ECLI:EU:C:2021:311

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

20 April 2021 (*)

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

In Case C-896/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Prim'Awla tal-Qorti Ċivili – Ġurisdizzjoni Kostituzzjonali (First Hall of the Civil Court, sitting as a Constitutional Court, Malta), made by decision of 25 November 2019, received at the Court on 5 December 2019, in the proceedings

Repubblika

v

Il-Prim Ministru,

intervening party:

WY,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, A. Arabadjiev, A. Prechal, M. Vilaras, M. Ilešič and N. Piçarra, Presidents of Chambers, C. Toader, M. Safjan, S. Rodin, F. Biltgen, K. Jürimäe, C. Lycourgos, P.G. Xuereb and L.S. Rossi (Rapporteur), Judges,

Advocate General: G. Hogan,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 27 October 2020,

after considering the observations submitted on behalf of:

– Repubblika, by J. Azzopardi, avukat, S. Busuttil, advocate, and T. Comodini Cachia, avukat,

– the Maltese Government, by V. Buttigieg and A. Buhagiar, acting as Agents, and by D. Sarmiento Ramirez-Escudero and V. Ferreres Comella, abogados,

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

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

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

– the Swedish Government, by C. Meyer-Seitz, H. Shev, H. Eklinder, R. Shahsavan Eriksson, A.M. Runeskjöld, M. Salborn Hodgson, O. Simonsson and J. Lundberg, acting as Agents,

– the European Commission, initially by K. Mifsud-Bonnici, P.J.O. Van Nuffel, H. Krämer and J. Aquilina, and subsequently by K. Mifsud-Bonnici, P.J.O. Van Nuffel and J. Aquilina, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 December 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 19 TEU and of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between Repubblika, an association registered as a legal person in Malta, the purpose of which is to promote the protection of justice and the rule of law in that Member State, and Il-Prim Ministru (Prime Minister, Malta) relating to an *actio popularis* concerning, inter alia, the conformity with EU law of the provisions of the Constitution of Malta ('the Constitution') governing the procedure for the appointment of members of the judiciary.

Legal framework

3 Chapter VIII of the Constitution contains rules on the judiciary, including those governing the procedure for the appointment of members of the judiciary.

4 In Chapter VIII, Article 96 of the Constitution provides:

'(1) The judges of the Superior Courts shall be appointed by the President acting in accordance with the advice of the Prime Minister.

(2) A person shall not be qualified to be appointed a judge of the Superior Courts unless for a period of, or periods amounting in the aggregate to, not less than twelve years he has either practised as an advocate in Malta or served as a magistrate in Malta, or has partly so practised and partly so served.

(3) Without prejudice to the provisions of sub-article (4), before the Prime Minister gives his advice in accordance with sub-article (1) in respect of the appointment of a judge of the Superior Courts (other than the Chief Justice), the evaluation by the Judicial Appointments Committee established by Article 96A of this Constitution as provided in paragraphs (c), (d) or (e) of sub-article (6) of the said article 96A shall have been made.

(4) Notwithstanding the provisions of sub-article (3), the Prime Minister shall be entitled to elect not to comply with the result of the evaluation referred to in sub-article (3):

Provided that after the Prime Minister shall have availed himself of the power conferred upon him by this sub-article, the Prime Minister or the Minister responsible for justice shall:

(a) publish within five days a declaration in the [*Malta Government Gazette*; the Gazette] announcing the decision to use the said power and giving the reasons which led to the said decision; and

(b) make a statement in the House of Representatives about the said decision explaining the reasons upon which the decision was based by not later than the second sitting of the House to be held after the advice was given to the President in accordance with sub-article (1):

Provided further that the provisions of the first proviso to this sub-article shall not apply in the case of appointment to the office of Chief Justice.'

5 Article 96A of the Constitution is worded as follows:

'(1) There shall be a Judicial Appointments Committee, hereinafter in this article referred to as "the Committee", which shall be a subcommittee of the Commission for the Administration of Justice established by article 101A of this Constitution and which shall be composed as follows:

(a) the Chief Justice;

(b) the Attorney General;

(c) the Auditor General;

(d) the Commissioner for Administrative Investigations (Ombudsman); and

(e) the President of the Chamber of Advocates:

…

(2) The Committee shall be chaired by the Chief Justice or, in his absence, by the judge who substitutes him in accordance with paragraph (d) of sub-article (3).

