

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

26 February 2019 (*)

(European System of Central Banks — Action based on infringement of the second subparagraph of Article 14.2 of the Statute of the European System of Central Banks and of the European Central Bank — Decision of a national authority suspending the governor of the national central bank from office)

In Joined Cases C-202/18 and C-238/18,

TWO ACTIONS under the second subparagraph of Article 14.2 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank lodged on 16 March and 3 April 2018, respectively,

Ilmārs Rimšēvičs, represented by S. Vārpiņš, M. Kvēps and I. Pazare, advokāti (C-202/18),

European Central Bank (ECB), represented by C. Zilioli, K. Kaiser and C. Kroppenstedt, acting as Agents, and by D. Sarmiento Ramírez-Escudero, abogado, and by V. Čuske-Jurjeva, advokāte (C-238/18),

applicants,

v

Republic of Latvia, represented by I. Kucina and J. Davidoviča, acting as Agents,

defendant,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, J.-C. Bonichot (Rapporteur), A. Prechal, M. Vilaras, E. Regan, K. Jürimäe and C. Lycourgos, Presidents of Chambers, A. Rosas, E. Juhász, E. Levits, L. Bay Larsen, D. Šváby and M. Berger, Judges,

Advocate General: J. Kokott,

Registrar: M. Aleksejev, Head of Unit,

having regard to the written procedures and further to the hearing of 25 September 2018,

after hearing the Opinion of the Advocate General at the sitting on 19 December 2018,

gives the following

Judgment

- 1 By their actions brought on the basis of the second subparagraph of Article 14.2 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank ('the Statute of the ESCB and of the ECB'), Mr Ilmārs Rimšēvičs, Governor of Latvijas Banka (the Bank of Latvia) ('the Central Bank of Latvia'), on the one hand, and the European Central Bank (ECB), acting upon a decision

of its Governing Council, on the other, contest the decision of 19 February 2018 whereby the Korupcijas novēršanas un apkarošanas birojs (Anti-Corruption Office, Latvia) ('the KNAB') has temporarily prohibited Mr Rimšēvičs from performing his duties as Governor of the Central Bank of Latvia ('the decision at issue').

Legal context

European Union law

2 Under Article 129 TFEU:

'1. The ESCB shall be governed by the decision-making bodies of the European Central Bank which shall be the Governing Council and the Executive Board.

2. The Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as "the Statute of the ESCB and of the ECB") is laid down in a Protocol annexed to the Treaties.

...'

3 Article 130 TFEU provides:

'When exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and the Statute of the ESCB and of the ECB, neither the European Central Bank, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. The Union institutions, bodies, offices or agencies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the European Central Bank or of the national central banks in the performance of their tasks.'

4 Article 131 TFEU provides:

'Each Member State shall ensure that its national legislation including the statutes of its national central bank is compatible with the Treaties and the Statute of the ESCB and of the ECB.'

5 Article 283(1) TFEU is worded as follows:

'The Governing Council of the European Central Bank shall comprise the members of the Executive Board of the European Central Bank and the Governors of the national central banks of the Member States whose currency is the euro.'

6 Article 14 of the Statute of the ESCB and of the ECB, entitled 'National central banks', provides:

'14.1. In accordance with Article 131 of the Treaty on the Functioning of the European Union, each Member State shall ensure that its national legislation, including the statutes of its national central bank, is compatible with these Treaties and this Statute.

14.2. The statutes of the national central banks shall, in particular, provide that the term of office of a Governor of a national central bank shall be no less than five years.

A Governor may be relieved from office only if he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct. A decision to this effect may be referred to the Court of Justice by the Governor concerned or the Governing Council on grounds of infringement of these Treaties or of any rule of law relating to their application. Such proceedings shall be instituted within two months of the publication of the decision or of its notification to the plaintiff or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

14.3. The national central banks are an integral part of the ESCB and shall act in accordance with the guidelines and instructions of the ECB. The Governing Council shall take the necessary steps to ensure compliance with the guidelines and instructions of the ECB, and shall require that any necessary information be given to it.

14.4. National central banks may perform functions other than those specified in this Statute unless the Governing Council finds, by a majority of two thirds of the votes cast, that these interfere with the objectives and tasks of the ESCB. Such functions shall be performed on the responsibility and liability of national central banks and shall not be regarded as being part of the functions of the ESCB.'

Latvian law

7 Article 241(2) of the Kriminālprocesa likums (Code of Criminal Procedure) provides:

'A detention order shall be made as a procedural restrictive measure against a suspected or accused person if there are reasons to believe that the person concerned will continue to engage in criminal activity, will impede the conduct of the criminal proceedings or the work of the court, or will evade those proceedings or that court.'

8 Under Article 254 of that code:

'1. The prohibition on holding a specific post is a prohibition imposed on a suspected or accused person, under conditions defined by decision of the person directing the proceedings, from carrying on a specific type of employment activity during a certain period, or from performing the duties relating to a particular position.

2. The decision prohibiting the holding of a specific post shall be sent, for the purposes of enforcement, to the employer or to any other competent body.

3. The decision referred to in paragraph 1 above shall be binding on any official and must be enforced within three working days of receipt. The official shall notify the person directing the proceedings of the beginning of the enforcement of the decision.'

9 Article 389(1) of that code provides:

'Once a person who has a right of defence or a person whose right to dispose of his property is restricted by procedural acts is involved in the preliminary criminal proceedings, the preliminary criminal proceedings must be closed with regard to that person, or all the security measures and restrictions on rights must be withdrawn with regard to his property, within the following period:

...

(4) for a particularly serious crime: twenty-two months.'

