



[Pagina iniziale](#) > [Formulario di ricerca](#) > [Elenco dei risultati](#) > Documenti



[Avvia la stampa](#)

Lingua del documento :

ECLI:EU:C:2025:109

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

25 February 2025 (*)

(References for a preliminary ruling – Freezing or reduction of remuneration in the national public administration – Measures specifically aimed at judges – Article 2 TEU – Article 19(1), second subparagraph, TEU – Article 47 of the Charter of Fundamental Rights of the European Union – Obligations on Member States to provide remedies sufficient to ensure effective judicial protection – Principle of judicial independence – Powers of the legislatures and executives of the Member States to set the detailed rules for determining judges’ remuneration – Possibility of derogating from those rules – Conditions)

In Joined Cases C146/23 [*Sąd Rejonowy w Białymstoku*] and C374/23 [*Adoreikė*], (i)

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the *Sąd Rejonowy w Białymstoku* (District Court, Białystok, Poland) (C146/23), and from the *Vilniaus apygardos administracinis teismas* (Regional Administrative Court, Vilnius, Lithuania) (C374/23), made by decisions of 10 March and 1 June 2023, received at the Court on 10 March and 13 June 2023 respectively, in the proceedings

XL

v

Sąd Rejonowy w Białymstoku (C146/23),

and

SR,

RB

v

Lietuvos Respublika (C374/23),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, T. von Danwitz, Vice-President, F. Biltgen, K. Jürimäe, C. Lycourgos, M.L. Arastey Sahún, N. Jääskinen, D. Gratsias and M. Gavalec (Rapporteur), Presidents of Chambers, E. Regan, J. Passer, Z. Csehi and O. Spineanu-Matei, Judges,

Advocate General: A.M. Collins,

Registrar: M. Siekierzyńska, Administrator,

having regard to the written procedure and further to the hearing on 12 March 2024,

after considering the observations submitted on behalf of:

- XL, by himself,
- the Polish Government, by B. Majczyna and S. Żyrek, acting as Agents,
- the Lithuanian Government, by K. Dieninis, S. Grigonis and V. Kazlauskaitė-Švenčionienė, acting as Agents,
- the European Commission, by K. Herrmann, A. Steiblytė and P. Van Nuffel, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 June 2024,

gives the following

Judgment

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

2 The requests have been made in proceedings between, in Case C146/23, XL, a judge, and the Sąd Rejonowy w Białymstoku (District Court, Białystok, Poland) and, in Case C374/23, SR and RB, two judges, and the Lietuvos Respublika (the Republic of Lithuania), concerning the amount of their remuneration.

Legal context

Polish law

3 Article 178 of the Konstytucja Rzeczypospolitej Polskiej (Constitution of the Republic of Poland), concerning judicial independence, provides:

'1. Judges, within the exercise of their office, shall be independent and subject only to the Constitution and statutes.

2. Judges shall be provided with appropriate conditions for work and granted remuneration consistent with the dignity of their office and the scope of their duties.

3. Judges may not be affiliated to any political party or trade union, nor may they engage in a public activity that is incompatible with the principle of the independence of courts and judges.'

4 The ustawa – Prawo o ustroju sądów powszechnych (Law on the organisation of the ordinary courts) of 27 July 2001 (Dz. U. of 2001, No 98, item 1070), in the version applicable to the dispute in the main proceedings in Case C146/23 ('the Law on the organisation of the ordinary courts'), includes Article 91, concerning the remuneration of judges, which is worded as follows:

'...

1c. Subject to Paragraph 1d, the basis for setting the basic salary of judges for a particular year shall be the average salary during the second quarter of the preceding year published in the [*Dziennik Urzędowy Rzeczypospolitej Polskiej "Monitor Polski"* (*Official Journal of the Republic of Poland, "Monitor Polski"*)] by the President of the [Głównego Urzędu Statystycznego (the Central Statistical Office, Poland)], in accordance with Article 20(2) of [the ustawa o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych (Law on retirement and other pensions payable from the Social Security Fund) of 17 December 1998 (Dz. U. of 1998, No 162, item 1118)].

1d. If the average salary referred to in Paragraph 1c is lower than the average salary published for the second quarter of the preceding year, the latter amount shall be used as the basic amount for determining the basic salary of judges.

2. The salary for a judge shall be expressed in grades, the level of which shall be determined through the application of multipliers to the basis for determining the basic salary referred to in Paragraph 1c. The basic salary grades for individual judicial posts and the multipliers used to determine the level of the basic salary for judges in individual grades are set out in the annex to this Law.

...

6. Judges are entitled to an allowance in respect of their office.

7. In addition, remuneration for judges shall be differentiated by a seniority allowance amounting, as from the sixth year of service, to 5% of the basic salary and increasing each year by 1% until it reaches 20% of the basic salary.

...'

5 Under Article 8 of the ustawa o szczególnych rozwiązaniach służących realizacji ustawy budżetowej na rok 2022 (Law on specific arrangements for implementing the budget law for 2022) of 17 December 2021 (Dz. U. of 2021, item 2445; 'the Law accompanying the budget for 2022'):

'1. For 2022, the basis for setting the basic salary of judges referred to in Article 91(1c) of the [Law on the organisation of the ordinary courts] shall be the average salary in the second quarter of 2020, published in the communication of the President of the Central Statistical Office.

2. The basis referred to in paragraph 1 shall be increased by 26 [Polish zlotys (PLN) (approximately EUR 6)].

3. Where separate provisions refer to the basic salary of judges referred to in Article 91(1c) of the [Law on the organisation of the ordinary courts], this shall correspond, for 2022, to the average salary in the second quarter of 2020, published in the communication of the President of the Central Statistical Office, plus PLN 26.