(3) (a) A person shall not be qualified to be appointed or to continue to hold office as a member of the Committee if he is a Minister, a Parliamentary Secretary, a Member of the House of Representatives, a member of a local government or an official or a candidate of a political party:

…

(4) In the exercise of their functions the members of the Committee shall act on their individual judgment and shall not be subject to the direction or control of any person or authority.

…

(6) The functions of the Committee shall be:

(a) to receive and examine expressions of interest from persons interested in being appointed to the office of judge of the Superior Courts (other than the office of Chief Justice) or of magistrate of the Inferior Courts, except from persons to whom paragraph (e) applies;

(b) to keep a permanent register of expressions of interest mentioned in paragraph (a) and to the acts relative thereto, which register shall be kept secret and shall be accessible only to the members of the Committee, to the Prime Minister and to the Minister responsible for justice;

(c) to conduct interviews and evaluations of candidates for the abovementioned offices in such manner as it deems appropriate and for this purpose to request information from any public authority as it considers to be reasonably required;

(d) to give advice to the Prime Minister through the Minister responsible for justice about its evaluation on the eligibility and merit of the candidates for appointment to the abovementioned offices;

(e) when requested by the Prime Minister, to give advice on the eligibility and merit of persons who already occupy the offices of Attorney General, Auditor General, Commissioner for Administrative Investigations (Ombudsman) or of magistrate of the Inferior Courts to be appointed to an office in the judiciary;

(f) to give advice on appointment to any other judicial office or office in the courts as the Minister responsible for justice may from time to time request:

Provided that the evaluation referred to in paragraph (d) shall be made by not later than sixty days from when the Committee receives the expression of interest and the advice mentioned in paragraphs (e) and (f) shall be given by not later than thirty days from when it was requested, or within such other time limits as the Minister responsible for justice may, with the agreement of the Committee, by order in the Gazette establish.

(7) The proceedings of the Committee shall be confidential and shall be held *in camera* and no member or secretary of the Committee may be called to give evidence before any court or other body with regard to any document received by or any matter discussed or communicated to or by the Committee.

(8) The Committee shall regulate its own procedure and shall be obliged to publish, with the concurrence of the Minister responsible for justice, the criteria on which its evaluations are made.'

6 Article 97 of the Constitution provides:

'(1) Subject to the provisions of this article, a judge of the Superior Courts shall vacate his office when he attains the age of sixty-five years.

(2) A judge of the Superior Courts shall not be removed from his office except by the President upon an address by the House of Representatives supported by the votes of not less than two-thirds of all the members thereof and praying for such removal on the ground of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour.

(3) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the inability or misbehaviour of a judge of the Superior Courts under the provisions of the last preceding sub-article.'

7 Article 100 of the Constitution provides:

'(1) Magistrates of the Inferior Courts shall be appointed by the President acting in accordance with the advice of the Prime Minister.

(2) A person shall not be qualified to be appointed to or to act in the office of magistrate of the Inferior Courts unless he has practised as an advocate in Malta for a period of, or periods amounting in the aggregate to, not less than seven years.

(3) Subject to the provisions of sub-article (4) of this article, a magistrate of the Inferior Courts shall vacate his office when he attains the age of sixty-five years.

(4) The provisions of sub-articles (2) and (3) of article 97 of this Constitution shall apply to magistrates of the Inferior Courts.

(5) Without prejudice to the provisions of sub-article (6), before the Prime Minister gives his advice in accordance with sub-article (1) in respect of the appointment of a magistrate of the Inferior Courts the evaluation by the Judicial Appointments Committee established by article 96A of this Constitution as provided in paragraph (c), (d) or (e) of sub-article (6) of the said article 96A shall have been made.

(6) Notwithstanding the provisions of sub-article (5), the Prime Minister shall be entitled to elect not to comply with the result of the evaluation referred to in sub-article (5):

Provided that, after the Prime Minister shall have availed himself of the power conferred upon him by this sub-article, the Prime Minister or the Minister responsible for justice shall:

(a) publish within five days a declaration in the Gazette announcing the decision to use the said power and giving the reasons which led to the said decision; and

(b) make a statement in the House of Representatives about the said decision explaining the reasons upon which the decision was based by not later than the second sitting of the House to be held after the advice was given to the President in accordance with sub-article (1).'

8 Article 101B(1) of the Constitution states:

'There shall be a Committee for Judges and Magistrates … which shall be a subcommittee of the Commission for the Administration of Justice and which shall consist of three members of the judiciary who are not members of the Commission for the Administration of Justice and who shall be elected from amongst judges and magistrates according to regulations issued by the Commission for the Administration of Justice so however that in disciplinary proceedings against a magistrate

two of the three members shall be magistrates and in the case of disciplinary proceedings against a judge two of the three members shall be judges.'

