [Law on the ordinary courts], according to which provisions:

(a) the criminal prosecution or deprivation of liberty (detention) of a judge of a national court, in principle at the request of a public prosecutor, requires authorisation from the disciplinary court having jurisdiction;

(b) a disciplinary court, having authorised the criminal prosecution or deprivation of liberty (detention) of a judge of a national court, is allowed (and in some cases is obliged to) suspend this judge from his or her duties;

(c) when suspending a judge of a national court from his or her duties, the disciplinary court is at the same time obliged to reduce his or her remuneration, within the limits set by the relevant provisions, for the duration of the suspension?

(3) Must EU law – in particular the provisions referred to in question 2 – be interpreted as precluding legislation of a Member State, such as Article 110(2a) of the [Law on the ordinary courts] and Article 27(1)(1a) of the [Law on the Supreme Court], according to which cases relating to authorisation for the criminal prosecution or deprivation of liberty (detention) of a judge of a national court fall within the exclusive jurisdiction of a body such as the Disciplinary Chamber at both first and second instance, taking in particular into account (individually or jointly) the following facts:

(a) the establishment of the Disciplinary Chamber coincided with a change in the rules for selecting members of a body such as the [NCJ], which is involved in judicial appointments and upon whose proposal all members of the Disciplinary Chamber were appointed;

(b) the national legislature has made it impossible to transfer to the Disciplinary Chamber current judges of [a] national court of last instance, such as the [Sąd Najwyższy (Supreme Court),] within which that Chamber operates, such that only new members appointed upon the proposal of the newly selected NCJ may sit in the Disciplinary Chamber;

(c) the Disciplinary Chamber enjoys a particularly high degree of autonomy within the [Sąd Najwyższy (Supreme Court)];

(d) the [Sąd Najwyższy (Supreme Court)], in its rulings implementing the 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), confirmed that the newly selected NCJ is not independent of the legislature and of the executive and that the Disciplinary Chamber is not a "tribunal" within the meaning of Article 47 of the Charter, Article 6 of the [Convention for the Protection of Human Rights and Fundamental Freedoms] and Article 45(1) of the [Constitution];

(e) a request for authorisation for criminal prosecution or deprivation of liberty (detention) of a judge of a national court is, in principle, submitted by a public prosecutor whose superior is an executive body such as the Minister for Justice, which executive body may issue binding instructions to public prosecutors concerning procedural acts, and at the same time members of the Disciplinary Chamber and of the newly selected NCJ have, as the [Sąd Najwyższy (Supreme Court)] found in the rulings referred to in point (d), particularly close links to the legislature and to the executive, and thus the Disciplinary Chamber cannot be regarded as a third party in relation to the parties to the proceedings;

(f) the Republic of Poland was obliged to suspend the application of certain provisions of the [Law on the Supreme Court] concerning the Disciplinary Chamber and to refrain from referring cases pending before this Chamber to a [formation] whose composition does not meet the

requirements of independence in accordance with the order of 8 April 2020, *Commission* v *Poland* (C-791/19 R, EU:C:2020:277)?

(4) Where authorisation is granted for the criminal prosecution or detention of a judge of a national court, which involves suspending that judge from his or her duties and reducing his or her remuneration for the duration of his or her suspension, must EU law – in particular the provisions referred to in question 2 and the principles of primacy, sincere cooperation under Article 4(3) TEU and legal certainty – be interpreted as precluding such authorisation, in particular as regards the suspension of that judge from his or her duties, from having binding effect if it was granted by a body such as the Disciplinary Chamber, and therefore:

(a) all State bodies (including the referring court whose composition includes the judge covered by that authorisation as well as the bodies which have [power] to designate and modify the composition of national courts) must disregard that authorisation and allow the judge of a national court covered by that authorisation to sit on the adjudicating [formation] of that court;

(b) the court whose composition includes the judge covered by that authorisation is a tribunal previously established by law or an independent and impartial tribunal, and therefore can, as a "tribunal", rule on questions concerning the application or interpretation of EU law?'

25 In their written observations, YP, the Regional Public Prosecutor's Office, Warsaw, and the European Commission stated that the appeal brought by the Regional Public Prosecutor's Office against the order for reference in Case C-615/20 had been dismissed by order of 24 February 2021 of the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw, Poland), the latter court having held that the resolution at issue might not be in the nature of a judicial decision on the ground that it was adopted by the Disciplinary Chamber, which does not constitute an independent court.

