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Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

19 November 2019 (*)

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In Joined Cases C-585/18, C-624/18 and C-625/18,

THREE REQUESTS for a preliminary ruling under Article 267 TFEU from the Sąd Najwyższy (Izba Pracy i Ubezpieczeń Społecznych) (Supreme Court (Labour and Social Insurance Chamber), Poland), made by decisions of 30 August 2018 (C-585/18) and of 19 September 2018 (C-624/18 and C-625/18), received at the Court on 20 September 2018 (C-585/18) and 3 October 2018 (C-624/18 and C-625/18), in the proceedings

A. K.

v

Krajowa Rada Sądownictwa (C-585/18),

and

CP (C-624/18),

DO (C-625/18)

v

Sąd Najwyższy,

third party:

Prokurator Generalny, represented by the Prokuratura Krajowa,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, A. Prechal (Rapporteur), E. Regan, P.G. Xuereb and L.S. Rossi, Presidents of Chambers, E. Juhász, M. Ilešič, J. Malenovský, and N. Piçarra, Judges,

Advocate General: E. Tanchev,

Registrar: M. Aleksejev, Head of Unit, and R. Schiano, Administrator,

having regard to the written procedure and further to the hearings on 19 March and 14 May 2019,

after considering the observations submitted on behalf of:

– A. K., CP and DO, by S. Gregorczyk-Abram and M. Wawrykiewicz, adwokaci,

– the Krajowa Rada Sądownictwa, by D. Drajewicz, J. Dudzicz, and D. Pawełczyk-Woicka,

– the Sąd Najwyższy, by M. Wrzołek-Romańczuk, radca prawny,

– the Prokurator Generalny, represented by the Prokuratura Krajowa, by S. Bańko, R. Hernand, A. Reczka, T. Szafrański and M. Szumacher,

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

– the Latvian Government, by I. Kucina and V. Soņeca, acting as Agents,

– the European Commission, by H. Krämer and by K. Herrmann, acting as Agents,

– the EFTA Surveillance Authority, by J.S. Watson, C. Zatschler, I.O. Vilhjálmsdóttir and C. Howdle, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 27 June 2019,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 2 and of the second subparagraph of Article 19(1) TEU, of the third paragraph of Article 267 TFEU, of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and of

Article 9(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

2 The requests have been made in proceedings between, on the one hand, A. K., Judge of the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland) and the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland) ('the KRS') (Case C-585/18) and, on the other, CP and DO, Judges of the Sąd Najwyższy (Supreme Court, Poland), and that court (Cases C-624/18 and C-625/18) concerning their early retirement due to the entry into force of new national legislation.

Legal context

European Union law

The EU Treaty

3 Article 2 TEU reads as follows:

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

4 Article 19(1) TEU provides:

'The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed.

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

The Charter

5 Title VI of the Charter, under the heading 'Justice', includes Article 47 thereof, entitled 'Right to an effective remedy and to a fair trial', which states as follows:

'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. …

…'

6 Under Article 51 of the Charter, under the heading 'Scope':

'1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They must therefore respect the rights, observe the principles and

promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the European Union as conferred on it in the Treaties.

2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.'

7 Article 52(3) of the Charter states:

'In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms[, signed in Rome on 4 November 1950], the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.'

8 The Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17) point out that the second paragraph of Article 47 of the Charter corresponds to Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms ('the ECHR').

Directive 2000/78

9 Article 1 of Directive 2000/78 provides:

'The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of … age … as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.'

10 Article 2(1) of that directive provides:

'For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.'

11 Article 9(1) of Directive 2000/78 states:

'Member States shall ensure that judicial and/or administrative procedures … for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.'

Polish law

The Constitution

12 Under Article 179 of the Constitution, the President of the Republic of Poland ('the President of the Republic') shall appoint judges, on a proposal of the KRS, for an indefinite period.

13 Under Article 186(1) of the Constitution:

'The [KRS] shall be the guardian of the independence of the courts and of the judges.'

14 Article 187 of the Constitution provides:

‘1. The [KRS] shall be composed of:

(1) the First President of the [Sąd Najwyższy (Supreme Court)], the Minister for Justice, the President of the [Naczelny Sąd Administracyjny (Supreme Administrative Court)] and a person designated by the President of the Republic,

(2) Fifteen elected members from among the judges of the [Sąd Najwyższy (Supreme Court)], the ordinary courts, the administrative courts and the military courts,

(3) Four members elected by [the Sejm (Lower Chamber of the Polish Parliament)] from among the members [of the Lower Chamber] and two members elected by the Senate from among the senators.

…

3. The elected members of the [KRS] shall have a mandate of four years.

4. The regime applicable to the [KRS] … and the procedure by which its members are elected shall be laid down by law.’

The New Law on the Supreme Court

– *The provisions lowering the retirement age for judges of the Sąd Najwyższy (Supreme Court)*

15 Article 30 of the ustawa o Sądzie Najwyższym (Law on the Supreme Court) of 23 November 2002 (Dz. U. of 2002, item 240) set the retirement age for judges of the Sąd Najwyższy (Supreme Court) at 70 years.

16 On 20 December 2017, the President of the Republic signed the ustawa o Sądzie Najwyższym (Law on the Supreme Court) of 8 December 2017 (Dz. U. of 2018, item 5) (‘the New Law on the Supreme Court’), which entered into force on 3 April 2018. That law was subsequently amended on several occasions.

17 Under Article 37 of the New Law on the Supreme Court:

‘1. Judges of the [Sąd Najwyższy (Supreme Court)] shall retire on the day of their 65th birthday, unless they make a statement, no earlier than 12 months and no later than 6 months before reaching [the age of 65], indicating their desire to continue to perform their duties, and submit a certificate, drawn up under the conditions applicable to candidates applying for a judge’s post, confirming that their state of health allows them to serve, and the [President of the Republic] consents to their continuing to perform their duties at the [Sąd Najwyższy (Supreme Court)].

1a. Prior to granting such authorisation, the [President of the Republic] shall consult the [KRS]. The [KRS] shall provide the [President of the Republic] with an opinion within 30 days of the date on which the [President of the Republic] requests submission of such an opinion. If the opinion is not submitted within the period referred to in the second sentence, the [KRS] shall be deemed to have submitted a positive opinion.

1b. When providing the opinion referred to in paragraph 1a, the [KRS] shall take into account the interest of the judicial system or an important public interest, in particular the rational

distribution of members of the [Sąd Najwyższy (Supreme Court)] or the needs arising from the workload of individual chambers of the [Sąd Najwyższy (Supreme Court)].

…

4. The authorisation referred to in paragraph 1 shall be granted for a period of three years, no more than twice. …'

18 Article 39 of that law provides:

'The [President of the Republic] shall declare the date on which a judge of the [Sąd Najwyższy (Supreme Court)] retires or is retired.'

19 Under Article 111(1) of that law:

'Judges of the [Sąd Najwyższy (Supreme Court)] who by the date of entry into force of this law have reached the age of 65 or who will have reached the age of 65 within three months of the date of entry into force of this law shall retire on the day following the expiry of that three-month period, unless they submit the declaration and certificate referred to in Article 37(1) within one month of the date of entry into force of this law and the [President of the Republic] grants authorisation for those judges of the [Sąd Najwyższy (Supreme Court)] to continue to carry out their duties. …'

– *Provisions on the appointment of judges to the Sąd Najwyższy (Supreme Court)*

20 Under Article 29 of the New Law on the Supreme Court, judges shall be appointed to the Sąd Najwyższy (Supreme Court) by the President of the Republic acting on a proposal from the [KRS]. Article 30 of that law sets out the conditions which a person must satisfy in order to qualify for the post of judge of the Sąd Najwyższy (Supreme Court).

– *Provisions on the Disciplinary Chamber*

21 The New Law on the Supreme Court created a new chamber within the Sąd Najwyższy (Supreme Court) known as the 'Izba Dyscyplinarna' ('the Disciplinary Chamber').

22 Article 20 of the New Law on the Supreme Court states:

'With regard to the Disciplinary Chamber and the judges who adjudicate in it, the powers of the First President of the [Sąd Najwyższy (Supreme Court)] as defined in:

– Article 14(1)(1), (4) and (7), Article 31(1), Article 35(2), Article 36(6), Article 40(1) and (4) and Article 51(7) and (14) shall be exercised by the President of the [Sąd Najwyższy (Supreme Court)] who shall direct the work of the Disciplinary Chamber;

– Article 14(1)(2) and the second sentence of Article 55(3) shall be exercised by the First President of the [Sąd Najwyższy (Supreme Court)] in agreement with the President of the [Sąd Najwyższy (Supreme Court)] who shall direct the work of the Disciplinary Chamber.'

23 Article 27(1) of the New Law on the Supreme Court states:

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

(1) disciplinary proceedings:

– involving [Sąd Najwyższy (Supreme Court)] judges

…

(2) proceedings in the field of labour law and social security involving [Sąd Najwyższy (Supreme Court)] judges;

(3) proceedings concerning the compulsory retirement of a [Sąd Najwyższy (Supreme Court)] judge.'

24 Article 79 of the New Law on the Supreme Court provides:

'Labour law and social insurance cases concerning [Sąd Najwyższy (Supreme Court)] judges and cases relating to the retirement of a [Sąd Najwyższy (Supreme Court)] judge shall be heard:

(1) at first instance by one judge of the Disciplinary Chamber of the [Sąd Najwyższy (Supreme Court)];

(2) at second instance by three judges of the Disciplinary Chamber of the [Sąd Najwyższy (Supreme Court)].'