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

9 On 25 April 2019, Repubblika brought an action, described as an *actio popularis*, before the referring court under Article 116 of the Constitution, seeking a declaration that, by reason of the existing system for the appointment of members of the judiciary, as governed by Articles 96, 96A and 100 of the Constitution, the Republic of Malta is in breach of its obligations under, inter alia, the combined provisions of the second subparagraph of Article 19(1) TEU and of Article 47 of the Charter. Repubblika also requests that any judicial appointment made under the existing system during the proceedings initiated by that *actio popularis* be declared null and void, and that no other members of the judiciary be appointed except in accordance with the recommendations outlined in Opinion No 940/2018 of the European Commission for Democracy through Law ('the Venice Commission') of 17 December 2018 on Constitutional Arrangements and Separation of Powers and the Independence of the Judiciary and Law Enforcement in Malta (CDL-AD (2018)028), together with Article 19(1) TEU and Article 47 of the Charter.

10 In support of its application, Repubblika claims that the Prime Minister's discretion to appoint members of the judiciary, as provided for in Articles 96, 96A and 100 of the Constitution, raises doubts as to the independence of those judges and magistrates. It submits, in that regard, that a number of members of the judiciary appointed since 2013 were very active in the Partit laburista (Labour Party), which is in government, or have been appointed in such a way as to give rise to suspicion of political interference in the judiciary.

11 Repubblika also states that it is specifically challenging all of the appointments made on 25 April 2019 concerning three magistrates of the Inferior Courts appointed as judges of the Superior Courts together with three new magistrates of the Inferior Courts ('the appointments of 25 April 2019'), as well as any other appointment which might be made at a later date. It argues, in that regard, that those appointments were made in disregard of Opinion No 940/2018 of the Venice Commission of 17 December 2018.

12 The Prime Minister contends, on the contrary, that the appointments of 25 April 2019 are compliant with the Constitution and with EU law. There is, he submits, no difference between those appointments and any other judicial appointment made since the Constitution was adopted in 1964, apart from the fact that, unlike appointments made before 2016, the suitability of the candidates presented over the course of 2019 for the duties in question was examined by the Judicial Appointments Committee established by Article 96A of the Constitution. Repubblika's arguments thus relate, in reality, to any judicial appointment made up to the present.

13 The Prime Minister takes the view that the appointments procedure at issue is in conformity with the requirements of the second subparagraph of Article 19(1) TEU and of Article 47 of the Charter, as interpreted by the Court.

14 The referring court considers that, in the present case, the aspect which merits examination by the Court, from the point of view of the second subparagraph of Article 19(1) TEU and Article 47 of the Charter, concerns the discretion which Articles 96, 96A and 100 of the Constitution confer on the Prime Minister in the procedure for appointing members of the judiciary. Furthermore, in its view, the question arises as to whether the constitutional amendment carried out in 2016 brought about an improvement to the procedure in question.

15 In those circumstances, the Prim'Awla tal-Qorti Ċivili – Ġurisdizzjoni Kostituzzjonali (First Hall of the Civil Court, sitting as a Constitutional Court, Malta) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Should the second [subparagraph] of Article 19(1) TEU and Article 47 of the [Charter], read separately or together, be considered to be applicable with respect to the legal validity of Articles 96, 96A and 100 of the Constitution of Malta?

(2) If the first question elicits an affirmative answer, should the power of the Prime Minister in the process of the appointment of members of the judiciary in Malta be considered to be in conformity with Article 19(1) TEU and with Article 47 of the [Charter], considered as well in the light of Article 96A of the Constitution, which entered into effect in 2016?

(3) If the power of the Prime Minister is found to be incompatible, should this fact be taken into consideration with regard to future appointments or should it affect previous appointments as well?'

The request for a preliminary ruling and the procedure before the Court

16 In its order for reference, the Prim'Awla tal-Qorti Ċivili – Ġurisdizzjoni Kostituzzjonali (First Hall of the Civil Court, sitting as a Constitutional Court) requested that the present reference for a preliminary ruling be dealt with under an expedited procedure pursuant to Article 105 of the Rules of Procedure of the Court of Justice.