Case C-671/20

26 The Regional Public Prosecutor's Office, Warsaw, charged M.M. with various offences, inter alia, failure to file for bankruptcy in respect of a company, failure to satisfy creditors' claims and failure to file the financial statements of that company and bank fraud.

27 In that context, the prosecutor ordered, by decision of 9 June 2020, the creation of a compulsory mortgage over real property owned by M.M. and his wife, as security for the payment of potential fines and court fees to which M.M. might be sentenced. The latter brought an appeal against that decision before the Sąd Okręgowy w Warszawie (Regional Court, Warsaw). The case linked to that appeal was assigned, within that court, to Judge I.T.

28 Following the adoption of the resolution at issue, which, inter alia, suspended Judge I.T. from his duties, the President of the Sąd Okręgowy w Warszawie (Regional Court, Warsaw), on the basis of Article 47b(1) and (3) of the Law on the ordinary courts, delivered, on 24 November 2020, an order by which he instructed the President of the Chamber in which Judge I.T. sat to change the composition of the court formation in 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 of Justice the request for a preliminary ruling forming the subject of Case C-615/20. Consequently, that president of a chamber, using an IT tool and in accordance with the provisions of Article 47a and Article 47b(3) of the Law on the ordinary courts, adopted an order reassigning the cases initially assigned to Judge I.T., including the case referred to in paragraph 27 of the present judgment.

29 According to the referring court, namely another single-Judge formation of the Sąd Okręgowy w Warszawie (Regional Court, Warsaw) to which that case was reassigned, that succession of events shows that the President of that court has conceded that the resolution at issue is binding, 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, within the meaning of Article 47b(1) of the Law on the ordinary courts.

30 In those circumstances, the Sąd Okręgowy w Warszawie (Regional Court, Warsaw) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must EU law – in particular Article 2 TEU and the value of the rule of law expressed therein, the second subparagraph of Article 19(1) TEU and the principles of primacy, sincere cooperation and legal certainty – be interpreted as precluding the application of a Member State's legislation, such as Article 41b(1) and (3) of the [Law on the ordinary courts], in such a manner that the president of a court may, independently and without judicial review, decide to change the composition of a court as a result of an authorisation granted by a body such as the [Disciplinary Chamber] for the criminal prosecution … of a judge included in the original [formation] [(a judge of the Sąd Okręgowy (Regional Court)], which involves the mandatory suspension of that judge from his or her duties and entails, in particular, prohibiting that judge from sitting on [formations] in the cases assigned to him or her, including the cases assigned to him or her before the authorisation was granted?

(2) Must EU law – in particular the provisions cited in question 1 – be interpreted as precluding:

(a) legislation of a Member State such as Article 42a(1) and (2) and point 3 of Article 107(1) of the [Law on the ordinary courts], which prohibits a national court from reviewing, in the course of that court's review of its compliance with the requirements of being a tribunal previously established by law, the binding effect and legal circumstances of the authorisation granted by the Disciplinary Chamber referred to in question 1, which are a direct cause of the change in the composition of the court, while at the same time stipulating that an attempt to conduct such a review will give rise to disciplinary proceedings being instituted against the judge conducting it?

(b) the case-law of a national body, such as the Trybunał Konstytucyjny (Constitutional Court, Poland), according to which acts by national bodies such as the [President of the Republic] and the [NCJ] related to the appointment of members of a body such as the Disciplinary Chamber are not subject to judicial review, including review from the point of view of EU law irrespective of the seriousness and extent of the infringements, and the appointment of a person to a judicial post is final and conclusive?

(3) Must EU law – in particular the provisions cited in question 1 – be interpreted as precluding the authorisation referred to in question 1 from having binding effect, in particular as regards the suspension of a judge from his or her duties, due to the fact that it was granted by a body such as the Disciplinary Chamber, and therefore:

(a) all State bodies (including the referring court as well as the bodies which have [power] to designate and modify the composition of national courts, in particular a court president) must disregard that authorisation and allow the judge of a national court covered by that authorisation to sit on the adjudicating [formation] of that court;

(b) a court whose composition does not include the judge originally appointed to it – solely because he or she is covered by that authorisation – is not a tribunal previously established by law and therefore cannot, as a "tribunal", rule on questions concerning the application or interpretation of EU law?

