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Provisional text

JUDGMENT OF THE COURT (Fourth Chamber)

14 November 2024 (*)

(Reference for a preliminary ruling – Second subparagraph of Article 19(1) TEU – Remedies – Effective judicial protection – Independent and impartial tribunal established by law – National rules governing the random allocation of cases to the judges of a court and the modification of the formations of the court – Provision precluding reliance on the infringements of those rules in appeal proceedings)

In Case C197/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw, Poland), made by decision of 28 April 2022, received at the Court on 24 March 2023, in the proceedings

S. S.A.

v

C. sp. z o.o.,

intervening party

Prokurator Prokuratury Regionalnej w Warszawie,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Third Chamber acting as President of the Fourth Chamber, S. Rodin and O. Spineanu-Matei (Rapporteur), Judges,

Advocate General: L. Medina,

Registrar: M. Siekierzyńska, Administrator,

having regard to the written procedure and further to the hearing on 7 March 2024,

after considering the observations submitted on behalf of:

– C. sp. z o.o., by M. Mioduszewski, Z. Ochońska-Borowska and J. Sroczyński, radcowie prawni,

– the Prokurator Prokuratury Regionalnej w Warszawie, by M. Dejak,

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

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

after hearing the Opinion of the Advocate General at the sitting on 20 June 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2, Article 6(1) and (3) and the second subparagraph of Article 19(1) TEU, read in combination with Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between S. S.A. and C. sp. z o.o. concerning the lawfulness of premiums charged by C. in the performance of a commercial framework agreement.

Legal context

European Union law

3 Article 2 TEU provides:

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

4 The second subparagraph of Article 19(1) TEU states:

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

5 Article 47 of the Charter provides that:

'Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. …

…'

Polish law

The Code of Civil Procedure

6 Article 47(1) of the ustawa Kodeks postępowania cywilnego (Code of Civil Procedure) of 17 November 1964 (Dz. U. No 43, item 296), in its consolidated version (Dz. U. of 2019, item 1460) ('the Code of Civil Procedure'), provides:

'At first instance, the court shall hear cases in a single-judge formation, unless otherwise provided by a specific provision.'

7 Article 379(4) of the Code of Civil Procedure provides:

‘The proceedings shall be invalid … if the composition of the trial court does not comply with statutory provisions or if the case was heard in the presence of a judge subject to exclusion by operation of law.’

8 Article 386(2) of that code provides:

‘Where the proceedings are declared invalid, the court of second instance shall set aside the judgment under appeal, set aside the proceedings in so far as they are invalid and refer the case back to the court of first instance.’

The Law on the organisation of the ordinary courts

9 The ustawa Prawo o ustroju sądów powszechnych (Law on the organisation of the ordinary courts) of 27 July 2001 (Dz. U. No 98, item 1070), in its consolidated version (Dz. U. of 2019, item 52), as amended by the ustawa o zmianie ustawy – Prawo o ustroju sądów powszechnych, ustawy o Sądzie Najwyższym oraz niektórych innych ustaw (Law amending the Law on the organisation of the ordinary courts, Law on the Supreme Court and certain other laws) of 20 December 2019 (Dz. U. of 2020, item 190) (respectively, ‘the Law on the organisation of the ordinary courts’ and ‘the Law of 20 December 2019’), provides in Article 45:

‘1. A judge or trainee judge may be replaced in his or her duties by a judge or trainee judge of the same court, or by a judge seconded in accordance with Article 77(1) or (8).

2. The replacement referred to in paragraph 1 may be the result of a measure taken by the President of the Division or the President of the Court, adopted at the request of the judge or trainee judge or of his or her own motion, in order to ensure the proper conduct of the proceedings.’

10 Article 47a of the Law on the organisation of the ordinary courts states:

‘1. Cases shall be allocated to judges and to trainee judges at random according to the specific categories of cases, with the exception of the allocation of cases to a duty judge.

2. Cases within the specific categories shall be allocated equally unless the share has been reduced because of the post held, participation in the allocation of cases of another category, or for other reasons provided for by law.’

11 Article 47b of that law provides:

‘1. A change in the composition of the court may take place only where it is impossible for the court to hear and determine the case in its current composition or where there is a lasting obstacle to the court hearing and determining the case in its current composition. The provisions of Article 47a shall apply *mutatis mutandis*.