17 In support of its request, the referring court submitted, in essence, that the questions forming the subject matter of the present case are of national importance, since an answer to them may affect the legal certainty associated with judicial decisions already delivered by the various Maltese courts – including by members of the judiciary appointed in April 2019 – as well as the foundations and continuity of the Maltese judicial system. In addition, it has pointed out that several members of the judiciary will reach retirement age in the near future and if, during the course of the present proceedings, those judges and magistrates are not replaced by others, the pressure resulting from that situation on the work of members of the judiciary still in office could be detrimental to the fundamental right to a fair trial within a reasonable period.

18 Article 105(1) of the Rules of Procedure provides that, at the request of the referring court or tribunal or, exceptionally, of his 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.

19 It must be borne in mind, in that regard, that such an expedited procedure is a procedural instrument intended to address matters of exceptional urgency (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 48).

20 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 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 49).

21 In the present case, on 19 December 2019, the President of the Court decided, after hearing the Judge-Rapporteur and the Advocate General, to refuse the referring court's request referred to in paragraph 16 above.

22 First of all, the referring court itself considered that the case in the main proceedings was not so urgent as to justify the adoption of interim measures. Next, the significance of the effects of the Court's judgment in the present case on the Maltese judicial system is not, as such, a reason establishing the urgency necessary to justify an expedited procedure. Lastly, the present case raises sensitive and complex questions which justified the decision not to deviate from the ordinary rules of procedure applicable to references for a preliminary ruling.

23 On the same day, the President of the Court also decided to give priority treatment to the present case in accordance with Article 53(3) of the Rules of Procedure.

24 At the hearing held on 27 October 2020, the Court was informed of the fact that certain amendments had been made to the Constitution in July 2020 further to recommendations concerning the system for judicial appointments set out in Opinion No 940/2018 of the Venice Commission of 17 December 2018, and that those amendments had been the subject of Opinion No 993/2020 of that commission of 8 October 2020 on the 10 acts and bills implementing legislative proposals subject of the Opinion of the Venice Commission of 17 December 2018 (CDL-AD (2020)019).

Consideration of the questions referred

Admissibility

25 The Polish Government submits that the questions referred are inadmissible for three reasons.

26 That government observes, in the first place, that the referring court has referred its questions to the Court for a preliminary ruling in order that, on the basis of the answers to those questions, it can decide whether the provisions of Maltese law at issue in the main proceedings are compliant with EU law. It is argued that jurisdiction to assess, under Articles 258 and 259 TFEU, whether provisions of national law are compatible with EU law belongs, however, to the Court alone, to the exclusion of national courts, and that only the European Commission or a Member State can bring proceedings under those provisions of EU law. Consequently, a national court cannot, without circumventing the procedure laid down in Articles 258 and 259 TFEU, rule on the compatibility of national law with EU law on the basis of the interpretation of the latter provided in the context of the preliminary-ruling procedure, in so far as the Court itself considers that it does not have jurisdiction to carry out such a review of conformity under that latter procedure. The interpretation of EU law provided by the Court in the present proceedings cannot therefore be regarded as necessary in order to resolve the dispute in the main proceedings, within the meaning of Article 267 TFEU.

27 In that connection, it should be observed that, as is apparent from the present request for a preliminary ruling, the referring court considers that it must obtain from the Court an interpretation of the second subparagraph of Article 19(1) TEU and of Article 47 of the Charter in view of its doubts, in the context of an *actio popularis* brought before it under national law, as to whether the national provisions relating to the process for appointing members of the judiciary are in conformity with those provisions of EU law.

28 The preliminary-ruling procedure established by Article 267 TFEU is precisely a procedure for direct cooperation between the Court of Justice and the courts and tribunals of the Member States. Under that procedure, which is based on a clear separation of functions between national courts and the Court, any assessment of the facts of the case is a matter for the national court, which must determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court, while the Court is empowered to give rulings on the interpretation or the validity of an EU provision only on the basis of the facts which the national court puts before it (judgments of 25 October 2017, *Polbud – Wykonawstwo*, C-106/16, EU:C:2017:804, paragraph 27, and of 30 May 2018, *Dell'Acqua*, C-370/16, EU:C:2018:344, paragraph 31).

29 In that regard, the task of the Court must be distinguished according to whether it is requested to give a preliminary ruling, as in this case, or to rule on an action for failure to fulfil obligations. Whereas, in an action for failure to fulfil obligations, the Court must ascertain whether the national measure or practice challenged by the Commission or another Member State contravenes EU law in general, without there being any need for there to be a corresponding dispute before the national courts, the Court's function in proceedings for a preliminary ruling is, by contrast, to help the referring court to resolve the specific dispute pending before that court (judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraph 47).