25 Under Article 25 of the New Law on the Supreme Court:

'The Izba Pracy i Ubezpieczeń Społecznych [Labour and Social Insurance Chamber] shall have jurisdiction to hear and rule on cases concerning labour law, social insurance …'

26 The transitional measures of the New Law on the Supreme Court include inter alia the following provisions:

'Article 131

Until all of the judges of the [Sąd Najwyższy (Supreme Court)] have been appointed to the Disciplinary Chamber, the other judges of the [Sąd Najwyższy (Supreme Court)] cannot sit within that chamber.

…

Article 134

On entry into force of the present law, the judges of the [Sąd Najwyższy (Supreme Court)] sitting in the Labour, Social Insurance and Public Affairs Chamber shall sit in the Labour and Social Insurance Chamber.'

27 Under Article 1(14) of the ustawa o zmianie ustawy o Sądzie Najwyższym (Law amending the Law on the Supreme Court), of 12 April 2018 (Dz. U. of 2018, item 847), which entered into force on 9 May 2018, Article 131 of the New Law on the Supreme Court was amended as follows:

'Judges who, on the date of the entry into force of the present law, occupy posts in other Chambers of the [Sąd Najwyższy (Supreme Court)], may be transferred to posts in the Disciplinary Chamber.

Until all judges of the [Sąd Najwyższy (Supreme Court)] sitting in the Disciplinary Chamber have been appointed for the first time, a judge occupying a post in another chamber of the [Sąd Najwyższy (Supreme Court)] may submit a request [to the KRS] to be transferred to a post in the Disciplinary Chamber, after having obtained the consent of the First President of the [Sąd Najwyższy (Supreme Court)] and of the President of the [Sąd Najwyższy (Supreme Court)] responsible for directing the work of the Disciplinary Chamber and of the President of the chamber in which the applicant judge occupies a position. On a proposal [from the KRS], the [President of the Republic] shall appoint a judge of the [Sąd Najwyższy (Supreme Court)], to the Disciplinary Chamber, until the date on which all posts within that chamber have been filled for the first time.'

Law on the system of administrative courts

28 Article 49 of the ustawa — Prawo o ustroju sądów administracyjnych (Law on the system of administrative courts) of 25 July 2002 (Dz. U. of 2017, item 2188) provides that, as regards aspects which are not governed by that law, the provisions of the New Law on the Supreme Court are to be applied.

The Law on the KRS

29 The KRS is governed by the ustawa o Krajowej Radzie Sądownictwa (Law on the National Council of the Judiciary) of 12 May 2011 (Dz. U. No 126 of 2011, item 714), as amended by the ustawa o zmianie ustawy o Krajowej Radzie Sądownictwa oraz niektórych innych ustaw (Law amending the Law on the National Council of the Judiciary and certain other laws) of 8 December 2017 (Dz. U. of 2018, item 3) ('Law on the KRS').

30 Under Article 9a of the Law on the KRS:

'1. The Lower Chamber [of the Polish Parliament] shall elect, among the judges of the [Sąd Najwyższy (Supreme Court)] and of the ordinary, administrative and military courts, 15 members [of the KRS] for a collective term of four years.

2. In the election referred to in paragraph 1, the Lower Chamber shall, as far as possible, take into account the need for representativeness within [the KRS] of various types and levels of the courts.

3. The collective term of the new members [of the KRS], elected among the judges, shall begin the day following their election. Serving members [of the KRS] shall exercise their posts until the day on which the collective term of the new members [of the KRS] begins.'

31 Under Article 11a(2) of the Law on the KRS, candidates for the post of member of the KRS, chosen among the judges, may be presented by a group of at least 2 000 Polish citizens or by a group of at least 25 judges in active service. The procedure for the Lower Chamber to appoint members of the KRS is set out in Article 11d of the Law on the KRS.

32 In accordance with Article 34 of the Law on the KRS, a panel of three members of the KRS is to adopt a position on the assessment of candidates' suitability for the post of judge.

33 Article 35 of the Law on the KRS provides:

'1. Where several candidates have applied for a post of judge or trainee judge, the group shall draw up a list of recommended candidates.

2. In determining the order of the candidates on the list, the group shall take into account, in the first place, the assessment of the candidates' qualifications and it shall also consider:

(1) the professional experience, including experience in the application of legislative provisions, academic output, the opinion of his or her superiors, letters of recommendation, publications and other documents enclosed with the application form;

(2) the opinion of the kolegium (general assembly) of the relevant court and the evaluation of the relevant general assembly of judges.

3. The absence of any of the documents referred to in paragraph 2 shall not constitute an obstacle to the drawing up of a list of recommended candidates.'

34 Under Article 37(1) of the Law on the KRS:

'If several candidates have applied for a single post of judge, [the KRS] shall examine and evaluate all the applications lodged together. In that case, [the KRS] shall adopt a resolution including its decisions for the purposes of presenting one appointment proposition to the post of judge in respect of all candidates.'

35 Article 44 of the Law on the KRS provides:

'1. An applicant may bring an action before the [Sąd Najwyższy (Supreme Court)] on the ground of the illegality of [the KRS's] resolution, unless specific provisions provide otherwise. …

1a. In individual cases regarding appointment to the post of judge of the [Sąd Najwyższy (Supreme Court)], an action may be brought before the [Naczelny Sąd Administracyjny (Supreme Administrative Court)]. In those cases, no action may be brought before the [Sąd Najwyższy (Supreme Court)]. The action before the [Naczelny Sąd Administracyjny (Supreme Administrative Court)] cannot be based on a plea alleging an inadequate evaluation of whether the candidates fulfilled the criteria taken into account in arriving at its decision on the presentation of an appointment proposal to the post of judge of the [Sąd Najwyższy (Supreme Court)].

1b. If all of the applicants have not challenged the resolution referred to in Article 37(1) in individual cases regarding appointment to the post of judge of the [Sąd Najwyższy (Supreme Court)], that resolution shall become final in respect of the part concerning the decision on the presentation of the appointment proposition to the post of judge of the [Sąd Najwyższy (Supreme Court)] and in respect of the part concerning the decision not to present an appointment proposition to the post of judge of that court, as regards the applicants who did not challenge that decision.

2. An action shall be lodged through the offices of the Przewodniczący [President of the KRS], within two weeks of notice of the resolution with its statement of reasons. …'

36 Under Article 6 of the Law of 8 December 2017 amending the Law on the KRS:

'The term of office of the members [of the KRS] referred to in Article 187(1)(2) of the [Constitution], elected pursuant to provisions now in force, shall continue until the day preceding the term of the new members [of the KRS] without, however, exceeding 90 days from the date of the entry into force of the present law, unless that term has not already expired.'

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

37 In Case C-585/18, A. K., a judge of the Naczelny Sąd Administracyjny (Supreme Administrative Court) who reached the age of 65 before the entry into force of the New Law on the Supreme Court, submitted, on the basis of Article 37(1) and of Article 111(1) of that law, a declaration indicating his wish to continue in his position. On 27 July 2018, the KRS issued an unfavourable opinion to that request under Article 37(1a) of that law. On 10 August 2018, A. K. brought an action before the Sąd Najwyższy (Supreme Court) in respect of that opinion. In support of his action, A. K. claimed, inter alia, that retiring him at the age of 65 infringed the second subparagraph of Article 19(1) TEU, Article 47 of the Charter and Directive 2000/78, in particular, Article 9(1) thereof.

38 Cases C-624/18 and C-625/18 concern two judges of the Sąd Najwyższy (Supreme Court), CP and DO, who also reached the age of 65 before the date of the entry into force of the New Law on the Supreme Court but who have not submitted declarations on the basis of Article 37(1) and of Article 111(1) of that law. Having been informed that the President of the Republic had, pursuant to Article 39 of that law, declared that they had been retired as of 4 July 2018, CP and DO brought actions before the Sąd Najwyższy (Supreme Court) against the President of the Republic for a declaration that their employment relationship of judge in active service in the referring court had not been transformed, as of that date, into an employment relationship of retired judge of that court. In support of their actions, they rely, inter alia, on an infringement of Article 2(1) of Directive 2000/78 prohibiting discrimination on the ground of age.

39 The Izba Pracy i Ubezpieczeń Społecznych (Labour and Social Insurance Chamber) of the Sąd Najwyższy (Supreme Court) ('the Labour and Social Insurance Chamber'), before which these various actions are pending, notes, in its orders for reference in Cases C-624/18 and C-625/18, that the actions were brought before it since the Disciplinary Chamber has not yet been formed. In those circumstances, the referring court asks whether Article 9(1) of Directive 2000/78 and Article 47 of the Charter require it to disapply the provisions of national law which reserve jurisdiction to hear and rule on such actions to a chamber which has not yet been formed. The referring court points out, however, that that question could become irrelevant if enough posts of judge of the Disciplinary Chamber were actually filled.

40 Furthermore, in its orders for reference in Cases C-585/18, C-624/18 and C-625/18, the referring court considers that, in the light of, inter alia, the circumstances in which the new judges of the Disciplinary Chamber will be appointed, serious doubts arise as to whether that chamber and its members will provide sufficient guarantees of independence and impartiality.

41 In that regard, the referring court, which observes that those judges are appointed by the President of the Republic on a proposal of the KRS, notes, first of all, that, under the reform enacted by the Law of 8 December 2017 amending the Law on the National Council of the Judiciary and certain other laws, the 15 members of the KRS who, of its 25 members, must be elected among judges are now not elected by general assembly of judges of all levels as before, but by the Lower Chamber of the Polish Parliament. According to the referring court, that situation disregards the principle of the separation of powers as the basis for a democratic State governed by the rule of law and is not consistent with the prevailing international and European standards in that regard, as is clear, in particular, from Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe on Judges: independence, efficiency and responsibilities of 17 November 2010, from Opinion No 904/2017 (CDL-AD(2017)031) of the European Commission for Democracy through Law (Venice Commission) of 11 December 2017 and from Opinion No 10(2007) of the Consultative Council of European Judges to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society of 23 November 2007.