10 Article 22 of the Likums par Latvijas Banku (Law on the Bank of Latvia) of 19 May 1993 (*Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs*, 1992, No 22/23), provides:

'The Governor of the Bank of Latvia shall be appointed by the Parliament, on the recommendation of at least 10 of its Members.

The Vice-Governor and the Members of the Council of the Bank of Latvia shall be appointed by the Parliament, on the recommendation of the Governor of the Bank of Latvia.

The Governor, the Vice-Governor and the Members of the Council of the Bank of Latvia shall be appointed for a term of six years. If a Member of the Council leaves office before the end of his term, a new Member of the Council of the Bank of Latvia shall be appointed for a term of six years.

The Parliament may relieve the Governor, the Vice-Governor and the Members of the Council of the Bank of Latvia from office before the expiry of the term provided for in the third paragraph of this Article only in the following cases:

1. voluntary resignation;
2. serious misconduct within the meaning of Article 14.2 [of the Statute of the ESCB and of the ECB];
3. the other grounds for relieving [the person concerned] from office provided for in Article 14.2 [of the Statute of the ESCB and of the ECB] apply.

In the case referred to in point 2 of the fourth paragraph of this Article, the Parliament may decide to relieve the Governor, the Vice-Governor and the Members of the Council of the Bank of Latvia from office after the judgment pronouncing the conviction has taken effect.

The Governor of the Bank of Latvia may lodge an appeal against the decision of the Parliament to relieve him from office according to the procedure laid down in Article 14.2 [of the Statute of the ESCB and of the ECB]. The Vice-Governor or a Member of the Council of the Bank of Latvia may refer the decision of the Parliament to relieve him from office to the court specified in the Code of Administrative Procedure.'

- 11 Under Article 2(1) and (2) of the Korupcijas novēršanas un apkarošanas biroja likums (Law on the Anti-Corruption Office) (*Latvijas Vēstnesis*, 2002, No 65):

'(1) The Office is an authority of the direct administration which performs the anti-corruption functions provided for in this Law ...

(2) The Office shall be placed under the supervision of the Council of Ministers. The Council of Ministers shall exercise institutional supervision through the Prime Minister. Supervision shall include the right of the Prime Minister to review the legality of the administrative decisions adopted by the Head of the Office and to annul unlawful decisions, and also, where an unlawful failure to act is established, to order that a decision be taken. The right of supervision of the Council of Ministers shall not apply to decisions taken by the Office in the performance of the functions referred to in Articles 7, 8, 9 and 9¹ of this Law.'

- 12 Article 8(1)(2) of the Law on the Anti-Corruption Office is worded as follows:

'In the context of the fight against corruption, the Office shall perform the following functions:

...

(2) it shall conduct investigations and carry out operational activities, in order to detect criminal offences provided for by the Criminal Code committed [by persons] in the service of the public institutions, if those offences are connected with corruption.'

Background to the disputes

- 13 By a decision of the Latvian Parliament of 31 October 2013, Mr Rimšēvičs was appointed to the position of Governor of the Central Bank of Latvia for a term of office of six years, which began on 21 December 2013 and was set to end on 21 December 2019.

- 14 On 17 February 2018, Mr Rimšēvičs was arrested following the opening, on 15 February 2018, of a preliminary criminal investigation conducted against him by the KNAB.

- 15 According to the evidence available to the Court, Mr Rimšēvičs is suspected of having sought and accepted a bribe in 2013 in his capacity as Governor of the Central Bank of Latvia, with a view to exerting influence in favour of a private Latvian bank.

16 On 19 February 2018, upon Mr Rimšēvičs' release, the KNAB adopted the decision at issue, imposing several restrictive measures on him, namely a prohibition on performing his decision-making, control and monitoring duties within the Central Bank of Latvia, including remaining in his post as Governor of that central bank, an obligation to pay a surety and a prohibition on approaching certain persons or leaving the country without prior authorisation.

17 On 27 February 2018 the investigating judge of the Rīgas rajona tiesa (District Court, Riga, Latvia) dismissed the action brought by Mr Rimšēvičs on 23 February 2018 against two of the restrictive measures imposed by the KNAB, namely the prohibition on performing his duties within the Central Bank of Latvia and the prohibition on leaving the country without authorisation.

18 On 28 June 2018 Mr Rimšēvičs was charged by the public prosecutor of the case with the following offences:

- receiving a bribe by way of a gift, in the form of a free leisure trip;
- accepting the offer of a bribe in the amount of EUR 500 000; and
- accepting a bribe in the amount of EUR 250 000.

Forms of order sought and procedure before the Court of Justice

19 By his action in Case C-202/18, Mr Rimšēvičs claims that the Court should:

- declare that he has been unlawfully relieved from office as Governor of the Central Bank of Latvia by the decision at issue;
- declare that the restrictive measure consisting in the prohibition on performing the duties and exercising the powers of the Governor of the Central Bank of Latvia that has been imposed on him by the decision at issue is unlawful; and
- declare that the restrictions on the performance of the duties and the exercise of the powers of a Member of the Governing Council of the ECB resulting from the decision at issue have been unlawfully applied to him.

20 By its action in Case C-238/18, the ECB claims that the Court should:

- order the Republic of Latvia, on the basis of the first paragraph of Article 24 of the Statute of the Court of Justice of the European Union and Article 62 of the Rules of Procedure of the Court of Justice, to produce all relevant information relating to the investigations currently being carried out by the KNAB concerning Mr Rimšēvičs, Governor of the Central Bank of Latvia;
- declare, on the basis of Article 14.2 of the Statute of the ESCB and of the ECB, that the Republic of Latvia has infringed the second subparagraph of that provision, in that:
 - the holder of the post of Governor of the Central Bank of Latvia was relieved from office in the absence of a judgment convicting him delivered on the merits by an independent tribunal and
 - if the factual elements produced by the Republic of Latvia so confirm, there is no exceptional circumstance capable of justifying Mr Rimšēvičs being relieved from office in the present case;
- order the Republic of Latvia to pay the costs.