4. Where separate provisions refer to the remuneration of judges, that remuneration shall, for 2022, correspond to the remuneration determined in accordance with paragraphs 1 and 2.'

6 Article 8 of the ustawa o szczególnych rozwiązaniach służących realizacji ustawy budżetowej na rok 2023 (Law on specific arrangements for implementing the budget law for 2023) of 1 December 2022 (Dz. U. of 2022, item 2666; 'the Law accompanying the budget for 2023'), provided:

'1. For 2023, the basis for determining the remuneration of judges referred to in Article 91(1c) of the [Law on the organisation of the ordinary courts] shall be PLN 5 444.42 (approximately EUR 1 274).

2. Where separate provisions refer to the basic salary of judges referred to in Article 91(1c) of the [Law on the organisation of the ordinary courts], for 2023, the amount thereof shall be PLN 5 444.42.'

Lithuanian law

7 Article 3 of the Lietuvos Respublikos teisėjų darbo apmokėjimo įstatymas (Law of the Republic of Lithuania on remuneration of judges) of 6 November 2008 (Žin., 2008, No 131-5022; ‘the Law on the remuneration of judges’), in the version applicable to the main proceedings, provided that, for a given year, the base rate for the remuneration of State politicians, judges, State officials, civil servants, and employees of institutions funded by the State and of municipalities of the Republic of Lithuania – adopted by the Parliament of the Republic of Lithuania on a proposal from the Government of the Republic of Lithuania – was to be used for the purpose of calculating the remuneration of judges. That base rate could not be lower than the base rate for the preceding year, unless exceptional circumstances were established. The base rate was to be set taking into account the average annual inflation rate for the preceding year, as calculated by reference to the national consumer price index, the level of the minimum monthly salary and the impact of other factors affecting the level and evolution of the average salary in the public sector.

8 Pursuant to Article 4(2) of the Law on the remuneration of judges, the remuneration of judges of courts of general jurisdiction and specialised courts was to consist of a basic salary; an increment for length of service to the Lithuanian State; a payment for working and being on standby duty on rest days and on public holidays, and for substitution; and, lastly, a bonus for an increase in workload.

9 The remuneration of judges of the apygardos teismai (Regional Courts, Lithuania) was calculated by multiplying the base rate by the coefficient for salary which, under Title II of the annex to the Law on the remuneration of judges, was 17.2 for those judges.

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

Case C146/23

10 On 4 December 2003, XL was appointed judge to the Sąd Rejonowy w Suwałkach (District Court, Suwałki, Poland). Since 3 April 2007, he has performed his duties at the Sąd Rejonowy w Białymstoku (District Court, Białystok). His basic remuneration consists of the basis amount used for determining his basic salary, to which a multiplication coefficient of 2.5 is applied, plus, inter alia, a seniority allowance corresponding to 20% of the basic salary. The amount of that basis amount was PLN 5 050.48 (approximately EUR 1 181) for 2022 and PLN 5 444.42 (approximately EUR 1 274) for 2023.

11 XL thus received monthly remuneration of PLN 15 151.44 (approximately EUR 3 544) for the months of July to November 2022, PLN 15 033.51 (approximately EUR 3 517) for December 2022 and PLN 16 333.26 (approximately EUR 3 821) for January 2023.

12 After his employer informed him, at his request, that he would have obtained PLN 10 000 (approximately EUR 2 339) more than he received in respect of his remuneration for the period from 1 July 2022 to 31 January 2023, if his remuneration had been calculated in accordance with Article 91(1c) of the Law on the organisation of the ordinary courts, XL brought an action against the Sąd Rejonowy w Białymstoku (District Court, Białystok) before that same court, which is the referring court, seeking payment of that sum, together with statutory default interest.

13 The referring court notes, first of all, that it follows from the judgment of 27 February 2018, *Associação Sindical dos Juizes Portugueses* (C64/16, EU:C:2018:117, paragraphs 42 to 45), that the receipt by judges of a level of remuneration commensurate with the importance of the functions they carry out constitutes a guarantee essential to judicial independence. That court considers that that guarantee should be observed, including where the amendments to the national legislation relating to the determination of judges’ remuneration lead to a worsening of their material situation due to a sustained reduction in the level of their remuneration.

14 The referring court then notes that Article 91(1c) of the Law on the organisation of the ordinary courts provides that the basic salary of judges for a given year is to be determined objectively on the basis of the average salary for the second quarter of the preceding year, as communicated by the President of the Central Statistical Office.

15 It adds that that mechanism for determining the basic salary of judges has, however, recently been amended on three occasions. Thus, for 2021, the basic salary was established by reference to the average salary for the second quarter of the year 'n – 2', namely that of 2019, not by reference to the average salary for the second quarter of the year 'n – 1', namely that of 2020, and this resulted in a 'freeze' in the uprating of judges' remuneration. For 2022, the average salary for the second quarter of 2020 was taken into account, together with an increase of PLN 26. Lastly, for 2023, judges' remuneration was calculated not on the basis of the average salary for the second quarter of 2022, but on the basis of a basic amount determined by the Polish legislature.

16 The referring court points out that the Polish Government justified those amendments by the economic situation of Poland caused, for 2021, by the COVID-19 pandemic and, for 2023, both by that pandemic and by the invasion of Ukraine by the Russian Federation. By contrast, no particular reason was referred to for 2022.