(4) From the point of view of the answers to the above questions, is it relevant that the Disciplinary Chamber and the Trybunał Konstytucyjny (Constitutional Court) do not guarantee effective judicial protection due to their lack of independence and the established infringements of the rules concerning the appointment of their members?'

Procedure before the Court

31 The two separate formations of the Sąd Okręgowy w Warszawie (Regional Court, Warsaw) which submitted the present references for a preliminary ruling ('the referring courts') requested that the expedited procedure be applied to those references pursuant to Article 105 of the Rules of Procedure of the Court of Justice. In support of those requests, the referring courts argued, in essence, that recourse to such a procedure was warranted in the present case since the answers to the questions referred may have an impact not only on their respective compositions, but also on the situation of judges other than Judge I.T. in respect of whom the Disciplinary Chamber has taken or has the intention of adopting measures similar to the resolution at issue.

32 Article 105(1) of the Rules of Procedure provides that, at the request of the referring court or tribunal or, exceptionally, of his or her own motion, the President of the Court may decide, after hearing the Judge-Rapporteur and the Advocate General, that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure where the nature of the case requires that it be dealt with within a short time.

33 It must be borne in mind that such an expedited procedure is a procedural instrument intended to address matters of exceptional urgency. Furthermore, it is also apparent from the Court's case-law that the expedited procedure may not be applied where the sensitive and complex nature of the legal problems raised by a case does not lend itself easily to the application of such a procedure, in particular where it is not appropriate to shorten the written part of the procedure before the Court (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 54 and the case-law cited).

34 In the present case, the President of the Court decided, by decisions of 9 December 2020 and 21 January 2021, after hearing the Judge-Rapporteur and the Advocate General, that it was not appropriate to grant the requests referred to in paragraph 31 above.

35 While the questions referred admittedly relate to fundamental provisions of EU law, they are nevertheless of a complex and sensitive nature and form part of a relatively complex national procedural context, such that they do not lend themselves in any way to a procedure derogating from the ordinary rules of procedure. Moreover, account was also taken of the fact that other cases pending before the Court and raising similar issues to those in the questions referred in the present cases were already at advanced stages of the proceedings.

36 However, in those decisions of 9 December 2020 and 21 January 2021, the President of the Court gave the present cases priority pursuant to Article 53(3) of the Rules of Procedure. Furthermore, in the same decision of 21 January 2021, Cases C-615/20 and C-671/20 were joined for the purposes of the written and oral parts of the procedure and of the judgment.

37 At the end of the written part of the procedure in those cases, they were stayed by decision of the President of the Court of 28 October 2021 pending the closure of the written part of the procedure in Case C-204/21, *Commission* v *Poland (Independence and private life of judges)*, having regard to the close links between the questions raised in those three cases. As a result of that closure, the proceedings in the present Joined Cases resumed on 23 February 2022.

Admissibility of the requests for a preliminary ruling

38 The Polish Government and the Regional Public Prosecutor's Office, Warsaw maintain that the requests for a preliminary ruling are inadmissible in various respects.

39 In the first place, they submit that, since the main proceedings are exclusively governed by national criminal law, which falls within the exclusive competence of the Member States, those proceedings are of a purely domestic character and are not connected with the provisions of EU law which the questions put to the Court concern. As regards, specifically, an act such as the resolution at issue, it thus follows from Article 5 TEU and Articles 3 and 4 TFEU that it is for the Member States exclusively to decide whether to confer on judges immunity from prosecution and, if so, to determine the scope and the procedure for the potential lifting of that immunity and the consequences attaching to such a lifting of immunity.

40 It must be recalled in this connection, first, that although the organisation of justice in the Member States, in particular the establishment, composition, the powers and functioning of national courts, and the rules governing the process for the appointment of judges or those applicable to the status of judges or the performance of their duties, such as the disciplinary regime applicable to them or the conditions under which their immunity may be lifted and they may be suspended from duties, falls within the competence of those Member States, when exercising that competence, the Member States are nevertheless required to comply with their obligations deriving from EU law and, in particular, from Articles 2 and 19 TEU (see, to that effect, judgments of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraphs 56, 60 to 62 and 95 and the case-law cited, and of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 38 and the case-law cited).