21 The Republic of Latvia contends that the two actions should be dismissed.

- 22 By separate document lodged at the Court Registry on 3 April 2018, namely the same day as its application, the ECB requested the Court to deal with Case C-238/18 under an expedited procedure pursuant to Article 53(4) and Article 133 of the Rules of Procedure. By order of 12 June 2018, *ECB v Latvia* (C-238/18, not published, EU:C:2018:488), the President of the Court granted that request.
- 23 By order of the same day, *Rimšēvičs v Latvia* (C-202/18, not published, EU:C:2018:489), the President of the Court also decided, of his own motion, on the basis of Article 133(3) of the Rules of Procedure, having requested Mr Rimšēvičs and the Republic of Latvia to submit their observations in that regard, to deal with Case C-202/18 under an expedited procedure.
- 24 By document also lodged at the Court Registry on 3 April 2018, the ECB also submitted an application to the Court, pursuant to Article 279 TFEU and Article 160 of the Rules of Procedure, for interim measures consisting in an order for the Republic of Latvia to temporarily suspend the prohibition on Mr Rimšēvičs performing his duties as Governor of the Central Bank of Latvia, so as to enable him to carry out, in his capacity as a Member of the Governing Council of the ECB, tasks unconnected with the subject matter of the criminal investigation, or, at the very least, to authorise Mr Rimšēvičs to designate a substitute Member of that council in his stead.
- 25 By order of 20 July 2018, *ECB v Latvia* (C-238/18 R, not published, EU:C:2018:581), the Vice-President of the Court ordered the Republic of Latvia to take the necessary measures to suspend, pending delivery of the final judgment in Case C-238/18, the restrictive measures adopted on 19 February 2018 by the KNAB in respect of Mr Rimšēvičs, in so far as those measures prevent him from designating a substitute Member of the Governing Council of the ECB in his stead, and dismissed the application for interim measures as to the remainder.
- 26 At the hearing, common to both cases, which took place on 25 September 2018, the President of the Court requested the representatives of the Republic of Latvia to send to the Court, within a period of eight days, the documents supporting the restrictive measures adopted by the KNAB in respect of Mr Rimšēvičs on 19 February 2018.
- 27 By letter registered at the Court Registry on 2 October 2018, the Republic of Latvia produced 44 documents.
- 28 In the observations submitted by Mr Rimšēvičs and the ECB regarding those documents, both of those parties concur, in essence, that the Republic of Latvia has not adduced any evidence either of wrongdoing on the part of Mr Rimšēvičs or that the restrictive measures taken against him are well founded.
- 29 As Cases C-202/18 and C-238/18 concern two actions brought against the decision at issue, the Court hereby decides, having heard the parties, to join those cases for the purposes of the judgment pursuant to Article 54(1) of the Rules of Procedure.

The jurisdiction of the Court

Arguments of the parties

- 30 The Republic of Latvia contends that the Court does not have jurisdiction to hear and determine the actions brought by Mr Rimšēvičs and the ECB.

In Case C-202/18

- 31 According to the Republic of Latvia, Mr Rimšēvičs is asking the Court to examine whether the measures taken by the investigating authority pursuant to the Code of Criminal Procedure are lawful and proportionate. He is asking the Court to interfere in the conduct of criminal proceedings, which could have a significant impact on the investigation and on the bringing of the guilty party to justice under Latvian

legislation. In the Republic of Latvia's view, the forms of order sought in the application are beyond the jurisdiction of the Court. If the Court were to uphold them, it would be acting contrary to Article 276 TFEU.

- 32 By contrast, Mr Rimšēvičs considers that the prohibition on him performing his duties as Governor of the Central Bank of Latvia for an unspecified period must be regarded as relieving him from office, which falls within the jurisdiction of the Court under Article 14.2 of the Statute of the ESCB and of the ECB.

In Case C-238/18

- 33 The Republic of Latvia considers that the only decision amenable to review under the second subparagraph of Article 14.2 of the Statute of the ESCB and of the ECB is the decision severing the legal and institutional link between the governor of a national central bank and that institution, and not any decision imposing obligations on that person. It explains that, in order to identify the decision severing such a legal link, there is no need to distinguish between a person being 'relieved from office' as referred to in that article and his 'compulsory retirement' as referred to in Articles 246, 247 and 286 TFEU, Article 11.4 of the Statute of the ESCB and of the ECB, and Article 26(4) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63), as both concepts are equivalent in terms of their effects. The Republic of Latvia also notes that the terms used in the Latvian version of those provisions are interchangeable.

- 34 However, it maintains that the objective of the decision at issue is not to sever the legal and institutional link between the Central Bank of Latvia and its Governor, but only to guarantee the effective conduct of the investigation concerning him.

- 35 In the first place, that measure is temporary and may be amended or withdrawn at any time. Indeed, Article 389(1)(4) of the Code of Criminal Procedure provides that, where a particularly serious crime is involved, such as that of which the person concerned is suspected, the preliminary criminal proceedings opened against him must be closed, or all the restrictive measures must be withdrawn, within 22 months of his becoming involved in those proceedings. In addition, it is apparent from Article 249(1) of the Code of Criminal Procedure that, if a procedural restrictive measure which has been taken against a person becomes devoid of purpose or if the conduct of the person or the circumstances which gave rise to the choice of the restrictive measure have changed, that measure must be withdrawn.