17 The referring court also states that the First President of the Sąd Najwyższy (Supreme Court, Poland), the President of the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland) and the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland) brought three separate actions before the Trybunał Konstytucyjny (Constitutional Court, Poland) seeking a declaration that Article 8 of the Law accompanying the budget for 2023 was unconstitutional. In those three actions, it was argued, in essence, that that article infringes the guarantees which ensure that judges receive remuneration consistent with the dignity of their office, the principle of judicial independence and the principle of the protection of acquired rights and confidence in the State. That article provides for a method of determining the basic salary of judges, which is contrary to their right to receive remuneration determined on the basis of objective criteria independent of any arbitrary decision by the legislature, and to receive remuneration consistent with the dignity of their office. Since the basic amount of judges' remuneration is determined annually by the legislature, the model adopted to determine that remuneration is, to a certain extent, unforeseeable. Furthermore, while the 'freezing' of salaries was supposed to have been introduced temporarily, its maintenance for 2023 demonstrates the intention to reduce judges' remuneration on a permanent basis, in breach of Article 178(2) of the Constitution of the Republic of Poland. Lastly, it was argued that any intervention in the functioning and organisation of the judiciary can be carried out only exceptionally and would have to be the result of concerted action by the legislature and the judiciary.

18 The referring court, which, as XL's employer, considers that it is not entitled to disapply the contested national provisions, concurs with the arguments set out in the preceding paragraph. In the present case, the undermining of judicial independence lies, it is argued, in the sustained 'freezing' for three years of the uprating of the judges' remuneration and the de facto abandonment in 2023 of the mechanism for determining judges' remuneration based on the average salary of the second quarter of the preceding year, as provided for in Article 91(1c) of the Law on the organisation of the ordinary courts. The referring court considers that that sustained, repeated and significant evolution in judges' remuneration is unjustified in the light of the stable situation of the public finances of the Republic of Poland and seeks to subordinate an independent and autonomous judiciary so that it acts in an arbitrary manner on the basis of political considerations dictated by the executive and the legislature.

19 Like XL, the referring court considers that the judgments of 27 February 2018, *Associação Sindical dos Juizes Portugueses* (C64/16, EU:C:2018:117), and of 7 February 2019, *Escribano Vindel* (C49/18, EU:C:2019:106), cannot be transposed to the present case, inasmuch as, in this case, the derogation from

the mechanism for determining judges' remuneration is permanent, and not temporary as in the cases giving rise to those judgments, and primarily concerns judges, which was not true of those aforementioned cases.

20 In those circumstances the Sąd Rejonowy w Białymstoku (District Court, Białystok) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Should Article 2 [TEU], which defines the values on which the European Union is based with regard to respect for the rule of law, and the second subparagraph of Article 19(1) [TEU], in conjunction with Article 47 of the [Charter], which requires Member States to ensure effective legal protection, which is based on the right to a fair and public hearing, be interpreted as meaning that the principle of judicial independence precludes provisions of national legislation which, for the purpose of limiting government spending, waives a mechanism for setting judges' pay on the basis of objective criteria that are independent of arbitrary interference by the executive and legislative authorities, resulting in sustained cuts to the pay of judges, thereby infringing the constitutional guarantees by which judges are granted remuneration consistent with the dignity of their office and the scope of their duties and the administration of justice is carried out by independent courts and independent judges?'

21 In response to a request for information from the Court concerning, inter alia, the possible impact on the request for a preliminary ruling of the judgment of the Trybunał Konstytucyjny (Constitutional Court) of 8 November 2023 (Case No K 1/23), by which it was found that Article 8 of the Law accompanying the budget for 2023 did not comply with Article 178(2) of the Constitution of the Republic of Poland, the referring court stated that it intended to maintain the request for a preliminary ruling, on the ground that the Trybunał Konstytucyjny (Constitutional Court) did not examine whether Article 8 complied with the principle of judicial independence set out in Article 178(1) of that constitution. Furthermore, it stated that that judgment relates only to the Law accompanying the budget for 2023, whereas the dispute in the main proceedings also involves determining whether the Law accompanying the budget for 2022 observes that principle.

Case C374/23

22 SR and RB, who are judges at the Vilniaus apygardos teismas (Regional Court, Vilnius, Lithuania), brought an action for damages against the Republic of Lithuania before the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania), which is the referring court, seeking payment of damages in the amount of EUR 74 286.09 for SR and EUR 95 620.17 for RB. They maintain that the determination of their remuneration depends on the political will of the executive and the legislature and that it fails to observe, inter alia, the constitutional principle of judicial independence.

23 SR and RB complain that there is no legal mechanism allowing a court or a judge to require the executive and the legislature to set judges' remuneration commensurate with the dignity of their office, based on national economic indicators, and consistent with the responsibilities of judges and the strict limitations imposed upon them, inter alia, as regards engaging in other work.

24 The Republic of Lithuania contends, for its part, that the planning of the State budget and, in particular, of the rate of remuneration of public officials and public sector employees falls within the prerogatives of the Government provided for in the Constitution of the Republic of Lithuania. In addition, the base rate of the remuneration of those public officials and public sector employees is set annually according to the resources and financial constraints of the State, with the result that the latter could not have increased that base rate more quickly than it did. Furthermore, from 2018 to 2023, that base rate has duly increased and has had a direct economic impact on private sector salaries and the national average salary, as well as a significant impact on the growth of the judicial salary fund. Lastly, the Republic of

Lithuania submits that the establishment of the system for the remuneration of judges falls within the exclusive constitutional discretion of the State and its institutions.

25 The referring court states that, under Article 3 of the Law on the remuneration of judges in conjunction with the Annex thereto, the remuneration of the judges of the apygardos teismai (Regional Courts) is calculated by multiplying the base rate, which was EUR 181 for 2022 and EUR 186 for 2023, by a salary coefficient of 17.2, that coefficient not having varied since 1 October 2013, except for the judges of the apylinkės teismai (District Courts, Lithuania).