42 Next, according to the referring court, both the conditions, in particular those of a procedural nature, under which the members of the KRS were selected and appointed during 2018 and an examination of the way in which that body thus constituted has acted, until the present, demonstrate that the KRS is subject to the political authorities and is incapable of exercising its constitutional role of ensuring the independence of the courts and of the judiciary.

43 First, the referring court considers that the recent elections of the new members of the KRS were not transparent and there are serious doubts as to whether the requirements laid down in the applicable legislation were actually complied with during those elections. Moreover, the requirement of representativeness of the various types and levels of the judiciary laid down in Article 187(1)(2) of the Constitution has not been respected. The KRS has no elected judge from the Sąd Najwyższy (Supreme Court), the courts of appeal or the military courts, but has 1 representative of a regional administrative court, 2 representatives of regional courts and 12 representatives of district courts.

44 Second, an examination of the activities of the KRS as now formed is said to demonstrate a complete lack of the adoption of any stance by that body for the purposes of defending the independence of the Sąd Najwyższy (Supreme Court) in the crisis caused by the recent legislative reforms affecting that court. By contrast, the KRS, or members thereof, have publicly criticised members of the Sąd Najwyższy (Supreme Court) for having referred questions to the Court of Justice for a preliminary ruling or cooperated with the EU institutions, in particular with the European Commission. Furthermore, the KRS's practice — when called on to issue an opinion on the possibility for a judge of the Sąd Najwyższy (Supreme Court) to continue to serve beyond the retirement age now set at 65 — consists, as demonstrated, inter alia, in the opinion of the KRS challenged before the referring court in Case C-585/18, in issuing unreasoned unfavourable opinions or merely reproducing the wording of Article 37(1b) of the New Law on the Supreme Court.

45 In addition, the selection procedure conducted by the KRS for the purposes of filling the 16 posts of judge of the Disciplinary Chamber declared vacant on 24 May 2018 by the President of the Republic reveals that the 12 candidates chosen by the KRS, namely 6 Public Prosecutors, 2 judges, 2 legal advisers and 2 professors, were persons who were, until that time, subject to the executive, persons who, during the crisis of the rule of law in Poland, have acted on the instructions of the political authorities or in line with their expectations, or, lastly, persons who do not meet the statutory criteria or persons who have in the past been the subject of disciplinary sanctions.

46 Lastly, the referring court notes that the procedure during the course of which the KRS is called on to select candidates to the posts of judge of the Disciplinary Chamber, who cannot be chosen from currently serving members of the Sąd Najwyższy (Supreme Court), was designed and, subsequently, amended, so that the KRS may act in an ad hoc manner, without the possibility of any meaningful review in that regard.

47 First, the Supreme Court is no longer involved in that appointment process and, thus, the actual and effective assessment of the qualities of the candidates may no longer be guaranteed. Second, the fact that candidates have not provided the documents referred to in Article 35(2) of the Law on the KRS, which are nevertheless essential for the purposes of distinguishing between the candidates, is no longer, as is clear from Article 35(3) of that law, an obstacle to the drawing up of the list of candidates recommended by the KRS. Third, under Article 44 of that law, the KRS's decisions become final until challenged by all of the candidates, which effectively precludes any actual possibility of their judicial review.

48 In that context, the referring court harbours doubts as to the importance which should be ascribed, as regards compliance with the requirement stemming from EU law that the courts and the judiciary of the Member States must be independent, to factors such as, first, independence, from the political authorities, of the body responsible for selecting judges, and, second, the circumstances surrounding the selection of the members of a newly created chamber of a court in a particular Member State, where that chamber has jurisdiction to rule on cases governed by EU law.

49 In the event that such a chamber of a court does not meet the requirement that courts be independent, the referring court wishes to know whether EU law must be interpreted as meaning that the referring court must disapply the application of provisions of national law which, by reserving such jurisdiction to that chamber, impinge on its own jurisdiction to hear and to rule, where relevant, on the cases in the main proceedings. In its orders for reference in Cases C-624/18 and C-625/18, the referring court observes, in that regard, that it has general jurisdiction in labour law and the law of social security, which empowers it, in particular, to rule on cases such as those in the main proceedings which concern alleged infringement of the prohibition of discrimination in employment on the ground of age.

50 In those circumstances the Sąd Najwyższy (Izba Pracy i Ubezpieczeń Społecznych) (Supreme Court (Labour and Social Insurance Chamber)) decided to stay the proceedings and refer questions to the Court for a preliminary ruling.

51 In Case C-585/18, the questions referred are worded as follows:

'(1) On a proper construction of the third paragraph of Article 267 TFEU, read in conjunction with Article 19(1) and Article 2 TEU and Article 47 of the [Charter], is a newly created chamber of a court of last instance of a Member State which has jurisdiction to hear an action by a national court judge and which must be composed exclusively of judges selected by a national body tasked with safeguarding the independence of the courts (the [KRS]), which, having regard to the systemic model for the way in which it is formed and the way in which it operates, is not guaranteed to be independent from the legislative and executive authorities, an independent court or tribunal within the meaning of EU law?

(2) If the answer to the first question is negative, should the third paragraph of Article 267 TFEU, read in conjunction with Article 19(1) and Article 2 TEU and Article 47 of the [Charter of Fundamental Rights], be interpreted as meaning that a chamber of a court of last instance of a Member State which does not have jurisdiction in the case but meets the requirements of EU law for a court and is seised of an appeal in a case falling within the scope of EU law should disregard the provisions of national legislation which preclude it from having jurisdiction in that case?'

52 In Cases C-624/18 and C-625/18, the questions referred were worded as follows:

'(1) Should Article 47 of the [Charter], read in conjunction with Article 9(1) of [Directive 2000/78], be interpreted as meaning that, where an appeal is brought before a court of last instance in a Member State against an alleged infringement of the prohibition of discrimination on the ground of age in respect of a judge of that court, together with a motion for granting security in respect of the reported claim, that court — in order to protect the rights arising from EU law by ordering an interim measure provided for under national law — must refuse to apply national provisions which confer jurisdiction, in the case in which the appeal has been lodged, on a chamber of that court which is not operational by reason of a failure to appoint judges to be its members?

(2) In the event that judges are appointed to adjudicate within the chamber with jurisdiction under national law to hear and determine the action brought, on a proper construction of the third paragraph of Article 267 TFEU, read in conjunction with Article 19(1) and Article 2 TEU and Article 47 of the [Charter], is a newly created chamber of a court of last instance of a Member State which has jurisdiction to hear the case of a national court judge at first or second instance and which is composed exclusively of judges selected by a national body tasked with safeguarding the independence of the courts, namely the [(KRS)], which, having regard to the systemic model for the way in which it is formed and the way in which it operates, is not guaranteed to be independent from the legislative and executive authorities, an independent court or tribunal within the meaning of EU law?

(3) If the answer to the second question is negative, should the third paragraph of Article 267 TFEU, read in conjunction with Article 19(1) and Article 2 TEU and Article 47 of the [Charter], be interpreted as meaning that a chamber of a court of last instance of a Member State which does not have jurisdiction in the case but meets the requirements of EU law for a court seised with an appeal in an EU case should disregard the provisions of national legislation which preclude it from having jurisdiction in that case?'

Procedure before the Court

53 Cases C-585/18, C-624/18 and C-625/18 were joined by decision of the President of the Court of 5 November 2018.

54 By order of 26 November 2018, *A. K. and Others* (C-585/18, C-624/18 and C-625/18, not published, EU:C:2018:977), the President of the Court accepted the referring court's request that the present cases be subject to the expedited procedure. Thus, as provided for by Article 105(2) and (3) of the Rules of Procedure of the Court, the date for the hearing was fixed immediately, namely for 19 March 2019, and communicated to the interested parties together with notification of the requests for a preliminary ruling. A time limit was prescribed for the interested parties to lodge any written observations.

55 On 19 March 2019, a first hearing was held before the Court. On 14 May 2019, a second hearing was organised by the Court following, inter alia, a request from the KRS, which had not lodged any written observations before the Court, had not been represented at the first hearing and wished to be heard, and in order to allow the interested parties to make submissions on any implications for the present cases which may have resulted from a judgment delivered on 25 March 2019, in which the Trybunał Konstytucyjny (Constitutional Court, Poland) declared Article 9a of the Law on the KRS to be compatible with Article 187(1)(2) and (4) of the Constitution.

56 Furthermore, at that second hearing, the KRS provided a copy of Resolution No 6 adopted by the General Assembly of the judges of the Disciplinary Chamber on 13 May 2019, which sets out the position of that chamber on the procedure followed in the present joined cases. The copy of that resolution was circulated among the interested parties present and added to the case file.

57 By documents lodged at the Registry of the Court on 3 and 29 July 2019, on 16 September 2019 and on 7 November 2019 by the Polish Government, on 4 July 2019 by the KRS and on 29 October 2019 by the Prokurator Generalny (Public Prosecutor, Poland), a reopening of the oral part of the procedure was requested.

58 In support of its request, the KRS states, in essence, that it does not share the Opinion of the Advocate General, which it considers to be based on false premisses and which takes insufficient

account, in its view, of the line of argument which it set out at the hearing of 14 May 2019. Consequently, it contends, in addition, that the Court should re-examine the possibility of taking into consideration the written observations previously submitted by the KRS which were rejected on account of being lodged out of time.