- 36 In the second place, although, pursuant to Article 22 of the Law on the Bank of Latvia, only the Latvian Parliament has the power to relieve the Governor of the Central Bank of Latvia from office, that institution has not adopted any such decision.

- 37 Furthermore, an interpretation whereby a decision such as the decision at issue would fall within the scope of the second subparagraph of Article 14.2 of the Statute of the ESCB and of the ECB would be contrary to Article 276 TFEU. The objective of the second subparagraph of Article 14.2 of the Statute of the ESCB and of the ECB is not to enable the Court to interfere in the conduct of ongoing criminal proceedings, but to ensure that a governor of a national central bank is not unlawfully relieved from office by the national authorities. Granting the ECB's request would oblige the Court to review the facts and evidence gathered in the context of the ongoing criminal proceedings in Latvia in support of imposing restrictive measures concerning Mr Rimšēvičs and to encroach, accordingly, on the national authorities' sphere of competence.

- 38 The independence of the management of the Central Bank of Latvia is also, under Article 7 of the Statute of the ESCB and of the ECB, guaranteed by Article 13 of the Law on the Bank of Latvia. That independence in performing the tasks of the Central Bank of Latvia does not confer any criminal immunity on its Governor and does not impose any restrictions on the Latvian law enforcement authorities. In order to guarantee the independence and stability of the Central Bank of Latvia, the Law has provided the Governor with a Vice-Governor, the procedure for whose appointment by the Parliament provides the same guarantees as those enjoyed by the Governor, and who performs the duties of the Governor of that central

bank in the Governor's absence or where that person has been relieved from office or his term of office has expired. According to the Republic of Latvia, the Vice-Governor must therefore, in such a situation, be classified as the 'Governor' for the purpose of Article 283(1) TFEU and Article 10.1 of the Statute of the ESCB and of the ECB and consequently be recognised as having the right to sit on the Governing Council of the ECB.

39 Moreover, the evidence in the case file is covered by the confidentiality of the investigation pursuant to Article 375(1) of the Code of Criminal Procedure and therefore cannot be disclosed to third parties to the criminal proceedings. Consequently, the Court must also reject the ECB's request for the Republic of Latvia to be ordered to produce all relevant information relating to the KNAB's investigation concerning Mr Rimšēvičs.

40 For its part, the ECB considers that its action cannot be excluded from the scope of the second subparagraph of Article 14.2 of the Statute of the ESCB and of the ECB.

41 In that regard, it emphasises the importance of the principle of the independence of the ESCB and of the ECB set out in Article 130 TFEU, which is intended to enable the ECB to carry out, free from political pressure, the tasks conferred on it by the Treaty on the Functioning of the European Union. The second subparagraph of Article 14.2 of the Statute of the ESCB and of the ECB implements that principle by specifying the conditions under which a governor of a national central bank may be relieved from office and by enabling the lawfulness of such a measure to be reviewed by the Court.

42 Having regard to the purpose of that provision, a prohibition on performing any duty relating to the position of governor of a national central bank, even if it does not formally sever the legal and institutional link between that person and that bank, must be regarded as equivalent to relieving that person from office for the purposes of the second subparagraph of Article 14.2 of the Statute of the ESCB and of the ECB. If the opposite interpretation were to be accepted, it would be open to the Member States, by adopting measures of that nature, to circumvent the guarantee of independence envisaged by that text. The independence of the governor would be equally undermined by a temporary prohibition on that governor performing his duties, a fortiori if, as in the present case, the end date of that prohibition is unknown and may take place after the governor's term of office has expired.

Findings of the Court

43 The Republic of Latvia contends, in the first place, that the decision at issue, which is temporary, has not 'relieved [the Governor of the Central Bank of Latvia] from office'. It argues that the only decisions which are amenable to the review referred to in the second subparagraph of Article 14.2 of the Statute of the ESCB and of the ECB are those definitively severing the legal and institutional link between the governor of a national central bank and that bank.

44 In that regard, it is true that, as the Advocate General noted in point 78 of her Opinion, the terms used in the second subparagraph of Article 14.2 of the Statute of the ESCB and of the ECB to define the subject matter of the review envisaged therein appear to evoke, in the Latvian version as in several other language versions of that provision, the definitive severing of the link between the national central bank and its governor.

45 Nevertheless, according to the settled case-law of the Court, it is necessary, in order to interpret a provision of EU law, to consider not only its wording but also its context and the objectives of the legislation of which it forms part (see, in particular, judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 44 and the case-law cited).

46 In that regard, it should be borne in mind that the authors of the EC Treaty and, subsequently, the Treaty on the Functioning of the European Union intended to ensure that the ECB and the ESCB should be in a position to carry out independently the tasks conferred upon them (see, to that effect, judgment of 10 July 2003, *Commission v ECB*, C-11/00, EU:C:2003:395, paragraph 130).