41 Secondly, it must be stated that the arguments referred to in paragraph 39 above relate, in essence, to the scope and, therefore, to the interpretation of the provisions of EU law with which the questions referred for a preliminary ruling are concerned, and to the likely effects of those provisions, in view, in particular, of the primacy of that law. Such arguments, which concern the substance of the questions referred, cannot therefore, by their nature, entail the inadmissibility of those questions (see, to that effect, judgment of 16 November 2021, *Prokuratura Rejonowa w Mińsku Mazowieckim and Others*, C-748/19 to C-754/19, EU:C:2021:931, paragraph 54 and the case-law cited).

42 In the second place, the Polish Government and the Regional Public Prosecutor's Office, Warsaw, take the view that the requests for a preliminary ruling are inadmissible since the Court's answers to the questions referred are unnecessary for the purposes of the outcome of the main proceedings and, in particular, cannot lead to decisions which the referring courts would be able to adopt in those proceedings.

43 According to the Polish Government, neither of those courts is able to call in question the resolution at issue. In addition, even if the Court authorised one of those courts to disregard that resolution, under national law those courts have no procedural basis allowing them in practice to

assign the cases in the main proceedings back to the judge before whom those cases were initially brought.

44 That government is of the opinion that the questions referred for a preliminary ruling are, in fact, relevant only in the context of the pending criminal proceedings pursued against Judge I.T. Any doubts as to the interpretation of provisions of EU law such as those relied on by the referring courts should be examined in the context of those criminal proceedings, to which the judge concerned is a party, and not in the context of the main proceedings, which that judge happened to be hearing before being suspended from his duties by the resolution at issue. At the hearing before the Court, the Polish Government submitted that that analysis has, in the meantime, been borne out by the guidance provided in paragraphs 60 and 71 of the judgment of 22 March 2022, *Prokurator Generalny and Others (Disciplinary Chamber of the Supreme Court – Appointment)*, (C-508/19, EU:C:2022:201).

45 The Regional Public Prosecutor's Office, Warsaw, submits, as regards the main proceedings in Case C-615/20, that the decision to stay those proceedings, ordered by the referring court in that case, prevents the conclusion of those proceedings by delivery of a judgment by that court in its current formation, and that, if a new court formation were to be appointed, the ground for that stay would cease to exist, since the resolution at issue concerns Judge I.T. alone. As regards the main proceedings in Case C-671/20, the suspension of Judge I.T. from his duties constitutes a lasting obstacle to continuing that case, which legitimately warranted the reassignment of the case related to those proceedings in order to ensure that those proceedings were effective and that the rights of the individuals concerned were observed.

46 In that regard, it must nevertheless be noted that both referring courts are, here, faced, in the context of the main proceedings before them respectively, with questions of a procedural nature which must be settled *in limine litis* and whose solution is dependent on an interpretation of the provisions and principles of EU law with which the questions referred for a preliminary ruling are concerned. In Case C-615/20, those questions seek, in essence, to determine whether, having regard to those provisions and principles of EU law, the single Judge who makes up the referring 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. So far as concerns the questions in Case C-671/20, they seek, in essence, to determine whether, having regard to the same provisions and principles of EU law, the referring court in that case may, without any risk of disciplinary liability to the single Judge sitting in that court, regard that resolution as non-binding, which would result in that court not being 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.

47 As follows from the Court's case-law, questions referred for a preliminary ruling which seek in that way to enable a referring court to settle, *in limine litis*, procedural difficulties such as those relating to its own jurisdiction to hear and determine a case pending before it, or which concern the legal effects which must or must not be conferred on a judicial decision which potentially precludes the continuation of the examination of such a case by that court, are admissible under Article 267 TFEU (see, to that effect, 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, paragraphs 100, 112 and 113 and the case-law cited; 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 93 and 94; and of 16 November 2021, *Prokuratura Rejonowa w Mińsku Mazowieckim and Others*, C-748/19 to C-754/19, EU:C:2021:931, paragraphs 47 to 49).

48 It must be observed in this connection that, unlike in the case which gave rise to the judgment of 22 March 2022, *Prokurator Generalny and Others (Disciplinary Chamber of the Supreme Court – Appointment)* (C-508/19, EU:C:2022:201), to which the Polish Government referred, the main proceedings in the present Joined Cases are entirely separate from the criminal proceedings initiated against the referring judge in Case C-615/20 and are not in any way incidental to those proceedings, within the meaning of paragraph 71 of that judgment. Consequently, the guidance derived from that judgment cannot be transposed to the main proceedings in the present cases.