26 Excluding the seniority allowance, the remuneration of the judges of the apygardos teismai (Regional Courts) was EUR 2 440.85 (gross) for 2008 and EUR 2 362 (gross) for 2021, taking into account the tax reform introduced in 2019. Thus, while the remuneration of judges appears to have increased by approximately 8% over a 13-year period, in actual fact a judge's remuneration has decreased by 3.2% in nominal terms due to that tax reform alone. In addition, from the end of 2021, judges' remuneration decreased and was approaching the level of the national average salary. In the first quarter of 2022, the national average salary was EUR 1 729.90, while the average salary of a judge was EUR 3 113.20. Furthermore, judges are subject to particularly stringent requirements, consisting in, inter alia, the requirement to be of impeccable conduct, the requirement to perform their duties for the same monthly remuneration regardless of workload, and the requirement not to engage in any other work, with the exception of teaching and creative work.

27 The referring court also states that, according to the Recommendations concerning the maximum amount of the fee for the assistance provided by a lawyer or trainee lawyer to be awarded in civil cases, approved in 2004 by the Minister for Justice of the Republic of Lithuania and the Lithuanian Bar Association, the amount of the hourly salary for a lawyer is EUR 179.9, whereas the gross hourly remuneration for a judge of an apygardos teismas (Regional Court, Lithuania), excluding the seniority allowance, is approximately EUR 20. Such a difference would constitute discrimination, contrary to the principle of equality and to Article 2 TEU, to the detriment of those judges as compared to lawyers in similar professions.

28 Lastly, the referring court notes that it follows from the judgment of 27 February 2018, *Associação Sindical dos Juizes Portugueses* (C64/16, EU:C:2018:117), that judicial independence means that the remuneration of national judges must be determined according to criteria independent of arbitrary intervention by the executive and the legislature and that the level of judges' remuneration must be commensurate with the importance of the functions they carry out, which is not the case here.

29 In that context, that court states that it is required to ascertain whether a national system for the remuneration of judges which is directly dependent on the political will of the legislature and the executive is consistent with EU law and guarantees the values protected by Article 2 TEU as well as the principle of judicial independence enshrined in Article 47 of the Charter.

30 In those circumstances the Vilnius apygardos administracinis teismas (Regional Administrative Court, Vilnius) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Are the values of democracy, the rule of law, respect for human rights and justice, enshrined in Article 2 TEU, and the provisions of the second subparagraph of Article 19(1) TEU, to be interpreted as conferring on the legislature and the executive of the Member States the unrestricted and exclusive discretion to set, by means of national legislation, the remuneration of judges at a rate that depends solely on the will of the legislature and the executive?

(2) Are the provisions of the second subparagraph of Article 19(1) TEU, as well as those of Article 47 of the Charter, which covers, inter alia, the independence of the judiciary, to be interpreted as permitting the Member States to introduce, by means of national legislation, rules which set the remuneration of judges below the remuneration or fees set by the State in respect of members of other legal professions?’

Procedure before the Court

31 By decision of the Court of 23 January 2024, Cases C146/23 and C374/23 were joined for the purposes of the oral part of the procedure and of the judgment.

The jurisdiction of the Court and the admissibility of the request for a preliminary ruling in Case C374/23

32 In its written observations, the Lithuanian Government submits, in the first place, that the Court does not have jurisdiction to rule on the questions referred by the national court in that case, since EU law does not regulate either the level of remuneration of national judges or the detailed rules for determining, calculating or paying that remuneration.

33 However, that argument relates, in fact, to the interpretation of the provisions of primary EU law referred to by the national court in its questions. As it is, an interpretation of those provisions clearly falls within the jurisdiction of the Court under Article 267 TFEU. Indeed, although the organisation of justice in the Member States falls within the competence of those Member States, they are nonetheless required, when exercising that competence, to comply with their obligations deriving from EU law (see, to that effect, judgments of 18 May 2021, *Asociația ‘Forumul Judecătorilor din România’ and Others*, C83/19, C127/19, C195/19, C291/19, C355/19 and C397/19, EU:C:2021:393, paragraph 111, and of 9 January 2024, *G. and Others (Appointment of judges to the ordinary courts in Poland)*, C181/21 and C269/21, EU:C:2024:1, paragraphs 57 and 58), in particular where they lay down the detailed rules for determining judges’ remuneration.

34 In addition, the second subparagraph of Article 19(1) TEU is intended to apply, from a substantive point of view, to any national judge or court capable of ruling on questions concerning the interpretation or application of EU law and which therefore fall within the fields covered by EU law, within the meaning of that provision (see, to that effect, judgment of 11 July 2024, *Hann-Invest and Others*, C554/21, C622/21 and C727/21, EU:C:2024:594, paragraph 36 and the case-law cited). That is the case, in particular, of the two applicants in the main proceedings in Case C374/23, in their capacity as judges at the Vilniaus apygardos teismas (Regional Court, Vilnius).

35 It follows that the questions referred in Case C374/23 fall within the jurisdiction of the Court.

36 In the second place, the Lithuanian Government submits that the request for a preliminary ruling is inadmissible, on the ground that the questions referred bear no relation to the facts or the purpose of the dispute in the main proceedings and that, therefore, the interpretation sought is not necessary in order to resolve that dispute. Thus, it states that, in the present case, no national measure specifically aimed at reducing judges’ remuneration is challenged and that, during the period in question, the remuneration of Lithuanian judges duly increased.

37 In that regard, it is settled case-law that, in the context of the cooperation between the Court and the national courts, provided for in Article 267 TFEU, 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. It follows that questions relating to EU law enjoy a presumption of relevance and that where the questions submitted concern the interpretation of EU law, the Court is in principle required to give a ruling. The Court may refuse to rule on a question referred by a national court for a preliminary ruling 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 18 May 2021, *Asociația ‘Forumul Judecătorilor Din România’ and Others*, C83/19, C127/19, C195/19, C291/19, C355/19 and C397/19, EU:C:2021:393, paragraphs 115 and 116 and the case-law cited).