- 47 The main evidence of that intention is set out in Article 130 TFEU, reproduced, in essence, in Article 7 of the Statute of the ESCB and of the ECB, which expressly prohibits the ECB, the national central banks, and the members of their decision-making bodies from seeking or taking instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body, on the one hand, and prohibits those Union institutions, bodies, offices or agencies and any government of a Member State from seeking to influence the members of the decision-making bodies of the ECB and the national central banks in the performance of their tasks, on the other (see, to that effect, judgment of 10 July 2003, *Commission v ECB*, C-11/00, EU:C:2003:395, paragraph 131). Thus, those provisions are, in essence, intended to shield the ESCB from all political pressure in order to enable it effectively to pursue the objectives ascribed to its tasks, through the independent exercise of the specific powers conferred on it for that purpose by primary law (see, to that effect, judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 40 and the case-law cited).
- 48 It is in order to guarantee the functional independence of the governors of the national central banks which, under Article 282(1) TFEU, comprise, together with the ECB, the ESCB, that Article 14.2 of the Statute of the ESCB and of the ECB sets the minimum length of their term of office at five years, provides that they may not be relieved from office unless they no longer fulfil the conditions required for the performance of their duties or if they have been guilty of serious misconduct, and establishes a legal remedy before the Court for the governor concerned and for the Council of Governors of the ECB against such a measure.
- 49 By directly conferring jurisdiction on the Court to determine the lawfulness of the decision to relieve the governor of a national central bank from office, the Member States have demonstrated the importance which they attach to the independence of the holders of such positions.
- 50 Under Article 283(1) TFEU and Article 10.1 of the Statute of the ESCB and of the ECB, the governors of the national central banks of the Member States whose currency is the euro are to be *ex officio* members of the Governing Council of the ECB, which is the main decision-making body of the Eurosystem under Article 12.1 of that statute and the sole decision-making body of the ECB in the context of the single supervisory mechanism pursuant to Article 26(8) of Regulation No 1024/2013.
- 51 If it were possible to decide, without grounds, to relieve the governors of the national central banks from office, their independence and, by extension, that of the Governing Council of the ECB itself would be severely undermined.
- 52 In that regard, it should first be noted that a temporary prohibition on a governor of a national central bank performing his or her duties is likely to constitute a form of pressure on that person. First, as is illustrated by the circumstances of the present cases, such a prohibition may be especially serious for the governor on whom it is imposed where it is not accompanied by a specific end date, as that prohibition may also apply for a significant part of his or her term of office. Second, it is capable, owing to the fact that it is temporary, of providing a form of pressure that is all the more effective where, as the Republic of Latvia has indicated regarding the decision at issue, it may be withdrawn at any time depending not only on developments in the investigation but also on the conduct of the governor concerned.
- 53 Next, if a measure prohibiting a governor from performing his or her duties were to be excluded from any form of review by the Court under the second subparagraph of Article 14.2 of the Statute of the ESCB and of the ECB on the ground of its temporary nature, it would be easy for a Member State, by adopting a series of temporary measures, to evade such review, so that, as the Advocate General emphasised in point 75 of her Opinion, that provision could be deprived of its practical effect.
- 54 Moreover, it is not certain that the decision at issue, although temporary in theory, might not be definitive in terms of its effects, given that, according to the statements made by the Republic of Latvia itself, Article 389 of the Code of Criminal Procedure allows measures and restrictions adopted in the context of that article to be maintained for 22 months, that is, until the end of Mr Rimšēvičs' term of office, which is set to take place in December 2019.

- 55 It therefore follows, both from the intention of the authors of the Treaty on the Functioning of the European Union and from the general scheme of the Statute of the ESCB and of the ECB, and from the very purpose of the second subparagraph of Article 14.2 of that statute, that the Court has jurisdiction, under that provision, to hear and determine an action brought against a measure such as the temporary prohibition on performing the duties of Governor of the Central Bank of Latvia contained in the decision at issue.
- 56 In the second place, the Republic of Latvia contends that the Court does not have jurisdiction to examine a decision which, in its view, is intended to guarantee the effective conduct of the criminal proceedings against the person concerned by that decision. Thus, the assessment of the evidence supporting the imposition of restrictive measures in the context of criminal proceedings falls solely within the national authorities' sphere of competence. Moreover, that evidence is covered by the confidentiality of the investigation pursuant to Article 375(1) of the Code of Criminal Procedure and therefore cannot be disclosed to third parties to the criminal proceedings. Article 276 TFEU confirms that the Court lacks jurisdiction in that regard, since it provides that, 'in exercising its powers regarding the provisions of Chapters 4 and 5 of Title V of Part Three [of the Treaty on the Functioning of the European Union] relating to the area of freedom, security and justice, the Court of Justice of the European Union shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law-enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security'.
- 57 In that regard, although it is true that the authors of the Treaties have ascribed only limited powers to the Union in criminal matters, it is nonetheless apparent from the case-law of the Court that EU law sets certain limits to the powers of Member States in such matters (judgment of 15 September 2011, *Dickinger and Ömer*, C-347/09, EU:C:2011:582, paragraph 31). Indeed, that power of the Member States must be exercised in line with not only the fundamental freedoms guaranteed by EU law (see, to that effect, judgments of 2 February 1989, *Cowan*, 186/87, EU:C:1989:47, paragraph 19, and of 19 January 1999, *Calfa*, C-348/96, EU:C:1999:6, paragraph 17), but also EU law as a whole, in particular primary EU law. Consequently, the national rules of criminal procedure may not preclude the jurisdiction conferred on the Court by the second subparagraph of Article 14.2 of the Statute of the ESCB and of the ECB, wherever that provision is applicable.
- 58 Furthermore, the Republic of Latvia's argument based on Article 276 TFEU cannot be accepted.
- 59 Indeed, that article limits the Court's jurisdiction only in exercising its powers regarding the provisions of Chapters 4 and 5 of Title V of Part Three of the Treaty on the Functioning of the European Union. However, as the Advocate General notes in point 82 of her Opinion, the present case does not concern those powers, but those directly and expressly conferred on the Court by the second subparagraph of Article 14.2 of the Statute of the ESCB and of the ECB.
- 60 In the third and last place, the Republic of Latvia emphasises the, in its view, unacceptable consequences of recognising the Court's jurisdiction. Such jurisdiction would give the Governor of the Central Bank of Latvia criminal immunity, would limit the restrictive measures that could be imposed on him, and would have a significant impact on the conduct of the criminal proceedings.
- 61 In that regard, it should be emphasised that Article 14.2 of the Statute of the ESCB and of the ECB does not confer any criminal immunity on the governor of a national central bank; nor does it limit the restrictive measures that may be imposed on him. That article merely confers on that person, and on the Governing Council of the ECB, the right to contest before the Court any decision whereby that governor is relieved from office. The potential coincidence of the action provided for in that article and national criminal proceedings therefore concerns only the exceptional case where such proceedings result in a temporary measure that could be equated with relieving the governor of a national central bank from office, as referred to in that provision, being taken against that person. However, even in that case, none of the evidence put forward by the Republic of Latvia shows that the action provided for in the Statute of the ESCB and of the ECB would be such as to impede the normal conduct of the investigation.