49 It follows from all of the foregoing that the present requests for a preliminary ruling are admissible.

Consideration of the questions referred

The first to third questions referred in Case C-615/20

50 By its first to third questions, which should be examined together, the referring court in Case C-615/20 asks, in essence, whether Article 2 TEU, the second subparagraph of Article 19(1) TEU and Article 47 of the Charter must be interpreted as precluding 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.

51 It must be noted at the outset in this connection that, since the present requests for a preliminary ruling were made, the Court, seised by the Commission of an action directed against the Republic of Poland seeking a declaration of failure to fulfil obligations, has, on the grounds set out in paragraphs 91 to 103 of the judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21, EU:C:2023:442) ('the judgment in *Commission* v *Poland (Independence and private life of judges)*') and as follows from point 1 of the operative part of that judgment, ruled that, by conferring on the Disciplinary Chamber, 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 and the performance of their office, such as applications for authorisation to initiate criminal proceedings against judges and trainee judges, that Member State has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU.

52 In particular, in paragraph 101 of that judgment the Court 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.

53 In paragraph 102 of that judgment, the Court noted that it had already found, in paragraph 112 of its judgment of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)* (C-791/19, EU:C:2021:596), that, for the reasons set out in paragraphs 89 to 110 of the latter judgment, the independence and impartiality of the Disciplinary Chamber were not guaranteed.

54 In the present case, it is apparent from the order for reference that the resolution at issue, which authorised the initiation of criminal proceedings against the single Judge comprising the referring court in Case C-615/20 – namely 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 – and which suspended that judge from his duties while reducing his remuneration, was adopted on the basis of the national provisions which the Court, in the judgment in *Commission* v *Poland (Independence and private life of judges),* held to be contrary to that provision of EU law inasmuch as they confer jurisdiction to adopt acts such as that resolution on a body whose independence and impartiality are not guaranteed.

55 The guidance in paragraphs 91 to 103 of the judgment in *Commission* v *Poland (Independence and private life of judges)*, which underpins the finding of a failure to fulfil obligations made in point 1 of the operative part of that judgment, is thus sufficient for the purposes of answering the first to third questions in Case C-615/20, and in that case there is no need to also undertake an interpretation of Article 2 TEU and Article 47 of the Charter or to examine the other criteria mentioned in those first and third questions.

56 It is also important to bear in mind in that context that, under Article 260(1) TFEU, if the Court finds that a Member State has failed to fulfil its obligations under the Treaties, that Member State is required to take the necessary measures to comply with the judgment of the Court, which has the force of *res judicata* as regards the matters of fact and law actually or necessarily settled by the judicial decision in question (judgment of 10 March 2022, *Grossmania*, C-177/20, EU:C:2022:175, paragraph 35 and the case-law cited).

57 Thus, if the authorities of the Member State concerned, which is participating in the exercise of legislative power, are under a duty to amend national provisions which have been the subject of a judgment establishing a failure to fulfil obligations so as 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 it is the duty of those national courts, by virtue of the authority attaching to that judgment, to take account, if need be, of the elements of law established by that judgment in order to determine the scope of the provisions of EU law which they have the task of applying (judgment of 10 March 2022, *Grossmania*, C-177/20, EU:C:2022:175, paragraph 36 and the case-law cited).

58 It follows from all the foregoing that the referring court in Case C-615/20 is here required, in the case in the main proceedings, to draw the appropriate conclusions from the guidance in the judgment in *Commission* v *Poland (Independence and private life of judges)* referred to in paragraphs 51 and 55 above.

59 Having regard to all the foregoing, the answer to the first to third questions referred in Case C-615/20 is that the second subparagraph of Article 19(1) TEU must be interpreted as precluding 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.

The fourth question referred in Case C-615/20

60 By its fourth question, the referring court in Case C-615/20 asks, in essence, whether the second subparagraph of Article 19(1) TEU and the principle of the primacy of EU law, the principle of sincere cooperation laid down in Article 4(3) TEU and the principle of legal certainty must be interpreted as meaning:

– 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.

61 Under settled case-law, the principle of the primacy of EU law establishes the pre-eminence of EU law over the law of the Member States. That principle therefore requires all Member State bodies to give full effect to the various EU provisions, and the law of the Member States may not undermine the effect accorded to those provisions in the territory of those States (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 156 and the case-law cited).