30 It should also be borne in mind that, although it is not the task of the Court, in preliminary-ruling proceedings, to rule upon the compatibility of provisions of national law with the legal rules of the European Union, the Court does, however, have jurisdiction to give the national court full guidance on the interpretation of EU law in order to enable it to determine the issue of compatibility for the purposes of the case before it (judgment of 26 January 2010, *Transportes Urbanos y Servicios Generales*, C-118/08, EU:C:2010:39, paragraph 23 and the case-law cited). It is for the referring court to carry out such an assessment, in the light of the guidance thus provided by the Court.

31 It follows that the Polish Government's objection, referred to in paragraph 26 of the present judgment, that an answer to the questions raised by the referring court in the present case under Article 267 TFEU would circumvent Articles 258 and 259 TFEU must be rejected.

32 In the second place, the Polish Government points out that the second subparagraph of Article 19(1) TEU, under which Member States are required to provide effective remedies in the fields covered by EU law, does not alter the substance of the principle of conferral or the extent of the European Union's powers. On the contrary, it argues, that provision is based on the premiss that, in the absence of EU competence in the field of organisation of judicial systems, it is for the Member States to designate the courts and tribunals that have jurisdiction and to lay down appropriate procedural rules intended to safeguard the rights which individuals derive from the legal order of the European Union. Consequently, no specific rule governing the appointment of members of the judiciary or the organisation of national courts and tribunals can be derived from the second subparagraph of Article 19(1) TEU. It is further submitted that Article 47 of the Charter is inapplicable in the present case. Repubblika has brought an *actio popularis*, but it does not rely on a subjective right which it derives from EU law. Thus, in the present case, there is no 'implementation' of EU law within the meaning of Article 51(1) of the Charter.

33 In that regard, it is sufficient to note that the objections thus raised by the Polish Government relate, in essence, to the actual scope of EU law and, in particular, to that of Article 19 TEU and Article 47 of the Charter, and, therefore, to the interpretation of those provisions. Such arguments,

which relate to the substance of the questions referred, cannot therefore, by their very nature, lead to the inadmissibility of those questions (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 80).

34 Consequently, the questions referred for a preliminary ruling are admissible.

The first question

35 By its first question, the referring court asks, in essence, whether the second subparagraph of Article 19(1) TEU and Article 47 of the Charter must be interpreted as meaning that they may be applied in a case in which a national court is seised of an action provided for by national law and seeking a ruling on the compatibility with EU law of national provisions governing the procedure for the appointment of members of the judiciary of the Member State to which that court belongs.

36 As regards, on the one hand, the material scope of the second subparagraph of Article 19(1) TEU, it should be recalled that that provision refers to the 'fields covered by Union law', irrespective of whether the Member States are implementing EU law within the meaning of Article 51(1) of the Charter (judgments of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraph 29, and of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 111 and the case-law cited).

37 Under the second subparagraph of Article 19(1) TEU, every Member State must thus in particular ensure that the bodies which, as 'courts or tribunals' within the meaning of EU law, come within its judicial system in the fields covered by EU law and which, therefore, are liable to rule, in that capacity, on the application or interpretation of EU law, meet the requirements of effective judicial protection (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 112 and the case-law cited).

38 In that connection, it is common ground that Maltese judges and magistrates may be called upon to rule on questions relating to the application or interpretation of EU law and that they form part, as 'courts or tribunals' as defined by that law, of the Maltese judicial system in the 'fields covered by Union law', within the meaning of the second subparagraph of Article 19(1) TEU, meaning that those courts must meet the requirements of effective judicial protection (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 114 and the case-law cited).

39 Furthermore, it follows from the request for a preliminary ruling and from paragraphs 9 to 11 above that the referring court is seised of an action, provided for by national law, in which Repubblika challenges the conformity of provisions concerning the procedure for the appointment of members of the Maltese judiciary with, in particular, the requirements for the independence of the judicial system of the Member States, laid down by EU law. The second subparagraph of Article 19(1) TEU is intended to apply in the context of an action the purpose of which is thus to challenge the conformity with EU law of provisions of national law which it is alleged are liable to affect judicial independence (see, by analogy, judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraphs 11 to 13 and 46 to 52).