59 In its request of 3 July 2019 and in the further submissions which it addressed to the Court on 29 July and 16 September 2019, the Polish Government also states that it does not share the Opinion of the Advocate General, which, it claims, contain certain contradictions and are based, as is clear from certain points thereof and from corresponding points in the Opinion of the Advocate General made on 11 April 2019 in *Commission* v *Poland (Independence of the Supreme Court)* (C-619/18, EU:C:2019:325), on an erroneous interpretation of the past case-law of the Court, in particular of the judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses* (C-64/16, EU:C:2018:117). Furthermore, the Polish Government submits that the Advocate General's Opinion contains a number of new arguments and positions, which have not been sufficiently aired. However, in the light of their supreme importance and fundamental implications for the various legal models applicable in the Member States as regards the composition of the national councils of the judiciary and the processes for judicial appointments, it claims that those factors justify a reopening of the oral part of the procedure in order to allow all the Member States to make submissions on the matter. In its request of 7 November 2019, in support of which it provided the minutes of a hearing of the Sąd Okręgowy w Krakowie (District Court, Kraków, Poland) of 6 September 2019, the Polish Government submits that that document raises the prospect that the judgment to be delivered by the Court in the present cases could give rise to legal uncertainty in Poland and that it thus discloses a new fact which is of such a nature as to be a decisive factor for the decision of the Court.

60 Lastly, the Public Prosecutor, who essentially points to factors previously relied on and arguments already set out by the Polish Government and the KRS in their respective abovementioned requests to reopen the oral part of the procedure of 3, 4 and 29 July 2019 and of 16 September 2019, maintains, first, that sufficient information is lacking on the facts of the cases in the main proceedings, as is clear from the Advocate General's Opinion, second, that that Opinion adopts a position on important factors which were not debated between the parties and, third, that that Opinion is based on an erroneous interpretation of the past case-law of the Court which allegedly constitutes a new fact which is of such a nature as to be a decisive factor for the decision of the Court.

61 In that regard, it should be noted, first, that the Statute of the Court of Justice of the European Union and the Rules of Procedure of the Court make no provision for the interested parties referred to in Article 23 of the Statute to submit observations in response to the Advocate General's Opinion (judgment of 6 March 2018, *Achmea*, C-284/16, EU:C:2018:158, paragraph 26 and the case-law cited).

62 Second, under the second paragraph of Article 252 TFEU, the Advocate General, acting with complete impartiality and independence, is to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require the Advocate General's involvement. The Court is not bound either by those submissions or by the reasoning underpinning those submissions. Consequently, a party's disagreement with the Opinion of the Advocate General, irrespective of the questions that he examines in his Opinion, cannot in itself constitute grounds justifying the reopening of the oral procedure (judgment of 6 March 2018, *Achmea*, C-284/16, EU:C:2018:158, paragraph 27 and the case-law cited).

63 However, the Court may at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in accordance with Article 83 of its Rules of Procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the interested persons.

64 In the present cases, the Court considers, however, having heard the Advocate General, that it has before it, following the written procedure and the two successive hearings which it held, all of the information necessary for it to give a ruling. Furthermore, it notes that these joined cases shall not be decided on the basis of an argument which has not been the subject of exchanges between the parties. Lastly, it considers that the various requests to reopen the oral part of the present procedure do not disclose any new fact which is of such a nature as to be a decisive factor for the decision of the Court in those cases. In those circumstances, it is not necessary to reopen the oral part of the procedure.

65 Lastly, as regards the request repeated by the KRS that the Court should take into account its written observations of 4 April 2019, it should be noted that that party to the main proceedings which, like the other interested parties referred to in Article 23 of the Statute of the Court of Justice of the European Union, was asked to submit such observations within the period prescribed for doing so deliberately refrained from lodging observations within that time, as is expressly made clear in the letter of 28 March 2019 which it sent to the Court. In those circumstances, the abovementioned written observations, which were lodged by the KRS out of time and were therefore returned to the KRS, also cannot be taken into consideration by the Court at this stage in the procedure.

Consideration of the questions referred

The first question in Cases C-624/18 and C-625/18

66 By its first question in Cases C-624/18 and C-625/18, the referring court asks, in essence, whether Article 9(1) of Directive 2000/78 read in conjunction with Article 47 of the Charter must be interpreted as meaning that, where an action is brought before a court of last instance in a Member State alleging infringement of the prohibition of discrimination on the ground of age arising from that directive, such a court must refuse to apply provisions of national law which confer jurisdiction to rule on such an action on a court, such as the Disciplinary Chamber, which has not yet been formed because the judges of that court have not been appointed.

67 In the present cases, it is, however, important to take account of the fact that, shortly after the adoption of the orders for reference in Cases C-624/18 and C-625/18, the President of the Republic appointed the judges of the Disciplinary Chamber, which has now been formed.

68 In the light of that fact, it must be found that an answer to the first question in Cases C-624/18 and C-625/18 is no longer relevant for the purposes of the decisions which the referring court is called on to deliver in those two cases. Only if the Disciplinary Chamber were not sufficiently operational would that question need to be answered.

69 It has consistently been held that the procedure provided for in Article 267 TFEU is an instrument of cooperation between the Court of Justice and the national courts, by means of which the Court provides the national courts with the points of interpretation of EU law which they need

in order to decide the disputes before them (judgment of 19 December 2013, *Fish Legal and Shirley*, C-279/12, EU:C:2013:853, paragraph 29 and the case-law cited).

70 In that regard, it should be borne in mind that the justification for a reference for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute (judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 28 and the case-law cited). If it appears that the question raised is manifestly no longer relevant for the purposes of deciding the case, the Court must declare that there is no need to proceed to judgment (see, to that effect, judgment of 24 October 2013, *Stoilov i Ko*, C-180/12, EU:C:2013:693, paragraph 38 and the case-law cited).

71 It follows, as submitted by the KRS, the Polish Government and the Commission, and as had, moreover, been suggested by the referring court itself, as is clear from paragraph 39 above, that it is no longer necessary for the Court to rule on the first question referred in Cases C-624/18 and C-625/18.

The questions in Case C-585/18 and the second and third questions in Cases C-624/18 and C-625/18

72 By its questions in Case C-585/18 and its second and third questions in Cases C-624/18 and C-625/18, which it is appropriate to consider together, the referring court asks, in essence, whether Article 2 and the second subparagraph of Article 19(1) TEU, Article 267 TFEU and Article 47 of the Charter must be interpreted as meaning that a chamber of a supreme court in a Member State, such as the Disciplinary Chamber, which is called on to rule on cases falling within the scope of EU law, satisfies, in the light of the circumstances in which it was formed and its members appointed, the requirements of independence and impartiality required by those provisions of EU law. If that is not the case, the referring court asks whether the principle of the primacy of EU law must be interpreted as meaning that that court is required to disapply the provisions of national law which reserve jurisdiction to rule on such cases to that chamber of that court.

The jurisdiction of the Court

73 The Public Prosecutor has submitted, in the first place, that the Court has no jurisdiction to provide rulings on the second and third questions referred in Cases C-624/18 and C-625/18 on the ground that the provisions of EU law to which those questions refer do not provide a definition of the concept of an 'independent court' and do not lay down any rules on the jurisdiction of national courts and national councils of the judiciary, since those questions fall within the exclusive competencies of the Member States and cannot be encroached upon by the European Union.

74 However, the fact remains that the arguments thus advanced by the Public Prosecutor do in fact concern the very scope of those provisions of EU law and, thus, concern an interpretation of those provisions. An interpretation of that nature clearly falls within the jurisdiction of the Court under Article 267 TFEU.

75 In that regard, the Court has previously held 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 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531, paragraph 52 and the case-law cited).

76 In the second place, the Public Prosecutor claims that, as regards the second subparagraph of Article 19(1) TEU and Article 47 of the Charter, the Court also lacks jurisdiction to rule on those two referred questions because the provisions of national law at issue in the main proceedings do not implement EU law or fall within the scope thereof and they cannot therefore be assessed under that law.

77 As regards, first of all, the provisions of the Charter, it should certainly be recalled that, in the context of a request for a preliminary ruling under Article 267 TFEU, the Court may interpret EU law only within the limits of the powers conferred upon it (judgment of 30 June 2016, *Toma and Biroul Executorului Judecătoresc Horațiu-Vasile Cruduleci*, C-205/15, EU:C:2016:499, paragraph 22 and the case-law cited).

78 The scope of the Charter, in so far as the action of the Member States is concerned, is defined in Article 51(1) thereof, according to which the provisions of the Charter are addressed to the Member States when they are implementing EU law. That provision confirms the Court's 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 30 June 2016, *Toma and Biroul Executorului Judecătoresc Horațiu-Vasile Cruduleci*, C-205/15, EU:C:2016:499, paragraph 23 and the case-law cited).

79 However, in the present cases, as regards, in particular, Article 47 of the Charter, the Court notes that, in the actions in the main proceedings, the applicants rely, inter alia, on infringements to their detriment of the prohibition of discrimination in employment on the ground of age, which is provided for by Directive 2000/78.

80 In addition, it is to be noted that the right to an effective remedy is reaffirmed by Directive 2000/78, Article 9 of which provides that Member States must ensure that all persons who consider themselves wronged by failure to apply the principle of equal treatment to them as provided for by that directive are able to assert their rights (judgment of 8 May 2019, *Leitner*, C-396/17, EU:C:2019:375, paragraph 61 and the case-law cited).

81 It follows from the foregoing that the present cases are situations governed by EU law, so that the applicants in the main proceedings are justified in asserting the right to effective judicial protection afforded to them by Article 47 of the Charter.

82 Next, as regards the scope of the second subparagraph of Article 19(1) TEU, that provision, first, aims to guarantee effective judicial protection in '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 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531, paragraph 50 and the case-law cited).