62 That principle thus, inter alia, imposes a duty 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 (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). Compliance with that obligation is necessary, inter alia, in order to ensure respect for the equality of Member States before the Treaties and constitutes an expression of the principle of sincere cooperation set out in Article 4(3) TEU (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 55 and the case-law cited).

63 The Court has ruled 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 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, 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 (judgment in *Commission* v *Poland (Independence and private life of judges)*, paragraph 78 and the case-law cited).

64 It is also apparent from settled case-law that, even in the absence of national legislative measures having brought to an end a failure to fulfil obligations established by the Court, it is for the national courts to take all measures to facilitate the full application of EU law in accordance with the *dicta* in the judgment establishing a failure to fulfil obligations. Moreover, those courts are required, under the principle of sincere cooperation laid down in Article 4(3) TEU, to nullify the unlawful consequences of an infringement of EU law (see, to that effect, judgment of 10 March 2022, *Grossmania*, C-177/20, EU:C:2022:175, paragraphs 38 and 63 and the case-law cited).

65 For the purposes of meeting the obligations set out in paragraphs 61 to 64 above, 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 (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).

66 Since the final assessment of the facts and the application and interpretation of the national law falls solely to the referring court in proceedings which are the subject of Article 267 TFEU, it is for that court to assess definitively what concrete consequences stem, in the main proceedings in Case C-615/20, from the principle recalled in the previous paragraph. However, in accordance with settled case-law, the Court may, on the basis of the material presented to it, provide the referring court with an interpretation of EU law which may be useful to it for that purpose (see, to that effect, judgment of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153,paragraph 96 and the case-law cited).

67 In this connection, at the hearing before the Court, the Polish Government informed it of the adoption of the ustawa o zmianie ustawy o Sądzie Najwyższym oraz niektórych innych ustawa (Law amending the Law on the Supreme Court and certain other Laws), of 9 June 2022 (Dz. U. of 2022, item 1259), which entered into force on 15 July 2022. According to the explanations provided by that government, that new law has, inter alia, dissolved the Disciplinary Chamber and established a transitional regime under which any judge against whom that chamber has adopted a resolution authorising the initiation of criminal proceedings against him or her now has the possibility of requesting a review of the file by a new chamber established by that law within the Sąd Najwyższy (Supreme Court). The latter chamber must, in that situation, rule on such a request within a maximum period of 12 months.

68 According to that government, the existence of that new remedy would thus enable the referring judge in Case C-615/20 potentially to obtain judicial review of the resolution at issue, so that it would no longer be necessary to disapply that resolution in the present case. That government argues that the Court itself has pointed out, in paragraph 161 of the 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), that that type of remedy is justified only in so far as it is essential in view of the procedural situation at issue in order to ensure the primacy of EU law.

69 However, it is not apparent from the explanations thus provided by the Polish Government that the resolution at issue ceased to have effect as a result of the entry into force of the Law of 9 June 2022 mentioned in paragraph 67 above or, therefore, that the obstacle to the continuation of the main proceedings by the referring court in Case C-615/20, in its present composition, has been removed. As regards the fact that the judge concerned now has the possibility of requesting the judicial review of the resolution at issue before a newly established body which is required to rule within a maximum period of one year, that likewise does not appear, subject to the final checks which it falls to the referring court to make in that regard, capable of ensuring that that obstacle can be removed without delay, if necessary at the initiative of the judicial bodies with jurisdiction for designating and modifying the composition of the formations of the national court, under conditions such as to ensure observance of the principle of the primacy of EU law.

70 Lastly, 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 or the alleged finality of that resolution can be successfully relied on in order to prevent the referring court and the judicial bodies with jurisdiction for designating and modifying the composition of the formations of the national court from disapplying such a resolution (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 160).

71 Attention must be drawn in this respect, in particular, to the fact that the main proceedings in Case C-615/20 have been stayed by the referring court, pending the present judgment. 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 have reached, does not, a priori, appear such as to be capable of undermining legal certainty. On the contrary, it seems 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.

72 In those circumstances, the referring court in Case C-615/20 is justified in disapplying the resolution at issue so that it may, in that light, continue the examination of the case in the main proceedings in its present 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.