2. If it is necessary to take measures in a case, in particular where this is required by separate provisions or justified on grounds of the proper course of the proceedings, and where the formation of the court to which the case has been allocated cannot do so, measures shall be taken by the formation designated in accordance with the substitution plan and, if measures are not covered by the substitution plan, by the formation designated in accordance with Article 47a.

3. Decisions in the cases referred to in paragraphs 1 and 2 shall be taken by the President of the Court or by a judge authorised by him or her.’

12 The Law of 20 December 2019 added a paragraph 4 to Article 55 of the Law on the organisation of ordinary courts, which is worded as follows:

‘Judges may adjudicate in all cases in the place to which they are posted and in other courts in cases defined by law (jurisdiction of the judge). The provisions relating to the allocation of cases and to the designation and modification of the formations of the court shall not limit the jurisdiction of a judge and

cannot be a basis for determining that a formation is contrary to the law, that a court is improperly composed or that a person not authorised or competent to give judgment forms part of the court.'

13 In accordance with Article 8 of the Law of 20 December 2019, Article 55(4) of the Law on the organisation of the ordinary courts is also to apply to cases initiated or closed before the date of entry into force of the Law of 20 December 2019.

The Regulation on the operation of the ordinary courts

14 The Rozporządzenie Ministra Sprawiedliwości Regulamin urzędowania sądów powszechnych (Regulation of the Minister for Justice laying down rules on the operation of the ordinary courts) of 23 December 2015 (Dz. U. of 2015, item 2316) ('the Rules on the operation of the ordinary courts'), applicable in the case in the main proceedings, provided in Article 43(1):

'Cases shall be allocated to reporting judges (judges and trainee judges) at random, according to the distribution of activities established, by an IT tool operating on the basis of a random number generator, separately for each register, list or other recording device, unless the provisions of this Regulation provide for other allocation rules. …'

15 Article 52b of the Rules on the operation of the ordinary courts provided:

'1. The substitution table shows the alternates (judges, trainee judges and jurors) for each working day.

2. The duty table indicates the duty judges and trainee judges for each day.

3. The substitution and duty tables shall determine the number of alternate and duty [judges and trainee judges] by period of time, division or types of case allocated to alternate and duty [judges and trainee judges], as well as the order in which substitutions shall be made, and cases allocated to duty [judges and trainee judges] where a number of [judges and trainee judges] are alternates and on duty.

…'

16 Article 52c of the Rules on the operation of the ordinary courts provided:

'1. In the event of the absence of the reporting judge at the hearing, the President of the Division shall cancel the hearing if it is possible to inform the persons concerned, unless the proper course of the proceedings clearly requires that the hearing be held.

2. The case in respect of which the hearing has not been cancelled shall be heard by the alternate judge as provided in the substitution plan for the day in question. If the alternate has been unable to make adequate preparations or if the examination of the case by that alternate requires that a substantial part of the procedure be reopened, the President of the Division shall order that the hearing be cancelled. …

…'

The Law on combating unfair competition

17 The ustawa o zwalczeniu nieuczciwej konkurencji (Law on combating unfair competition) of 16 April 1993 (consolidated text, Dz. U. of 2022, item 1233) provides in Article 15(1)(4):

'An act of unfair competition occurs when access to the market for other entrepreneurs is hindered, in particular by … the levying of charges other than the commercial mark-up for accepting goods for sale.'

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

18 On 27 April 2018, S. brought a commercial litigation action before the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland). Acting as the assignee of a claim against C., a company operating in the

retail sector, it seeks an order that C. pay the sum of 4 572 648 Polish zlotys (PLN) (approximately EUR 1 045 000), corresponding to cash premiums on the turnover achieved in a given accounting year (arrears margins) which, it is alleged, C. wrongly charged in the context of a commercial framework agreement concluded with the assignor and relating to the supply of goods for resale. According to S., the charging of those premiums was contrary to Article 15(1)(4) of the Law on combating unfair competition, since they constituted 'charges other than the commercial mark-up for accepting goods for sale' within the meaning of that provision.

19 That case was allocated to the XVI Commercial Division of that court and, under the system of random allocation of cases, to Judge E.T., Vice-President of that division, sitting as a single judge.