83 Contrary to what has been claimed by the Public Prosecutor in that regard, the fact that the national salary reduction measures at issue in the case which gave rise to the judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses* (C-64/16, EU:C:2018:117) were adopted due to requirements linked to the elimination of the excessive budget deficit of the Member State concerned and in the context of an EU financial assistance programme for that Member State did not, as is apparent from paragraphs 29 to 40 of that judgment, play any role in the interpretation which led the Court to conclude that the second subparagraph of Article 19(1) TEU was applicable in the case in question. That conclusion was reached on the basis of the fact that the national body at issue in that case, namely the Tribunal de Contas (Court of Auditors, Portugal), could, subject to verification to be carried out by the referring court in that case, rule, as a court or tribunal, on

questions concerning the application or interpretation of EU law and thus falling within the fields covered by EU law (judgment of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531, paragraph 51 and the case-law cited).

84 Since the actions in the main proceedings concern alleged infringements of rules of EU law, it is sufficient to find that, in the present cases, the court called on to dispose of the cases will be required to rule on questions concerning the application or interpretation of EU law and thus falling within the fields covered by EU law within the meaning of the second subparagraph of Article 19(1) TEU.

85 Lastly, in respect of Protocol (No 30) on the application of the Charter of Fundamental Rights of the European Union to the Republic of Poland and to the United Kingdom (OJ 2010 C 83, p. 313), on which the Public Prosecutor also relies, it must be observed that that protocol does not concern the second subparagraph of Article 19(1) TEU and it should be recalled that it does not call into question the applicability of the Charter in Poland, nor is it intended to exempt the Republic of Poland from the obligation to comply with the provisions of the Charter (judgment of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531, paragraph 53 and the case-law cited).

86 It follows from all the foregoing that the Court has jurisdiction to interpret Article 47 of the Charter and the second subparagraph of Article 19(1) TEU in the present cases.

Whether it is necessary to give a ruling

87 The KRS, the Public Prosecutor and the Polish Government have stated that, on 17 December 2018, the President of the Republic signed the ustawa o zmianie ustawy o Sądzie Nawyższym (Law amending the [New Law on the Supreme Court]) of 21 November 2018 (Dz. U. of 2018, item 2507, ‘the Law of 21 November 2018’), which entered into force on 1 January 2019.

88 It is clear that Article 1 of that law repeals Article 37(1a) to (4) and Article 111(1) of the New Law on the Supreme Court and amends Article 37(1) thereof to the effect that ‘the judges of the Sąd Najwyższy [(Supreme Court)] shall retire at the age of 65’. It is, however, specified that that provision applies only to judges of the Sąd Najwyższy (Supreme Court) who entered into service in that court after 1 January 2019. The previous wording of Article 30 of the Law on the Supreme Court of 23 November 2002, which provided for retirement at the age of 70, applies to judges of the Sąd Najwyższy (Supreme Court) who entered into service before that date.

89 Article 2(1) of the Law of 21 November 2018 provides that, ‘from the date of the entry into force of the present law, any judge of the Sąd Najwyższy [(Supreme Court)] or of the Naczelny Sąd Administracyjny [(Supreme Administrative Court)] who has been retired pursuant to Article 37(1) to (4) or Article 111(1) or (1a) of the [New Law on the Supreme Court] shall re-enter active service in the post he or she held on the date of the entry into force of [that law]. Service as judge of the Sąd Najwyższy [(Supreme Court)] or of the Naczelny Sąd Administracyjny [(Supreme Administrative Court)] shall be regarded as having continued without interruption’.

90 Article 4(1) of the Law of 21 November 2018 provides that ‘procedures commenced pursuant to Article 37(1) and to Article 111(1) to (1b) of the [New Law on the Supreme Court] and appeal procedures pending in those cases on the date of the entry into force of the present law shall be discontinued’, and Article 4(2) thereof provides that ‘procedures commenced and pending at the date of the entry into force of the present law, for the purposes of establishing the existence of an employment relationship as a judge in active service of the Sąd Najwyższy [(Supreme Court)] or of

the Naczelny Sąd Administracyjny [(Supreme Administrative Court)], in respect of the judged referred to in Article 2(1), shall be discontinued'.

91 According to the KRS, the Public Prosecutor and the Polish Government, it follows from Article 1 and Article 2(1) of the Law of 21 November 2018 that the judges who are applicants in the main proceedings and were retired pursuant to provisions of the New Law on the Supreme Court, now repealed, have been returned to their previous posts in those courts by operation of law, until they reach the age of 70, in accordance with the provisions of national law previously in force, but that any possibility of extension, by the President of the Republic, of their term in office beyond the ordinary retirement age has also been repealed.

92 In those circumstances, and in accordance with Article 4 of that law providing for cases such as those in the main proceedings to be discontinued, it is said that those cases have become devoid of purpose, so that it is no longer be necessary for the Court to rule on the present references for a preliminary ruling.

93 In the light of the foregoing, on 23 January 2019, the Court asked the referring court whether, following the entry into force of the Law of 21 November 2018, that court considered that an answer to the questions referred was still necessary to enable it to deliver judgment in the cases pending before it.

94 In its reply of 25 January 2019, the referring court confirmed that request, adding that, by orders of 23 January 2019, it had ordered a stay in the proceedings on the requests that there is no need to proceed to judgment lodged before it by the Public Prosecutor, under Article 4(1) and (2) of the Law of 21 November 2018, until the Court has ruled on the present cases.

95 In that reply, the referring court explains that an answer to the questions referred in those cases is still necessary for it to be able to dispose of the preliminary procedural problems with which it is faced prior to it being able to deliver judgment in those cases.

96 Furthermore, as regards the substance of the cases in the main proceedings, the referring court indicated that the Law of 21 November 2018 was not intended to render national law compatible with EU law, but to apply the interim measures ordered by the Vice-President of the Court in her order of 19 October 2018, *Commission* v *Poland* (C-619/18 R, not published, EU:C:2018:852), upheld by order of the Court of 17 December 2018, *Commission* v *Poland* (C-619/18 R, EU:C:2018:1021). That law did not therefore repeal the provisions of national law at issue or their legal effects *ex tunc*. Whereas that law purports to reinstate those judges who are applicants in the main proceedings to their office after their retirement and to introduce a legal fiction as to the continued nature of their term in office effected by that reinstatement, the actions in the main proceedings seek a declaration that the judges in question never took retirement and remained fully in their posts during that entire period, which can result only from the invalidity of the rules of national law at issue, under the primacy of EU law. That distinction is fundamental in determining the status of the judges in question from the perspective of their capacity to take judicial, organisational and administrative measures and from the perspective of any mutual rights and obligations in respect of the Sąd Najwyższy (Supreme Court) on the basis of an employment relationship, or even that of disciplinary sanctions. In that latter respect, the referring court notes that, according to the declarations of representatives of the political authorities, those judges were exercising their judicial office illegally until 1 January 2019, the date of the entry into force of the Law of 21 November 2018.

97 It should be noted that, as is clear from settled case-law, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to 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. Consequently, where the questions submitted concern the interpretation of a rule of EU law, the Court is in principle bound to give a ruling (judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 26 and the case-law cited).

98 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 27 and the case-law cited).

99 In the present cases, the Court notes, first of all, that, by the questions which the referring court referred to the Court for a preliminary ruling and by the interpretation of EU law sought in the present cases, the referring court wishes to be instructed not as to the substance of the cases before it which do in turn raise other questions of EU law, but as regards a procedural problem which it must answer *in limine litis*, since that problem relates to the jurisdiction of that court to hear and rule on those cases.

100 In that regard, it should be noted that, according to settled case-law, the Court has power to explain to the national court points of EU law which may help to solve the problem of jurisdiction with which that court is faced (judgments of 22 October 1998, *IN. CO. GE.'90 and Others*, C-10/97 to C-22/97, EU:C:1998:498, paragraph 15 and the case-law cited, and of 12 December 2002, *Universale-Bau and Others*, C-470/99, EU:C:2002:746, paragraph 43). That applies in particular where, as in the present cases, and as is clear from paragraphs 79 to 81 above, the questions raised relate to the issue whether a national court which ordinarily has jurisdiction to rule on a case in which an individual relies on a right stemming from EU law meets the requirements derived from the right to an effective remedy before a court of law as enshrined in Article 47 of the Charter and Article 9(1) of Directive 2000/78.

101 The Law of 21 November 2018 does not concern aspects relating to jurisdiction to rule on the cases in the main proceedings on which the referring court is thus called to rule and in respect of which it has, in the present cases, requested an interpretation of EU law.

102 Next, it should be made clear that the fact that national legislation, such as Article 4(1) and (2) of the Law of 21 November 2018, provides for discontinuance of cases such as those in the main proceedings cannot, in principle and without a decision of the referring court ordering such discontinuance or to the effect that there is no need to rule on the cases in the main proceedings, lead the Court to find that it is no longer necessary for it to answer the questions before it which were referred for a preliminary ruling.

103 It should be noted that national courts have the widest discretion in referring questions to the Court involving interpretation of relevant provisions of EU law, that discretion being replaced by an obligation for courts ruling at final instance, subject to certain exceptions recognised by the Court's case-law. A rule of national law thus cannot prevent a national court, where appropriate, from exercising that discretion, or complying with that obligation. Both that discretion and that obligation

are an inherent part of the system of cooperation between the national courts and the Court of Justice established by Article 267 TFEU and of the functions of the court responsible for the application of EU law entrusted by that provision to the national courts (judgment of 5 April 2016, *PFE*, C-689/13, EU:C:2016:199, paragraphs 32 and 33 and the case-law cited).

104 Provisions of national law such as those referred to in paragraph 102 above cannot therefore preclude a chamber of a court from which there is no appeal, faced with a question on the interpretation of EU law, from confirming questions which it referred to the Court for a preliminary ruling.

105 Lastly, it is to be noted that, as regards Cases C-624/18 and C-625/18, which concern the issue whether or not the applicants in the main proceedings continue to be in an employment relationship as judges in active service with the Sąd Najwyższy (Supreme Court) as their employer, it is clear from the explanations provided by the referring court, set out in paragraph 96 above, that, in the light of, inter alia, all of the consequences resulting from the existence of such an employment relationship, the mere fact of the entry into force of Article 2(1) of the Law of 21 November 2018 does not mean that it is beyond doubt that a declaration that there is no need to rule on the cases before the referring court is appropriate.