38 It is apparent from the request for a preliminary ruling that the referring court is hearing an action for damages brought against the Republic of Lithuania, in which it is claimed, in essence, that the discretion enjoyed by the legislature and the executive of that Member State in order to determine judges’ remuneration fails to observe the principle of judicial independence. In that context, the referring court wishes to ascertain, in order to be able to rule on that action, whether the detailed rules for determining that remuneration and the amount of that remuneration itself are consistent with that principle, which follows from Article 2 and the second subparagraph of Article 19(1) TEU and from Article 47 of the Charter.

39 Consequently, an answer to the questions referred in Case C374/23, which concern the interpretation of those provisions, appears necessary in order to enable the referring court to rule on the dispute in the main proceedings.

40 It follows that the request for a preliminary ruling in Case C374/23 is admissible.

Consideration of the questions referred

41 As a preliminary point, in so far as, in Case C374/23, the second question concerns the interpretation of Article 47 of the Charter, it must be pointed out that the recognition of the right to an effective remedy, in a given case, presupposes that the person invoking that right is relying on rights or freedoms guaranteed by EU law or that that person is the subject of proceedings constituting an implementation of EU law, within the meaning of Article 51(1) of the Charter (judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C430/21, EU:C:2022:99, paragraph 34 and the case-law cited).

42 However, it is not apparent from the request for a preliminary ruling that SR and RB satisfy either of those conditions.

43 Consequently, in accordance with Article 51(1) of the Charter, Article 47 thereof is not, as such, applicable in Case C374/23. Nevertheless, since the second subparagraph of Article 19(1) TEU requires all Member States to provide remedies sufficient to ensure effective judicial protection in the fields covered by EU law, within the meaning in particular of Article 47 of the Charter, that latter provision must be duly taken into consideration for the purposes of interpreting the second subparagraph of Article 19(1) TEU (judgments of 20 April 2021, *Repubblika*, C896/19, EU:C:2021:311, paragraphs 44 and 45, and of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C430/21, EU:C:2022:99, paragraphs 36 and 37).

44 That said, the questions referred in Cases C146/23 and C374/23, which it is appropriate to examine together, must be understood as seeking to ascertain, in essence, whether the second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 TEU, must be interpreted as meaning that the principle of judicial independence precludes:

- on the one hand, the legislature and the executive of a Member State from laying down in a discretionary manner, in the legislation of that Member State, the detailed rules for determining judges’ remuneration;
- on the other hand, the legislature and the executive of a Member State from derogating from the legislation of that Member State, which defines objectively the detailed rules for determining judges’

remuneration, by deciding to increase that remuneration by less than is provided for by that legislation or even to freeze or reduce the amount of that remuneration.

45 In that regard, neither Article 2 TEU nor the second subparagraph of Article 19(1) TEU, nor any other provision of EU law requires Member States to adopt a particular constitutional model governing the relationships and interaction between the various branches of the State, in particular as regards the definition and delimitation of their competences. Under Article 4(2) TEU, the European Union must respect the national identities of the Member States, inherent in their fundamental political and constitutional structures. However, in choosing their respective constitutional model, the Member States are required to comply with their obligations deriving from EU law (see, to that effect, judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C430/21, EU:C:2022:99, paragraph 43 and the case-law cited).

46 Indeed, in accordance with the settled case-law referred to in paragraph 33 above, although the organisation of justice in the Member States falls within the competence of those States, the fact remains that, when exercising that competence, the Member States are nonetheless required to comply with their obligations deriving from EU law and, in particular, from Article 2 and the second subparagraph of Article 19(1) TEU (see, to that effect, judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C430/21, EU:C:2022:99, paragraph 38 and the case-law cited). That is the case, in particular, where they lay down the detailed rules for determining judges' remuneration.

47 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 the judicial protection that individuals derive from EU law to national courts and tribunals and to the Court of Justice. To that end, maintaining the independence of those bodies is essential (see, to that effect, judgment of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C824/18, EU:C:2021:153, paragraphs 108 and 115 and the case-law cited).

48 The requirement that courts be independent, which is inherent in the task of adjudication, indeed forms part of the essence of the fundamental right to effective judicial protection and to a fair hearing, which is of cardinal importance as a guarantee that all the rights which individuals derive from EU law will be protected and that the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law, will be safeguarded (judgments of 11 July 2024, *Hann-Invest and Others*, C554/21, C622/21 and C727/21, EU:C:2024:594, paragraph 49, and of 29 July 2024, *Valančius*, C119/23, EU:C:2024:653, paragraph 46).

49 The concept of the independence of the courts presupposes, in particular, that the body concerned exercises its judicial 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, and that it is thus protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions. Like the protection against removal from office of the members of the body concerned, the receipt by those members of a level of remuneration commensurate with the importance of the functions they carry out constitutes a guarantee essential to judicial independence (judgment of 27 February 2018, *Associação Sindical dos Juizes Portugueses*, C64/16, EU:C:2018:117, paragraphs 44 and 45, and of 7 February 2019, *Escribano Vindel*, C49/18, EU:C:2019:106, paragraph 66).

50 More specifically, 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 (judgments of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C585/18, C624/18 and C625/18, EU:C:2019:982,

paragraph 124; of 20 April 2021, *Repubblika*, C896/19, EU:C:2021:311, paragraph 54; and of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C430/21, EU:C:2022:99, paragraph 42).