20 On 25 March 2019, the day of the hearing in that case, Judge E.T. being absent because of leave granted at her request, the President of the XVI Commercial Division of that court appointed J.K., the duty judge on that day, to hold the hearing, and the case was therefore allocated to him.

21 By judgment of 16 September 2019, delivered by Judge J.K, sitting as a single judge of the Sąd Okręgowy w Warszawie (Regional Court, Warsaw), S.'s claim was dismissed.

22 S. brought an appeal on 27 October 2019 before the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw, Poland), which is the referring court.

23 In that appeal, S. pleaded that the proceedings before the court of first instance were invalid on the basis of Article 379(4) of the Code of Civil Procedure, on the ground that the formation of the court was contrary to the law, owing to the infringement of the principle that the formation of the court may not be altered, since the hearing was held and the judgment delivered by a judge other than the one to whom the case had initially been allocated.

24 After carrying out various measures of inquiry or checks with a view to reviewing the lawfulness of the proceedings before the court of first instance, the referring court is satisfied that the replacement of Judge E.T. with Judge J.K. took place under conditions that infringe the principle that the formation of the court may not be altered, established by national law. That court considers that the reason for replacing Judge E.T. contravenes Article 47b of the Law on the organisation of the ordinary courts. It also states that not all the formalities that should have accompanied that replacement were completed, and it suspects the court of first instance of having amended certain documents in an attempt to remedy those irregularities a posteriori.

25 The referring court is not aware of the reasons for that replacement, which it considers to be irregular, while noting that the use of such a process could lead to the allocation of a relatively large number of cases being transferred from one judge to another.

26 It also states that, 'theoretically', it cannot be ruled out that the composition of a single-judge formation may be deliberately changed in sensitive cases by a procedure consisting, for the judge to whom a case was randomly allocated initially, in fixing a hearing for a date on which he or she will be on leave at his or her request, the judge's absence on the date of the hearing being used to cause that judge to be replaced by the judge who, on that date, appears in the substitution or duty table, and whose name may be known in advance.

27 Lastly, the referring court mentions resolutions of the Sąd Najwyższy (Supreme Court, Poland) according to which the composition of a panel of judges in breach of the provisions of national law relating to the allocation of cases and to the appointment and modification of the panels hearing the case may constitute a ground for imposing the penalty of declaring the proceedings to be invalid, as provided for in Article 379(4) of the Code of Civil Procedure.

28 It notes, however, that any review in that regard in the context of an appeal has been prohibited since the introduction of Article 55(4) of the Law on the organisation of the ordinary courts.

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

‘(1) Must Article 2, Article 6(1) and (3) and the second subparagraph of Article 19(1) [TEU], in conjunction with Article 47 of the [Charter], be interpreted as meaning that a court of first instance of a Member State …, the formation of which is composed of a single judge of that court assigned to hear a case in flagrant breach of the provisions of national law on the allocation of cases and the appointment and modification of the formations of a court, does not constitute an independent and impartial tribunal previously established by law which ensures effective legal protection?

(2) Must Article 2, Article 6(1) and (3) and the second subparagraph of Article 19(1) [TEU], in conjunction with Article 47 of the [Charter], be interpreted as precluding the application of provisions of national law, such as the second sentence of Article 55(4) of the [Law on the organisation of the ordinary courts] … in so far as they prohibit a court of second instance from declaring invalid … proceedings before a … court of first instance … on the grounds that the composition of that court was contrary to the law, the court was improperly composed, or a person not authorised or competent to adjudicate participated in the decision, as a legal sanction ensuring effective legal protection where a judge is assigned to hear a case in flagrant breach of the provisions of national law on the allocation of cases and the appointment and modification of the formations of a court?’

The jurisdiction of the Court of Justice and the admissibility of the request for a preliminary ruling

30 The State Counsel of the Warsaw Regional Office of the State Counsel (‘the Regional State Counsel’) submits that the reference for a preliminary ruling is inadmissible because it is not apparent from the order for reference that the case in the main proceedings has any connection with EU law. The Regional State Counsel and the defendant in the main proceedings submit that the questions referred concern the interpretation of provisions of national law governing the organisation of the judicial system of a Member State as regards the arrangements for allocating cases and changing the composition of the formation of a court, in particular, with regard to determining whether infringement of those provisions is capable of invalidating the proceedings under Article 379(4) of the Code of Civil Procedure. According to the Regional State Counsel, such matters, like any question relating to the organisation and functioning of State bodies, fall within the exclusive competence of the State. The second subparagraph of Article 19(1) TEU requires Member States to achieve an objective, namely the establishment of a set of provisions guaranteeing effective judicial protection, but it is not possible to infer from that any norms relating to the system of justice being organised in a certain way.