40 As regards, on the other hand, Article 47 of the Charter, it must be recalled that that provision, which constitutes a reaffirmation of the principle of effective judicial protection, enshrines the right to an effective remedy before a tribunal for every person whose rights and freedoms guaranteed by EU law are infringed (judgments of 27 June 2013, *Agrokonsulting-04*,

C-93/12, EU:C:2013:432, paragraph 59, and of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 87 and the case-law cited).

41 Thus, the recognition of that right, in a given case, presupposes, as is apparent from the first paragraph of Article 47 of the Charter, that the person invoking that right is relying on rights or freedoms guaranteed by EU law (judgments of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraph 55, and of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 88).

42 It is, however, not apparent from the information contained in the order for reference that, in the dispute in the main proceedings, Repubblika is relying on a right conferred on it by a provision of EU law. In that dispute, the conformity with EU law of the constitutional provisions governing the appointment of members of the judiciary is called into question.

43 Admittedly, Repubblika also disputes the lawfulness of the appointments of 25 April 2019 and of any subsequent appointment which is not in accordance with the recommendations made in Opinion No 940/2018 of the Venice Commission of 17 December 2018 and with Article 19(1) TEU and Article 47 of the Charter. However, Repubblika's challenge in that regard rests solely on the alleged non-conformity with EU law of those constitutional provisions pursuant to which those appointments were made, without Repubblika's invoking any infringement, arising from those appointments, of a right conferred on it under a provision of EU law.

44 In those circumstances, in accordance with Article 51(1) of the Charter, Article 47 thereof is not, as such, applicable to the dispute in the main proceedings.

45 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 EU law, within the meaning in particular of Article 47 of the Charter, that latter provision must be duly taken into consideration for the purposes of interpreting the second subparagraph of Article 19(1) TEU (judgments of 14 June 2017, *Online Games and Others*, C-685/15, EU:C:2017:452, paragraph 54, and of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 143 and the case-law cited).

46 In the light of the foregoing, the answer to the first question is that the second subparagraph of Article 19(1) TEU must be interpreted as meaning that it may be applied in a case in which a national court is seised of an action provided for by national law and seeking a ruling on the conformity with EU law of national provisions governing the procedure for the appointment of members of the judiciary of the Member State to which that court belongs. Article 47 of the Charter must be duly taken into consideration for the purposes of interpreting that provision.

The second question

47 By its second question, the referring court asks, in essence, whether the second subparagraph of Article 19(1) TEU must be interpreted as precluding national provisions which confer on the Prime Minister of the Member State concerned a decisive power in the process for appointing members of the judiciary, while providing for the involvement, in that process, of a body responsible for, inter alia, assessing candidates for judicial office and providing an opinion to that Prime Minister.

48 In that connection, it should 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. That may be the case, in particular, as regards national rules relating to the adoption of decisions appointing members of the judiciary (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 68 and the case-law cited, and paragraph 79).

49 Article 19 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 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 108).

50 In that regard, and as provided for by the second subparagraph of Article 19(1) TEU, it is for the Member States to establish a system of legal remedies and procedures ensuring effective judicial review in the fields covered by EU law and to ensure that courts and tribunals within that system, and which may rule on the application or interpretation of EU law, satisfy the requirements of effective judicial protection (judgment of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraphs 109 and 112 and the case-law cited).

51 In that context, the independence of the judges of the Member States is of fundamental importance for the EU legal order in various respects (judgment of 9 July 2020, *Land Hessen*, C-272/19, EU:C:2020:535, paragraph 45). It is, thus, essential to the proper working of the judicial-cooperation system embodied by the preliminary-ruling mechanism under Article 267 TFEU, in that that mechanism may be activated only by a body responsible for applying EU law which satisfies, inter alia, that criterion of independence (see, inter alia, judgment of 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraph 56 and the case-law cited). Furthermore, the requirement that courts be independent, which is inherent in the task of adjudication, forms part of the essence of the right to effective judicial protection and the fundamental right to a fair trial as provided for by Article 47 of the Charter, 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 (see, to that effect, judgments of 26 March 2020, *Review Simpson* v *Council and HG* v *Commission*, C-542/18 RX-II and C-543/18 RX-II, EU:C:2020:232, paragraphs 70 and 71, and of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 116 and the case-law cited).

52 Thus, while Article 47 of the Charter helps to ensure respect for the right to effective judicial protection of any individual relying, in a given case, on a right which he or she derives from EU law, the second subparagraph of Article 19(1) TEU seeks to ensure that the system of legal remedies established by each Member State guarantees effective judicial protection in the fields covered by EU law.