51 That said, the mere fact that the legislature and the executive of a Member State are involved in determining judges' remuneration is not, in itself, such as to create a dependence of those judges on the legislature or executive or to give rise to doubts as to the independence or impartiality of the judges. As the European Commission stated in its written observations, the Member States enjoy broad discretion when drawing up their budgets and deciding between the various items of public expenditure. That broad discretion includes determining the method of calculating that expenditure and, in particular, the judges' remuneration. The national legislature and executive are indeed best placed to take into account the particular socio-economic context of the Member State in which that budget must be drawn up and judicial independence guaranteed.

52 The fact remains nonetheless that national rules on judges' remuneration must not 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 (see, by analogy, judgment of 20 April 2021, *Repubblika*, C896/19, EU:C:2021:311, paragraphs 56 and 57).

53 To that end, charters, reports and other documents drawn up by bodies of the Council of Europe or under the aegis of the United Nations may provide relevant guidance for the interpretation of EU law where national provisions are adopted on the subject.

54 As regards, in the first place, the detailed rules for determining judges' remuneration, it is important, first, in accordance with the principle of legal certainty, that those rules be determined by law, which may provide for the involvement of the social partners, in particular the organisations representing the judges concerned. In that context, the transparency of the legislative procedure contributes to guaranteeing judicial independence.

55 In that regard, point 11 of the 'Basic Principles on the Independence of the Judiciary', adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan on 26 August to 6 September 1985, provides that the adequate remuneration of judges must be 'secured by law'. Similarly, Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, entitled 'judges: independence, efficiency and responsibilities', adopted on 17 November 2010 ('the 2010 Recommendation of the Committee of Ministers'), states, at point 53 thereof, that 'the principal rules of the system of remuneration for professional judges should be laid down by law'.

56 Furthermore, the principle of judicial independence, read in conjunction with the principle of legal certainty, requires that the detailed rules for determining judges' remuneration be objective, foreseeable, stable and transparent, so as to exclude any arbitrary intervention by the legislature and the executive of the Member State concerned.

57 Second, as referred to in paragraph 49 above, the receipt by judges of remuneration at a level commensurate with the importance of the functions they carry out constitutes a guarantee essential to their independence.

58 In that regard, it is apparent from the case-law arising from the judgment of 7 February 2019, *Escribano Vindel* (C49/18, EU:C:2019:106, paragraphs 70, 71 and 73), that the level of remuneration of judges must be sufficiently high, in the light of the socio-economic context of the Member State concerned, in order to confer on them a certain economic independence to protect them against any external interference or pressure that might undermine the neutrality of the judicial decisions they must take. Thus, the level of that remuneration must be such as to protect judges against the risk of corruption.

59 Point 54 of the 2010 Recommendation of the Committee of Ministers states that ‘judges’ remuneration should be commensurate with their profession and responsibilities, and be sufficient to shield them from inducements aimed at influencing their decisions’. Point 57 of the Explanatory Memorandum to that recommendation specifies that ‘an adequate level of remuneration is a key element in the fight against corruption of judges and aims at shielding them from any such attempts’.

60 The remuneration of judges may, therefore, vary according to seniority and the nature of the functions entrusted to them. In any event, it must always be commensurate with the importance of the functions they carry out.

61 In order to assess whether judges’ remuneration is adequate, account must be taken not only of the ordinary basic salary but also of the various bonuses and allowances that judges receive, in particular in respect of their seniority or the duties entrusted to them, and of any exemption from social security contributions.

62 In addition, the assessment of whether the judges’ remuneration is adequate must be made having regard to the economic, social and financial situation of the Member State concerned, as the Advocate General observed, in essence, in point 49 of his Opinion. From that point of view, it is appropriate to compare the average remuneration of judges to the average salary in that State, as highlighted in particular in the evaluation report on European judicial systems drawn up in 2020 by the European Commission for the Efficiency of Justice (CEPEJ) (p. 68).

63 Furthermore, as is apparent from that report (p. 67), in order to guarantee judicial independence and, more broadly, the quality of justice in a State governed by the rule of law, ‘justice policies should also consider the salaries of other legal professions in order to make the judicial profession attractive to highly qualified legal practitioners’. It cannot, however, be inferred from this that the principle of judicial independence precludes the remuneration of judges from being established at a level lower than that of the average remuneration of other legal professionals, in particular those exercising a liberal profession, such as lawyers, where they are clearly in a different situation from that of judges.

64 Third, the detailed rules for determining judges’ remuneration must be capable of being subject to effective judicial review in accordance with the procedural rules laid down by the law of the Member State concerned.

65 In the second place, as regards the possibility, for the legislature and the executive of a Member State, of derogating from national legislation, which objectively defines the detailed rules for determining judges’ remuneration, by deciding to increase that remuneration by less than is provided for by that legislation or even to freeze or reduce the amount of that remuneration, the adoption of such derogating measures must itself also satisfy a number of requirements.

66 First, a derogating measure such as that referred to in the preceding paragraph must, like the general rules on the determination of judges’ remuneration from which it derogates, be provided for by law. In addition, the detailed rules for the remuneration of judges provided for by that derogating measure must be objective, foreseeable and transparent.

67 Second, that derogating measure must be justified by an objective in the general interest, such as a requirement to eliminate an excessive government deficit, within the meaning of Article 126(1) TFEU (see, to that effect, judgments of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C64/16, EU:C:2018:117, paragraph 46, and of 7 February 2019, *Escribano Vindel*, C49/18, EU:C:2019:106, paragraph 67).

68 However, as the Advocate General observed in point 60 of his Opinion, the possibility for a Member State of relying on such a requirement does not presuppose that a procedure under Protocol No 12 on the excessive deficit procedure, annexed to the EU and FEU Treaties, is initiated against it.