31 In that regard, in so far as the Regional State Counsel and the defendant in the main proceedings, by those arguments, are in fact seeking to call into question the jurisdiction of the Court to rule on the request for a preliminary ruling, it must be borne in mind that, although the organisation of justice in the Member States falls within the competence of those Member States, the fact remains that, when exercising that competence, the Member States are required to comply with their obligations deriving from EU law (judgment of 7 September 2023, Asociaţia ‘ Forumul Judecătorilor din România’, C216/21, EU:C:2023:628, paragraph 45 and the case-law cited).

32 As regards the scope of the second subparagraph of Article 19(1) TEU, it is apparent from the case-law of the Court that that provision refers to the ‘fields covered by Union law’, irrespective of whether the Member States are implementing Union law within the meaning of Article 51(1) of the Charter (judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C558/18 and C563/18, EU:C:2020:234, paragraph 33 and the case-law cited).

33 The second subparagraph of Article 19(1) TEU is thus intended, inter alia, to apply to any national body which can rule, as a court or tribunal, on questions concerning the application or interpretation of EU law and which therefore fall within the fields covered by that law (judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C558/18 and C563/18, EU:C:2020:234, paragraph 34 and the case-law cited).

34 There is no doubt that that is the situation in the present case, given that, as the Advocate General observed in point 29 of her Opinion, both the court of first instance, whose lawful composition is called into question before the referring court, and the referring court, which is prohibited by national law from reviewing the lawfulness of that composition, may be called upon to rule on questions relating to the application or interpretation of EU law. Accordingly, those courts must satisfy the requirements arising from the right to effective judicial protection.

35 Furthermore, the Regional State Counsel and the European Commission submit that it is not apparent from the order for reference that the dispute in the main proceedings involves the implementation of Union law, within the meaning of Article 51(1) of the Charter, and that, therefore, Article 47 of the Charter is inapplicable.

36 In that regard, it is appropriate to point out that, in the context of a reference for a preliminary ruling under Article 267 TFEU, the Court may interpret EU law only within the limits of the powers conferred on it (judgment of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)* (C585/18, C624/18 and C625/18, EU:C:2019:982, paragraph 77 and the case-law cited).

37 As regards the Charter, its scope, 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)* (C585/18, C624/18 and C625/18, EU:C:2019:982, paragraph 78 and the case-law cited).

38 In the present case, as regards, more specifically, Article 47 of the Charter, it must be stated that the dispute which gave rise to the main proceedings has no connection with any provision of EU law. Indeed, the claim against the defendant in the main proceedings is based exclusively on a provision of national law. In addition, the referring court has not provided any information to indicate that the dispute in the main proceedings relates to the interpretation or application of a rule of EU law which is implemented at national level.

39 Therefore, as such, Article 47 of the Charter is not applicable to the case in the main proceedings.

40 However, since the second subparagraph of Article 19(1) TEU requires all Member States to provide remedies sufficient to ensure effective judicial protection in the fields covered by Union law, within the meaning in particular of Article 47 of the Charter, the latter provision, although it is not applicable to the main proceedings, must be duly taken into consideration for the purposes of interpreting the second subparagraph of Article 19(1) TEU (see, to that effect, judgment of 20 April 2021, *Repubblika*, C896/19, EU:C:2021:311, paragraph 45 and the case-law cited).

41 In addition, the Regional State Counsel submits that a preliminary ruling is not necessary to enable the referring court to rule in the case in the main proceedings. That court exceeds its jurisdiction by reviewing the lawfulness of the composition of the court of first instance. For its part, the defendant in the main proceedings submits that the questions referred are so general that an answer from the Court of

Justice would not dispel the doubts as to the legal issue concerning the relationship between the rules on the allocation of a case to a judge and the invalidity of the proceedings at first instance in the main action.

42 However, it should be noted, first, that the request for a preliminary ruling specifically concerns the question whether EU law precludes a prohibition on the referring court reviewing the lawfulness of the composition of the court of first instance, which requires the interpretation of EU law, in particular the second subparagraph of Article 19(1) TEU, so that the examination of the objection that the referring court exceeds its jurisdiction merges with that of the questions referred for a preliminary ruling.