106 It follows from all the foregoing that the adoption and entry into force of the Law of 21 November 2018 is not capable of justifying the Court in not ruling on the second and third questions in Cases C-624/18 and C-625/18.

107 By contrast, as regards Case C-585/18, it must be borne in mind that the action before the referring court relates to an opinion of the KRS delivered in a procedure capable of leading to a decision extending the exercise of judicial functions of the applicant in the main proceedings beyond the age of retirement now set at 65.

108 Indeed, it does not flow from the abovementioned explanations provided by the referring court that that action might still have a purpose, more particularly, that such an opinion might not be invalid, despite the fact that, under the provisions of national law adopted between then and now, both the provisions of national law setting a new retirement age and those setting out the procedure for extending the exercise of judicial functions bringing about the need for such an opinion have been repealed, as a result of which the applicant in the main proceedings may continue in his post as a judge until the age of 70, in accordance with the provisions of national law in force before the adoption of the provisions which were repealed.

109 In those circumstances, and in the light of the principles set out in paragraphs 69 and 70 above, it is no longer necessary for the Court to rule on the questions referred in Case C-585/18.

Admissibility of the second and third questions in Cases C-624/18 and C-625/18

110 The Polish Government claims that the second and third questions in Cases C-624/18 and C-625/18 are inadmissible. It maintains, in the first place, that those questions are irrelevant because answers to them are unnecessary on account of the fact that the proceedings pending before the Labour and Social Insurance Chamber which referred the questions for a preliminary ruling are invalid, under Article 379(4) of the Civil Procedure Code, because they disregarded the rules relating to the composition and jurisdiction of the courts. There is a three-judge panel sitting in those cases in that chamber, whereas Article 79 of the New Law on the Supreme Court provides that cases such as those in the main proceedings must, at first instance, be decided by a single-judge panel. In the second place, the answers to the questions referred cannot, in any event, enable the

referring court to rule on cases which fall within the jurisdiction of another chamber of the Sąd Najwyższy (Supreme Court) without impinging on the exclusive competency of the Member States to organise their national courts or overstepping the competency of the European Union, nor can those answers therefore be relevant to the outcome of the cases in the main proceedings.

111 However, the arguments thus put forward, which concern matters of substance, cannot affect the admissibility of the questions referred.

112 Indeed, the questions referred precisely concern the question of whether, notwithstanding rules of national law in force in the Member State in question attributing jurisdiction, a court such as the referring court has the obligation, under the provisions of EU law to which those questions refer, to disapply those rules of national law and to assume, where relevant, jurisdiction for the actions in the main proceedings. A judgment in which the Court were to uphold the existence of such an obligation would be binding on the referring court and all other bodies of the Republic of Poland, and could not be affected by provisions of domestic law relating to the invalidity of proceedings or by the distribution of jurisdiction between the courts to which the Polish Government refers.

113 It follows that the objections made by the Polish Government as to the admissibility of those questions cannot be upheld.

The substance of the second and third questions in Cases C-624/18 and C-625/18

114 It should be noted that, as is clear from paragraphs 77 to 81 above, in situations such as those at issue in the main proceedings, in which the applicants rely on infringements to their detriment of the prohibition of discrimination on the ground of age in employment provided by Directive 2000/78, both Article 47 of the Charter, which enshrines the right to effective judicial protection, and Article 9(1) of the directive, which reaffirms it, may apply.

115 In that regard, according to settled case-law, when there are no EU rules governing the matter, although it is for the domestic legal system of every Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law, the Member States are, however, responsible for ensuring that those rights are effectively protected in every case, compliance with the right to effective judicial protection of those rights as enshrined in Article 47 of the Charter (see, to that effect, judgments of 22 October 1998, *IN. CO. GE.'90 and Others*, C-10/97 to C-22/97, EU:C:1998:498, paragraph 14 and the case-law cited; of 15 April 2008, *Impact*, C-268/06, EU:C:2008:223, paragraphs 44 and 45; and of 19 March 2015, *E.ON Földgáz Trade*, C-510/13, EU:C:2015:189, paragraphs 49 and 50 and the case-law cited).

116 Furthermore, it should be noted that Article 52(3) of the Charter states that, in so far as the Charter contains rights which correspond to rights guaranteed by the ECHR, the meaning and scope of those rights are to be the same as those laid down by the ECHR.

117 As is clear from the explanations relating to Article 47 of the Charter, which, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, have to be taken into consideration for the interpretation of the Charter, the first and second paragraphs of Article 47 of the Charter correspond to Article 6(1) and Article 13 of the ECHR (judgment of 30 June 2016, *Toma and Biroul Executorului Judecătoresc Horațiu-Vasile Cruduleci*, C-205/15, EU:C:2016:499, paragraph 40 and the case-law cited).

118 The Court must therefore ensure that the interpretation which it gives to the second paragraph of Article 47 of the Charter safeguards a level of protection which does not fall below the level of protection established in Article 6 of the ECHR, as interpreted by the European Court of Human Rights (judgment of 29 July 2019, *Gambino and Hyka*, C-38/18, EU:C:2019:628, paragraph 39).

119 As regards the substance of the second paragraph of Article 47 of the Charter, it is clear from the very wording of that provision that the fundamental right to an effective remedy enshrined therein means, inter alia, that everyone is entitled to a fair hearing by an independent and impartial tribunal.

120 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 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531, paragraph 58 and the case-law cited).

121 According to settled case-law, the requirement that courts be independent has two aspects to it. The first aspect, which is external in nature, requires that the court concerned exercise its functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, thus being protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions (judgments of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 63 and the case-law cited, and of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531, paragraph 72).

122 The second aspect, which is internal in nature, is linked to impartiality and seeks to ensure that an equal distance is maintained from the parties to the proceedings and their respective interests with regard to the subject matter of those proceedings. That aspect requires objectivity and the absence of any interest in the outcome of the proceedings apart from the strict application of the rule of law (judgments of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 65 and the case-law cited, and of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531, paragraph 73).

123 Those guarantees of independence and impartiality require 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, in order to dispel any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it (judgments 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 the case-law cited, and of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531, paragraph 74).

124 Moreover, in accordance with the principle of the separation of powers which characterises the operation of the rule of law, the independence of the judiciary must be ensured in relation to the legislature and the executive (see, to that effect, judgment of 10 November 2016, *Poltorak*, C-452/16 PPU, EU:C:2016:858, paragraph 35).

125 In that regard, it is necessary that judges are protected from external intervention or pressure liable to jeopardise their independence. The rules set out in paragraph 123 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 (see, to that effect, judgment of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531, paragraph 112 and the case-law cited).

126 That interpretation of Article 47 of the Charter is borne out by the case-law of the European Court of Human Rights on Article 6(1) of the ECHR according to which that provision requires that the courts be independent of the parties and of the executive and legislature (ECtHR, 18 May 1999, *Ninn-Hansen v. Denmark*, CE:ECHR:1999:0518DEC002897295, p. 19 and the case-law cited).

127 According to settled case-law of that court, in order to establish whether a tribunal is 'independent' within the meaning of Article 6(1) of the ECHR, regard must be had, inter alia, to the mode of appointment of its members and their term of office, the existence of guarantees against outside pressures and the question whether the body at issue presents an appearance of independence (ECtHR, 6 November 2018, *Ramos Nunes de Carvalho e Sáv. Portugal*, CE:ECHR:2018:1106JUD005539113, § 144 and the case-law cited), it being added, in that connection, that what is at stake is the confidence which such tribunals must inspire in the public in a democratic society (see, to that effect, ECtHR, 21 June 2011, *Fruniv. Slovakia*, CE:ECHR:2011:0621JUD000801407, § 141).

128 As regards the condition of 'impartiality', within the meaning of Article 6(1) of the ECHR, impartiality can, according to equally settled case-law of the European Court of Human Rights, be tested in various ways, namely, according to a subjective test where regard must be had to the personal convictions and behaviour of a particular judge, that is, by examining whether the judge gave any indication of personal prejudice or bias in a given case; and also according to an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality. As to the objective test, it must be determined whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to his or her impartiality. In this connection, even appearances may be of a certain importance. Once again, what is at stake is the confidence which the courts in a democratic society must inspire in the public, and first and foremost in the parties to the proceedings (see, inter alia, ECtHR, 6 May 2003, *Kleyn and Others v. Netherlands*, CE:ECHR:2003:0506JUD003934398, § 191 and the case-law cited, and 6 November 2018, *Ramos Nunes de Carvalho e Sáv. Portugal*, CE:ECHR:2018:1106JUD005539113, §§ 145, 147 and 149 and the case-law cited).

129 As the European Court of Human Rights has repeatedly held, the concepts of independence and objective impartiality are closely linked which generally means that they require joint examination (see, inter alia, ECtHR, 6 May 2003, *Kleyn and Others v. Netherlands*, CE:ECHR:2003:0506JUD003934398, § 192 and the case-law cited, and 6 November 2018, *Ramos Nunes de Carvalho e Sáv. Portugal*, CE:ECHR:2018:1106JUD005539113, § 150 and the case-law cited). According to the case-law of the European Court of Human Rights, in deciding whether there is reason to fear that the requirements of independence and objective impartiality are not met in a given case, the perspective of a party to the proceedings is relevant but not decisive. What is decisive is whether such fear can be held to be objectively justified (see, inter alia, ECtHR, 6 May 2003, *Kleyn and Others v. Netherlands*, CE:ECHR:2003:0506JUD003934398, §§ 193 and 194 and the case-law cited, and of 6 November 2018, *Ramos Nunes de Carvalho e Sáv. Portugal*, CE:ECHR:2018:1106JUD005539113, §§ 147 and 152 and the case-law cited).