69 The budgetary reasons justifying the adoption of a measure derogating from the rules of ordinary law on judges' remuneration must be clearly set out. In addition, subject to duly justified exceptional circumstances, those measures must not be aimed specifically at members of the national courts alone and must form part of a more general framework seeking to ensure that a wider set of members of the national civil service contribute to the budgetary effort which is being pursued (see, to that effect, judgments of 27 February 2018, *Associação Sindical dos Juizes Portugueses*, C64/16, EU:C:2018:117, paragraph 49, and of 7 February 2019, *Escribano Vindel*, C49/18, EU:C:2019:106, paragraph 67).

70 In that regard, point 54 of the 2010 Recommendation of the Committee of Ministers provides that 'specific legal provisions should be introduced as a safeguard against a reduction in remuneration aimed specifically at judges'. By contrast, as stated in point 57 of the Explanatory Memorandum to that recommendation, 'public policies aiming at the general reduction of civil servants' remuneration are not in contradiction with the requirement to avoid reducing specifically judges' remuneration'.

71 Thus, when a Member State adopts budgetary restriction measures affecting its officials and public servants, it may, in a society in which solidarity prevails, as stated in Article 2 TEU, decide to apply those measures also to national judges.

72 Third, in accordance with the principle of proportionality, which constitutes a general principle of EU law (judgment of 8 March 2022, *Bezirkshauptmannschaft Hartberg-Fürstenfeld (Direct effect)*, C205/20, EU:C:2022:168, paragraph 31), a derogating measure such as that referred to in paragraph 65 above must be appropriate for securing the attainment of the objective of general interest pursued, be limited to what is strictly necessary in order to attain that objective and not be disproportionate to that objective, which means that the importance of that objective must be weighed against the seriousness of the interference with the principle of judicial independence.

73 On that basis, a measure of that nature, if it appears appropriate for the attainment of the objective of general interest referred to in paragraph 67 above, must nevertheless remain exceptional and temporary, inasmuch as it must not apply beyond the period necessary for the attainment of the legitimate objective pursued, such as the elimination of an excessive government deficit.

74 Furthermore, the impact of that measure on judges' remuneration must not be disproportionate to the objective pursued.

75 Fourth, the preservation of judicial independence requires that, notwithstanding the application to the judiciary of a budgetary restriction measure, and even if such a measure were linked to the existence of a serious economic, social and financial crisis, the level of remuneration of judges is always commensurate with the importance of the functions they carry out, so that they remain shielded from external interventions or pressure liable to jeopardise their independent judgment and to influence their decisions, in accordance with the case-law referred to in paragraph 49 above.

76 Fifth, a derogating measure such as that set out in paragraph 65 above must be capable of being subject to effective judicial review, under the conditions referred to in paragraph 64 above.

77 Although in proceedings under Article 267 TFEU it is not for the Court to apply the rules of EU law to a particular case, it may, in order to provide an answer of use to the referring courts, provide guidance based on the documents relating to the main proceedings and on the written observations before it, in order to enable those courts to give judgment (see, to that effect, judgments of 20 June 1991, *Newton*, C356/89, EU:C:1991:265, paragraph 10; of 16 July 2015, *CHEZ Razpredelenie Bulgaria*, C83/14, EU:C:2015:480,

paragraph 71; and of 7 November 2024, *Centro di Assistenza Doganale Mellano*, C503/23, EU:C:2024:933, paragraph 85).

78 In Case C146/23, it is for the referring court to ascertain whether, as the Polish Government submitted before the Court, the measures derogating from Article 91(1c) of the Law on the organisation of the ordinary courts which were applicable in 2022 and 2023 met an objective of general interest consisting in reallocating budgetary resources in a context characterised by the COVID-19 pandemic, the Russian Federation's aggression against Ukraine and the unprecedented increase in energy prices resulting therefrom.

79 Given that Article 8 of the Law accompanying the budget for 2022 and Article 8 of the Law accompanying the budget for 2023 were specifically aimed at the remuneration of judges and prosecutors, such measures must be regarded, *prima facie*, as being capable of undermining the principle of judicial independence. However, having regard to the considerations set out in paragraphs 69 and 70 above and in the light of the evidence put forward by the Polish Government before the Court, it cannot be excluded – which it is, however, for the referring court to ascertain – that those measures, while specifically aimed at judges, form part of wider reforms also affecting the remuneration of other categories of officials or public servants. In particular, according to that evidence, those measures could in fact seek to apply, on a deferred basis, to judges budgetary restriction measures to which other categories of officials or public servants were subject during the preceding years.

80 In addition, it appears, subject to verification by the referring court, that the two national provisions referred to in the preceding paragraph each applied for only one year. The salary measures at issue in the main proceedings thus appear to have been exceptional and temporary in nature, which seems to be confirmed by the fact that the mechanism for calculating remuneration provided for in Article 91 of the Law on the organisation of the ordinary courts was not repealed and was applied again in 2024, as the Polish Government and the Commission observed at the hearing before the Court.

81 It is also apparent from the documents before the Court that, again subject to verification by the referring court, those measures did not have the effect of depriving XL of his right to receive remuneration which was, in view of the economic, social and financial context of the Member State concerned and the average salary in that Member State, commensurate with the importance of the functions he carries out. Although those measures may have resulted in a loss of purchasing power for XL, they do not appear, according to the information in the file, to have reduced the amount of his remuneration, which was frozen in 2021 and increased by 4.37% in 2022 and 7.8% in 2023. Moreover, the Polish Government and the Commission have stated that if the various bonuses, as well as the exemption from social security contributions enjoyed by Polish judges, which represents a saving of almost 14% of gross remuneration, are aggregated, their remuneration remained, during that period, three times the average salary in Poland.

82 Lastly, the reference for a preliminary ruling made by the Sąd Rejonowy w Białymstoku (District Court, Białystok) in Case C146/23 is sufficient to demonstrate the possibility of effective judicial review of the salary measures at issue in the main proceedings.