43 Second, it should be pointed out that, according to settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court of Justice to determine, enjoy a presumption of relevance. The Court of Justice may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual and legal material necessary to give a useful answer to the questions submitted to it (judgment of 6 June 2024, *INGSTEEL*, C547/22, EU:C:2024:478, paragraph 26 and the case-law cited).

44 In the present case, the referring court states that the type of irregularity concerned in the main proceedings involves a risk of manipulation of allocations in sensitive cases and that it is prevented by a provision of national law from drawing the appropriate conclusions from such irregularities. In those circumstances, it considers that it is faced with the question whether that provision must be disapplied in accordance with its obligation under the principle of the primacy of EU law to set aside rules of national law that are contrary to the second subparagraph of Article 19(1) TEU.

45 By those considerations, the referring court shows to the requisite legal standard that the preliminary ruling sought is ‘necessary’ to enable it to ‘give judgment’ in the case before it, within the meaning of Article 267 TFEU.

46 Lastly, as the Regional State Counsel submits, it should be noted that, contrary to what is provided for in Article 94(c) of the Rules of Procedure of the Court of Justice, the referring court does not set out the reasons why it is asking the Court about the interpretation of Article 2 and Article 6(1) and (3) TEU.

47 However, it must be pointed out that, as regards the second subparagraph of Article 19(1) TEU, the order for reference contains sufficient reasoning to make it possible to understand the reasons for the request for an interpretation of that provision and that, in the light of paragraph 34 above, the questions referred for a preliminary ruling are admissible in so far as they relate to that provision. That provision, which gives concrete expression to the value of the rule of law affirmed in Article 2 TEU, entrusts the responsibility for ensuring the full application of EU law in all Member States and the judicial protection that individuals derive from EU law to national courts and tribunals and to the Court of Justice (judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C430/21, EU:C:2022:99, paragraph 39 and the case-law cited). Therefore, as the Advocate General stated in point 41 of her Opinion, the second subparagraph of Article 19(1) TEU must be interpreted in the light of Article 2 TEU.

48 In the light of all of the foregoing, it must be held that, in so far as the request for a preliminary ruling concerns the interpretation of the second subparagraph of Article 19(1) TEU, read in the light of Article 2 TEU and of Article 47 of the Charter, the Court has jurisdiction to rule on that request and that it is admissible.

Consideration of the questions referred

49 As a preliminary point, it should be noted, in the first place, that the defendant in the main proceedings and the Regional State Counsel dispute the description of the national law set out in the order for reference, maintaining that it is incomplete and biased.

50 In addition, as regards the case-law of the Sąd Najwyższy (Supreme Court), while the referring court mentions decisions according to which infringement of the principle that the formation of the court may not be altered is such as to render the proceedings invalid, because the case has been dealt with by a formation of a court whose composition contravenes legal provisions, pursuant to Article 379(4) of the Code of Civil Procedure, the Regional State Counsel refers to earlier contrary decisions. The Regional State Counsel also maintains that the national law does not contain the concept of 'flagrant breach' of the provisions relating to the allocation of cases and modification of the formation of a court, used by the referring court, which contrasts that concept with that of a 'simple breach' of those provisions.

51 In that regard, it should be borne in mind that, according to settled case-law, the referring court alone has jurisdiction to interpret and apply national law. Therefore, the Court of Justice must take account, under the division of jurisdiction between itself and the national courts, of the legislative context, as described in the order for reference, in which the questions put to it are set (judgment of 27 January 2021, *Dexia Nederland*, C229/19 and C289/19, EU:C:2021:68, paragraph 44 and the case-law cited).

52 It follows that the Court of Justice must rely on the referring court's assessment, first, that the absence of the first-instance judge to whom the case at issue in the main proceedings had been allocated on the day fixed for a hearing on account of leave granted at her request did not, in the circumstances of that case, constitute a ground for replacing that judge pursuant to Article 47b(1) of the Law on the organisation of the ordinary courts and, second, that the application of Article 379(4) of the Code of Civil Procedure should, in principle, lead to the proceedings at first instance being declared invalid on account of that irregularity, although it is common ground that that is precluded by Article 55(4) of that law.