130 In that connection, the European Court of Human Rights has repeatedly stated that, although the principle of the separation of powers between the executive and the judiciary has assumed growing importance in its case-law, neither Article 6 nor any other provision of the ECHR requires States to adopt a particular constitutional model governing in one way or another the relationship and interaction between the various branches of the State, nor requires those States to comply with any theoretical constitutional concepts regarding the permissible limits of such interaction. The question is always whether, in a given case, the requirements of the ECHR have been met (see, inter alia, ECtHR, 6 May 2003, *Kleyn and Others v. Netherlands*, CE:ECHR:2003:0506JUD003934398, § 193 and the case-law cited; 9 November 2006, *Sacilor Lorminesv. France*, CE:ECHR:2006:1109JUD006541101, § 59; and 18 October 2018, *Thiamv. France*, CE:ECHR:2018:1018JUD008001812, § 62 and the case-law cited).

131 In the present cases, the doubts expressed by the referring court concern, in essence, the question whether, in the light of the rules of national law relating to the creation of a specific court, such as the Disciplinary Chamber, and, in particular, pertaining to the jurisdiction granted to it, its composition and the circumstances and conditions surrounding the appointment of the judges called to sit on that court, the context of its creation and those appointments, such a court and the members sitting on it satisfy the requirements of independence and impartiality which must be met by a court under Article 47 of the Charter where that court has jurisdiction to rule on a case in which subjects of the law rely, as in the present cases, on an infringement of EU law that is to their detriment.

132 It is ultimately for the referring court to rule on that matter having made the relevant findings in that regard. It must be borne in mind that Article 267 TFEU does not empower the Court to apply rules of EU law to a particular case, but only to rule on the interpretation of the Treaties and of acts adopted by the EU institutions. According to settled case-law, the Court may, however, in the framework of the judicial cooperation provided for by that article and on the basis of the material presented to it, provide the national court with an interpretation of EU law which may be useful to it in assessing the effects of one or other of its provisions (judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria*, C-83/14, EU:C:2015:480, paragraph 71 and the case-law cited).

133 In that regard, as far as concerns the circumstances in which the members of the Disciplinary Chamber were appointed, the Court points out, as a preliminary remark, that the mere fact that those judges were appointed by the President of the Republic does not give rise to a relationship of subordination of the former to the latter or to doubts as to the former's impartiality, if, once appointed, they are free from influence or pressure when carrying out their role (see, to that effect, judgment of 31 January 2013, *D. and A.*, C-175/11, EU:C:2013:45, paragraph 99, and ECtHR, 28 June 1984, *Campbell and Fell v. United Kingdom*, CE:ECHR:1984:0628JUD000781977, § 79; 2 June 2005, *Zolotasv. Greece*, CE:ECHR:2005:0602JUD003824002 §§ 24 and 25; 9 November 2006, *Sacilor Lorminesv. France*, CE:ECHR:2006:1109JUD006541101, § 67; and 18 October 2018, *Thiamv. France*, CE:ECHR:2018:1018JUD008001812, § 80 and the case-law cited).

134 However, it is still necessary to ensure that the substantive conditions and detailed procedural rules governing the adoption of 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 appointed as judges (see, by analogy, judgment of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531, paragraph 111).

135 In that perspective, it is important, inter alia, that those conditions and detailed procedural rules are drafted in a way which meets the requirements set out in paragraph 125 above.

136 In the present cases, it should be made clear that Article 30 of the New Law on the Supreme Court sets out all the conditions which must be satisfied by an individual in order for that individual to be appointed as a judge of that court. Furthermore, under Article 179 of the Constitution and Article 29 of the New Law on the Supreme Court, the judges of the Disciplinary Chamber are, as is the case for judges who are to sit in the other chambers of the referring court, appointed by the President of the Republic on a proposal of the KRS, that is to say the body empowered under Article 186 of the Constitution to ensure the independence of the courts and of the judiciary.

137 The participation of such a body, in the context of a process for the appointment of judges, may, in principle, be such as to contribute to making that process more objective (see, by analogy, judgment of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531, paragraph 115; see also, to that effect, ECtHR, 18 October 2018, *Thiamv. France*, CE:ECHR:2018:1018JUD008001812, §§ 81 and 82). In particular, the fact of subjecting the very possibility for the President of the Republic to appoint a judge to the Sąd Najwyższy (Supreme Court) to the existence of a favourable opinion of the KRS is capable of objectively circumscribing the President of the Republic's discretion in exercising the powers of his office.

138 However, that is only the case provided, inter alia, that that body is itself sufficiently independent of the legislature and executive and of the authority to which it is required to deliver such an appointment proposal (see, by analogy, judgment of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531, paragraph 116).

139 The degree of independence enjoyed by the KRS in respect of the legislature and the executive in exercising the responsibilities attributed to it under national legislation, as the body empowered, under Article 186 of the Constitution, to ensure the independence of the courts and of the judiciary, may become relevant when ascertaining whether the judges which it selects will be capable of meeting the requirements of independence and impartiality arising from Article 47 of the Charter.

140 It is for the referring court to ascertain whether or not the KRS offers sufficient guarantees of independence in relation to the legislature and the executive, having regard to all of the relevant points of law and fact relating both to the circumstances in which the members of that body are appointed and the way in which that body actually exercises its role.

141 The referring court has pointed to a series of elements which, in its view, call into question the independence of the KRS.

142 In that regard, although one or other of the factors thus pointed to by the referring court may be such as to escape criticism per se and may fall, in that case, within the competence of, and choices made by, the Member States, when taken together, in addition to the circumstances in which those choices were made, they may, by contrast, throw doubt on the independence of a body involved in the procedure for the appointment of judges, despite the fact that, when those factors are taken individually, that conclusion is not inevitable.

143 Subject to those reservations, among the factors pointed to by the referring court which it shall be incumbent on that court, as necessary, to establish, the following circumstances may be relevant for the purposes of such an overall assessment: first, the KRS, as newly composed, was formed by reducing the ongoing four-year term in office of the members of that body at that time; second, whereas the 15 members of the KRS elected among members of the judiciary were previously elected by their peers, those judges are now elected by a branch of the legislature among candidates capable of being proposed inter alia by groups of 2 000 citizens or 25 judges, such a

reform leading to appointments bringing the number of members of the KRS directly originating from or elected by the political authorities to 23 of the 25 members of that body; third, the potential for irregularities which could adversely affect the process for the appointment of certain members of the newly formed KRS.

144 For the purposes of that overall assessment, the referring court is also justified in taking into account the way in which that body exercises its constitutional responsibilities of ensuring the independence of the courts and of the judiciary and its various powers, in particular if it does so in a way which is capable of calling into question its independence in relation to the legislature and the executive.

145 Furthermore, in the light of the fact that, as is clear from the case file before the Court, the decisions of the President of the Republic appointing judges to the Sąd Najwyższy (Supreme Court) are not amenable to judicial review, it is for the referring court to ascertain whether the terms of the definition, in Article 44(1) and (1a) of the Law on the KRS, of the scope of the action which may be brought challenging a resolution of the KRS, including its decisions concerning proposals for appointment to the post of judge of that court, allows an effective judicial review to be conducted of such resolutions, covering, at the very least, an examination of whether there was no *ultra vires* or improper exercise of authority, error of law or manifest error of assessment (see, to that effect, ECtHR, 18 October 2018, *Thiamv. France*, CE:ECHR:2018:1018JUD008001812, §§ 25 and 81).

146 Notwithstanding the assessment of the circumstances in which the new judges of the Disciplinary Chamber were appointed and the role of the KRS in that regard, the referring court may, for the purposes of ascertaining whether that chamber and its members meet the requirements of independence and impartiality arising from Article 47 of the Charter, also wish to take into consideration various other features that more directly characterise that chamber.

147 That applies, first, to the fact referred to by the referring court that this court has been granted exclusive jurisdiction, under Article 27(1) of the New Law on the Supreme Court, to rule on cases of the employment, social security and retirement of judges of the Sąd Najwyższy (Supreme Court), which previously fell within the jurisdiction of the ordinary courts.

148 Although that fact is not conclusive per se, it should, however, be borne in mind, as regards, in particular, cases relating to the retiring of judges of the Sąd Najwyższy (Supreme Court) such as those in the main proceedings, that the assignment of those cases to the Disciplinary Chamber took place in conjunction with the adoption, which was highly contentious, of the provisions of the New Law on the Supreme Court which lowered the retirement age of the judges of the Sąd Najwyższy (Supreme Court), applied that measure to judges currently serving in that court and empowered the President of the Republic with discretion to extend the exercise of active judicial service of the judges of the referring court beyond the new retirement age set by that law.

149 It must be borne in mind, in that regard, that, in its judgment of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)* (C-619/18, EU:C:2019:531), the Court found that, as a result of adopting those measures, the Republic of Poland had undermined the irremovability and independence of the judges of the Sąd Najwyższy (Supreme Court) and failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU.

150 Second, in that context, the fact must also be highlighted, as it was by the referring court, that, under Article 131 of the New Law on the Supreme Court, the Disciplinary Chamber must be constituted solely of newly appointed judges, thereby excluding judges already serving in the Sąd Najwyższy (Supreme Court).

151 Third, it should be made clear that, although established as a chamber of the Sąd Najwyższy (Supreme Court), the Disciplinary Chamber appears, by contrast to the other chambers of that court, and as is clear inter alia from Article 20 of the New Law on the Supreme Court, to enjoy a particularly high degree of autonomy within the referring court.