- 62 It follows from all of the foregoing that the argument that the Court lacks jurisdiction to hear and determine the actions brought by Mr Rimšēvičs and the ECB against the decision at issue on the basis of the second subparagraph of Article 14.2 of the Statute of the ESCB and of the ECB must be rejected.
- 63 It should also be added that the Court's jurisdiction under that provision is limited to actions brought against a definitive or temporary prohibition on performing the duties of governor of a national central bank. Accordingly, the decision at issue, whereby the KNAB has laid down several restrictive measures, falls within the Court's jurisdiction only in so far as it temporarily prohibits Mr Rimšēvičs from performing his duties as Governor of the Central Bank of Latvia.

The actions

Nature of the actions

- 64 The Court has been seised by Mr Rimšēvičs, in his capacity as Governor of the Central Bank of Latvia, and by the ECB, acting upon a decision of its Governing Council, pursuant to Article 14.2 of the Statute of the ESCB and of the ECB. However, the forms of order sought in the two applications differ as to their wording. Mr Rimšēvičs claims, in essence, that the Court should declare that the decision at issue, adopted in the name of the Republic of Latvia, is unlawful, while the ECB claims that the Court should declare that the Republic of Latvia has infringed Article 14.2 of the Statute of the ESCB and of the ECB. When questioned at the hearing as to the nature of the action provided for in the second subparagraph of Article 14.2 of that statute, the ECB specified that it was claiming that the Court should give 'a declaratory judgment, as is the case in infringement proceedings'.
- 65 It should however be noted, as a preliminary point, that Article 14.2 of the Statute of the ESCB and of the ECB does not contain any implicit or explicit reference to the proceedings for failure to fulfil obligations governed by Articles 258 to 260 TFEU.
- 66 By contrast, both the literal and the systematic and teleological interpretations of Article 14.2 of that statute entail the action provided for in that article being classified as an action for annulment.
- 67 In the first place, regarding the wording of that provision, it should be noted that, like the action provided for in Article 263 TFEU, the action provided for in the second subparagraph of Article 14.2 of the Statute of the ESCB and of the ECB may be brought by an individual, in the present case by the Governor relieved from office, against a decision of which he is the addressee. In addition, each of those two actions must be brought within the same period — two months — defined identically in the sixth paragraph of Article 263 TFEU and the last sentence of the second subparagraph of Article 14.2 of that statute. Moreover, both provisions state, in the same terms, that the applicants may raise pleas in law alleging 'infringement of [the] Treaties or of any rule of law relating to their application'.
- 68 In the second place, it is apparent from a systematic approach that the specificity of Article 14.2 of that statute is not incompatible with the characteristics of an action for annulment.
- 69 It is true that, inasmuch as it expressly entrusts the Court with power to review the lawfulness of an act of national law in light of '[the] Treaties or of any rule of law relating to their application', the second subparagraph of Article 14.2 of the Statute of the ESCB and of the ECB derogates from the general distribution of powers between the national courts and the courts of the European Union as provided for by the Treaties and in particular by Article 263 TFEU, as an action under that article may concern only acts of EU law (see, to that effect, judgment of 16 December 1960, *Humblet v Belgian State*, 6/60-IMM, EU:C:1960:48). However, that derogation can be explained by the particular institutional context of the ESCB within which it operates. The ESCB represents a novel legal construct in EU law which brings together national institutions, namely the national central banks, and an EU institution, namely the ECB, and causes them to cooperate closely with each other, and within which a different structure and a less marked distinction between the EU legal order and national legal orders prevails.