53 In the second place, the defendant in the main proceedings and the Regional State Counsel submit, in essence, that the rules of national law on the allocation of cases and the modification of the formations of the court are administrative provisions, the objective of which is to ensure a fair distribution of the workload among the members of a court. By their nature, those rules are not liable to give rise to the exercise of external influence.

54 It should be noted, however, that the requirement of independence of the courts which derives from EU law concerns not only undue influences which may be exerted by the legislature and the executive, but also those which may come from within the court concerned (see, to that effect, judgment of 11 July 2024, *Hann-Invest and Others*, C554/21, C622/21 and C727/21, EU:C:2024:594, paragraph 54).

55 The referring court has found that there is a serious risk that infringements of national rules relating to the reallocation of cases may have the objective of enabling a certain judge to rule on a specific case or on a certain type of case. In those circumstances, as the Advocate General noted in point 48 of her Opinion, the doubts thus expressed by the referring court are sufficient to regard the questions relating to the application of those rules as having to be assessed in the light of the requirements of EU law relating to the guarantee of an independent and impartial tribunal previously established by law.

56 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, read in the light of Article 2 TEU and of Article 47 of the Charter, must be interpreted as precluding a national provision which in all circumstances prevents the appellate court from reviewing whether the reallocation of the case to the formation of the court which ruled on it at first instance was made in breach of the national rules on the reallocation of cases within the courts.

57 It should be recalled that, in accordance with the second subparagraph of Article 19(1) TEU, every Member State must ensure that the bodies which are called upon, as 'courts or tribunals' within the meaning defined by 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 11 July 2024, *Hann-Invest and Others*, C554/21, C622/21 and C727/21, EU:C:2024:594, paragraph 47 and the case-law cited).

58 In order to guarantee that such a court is in a position to ensure that effective legal protection, it is necessary, in the first place, to maintain its independence, as confirmed by the second paragraph of Article 47 of the Charter, which refers to access to an 'independent' tribunal as one of the requirements linked to the fundamental right to an effective remedy (see, to that effect, judgment of 16 November 2021, *Prokuratura Rejonowa w Mińsku Mazowieckim and Others*, C748/19 to C754/19, EU:C:2021:931, paragraph 65 and the case-law cited).

59 That requirement that courts be independent, which is inherent in the task of adjudication, forms part of the essence of the right to effective judicial protection and the fundamental right to a fair trial, which is of cardinal importance as a guarantee that all the rights which individuals derive from EU law will be protected and that the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law, will be safeguarded (judgment of 16 November 2021, *Prokuratura Rejonowa w Mińsku Mazowieckim and Others*, C748/19 to C754/19, EU:C:2021:931, paragraph 66 and the case-law cited).

60 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. The second aspect, which is internal in nature, is linked to the concept of '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 11 July 2024, *Hann-Invest and Others*, C554/21, C622/21 and C727/21, EU:C:2024:594, paragraphs 50 and 51 and the case-law cited).

61 As recalled in paragraph 54 above, while the 'external' aspect 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, it also aims to protect judges from undue influences from within the court concerned.

62 It should also be pointed out that the performance of their duty of adjudicating must be protected not only from any direct influence, in the form of instructions, but also from types of influence which are more indirect and which are liable to have an effect on the court decisions (see, to that effect, judgment of 11 July 2024, *Hann-Invest and Others*, C554/21, C622/21 and C727/21, EU:C:2024:594, paragraph 53 and the case-law cited).

63 In the second place, the second subparagraph of Article 19(1) TEU also requires the existence of a tribunal 'previously established by law' bearing in mind the inextricable links that exist between access to such a tribunal and the guarantees of judicial independence and judicial impartiality (see, to that effect, judgment of 11 July 2024, *Hann-Invest and Others*, C554/21, C622/21 and C727/21, EU:C:2024:594, paragraph 55 and the case-law cited).

64 Furthermore, the reference to a ‘tribunal established by law’, which also appears in the second paragraph of Article 47 of the Charter, reflects, in particular, the principle of the rule of law and covers not only the legal basis for the very existence of a tribunal, but also the composition of the bench in each case and any other provision of domestic law which, if breached, would render the participation of one or more judges in the examination of a case irregular (see, to that effect, judgment of 29 March 2022, *Getin Noble Bank*, C132/20, EU:C:2022:235, paragraph 121 and the case-law cited).