53 It is settled case-law of the Court that the guarantees of independence and impartiality required under EU law presuppose rules, particularly as regards the composition of the body and the appointment, length of service and grounds for abstention, rejection and dismissal of its members, that are such as to dispel any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it (judgments of 19 September 2006, *Wilson*, C-506/04, EU:C:2006:587, paragraph 53 and the case-law cited; of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*,

C-216/18 PPU, EU:C:2018:586, paragraph 66; and of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 117 and the case-law cited).

54 In accordance with the principle of the separation of powers which characterises the operation of the rule of law, the independence of the judiciary must in particular be ensured in relation to the legislature and the executive (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, paragraph 124, and of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 118).

55 In that regard, it is necessary that judges should be protected from external intervention or pressure liable to jeopardise their independence. The rules mentioned in paragraph 53 above must, in particular, be such as to preclude not only any direct influence, in the form of instructions, but also types of influence which are more indirect and which are liable to have an effect on the decisions of the judges concerned (judgments of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531, paragraph 112, and of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 119).

56 As regards, in particular, the circumstances in which decisions to appoint members of the judiciary are made, the Court has already had occasion to state that the mere fact that the judges concerned are appointed by the President of a Member State does not give rise to a relationship of subordination of those judges to the latter or to doubts as to the judges' impartiality, if, once appointed, they are free from influence or pressure when carrying out their role (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, paragraph 133, and of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 122).

57 However, the Court has also stated that it is still necessary to ensure that the substantive conditions and procedural rules governing the adoption of those appointment decisions are such that they cannot give rise to reasonable doubts, in the minds of individuals, as to the imperviousness of the judges concerned to external factors and as to their neutrality with respect to the interests before them, once they have been appointed as judges, and that it is important, inter alia, in that perspective, that those conditions and procedural rules should be drafted in a way which meets the requirements set out in paragraph 55 above (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 134 and 135, and of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 123).

58 In the present case, the referring court's doubts in the light of the second subparagraph of Article 19(1) TEU relate, in essence, to the national provisions which confer on the Prime Minister of the Member State concerned a decisive power in the process for appointing members of the judiciary, while providing for the involvement, in that process, of a body responsible, inter alia, for assessing candidates for judicial office and providing an opinion to that Prime Minister.

59 In that connection, it should be noted, first, that, as is apparent from the documents before the Court, the constitutional provisions relating to the appointment of members of the judiciary remained unchanged from their adoption in 1964 until the 2016 reform of the Constitution, which

established the Judicial Appointments Committee referred to in Article 96A of the Constitution. Prior to that reform, the Prime Minister's power was limited only by the requirement that candidates for judicial office satisfy the conditions laid down by the Constitution in order to be eligible for such office.

60 It was therefore on the basis of the provisions of the Constitution in force prior to that reform that the Republic of Malta acceded to the European Union under Article 49 TEU.

61 Article 49, which provides for the possibility for any European State to apply to become a member of the European Union, states that the European Union is composed of States which have freely and voluntarily committed themselves to the common values referred to in Article 2 TEU, which respect those values and which undertake to promote them

62 In particular, it follows from Article 2 TEU that the European Union is founded on values, such as the rule of law, which are common to the Member States in a society in which, inter alia, justice prevails. In that regard, it should be noted that mutual trust between the Member States and, in particular, their courts and tribunals is based on the fundamental premiss that Member States share a set of common values on which the European Union is founded, as stated in that article (see, to that effect, Opinion 2/13 *(Accession of the European Union to the ECHR)* of 18 December 2014, EU:C:2014:2454, paragraph 168, and judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraph 30).

63 It follows that compliance by a Member State with the values enshrined in Article 2 TEU is a condition for the enjoyment of all of the rights deriving from the application of the Treaties to that Member State. A Member State cannot therefore amend its legislation in such a way as to bring about a reduction in the protection of the value of the rule of law, a value which is given concrete expression by, inter alia, Article 19 TEU (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 108).

64 The Member States are thus required to ensure that, in the light of that value, any regression of their laws on the organisation of justice is prevented, by refraining from adopting rules which would undermine the independence of the judiciary (see, by analogy, judgment of 17 December 2020, *Openbaar Ministerie (Independence of the issuing judicial authority)*, C-354/20 PPU and C-412/20 PPU, EU:C:2020:1033, paragraph 40).

65 In that context, the Court has already held, in essence, that the second subparagraph of Article 19(1) TEU must be interpreted as precluding national provisions relating to the organisation of justice which are such as to constitute a reduction, in the Member State concerned, in the protection of the value of the rule of law, in particular the guarantees of judicial independence (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, and of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153).