- 70 Article 14.2 of the Statute of the ESCB and of the ECB reflects the logic of this highly integrated system which the authors of the Treaties envisaged for the ESCB and, in particular, of the dual professional role of the governor of a national central bank, who is certainly a national authority but who acts within the framework of the ESCB and sits, where he is the governor of a national central bank of a Member State whose currency is the euro, on the main decision-making body of the ECB. It is because of this hybrid status and, as has been emphasised in paragraph 48 above, in order to guarantee the functional independence of the governors of the national central banks within the ESCB that, by way of exception, a decision taken by a national authority relieving one of those governors from office may be referred to the Court.
- 71 Article 14.2 of the Statute [of the ESCB and of the ECB] thus adds a legal remedy to the system of legal remedies laid down by the Treaties which is very specific, as is apparent from the very small number of persons to whom it is available, the unique subject matter of the decisions against which it may be used and the exceptional circumstances in which it may be exercised.
- 72 In the third place, the nature of the action provided for in Article 14.2 of the Statute [of the ESCB and of the ECB] is also made clear by the objective in view of which it was introduced. As has been recalled in paragraph 49 et seq. above, that action is one of the main guarantees that the governors, although appointed by and, as the case may be, dismissed by the Member States, are to carry out independently the tasks that are conferred on them by the Treaties and are not, pursuant to Article 130 TFEU and Article 7 of the Statute of the ESCB and of the ECB, to take any instructions from national authorities. It thus represents an essential component of the institutional balance necessary for close cooperation between the national central banks and the ECB within the ESCB.
- 73 It is because of the importance of that objective and the disadvantage inherent in any delay in penalising a decision to relieve a governor from office made in breach of the Treaties or of any rule of law relating to their application that the authors of those treaties made a legal remedy before the Court against such an act available to the ECB and the governor concerned. As the Vice-President of the Court noted, in essence, in his assessment of the urgency requirement in the interlocutory order of 20 July 2018, *ECB v Latvia* (C-238/18 R, not published, EU:C:2018:581, paragraphs 71 and 72), the prolonged lack of participation of a Member of the Governing Council is likely to seriously affect the proper functioning of that essential body of the ECB. In addition, relieving a governor from office may have serious and immediate consequences for the person concerned.
- 74 Only an action for annulment, possibly supplemented by the interim measures which the Court may order pursuant to Articles 278 and 279 TFEU, is capable of addressing the concerns which led to the creation of that legal remedy. In particular, the intentions of the authors of the Statute of the ESCB and of the ECB would not have been fully respected if the judgment given under the second subparagraph of Article 14.2 of that statute were a declaratory judgment and the effects thereof were thus dependent on its enforcement by the national authorities.
- 75 Furthermore, it should be borne in mind that, if the European Commission considers that a Member State has failed to fulfil its obligations under Article 14 of the Statute of the ESCB and of the ECB, it may, pursuant to Article 258 TFEU, deliver a reasoned opinion and, if the State in question does not comply with that opinion, bring an action before the Court for failure to fulfil obligations. Therefore, it cannot be accepted that, by introducing the legal remedy provided for in the second subparagraph of Article 14.2 of the Statute of the ESCB and of the ECB, the authors of that provision intended merely to create a parallel procedure to the procedure already laid down in Article 258 TFEU.
- 76 It follows from the foregoing that the action provided for in the second subparagraph of Article 14.2 of that statute has as its purpose the annulment of the decision taken to relieve a governor of a national central bank from office.
- 77 Since they have expressly been submitted on the basis of the second subparagraph of Article 14.2 of the Statute of the ESCB and of the ECB, the actions brought by Mr Rimšēvičs and the ECB must,

consequently, be regarded as seeking annulment of the decision at issue.

The plea alleging a lack of grounds for the decision at issue

Arguments of the parties

- 78 Mr Rimšēvičs submits that the decision at issue is unjustified.
- 79 First, it was not preceded by a suitable investigation, nor was sufficient evidence gathered beforehand. The KNAB dedicated only two days to the investigation, which opened on 15 February 2018, before deciding to arrest the applicant on 17 February 2018. The prosecutor-general of the Republic of Latvia himself stated on 21 February 2018 that there was nothing permitting a categorical assertion on that date that an offence had been committed.
- 80 Secondly, it is highly implausible that the Governor of the Central Bank of Latvia has committed the crime of which he is suspected, namely the crime of passive corruption for the benefit of a private Latvian bank, which ceased trading in 2016 and has gone into liquidation. Indeed, he has no powers enabling him to influence the activities of a private bank in any way. In addition, all the decisions of the Central Bank of Latvia are adopted collectively. The monitoring of Latvian private banks falls within the remit not of the Central Bank of Latvia but the Financial and Capital Market Commission, as provided for in Article 2(1) of the Finanšu un kapitāla tirgus komisijas likums (Law on the Financial and Capital Market Commission).
- 81 Thirdly, the source of the information which gave rise to the investigation is not reliable. According to the information disclosed to the applicant by the KNAB, the person who reported the crime allegedly committed in 2013 is a former member of the executive board of the private Latvian bank for whose benefit the bribery was committed. That person was arrested in 2016 for money laundering and was able to have the criminal investigation opened against him closed in exchange for reporting the acts of bribery imputed to Mr Rimšēvičs.
- 82 Fourthly, Mr Rimšēvičs submits that the accusations brought against him are inaccurate. The KNAB has stated that Mr Rimšēvičs was bribed in order to prevent him from hindering the activities of that private Latvian bank. However, the Governor of the Central Bank of Latvia does not have that power. He states that he has been accused, in a way that is extremely vague, of having committed a negative act (an abstention), because the person who reported that alleged act of bribery was not in a position to identify a positive act. Moreover, he states that the ECB, acting on a recommendation from the Financial and Capital Market Commission, revoked the licence of that private Latvian bank in 2016, which casts doubt on the assertion that the applicant favoured the continuation of the activities of that private bank.
- 83 For its part, the ECB submits that it is for the Court to interpret the concept of ‘serious misconduct’ capable of justifying relieving a governor of a national central bank from office for the purposes of the second subparagraph of Article 14.2 of the Statute of the ESCB and of the ECB, and the way in which evidence thereof must be adduced.
- 84 It would be for the Member State which adopts a measure referred to in the second subparagraph of Article 14.2 of the Statute of the ESCB and of the ECB to establish that the conditions laid down by that provision are satisfied. In that regard, those conditions should be established by an independent court or tribunal, and not by a government agency, the public prosecution service, or an investigating magistrate ruling on the restrictive measures. That requirement would enable the right to a fair trial and the presumption of innocence — an essential principle of the European justice system — to be observed. The ECB would thus have assurance that the reasons for relieving the governor from office are well founded. The decision of the court or tribunal would not have to be final, so that the decision to relieve a governor of a national central bank from office could be implemented, where appropriate, within a reasonable time.
- 85 However it could be accepted that, in exceptional circumstances, a governor of a central bank of a Member State whose currency is the euro could be relieved from office even before delivery of a judgment

convicting him. This would be the case, for example, where the measure was adopted on the basis of established or undisputed evidence.