65 Moreover, the possibility of checking compliance with those guarantees is necessary for the confidence which the courts in a democratic society must inspire in those subject to their jurisdiction. Thus, the Court has held that reviewing compliance with the requirement that every court, as composed, constitutes an independent and impartial tribunal previously established by law is an essential procedural requirement, compliance with which is a matter of public policy (see, to that effect, judgments of 1 July 2008, *Chronopost and La Poste* v *UFEX and Others*, C341/06 P and C342/06 P, EU:C:2008:375, paragraph 46, and of 8 May 2024, *Asociaţia ‘Forumul Judecătorilor din România’ (Associations of judges)*, C53/23, EU:C:2024:388, paragraph 55 and the case-law cited). Such a review must be made of the court’s own motion in the examination of an action where a serious doubt arises on that point (see, to that effect, judgment of 26 March 2020, *Review Simpson* v *Council and HG* v *Commission*, C542/18 RX-II and C543/18 RX-II, EU:C:2020:232, paragraphs 57 and 58).

66 Effective judicial protection cannot be guaranteed if, at the request of a party or of the court’s own motion where there is serious doubt, compliance with the rules conferring on a court the status of an ‘independent and impartial tribunal previously established by law’ could not be the subject of judicial review and a possible penalty in the event of non-compliance, otherwise those rules could be disregarded without that entailing any consequence. In that regard, it should be pointed out that the very existence of effective judicial review designed to ensure compliance with provisions of the law is of the essence of the concept of ‘the rule of law’ (see, to that effect, judgment of 6 October 2020, *Bank Refah Kargaran* v *Council*, C134/19 P, EU:C:2020:793, paragraph 36 and the case-law cited).

67 Therefore, if a Member State lays down legal provisions relating to the composition of the formation of the court sitting in each case and to the reallocation of cases, Article 19(2) TEU, read in the light of Article 2 TEU and of Article 47 of the Charter, requires that compliance with those rules may be subject to judicial review.

68 It follows that national legislation which prevents appellate courts from reviewing compliance with the national rules on the reallocation of cases within the courts or the modification of formations of the courts, in order to determine whether the formation of the court which ruled at first instance constitutes an independent and impartial tribunal previously established by law, by prohibiting those appellate courts in all circumstances from finding, as the case may be, that the proceedings at first instance are invalid where those proceedings have been closed by a judgment delivered by a formation of the court to which the case has been reallocated or which was modified in breach of those rules, must be regarded as incompatible with the requirements of the second subparagraph of Article 19(1) TEU.

69 It must also be pointed out that, after the present request for a preliminary ruling was made, in an action for failure to fulfil obligations brought against the Republic of Poland, in the specific context of the adoption by that Member State, as a matter of urgency, of various procedural provisions in response to a series of references for preliminary rulings made by various Polish courts as regards the compatibility with EU law of various legislative amendments that affected the organisation of justice in Poland, the Court held, in paragraphs 226 and 227 of the judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)* (C204/21, EU:C:2023:442), that a rule of national law which generally prevents such review, namely Article 55(4) of the Law on the organisation of the ordinary courts, contravenes the combined provisions of the second subparagraph of Article 19(1) TEU and Article 47 of the Charter. It

follows that, in the case in the main proceedings, the referring court will have to disapply that rule, as the Advocate General noted in point 84 of her Opinion.

70 It follows from all of the foregoing that the answer to the questions referred for a preliminary ruling is that the second subparagraph of Article 19(1) TEU, read in the light of Article 2 TEU and of Article 47 of the Charter, must be interpreted as precluding a national provision which in all circumstances prevents the appellate court from reviewing whether the reallocation of a case to the formation of the court which ruled on it at first instance was made in breach of the national rules on the reallocation of cases within the courts.

Costs

71 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 (Fourth Chamber) hereby rules:

The second subparagraph of Article 19(1) TEU, read in the light of Article 2 TEU and of Article 47 of the Charter of Fundamental Rights of the European Union,

must be interpreted as precluding a national provision which in all circumstances prevents the appellate court from reviewing whether the reallocation of a case to the formation of the court which ruled on it at first instance was made in breach of the national rules on the reallocation of cases within the courts.

[Signatures]

* Language of the case: Polish.