83 Accordingly, subject to the checks which it is for the referring court to carry out, it is not apparent that Article 8 of the Law accompanying the budget for 2022 and Article 8 of the Law accompanying the budget for 2023 disregarded the requirements arising from the principle of judicial independence, as follows from second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 TEU.

84 As regards Case C374/23, first, it is apparent from the information provided by the referring court that the determination of the remuneration of the judges of the *apygardos teismai* (Regional Courts) has a legal basis, namely Article 3 of the Law on the remuneration of judges; that provision states that the base rate of that remuneration is to be fixed each year by the legislature and the executive at a level which may

not be lower than that of the preceding year and that it must take account of a number of objective criteria, such as the annual inflation rate for the preceding year, which depends on the national consumer price index, the level of the minimum monthly salary and the impact of other factors affecting the level and evolution of the average salary in the public sector. Second, in the light of those factors, and subject to verification by the referring court, those detailed rules appear to be objective, foreseeable, stable and transparent.

85 In the event that the referring court seeks to call in question the adequacy of the remuneration received by SR and RB, it has been noted in paragraph 62 above that the adequacy of judges' remuneration must be assessed by taking into account the economic, social and financial situation of the Member State concerned and by comparing the average remuneration of judges to the average salary in that State.

86 As is apparent from the evaluation report on European judicial systems drawn up in 2022 by the CEPEJ (p. 80), in 2020 the average gross remuneration of Lithuanian judges corresponded, at the beginning of their career, to 2.1 times the average gross salary in Lithuania and, for judges of the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania), to 2.9 times that average gross salary.

87 Admittedly, the referring court also refers to a tax reform in 2019, which, it is stated, led to a reduction in the nominal remuneration of those judges. However, in the absence of any details of that reform in the order for reference, reliance on the application of that reform to the judges cannot, in itself, be sufficient to conclude that the principle of judicial independence has been undermined.

88 Consequently, subject to the checks which it is for the referring court to carry out, it is not apparent, in Case C374/23, that the detailed rules for determining the remuneration received by SR and RB during the period at issue in the main proceedings failed to have regard to the principle of judicial independence.

89 Lastly, the reference for a preliminary ruling made by the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius) in Case C374/23 is sufficient to demonstrate the possibility of effective judicial review of the salary measures at issue in the main proceedings in that case.

90 In the light of all the foregoing considerations, the answer to the questions referred in Cases C146/23 and C374/23 is that the second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 TEU, must be interpreted as meaning that the principle of judicial independence does not preclude:

- on the one hand, the legislature and the executive of a Member State from determining the remuneration of judges in so far as that determination does not involve the exercise of an arbitrary power but is based on detailed rules which:
 - are provided for by law,
 - are objective, foreseeable, stable and transparent,
 - ensure that judges receive a level of remuneration commensurate with the importance of the functions they carry out, having regard to the economic, social and financial situation of the Member State concerned and the average salary in that Member State, and
 - may be subject to effective judicial review in accordance with the procedural rules laid down by the law of that Member State;
- on the other hand, the legislature and the executive of a Member State from derogating from national legislation, which defines objectively the detailed rules for determining judges' remuneration, by deciding to increase that remuneration by less than is provided for by that legislation or even to freeze or reduce the amount of that remuneration, in so far as such a derogating measure does not involve the exercise of an arbitrary power but:

- is provided for by law,
- sets detailed rules for remuneration that are objective, foreseeable and transparent,
- is justified by an objective of general interest pursued in the context of measures which, subject to duly justified exceptional circumstances, are not specifically aimed at judges but affect, more generally, the remuneration of other categories of officials or public servants,
- is necessary and strictly proportionate to the attainment of that objective, which presupposes that the derogating measure remains exceptional and temporary and does not undermine the commensurate nature of judges' remuneration with the importance of the functions they carry out, and
- may be subject to effective judicial review in accordance with the procedural rules laid down by the law of the Member State concerned.

Costs

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

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

The second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 TEU, must be interpreted as meaning that the principle of judicial independence does not preclude:

- **on the one hand, the legislature and the executive of a Member State from determining the remuneration of judges in so far as that determination does not involve the exercise of an arbitrary power but is based on detailed rules which:**
 - **are provided for by law,**
 - **are objective, foreseeable, stable and transparent,**
 - **ensure that judges receive a level of remuneration commensurate with the importance of the functions they carry out, having regard to the economic, social and financial situation of the Member State concerned and the average salary in that Member State, and**
 - **may be subject to effective judicial review in accordance with the procedural rules laid down by the law of that Member State;**
- **on the other hand, the legislature and the executive of a Member State from derogating from national legislation, which defines objectively the detailed rules for determining judges' remuneration, by deciding to increase that remuneration by less than is provided for by that legislation or even to freeze or reduce the amount of that remuneration, in so far as such a derogating measure does not involve the exercise of an arbitrary power but:**
 - **is provided for by law,**
 - **sets detailed rules for remuneration that are objective, foreseeable and transparent,**
 - **is justified by an objective of general interest pursued in the context of measures which, subject to duly justified exceptional circumstances, are not specifically aimed at judges but affect, more generally, the remuneration of other categories of officials or public servants,**

- is necessary and strictly proportionate to the attainment of that objective, which presupposes that the derogating measure remains exceptional and temporary and does not undermine the commensurate nature of judges' remuneration with the importance of the functions they carry out, and
- may be subject to effective judicial review in accordance with the procedural rules laid down by the law of the Member State concerned.

[Signatures]

* Languages of the case: Polish and Lithuanian.

i The name of the present case is a fictitious name. It does not correspond to the real name of any of the parties to the proceedings.