73 Having regard to all the foregoing, the answer to the fourth question referred in Case C-615/20 is that the second subparagraph of Article 19(1) TEU, the principle of the primacy of EU law and the principle of sincere cooperation laid down in Article 4(3) TEU must be interpreted as meaning:

– 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.

The first and third questions and the first part of the fourth question referred in Case C-671/20

74 By its first and third questions and the first part of the fourth question – which relates to the conditions for the appointment of members of the Disciplinary Chamber – which it is appropriate to examine together, the referring court in Case C-671/20 asks, in essence, whether the second subparagraph of Article 19(1) TEU and the principles of the primacy of EU law, sincere cooperation and legal certainty must be interpreted as meaning:

– first, that 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 has 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 – must disapply that resolution and refrain from continuing to examine that case and,

– secondly, that 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.

75 It is apparent from the order for reference in Case C-671/20 that, following the adoption of the resolution at issue which authorised the initiation of criminal proceedings against Judge I.T. and ordered that he be suspended from his duties, the President of the Sąd Okręgowy w Warszawie (Regional Court, Warsaw), acting on the basis of Article 47b(1) and (3) of the Law on the ordinary courts, adopted an order by which he instructed the President of the Chamber in which Judge I.T. sat to change the composition of the court formation in 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 of Justice the request for a preliminary ruling which was the subject of Case C-615/20. Subsequently, that President of the Chamber, using an IT tool designed for that purpose, adopted an order re-assigning the case in the main proceedings to another formation, namely the referring court in Case C-671/20.

76 It follows from the considerations underpinning the answer to the fourth question referred in Case C-615/20 that the direct effect attaching to the second subparagraph of Article 19(1) TEU means that the national courts must disapply a resolution which leads, in breach of that provision, to 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.

77 In order to guarantee the effectiveness of the second subparagraph of Article 19(1) TEU, that obligation falls, in particular, on the court formation to which the case in question would have been re-assigned on account of such a resolution and, as a result, that formation is required to refrain from hearing and determining that case (see, to that effect, judgment of 22 March 2022, *Prokurator Generalny and Others (Disciplinary Chamber of the Supreme Court – Appointment)*, C-508/19, EU:C:2022:201, paragraph 74). 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.

78 In the present case, for the reason stated in paragraph 70 above, no consideration relating to the principle of legal certainty or linked to an alleged finality of that resolution can successfully be relied upon.

79 It must be observed in this connection that, as is apparent from the order for reference in Case C-671/20 and unlike in other cases assigned to Judge I.T. – which would also have been re-assigned 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 in that case were stayed pending delivery of the present judgment. 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.

80 Having regard to all the foregoing, the answer to the first and third questions and the first part of the fourth question referred in Case C-671/20 is that the second subparagraph of Article 19(1) TEU, the principle of the primacy of EU law and the principle of sincere cooperation must be interpreted as meaning:

– first, that a formation of a national court, to which a case which hitherto had been assigned to another formation of that court has been re-assigned – 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 of Justice on a preliminary ruling, must disapply that resolution and refrain from continuing to examine that case and,

– secondly, that 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.

The second question and the second part of the fourth question referred in Case C-671/20

81 By its second question and the second part of the fourth question – which relates to the conditions for the appointment of members of the Trybunał Konstytucyjny (Constitutional Court) – which it is appropriate to examine together, the referring court in Case C-671/20 asks, in essence, whether the second subparagraph of Article 19(1) TEU and the principles of the primacy of EU law and 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 make up 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 the judges who make up such a body cannot be the subject of judicial review, inasmuch as that case-law is liable to preclude that examination.

82 As regards, in the first place, the national provisions which the referring court cited in Case C-671/20, it must be observed that Article 42a(1) and (2) of the Law on the ordinary courts imposes, inter alia, on those courts, prohibitions on calling into question the lawfulness of the courts or on assessing the legality of the appointment of a judge or of 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.

83 As is apparent from the explanations provided by that referring court, that court takes the view that such national provisions are liable to prevent it from ruling 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. According to the referring court, in so doing, it would be required to call in question the legitimacy of a judicial authority, namely the Disciplinary Chamber, and to undermine seriously that authority's functioning. Such an examination of the binding force of the resolution at issue would, simultaneously, require the referring court to assess the legality of the appointments of the judges who make up that chamber and their authority to carry out judicial tasks as well as to decide on the effectiveness of those appointments.