86 The ECB emphasises that, in the present case, the KNAB has relieved the Governor of the Central Bank of Latvia from office before delivery of a judgment by a court or tribunal convicting him on the merits of the acts of which he is accused, and that it does not currently have any information enabling it to determine whether there are exceptional circumstances capable of justifying that measure. It specifies that it is willing to waive its right to access the case file if the criminal investigation calls for confidential treatment of the information supplied to the Court.

87 In both cases, the Republic of Latvia maintains that the evidence in Mr Rimšēvičs' criminal file is covered by the confidentiality of the investigation pursuant to Article 375(1) of the Code of Criminal Procedure.

– *Findings of the Court*

88 The second subparagraph of Article 14.2 of the Statute of the ESCB and of the ECB expressly states that, in support of the action referred to in that provision, the governor concerned or the Governing Council may invoke 'infringement of [the] Treaties or of any rule of law relating to their application'. That expression primarily concerns breach of the conditions to which that article makes relieving a governor from office subject.

89 In that regard, that provision states that a governor may not be relieved from office except in two instances, namely he no longer fulfils the conditions required for the performance of his duties or he has been guilty of serious misconduct.

90 In the present case, the prohibition on Mr Rimšēvičs performing his duties as Governor of the Central Bank of Latvia is for the purposes of a criminal investigation relating to that person's alleged conduct, which is considered criminal and which, were it to be established, would constitute 'serious misconduct' for the purposes of Article 14.2 of the Statute of the ESCB and of the ECB.

91 It should be specified at the outset that it is not for the Court, when an action is brought before it on the basis of Article 14.2 of that statute, to take the place of the national courts having jurisdiction to give a ruling on the criminal liability of the governor involved, nor even to interfere with the preliminary criminal investigation being conducted in respect of that person by the competent administrative or judicial authorities under the law of the Member State concerned. For the purposes of such an investigation, and in particular in order to prevent the governor concerned from obstructing that investigation, it may be necessary to decide to suspend that person temporarily from office.

92 By contrast, it is for the Court, in the context of the powers conferred on it by the second subparagraph of Article 14.2 of the Statute of the ESCB and of the ECB, to verify that a temporary prohibition on the governor concerned performing his duties is taken only if there are sufficient indications that he has engaged in serious misconduct capable of justifying such a measure.

93 In the present case, the person concerned maintains before the Court that he has not committed any of the offences of which he is accused. Like the ECB, he considers that the Republic of Latvia has not adduced the slightest evidence of those offences. In fact, in the written procedure before the Court, the Republic of Latvia did not provide any prima facie evidence of the accusations of bribery which were the basis for the opening of the investigation and the adoption of the decision at issue.

94 At the hearing, the President of the Court requested the representatives of the Republic of Latvia, who undertook to do so, to communicate to the Court, within a short period, the documents supporting the decision at issue. However, as the Advocate General noted in points 125 to 130 of her Opinion, none of the documents produced by the Republic of Latvia following the hearing contains any evidence capable of establishing the existence of sufficient indications as regards whether the accusations made against the person concerned are well founded.

95 By letter received at the Court Registry on 8 January 2019, the Republic of Latvia offered to communicate other documents ‘within a reasonable time’, without requesting that the oral part of the procedure, which had been declared closed following the delivery of the Advocate General’s Opinion pursuant to Article 82(2) of the Rules of Procedure, be reopened. By a second letter of 30 January 2019 the Republic of Latvia renewed its offer of evidence and requested that the oral part of the procedure be reopened. However, that offer of evidence, received at the Court at the stage when the case was under deliberation, is not accompanied by any statement of reasons explaining the delay in submitting those documents as is required by Article 128(2) of the Rules of Procedure. The developments in the criminal investigation as described by the Latvian Government are not relevant in that regard. In addition, that offer of evidence does not contain any concrete and specific indication regarding the content of the documents whose disclosure is offered. In those circumstances and having regard to the expedited nature of the proceedings, the offer of evidence and the request that the oral part of the procedure be reopened must be rejected.

96 Consequently, the Court must hold that the Republic of Latvia has not established that the relieving of Mr Rimšēvičs from office is based on the existence of sufficient indications that he has engaged in serious misconduct for the purposes of the second subparagraph of Article 14.2 of the Statute of the ESCB and of the ECB and, accordingly, upholds the plea alleging that that decision is unjustified. It is therefore unnecessary to examine the other pleas in the application.

97 It follows from the foregoing that the decision at issue must be annulled in so far as it prohibits Mr Rimšēvičs from performing his duties as Governor of the Central Bank of Latvia.

Costs

98 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party’s pleadings. Since the Republic of Latvia has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the ECB, in accordance with the form of order sought by the latter.

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

- 1. joins Cases C-202/18 and C-238/18 for the purposes of the judgment;**
- 2. annuls the decision of the Korupcijas novēršanas un apkarošanas birojs (Anti-Corruption Office, Latvia) of 19 February 2018 in so far as it prohibits Mr Ilmārs Rimšēvičs from performing his duties as Governor of the Central Bank of Latvia;**
- 3. orders the Republic of Latvia to bear its own costs and to pay those incurred by the European Central Bank (ECB).**

[Signatures]

* Language of the case: Latvian.