152 Although any one of the various facts referred to in paragraphs 147 to 151 above is indeed not capable, per se and taken in isolation, of calling into question the independence of a chamber such as the Disciplinary Chamber, that may, by contrast, not be true once they are taken together, particularly if the abovementioned assessment as regards the KRS were to find that that body lacks independence in relation to the legislature and the executive.

153 Thus, the referring court will need to assess, in the light, where relevant, of the reasons and specific objectives alleged before it in order to justify certain of the measures in question, whether, taken together, the factors referred to in paragraphs 143 to 151 above and all the other relevant findings of fact which it will have made are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of the Disciplinary Chamber to external factors, and, in particular, to the direct or indirect influence of the legislature and the executive, and as to its neutrality with respect to the interests before it and, thus, whether they may lead to that chamber not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society must inspire in subjects of the law.

154 If the referring court were to conclude that that is the case, it would follow that such a court does not meet the requirements arising from Article 47 of the Charter and from Article 9(1) of Directive 2000/78 on account of its not being an independent and impartial tribunal, within the meaning of the former provision.

155 If that is the case, the referring court also wishes to know whether the principle of the primacy of EU law requires it to disapply those provisions of national law which confer jurisdiction to rule on the cases in the main proceedings on that court.

156 For the purposes of answering that question, it should be noted that EU law is characterised by the fact that it stems from an independent source of law, namely the Treaties, by its primacy over the laws of the Member States, and by the direct effect of a whole series of provisions that are applicable to their nationals and to the Member States themselves. Those essential characteristics of EU law have given rise to a structured network of principles, rules and mutually interdependent legal relations binding the European Union and its Member States reciprocally as well as binding the Member States to one another (Opinion 1/17 (EU-Canada CET Agreement) of 30 April 2019, EU:C:2019:341, paragraph 109 and the case-law cited).

157 The principle of the primacy of EU law establishes the pre-eminence of EU law over the law of the Member States (judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraph 53 and the case-law cited).

158 That principle therefore requires all Member State bodies to give full effect to the various EU provisions, and the law of the Member States may not undermine the effect accorded to those various provisions in the territory of those States (judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraph 54 and the case-law cited).

159 In that regard, it should, inter alia, be pointed out that the principle that national law must be interpreted in conformity with EU law, by virtue of which the national court is required, to the greatest extent possible, to interpret national law in conformity with the requirements of EU law, is

inherent in the system of the treaties, since it permits the national court, within the limits of its jurisdiction, to ensure the full effectiveness of EU law when it determines the dispute before it (judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraph 55 and the case-law cited).

160 It is also in the light of the primacy principle that, where it is impossible for it to interpret national law in compliance with the requirements of EU law, the national court which is called upon within the exercise of its jurisdiction to apply provisions of EU law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for that court to request or await the prior setting aside of such provision by legislative or other constitutional means (judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraph 58 and the case-law cited).

161 In that regard, any national court, hearing a case within its jurisdiction, has, as a body of a Member State, more specifically the obligation to disapply any provision of national law which is contrary to a provision of EU law with direct effect in the case pending before it (judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraph 61 and the case-law cited).

162 As regards Article 47 of the Charter, it is clear from the case-law of the Court that that provision is sufficient in itself and does not need to be made more specific by provisions of EU or national law in order to confer on individuals a right which they may rely on as such (judgments of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 78, and of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626, paragraph 56).

163 The same applies to Article 9(1) of Directive 2000/78 in so far as, as has been stated in paragraph 80 above, by providing that the Member States are to ensure that all persons who consider themselves wronged by a failure to apply the principle of equal treatment enshrined in that directive to them may enforce their rights, that provision expressly reaffirms the right to an effective remedy in the relevant field. In applying Directive 2000/78, the Member States are required to comply with Article 47 of the Charter and the characteristics of the remedy provided for in Article 9(1) of the directive must be determined in a manner that is consistent with Article 47 of the Charter (see, by analogy, judgment of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626, paragraphs 55 and 56).

164 Consequently, in the situation referred to in paragraph 160 above, the national court is required to ensure within its jurisdiction the judicial protection for individuals flowing from Article 47 of the Charter and from Article 9(1) of Directive 2000/78, and to guarantee the full effectiveness of those articles by disapplying if need be any contrary provision of national law (see, to that effect, judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 79).

165 A provision of national law which granted exclusive jurisdiction to hear and rule on a case in which an individual pleads, as in the present cases, an infringement of rights arising from rules of EU law in a particular court which does not meet the requirements of independence and impartiality arising from Article 47 of the Charter would deprive that individual of any effective remedy within the meaning of that article and of Article 9(1) of Directive 2000/78, and would fail to comply with the essential content of the right to an effective remedy enshrined in Article 47 of the Charter (see, by analogy, judgment of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626, paragraph 72).

166 It follows that, where it appears that a provision of national law reserves jurisdiction to hear cases, such as those in the main proceedings, to a court which does not meet the requirements of

independence or impartiality under EU law, in particular, those of Article 47 of the Charter, another court before which such a case is brought has the obligation, in order to ensure effective judicial protection, within the meaning of Article 47, in accordance with the principle of sincere cooperation enshrined in Article 4(3) TEU, to disapply that provision of national law, so that that case may be determined by a court which meets those requirements and which, were it not for that provision, would have jurisdiction in the relevant field, namely, in general, the court which had jurisdiction, in accordance with the law then in force, before the entry into force of the amending legislation which conferred jurisdiction on the court which does not meet those requirements (see, by analogy, judgments of 22 May 2003, *Connect Austria*, C-462/99, EU:C:2003:297, paragraph 42, and of 2 June 2005, *Koppensteiner*, C-15/04, EU:C:2005:345, paragraphs 32 to 39).

167 Furthermore, as regards Articles 2 and 19 TEU, provisions on which the referring court has also referred questions to the Court, it must be borne in mind that Article 19 TEU, 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 judicial protection of the rights of individuals under that law to national courts and tribunals and to the Court (judgment of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531, paragraph 47 and the case-law cited).

168 The principle of the effective judicial protection of individuals' rights under EU law, referred to in the second subparagraph of Article 19(1) TEU, is a general principle of EU law which is now enshrined in Article 47 of the Charter, so that the former provision requires Member States to provide remedies that are sufficient to ensure effective legal protection, within the meaning in particular of the latter provision, in the fields covered by EU law (see, to that effect, judgment of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531, paragraphs 49 and 54 and the case-law cited).

169 In those circumstances, it does not appear necessary to conduct a distinct analysis of Article 2 and the second subparagraph of Article 19(1) TEU, which can only reinforce the conclusion already set out in paragraphs 153 and 154 above, for the purposes of answering the questions posed by the referring court and of disposing of the cases before it.

170 Lastly, it is also not necessary, in the present cases, for the Court to interpret Article 267 TFEU, to which the referring court also refers in its questions. In the order for reference, that court has provided no reasons as to why an interpretation of that article could be relevant for the purposes of resolving the points which it is called on to address in the actions in the main proceedings. In addition, in any event, it is clear that the interpretation of Article 47 of the Charter and of Article 9(1) of Directive 2000/78 given in paragraphs 114 to 154 above is sufficient for the purposes of providing a response capable of instructing the referring court in relation to the decisions which it is called on to make in those cases.

171 In the light of all of the foregoing considerations, the answer to the second and third questions referred in Cases C-624/18 and C-625/18 is:

– Article 47 of the Charter and Article 9(1) of Directive 2000/78 must be interpreted as precluding cases concerning the application of EU law from falling within the exclusive jurisdiction of a court which is not an independent and impartial tribunal, within the meaning of the former provision. That is the case where the objective circumstances in which that court was formed, its characteristics and the means by which its members have been appointed are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of that court to external factors, in particular, as to the direct or indirect influence of the legislature and the

executive and its neutrality with respect to the interests before it and, thus, may lead to that court not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society must inspire in subjects of the law. It is for the referring court to determine, in the light of all the relevant factors established before it, whether that applies to a court such as the Disciplinary Chamber of the Sąd Najwyższy (Supreme Court).

– If that is the case, the principle of the primacy of EU law must be interpreted as requiring the referring court to disapply the provision of national law which reserves jurisdiction to hear and rule on the cases in the main proceedings to the abovementioned chamber, so that those cases may be examined by a court which meets the abovementioned requirements of independence and impartiality and which, were it not for that provision, would have jurisdiction in the relevant field.

Costs

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

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

1. **It is no longer necessary to answer questions referred by the Izba Pracy i Ubezpieczeń Społecznych (Labour and Social Insurance Chamber) of the Sąd Najwyższy (Supreme Court, Poland) in Case C-585/18 or the first question referred by the same court in Cases C-624/18 and C-625/18.**

2. **The answer to the second and third questions referred by the referring court in Cases C-624/18 and C-625/18 is as follows:**

Article 47 of the Charter of Fundamental Rights of the European Union and Article 9(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as precluding cases concerning the application of EU law from falling within the exclusive jurisdiction of a court which is not an independent and impartial tribunal, within the meaning of the former provisions. That is the case where the objective circumstances in which that court was formed, its characteristics and the means by which its members have been appointed are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of that court to external factors, in particular, as to the direct or indirect influence of the legislature and the executive and its neutrality with respect to the interests before it and, thus, may lead to that court not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society must inspire in subjects of the law. It is for the referring court to determine, in the light of all the relevant factors established before it, whether that applies to a court such as the Disciplinary Chamber of the Sąd Najwyższy (Supreme Court).

If that is the case, the principle of the primacy of EU law must be interpreted as requiring the referring court to disapply the provision of national law which reserves jurisdiction to hear and rule on the cases in the main proceedings to the abovementioned chamber, so that those cases may be examined by a court which meets the abovementioned requirements of independence and impartiality and which, were it not for that provision, would have jurisdiction in the relevant field.

[Signatures]

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* Language of the case: Polish.