84 In that regard, it is apparent from the answer given to the first and third questions and to the first part of the fourth question in Case C-671/20 that the national courts which are called upon to give effect to 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 must, where it is essential in view of the procedural situation at issue in order to ensure the primacy of EU law, disapply such a resolution.

85 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, cannot, by definition, be prohibited or regarded as a disciplinary offence on the part of judges sitting in such a court (see, to that effect, judgment in *Commission* v *Poland (Independence and private life of judges)*, paragraph 132).

86 In the judgment in *Commission* v *Poland (Independence and private life of judges)*, the Court thus held, for the reasons set out in paragraphs 198 to 219 thereof and as is apparent from point 3 of the operative part thereof, that, by adopting and maintaining in force Article 42a(1) and (2) of the Law on the ordinary courts, prohibiting any national court from verifying compliance with the requirements stemming from EU law relating to the guarantee of an independent and impartial tribunal previously established by law, 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 under the principle of the primacy of EU law.

87 The Court also held in that judgment, for the reasons set out in paragraphs 125 to 163 thereof and as is apparent from point 2 of the operative part thereof, that by adopting and maintaining in force points 2 and 3 of Article 107(1) of the Law on the ordinary courts, which allows the examination of compliance with the EU requirements relating to an independent and impartial tribunal previously established by law to be classified as a disciplinary offence, the Republic of Poland had, inter alia, failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU, read in conjunction with Article 47 of the Charter.

88 It has already been recalled in paragraphs 56, 58 and 61 to 64 of the present judgment that, having regard to the authority attaching to judgments by which the Court finds such a failure to fulfil obligations as well as the direct effect of the second subparagraph of Article 19(1) TEU and the principle of the primacy of EU law, it is for the national courts, and therefore, in particular, the referring court in Case C-671/20, to disapply in the cases before them the national provisions thus held to be contrary to that provision of EU law. It follows that the national provisions concerned and, in particular, the prohibitions at issue that they impose on the ordinary courts cannot prevent the referring court from examining whether the resolution at issue is binding and from disapplying that resolution, as it is obliged to do.

89 As regards, in the second place, the case-law of the Trybunał Konstytucyjny (Constitutional Court) to which the referring court has referred, it is apparent from the explanations provided by that court that it takes the view that that case-law is also liable to preclude it from carrying out an examination of the conditions under which the appointments of the members of the Disciplinary Chamber were made for the purpose of satisfying itself that that body is independent and impartial and, from concluding, if necessary, that the resolution at issue is inapplicable.

90 In that regard, and without there being any need to examine the second part of the fourth question relating to the conditions for the appointment of the members of that constitutional court, it is sufficient to recall that, 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 (see, to that effect, judgment in *Commission* v *Poland (Independence and private life of judges)*, paragraph 78 and the case-law cited).

91 Furthermore, it should be recalled that, 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 (judgment in *Commission* v *Poland (Independence and private life of judges)*, paragraph 151 and the case-law cited).

92 Thus, it will be for the referring court in Case C-671/20 to disapply the national provisions as referred to in paragraphs 86 and 87 above and the case-law of the Trybunał Konstytucyjny (Constitutional Court) as referred to in paragraph 89 above, in so far as those provisions and that case-law are liable to preclude that referring court from disapplying the resolution at issue and, consequently, from refraining from ruling on the case in the main proceedings.

93 Having regard to all the foregoing considerations, the answer to the second question referred in Case C-671/20 is that the second subparagraph of Article 19(1) TEU and the principles of the primacy of EU law and 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 make up 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 the judges who make up such a body cannot be the subject of judicial review, inasmuch as that case-law is liable to preclude that examination.

Costs

94 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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:

1. **The second subparagraph of Article 19(1) TEU must be interpreted as precluding 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.**

2. **The second subparagraph of Article 19(1) TEU, the principle of the primacy of EU law and the principle of sincere cooperation laid down in Article 4(3) TEU must be interpreted as meaning:**

– **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.**

3. **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 meaning:**

– **first, that a formation of a national court, to which a case which hitherto had been assigned to another formation of that court has been re-assigned – 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 of Justice on a preliminary ruling, must disapply that resolution and refrain from continuing to examine that case and,**

– **secondly, that 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.**

4. **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 make up 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 the judges who make up such a body cannot be the subject of judicial review, inasmuch as that case-law is liable to preclude that examination.**

[Signatures]

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* Language of the case: Polish.