66 By contrast, the involvement, in the context of a process for appointing members of the judiciary, of a body such as the Judicial Appointments Committee established, when the Constitution was reformed in 2016, by Article 96A of the Constitution may, in principle, be such as to contribute to rendering that process more objective, by circumscribing the leeway available to the Prime Minister in the exercise of the power conferred on him or her in that regard. It is also necessary that such a body should itself be sufficiently independent of the legislature, the executive

and the authority to which it is required to submit an opinion on the assessment of candidates for a judicial post (see, by analogy, 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 137 and 138, and of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraphs 124 and 125).

67 In the present case, a series of rules mentioned by the referring court appear to be such as to guarantee the independence of the Judicial Appointments Committee vis-à-vis the legislature and the executive. The same applies to the rules, contained in Article 96A(1) to (3) of the Constitution, relating to the composition of that committee and the prohibition on politicians sitting in that committee, the obligation imposed on members of that committee by Article 96A(4) of the Constitution to act on their individual judgment and not to be subject to direction or control by any person or authority, and the obligation for that committee to publish, with the consent of the Minister responsible for justice, the criteria which it has drawn up, and also its assessments, something which was, moreover, done, as the Advocate General observes in point 91 of his Opinion.

68 Furthermore, the referring court has not, in the present case, expressed any doubts as to the conditions under which the members of the Judicial Appointments Committee established by Article 96A of the Constitution were appointed or as to how that body actually performs its role.

69 It is thus apparent that the introduction of the Judicial Appointments Committee by Article 96A of the Constitution serves to reinforce the guarantee of judicial independence.

70 In the second place, it should be noted that, as pointed out, in particular, by the Commission, although the Prime Minister has, in accordance with the national provisions at issue in the main proceedings, a certain power in the appointment of members of the judiciary, the fact remains that the exercise of that power is circumscribed by the requirements of professional experience which must be satisfied by candidates for judicial office, which requirements are laid down in Article 96(2) and Article 100(2) of the Constitution.

71 Furthermore, while it is true that the Prime Minister may decide to submit to the President of the Republic the appointment of a candidate not put forward by the Judicial Appointments Committee established by Article 96A of the Constitution, he or she is nevertheless required, in such a situation, under Article 96(4) and Article 100(6) of the Constitution, to communicate his or her reasons to the House of Representatives and, except as regards the appointment of the Chief Justice, by means of a declaration published in the Gazette. Inasmuch as the Prime Minister exercises that power only in quite exceptional circumstances and adheres to strict and effective compliance with that obligation to state reasons, that power is not such as to give rise to legitimate doubts concerning the independence of the candidates selected.

72 In the light of all of those factors, it does not appear that the national provisions at issue in the main proceedings relating to judicial appointments are, per se, such as to give rise to legitimate doubts, in the minds of individuals, as to the imperviousness of appointed members of the judiciary to external factors – in particular, to direct or indirect influence from the legislature or the executive – and as to their neutrality vis-à-vis the interests before them, and thus lead to those members of the judiciary not being regarded as independent or impartial, the consequence of which would be to undermine the trust which justice in a democratic society governed by the rule of law must inspire in individuals.

73 In the light of all of the foregoing considerations, the answer to the second question is that the second subparagraph of Article 19(1) TEU must be interpreted as not precluding national provisions which confer on the Prime Minister of the Member State concerned a decisive power in the process for appointing members of the judiciary, while providing for the involvement, in that process, of an independent body responsible for, inter alia, assessing candidates for judicial office and giving an opinion to that Prime Minister.

The third question

74 Having regard to the answer given to the second question, there is no need to answer the third question.

Costs

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

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

1. **The second subparagraph of Article 19(1) TEU must be interpreted as meaning that it may be applied in a case in which a national court is seised of an action provided for by national law and seeking a ruling on the conformity with EU law of national provisions governing the procedure for the appointment of members of the judiciary of the Member State to which that court belongs. Article 47 of the Charter of Fundamental Rights of the European Union must be duly taken into consideration for the purposes of interpreting that provision.**

2. **The second subparagraph of Article 19(1) TEU must be interpreted as not precluding national provisions which confer on the Prime Minister of the Member State concerned a decisive power in the process for appointing members of the judiciary, while providing for the involvement, in that process, of an independent body responsible for, inter alia, assessing candidates for judicial office and giving an opinion to that Prime Minister.**

[Signatures]

---

* Language of the case: Maltese.