Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

26 March 2020 (*)

(References for a preliminary ruling — Second subparagraph of Article 19(1) TEU — Rule of law — Effective judicial protection in the fields covered by Union law — Principle of judicial independence — Disciplinary regime applicable to national judges — Jurisdiction of the Court — Article 267 TFUE — Admissibility — Interpretation necessary for the referring court to be able to give judgment — Meaning)

In Joined Cases C-558/18 and C-563/18,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Sąd Okręgowy w Łodzi (Regional Court, Łódz, Poland) (C-558/18) and from the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland) (C-563/18), made by decisions of 31 August 2018 and 4 September 2018, received at the Court on 3 September 2018 and 5 September 2018 respectively, in the proceedings

Miasto Łowicz

v

Skarb Państwa — Wojewoda Łódzki,

intervening parties:

Prokurator Generalny, represented by the Prokuratura Krajowa, formerly the Prokuratura Regionalna w Łodzi,

Rzecznik Praw Obywatelskich (C-558/18)**,**

and

Prokurator Generalny, represented by the Prokuratura Krajowa, formerly the Prokuratura Okręgowa w Płocku,

v

VX,

WW,

XV (C-563/18),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, A. Prechal (Rapporteur), M. Vilaras, E. Regan, P.G. Xuereb and L.S. Rossi, Presidents of Chambers, M. Ilešič, J. Malenovský, L. Bay Larsen, T. von Danwitz, C. Toader, K. Jürimäe, C. Lycourgos and N. Piçarra, Judges,

Advocate General: E. Tanchev,

Registrar: M. Aleksejev, Head of Unit,

having regard to the written procedure and further to the hearing on 18 June 2019,

after considering the observations submitted on behalf of:

– the Skarb Państwa — Wojewoda Łódzki, by J. Zasada and L. Jurek, acting as Agents,

– the Prokurator Generalny, represented by the Prokuratura Krajowa, A. Reczka, S. Bańko, B. Górecka, J. Szubert and P. Tarczyński,

– the Rzecznik Praw Obywatelskich, by M. Taborowski and M. Wróblewski, acting as Agents,

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

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

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

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

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

after hearing the Opinion of the Advocate General at the sitting on 24 September 2019,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 19(1) TEU.

2 The requests have been made, first, in proceedings between Miasto Łowicz (town of Łowicz, Poland) and the Skarb Państwa — Wojewoda Łódzki (State Treasury — Governor of Łódź Province, Poland) (‘the State Treasury’) concerning a claim for payment of public subsidies (Case C-558/18) and, secondly, in criminal proceedings against VX, WW and XV for participation in kidnappings for financial gain (Case C-563/18).

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

3 As is apparent from the order for reference in Case C-558/18, the town of Łowicz brought proceedings against the State Treasury before the Sąd Okręgowy w Łodzi (Regional Court of Łódź, Poland), under the ustawa o dochodach jednostek samorządu terytorialnego (Law on the income of local government units) of 13 November 2003 (Dz. U. of 2018, item 317), seeking payment of 2 357 148 Polish zlotys (PLN) (approximately EUR 547 612) in respect of subsidies intended to cover the costs incurred by that town between 2005 and 2015 for the performance of certain tasks entrusted to it in respect of government administration.

4 Following an objection by the State Treasury, the order for payment of that sum, issued at the first phase of the main proceedings, was declared to be unenforceable, and the case is now being examined under the ordinary procedure. According to the referring court, it is highly likely, in view of the evidence gathered in those proceedings, that the decision which it is called upon to make will be unfavourable to the State Treasury.

5 As regards Case C-563/18, it is apparent from the order for reference of the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland) that VX, WW and XV are being prosecuted before that court in respect of two kidnappings for financial gain perpetrated in 2002 and 2003 respectively. VX, WW and XV, who admitted the charges against them and cooperated with the criminal authorities, applied to be granted the status of 'cooperative witnesses' ('*mały świadek koronny*'), which means that the referring court must consider whether to allow them an exceptional reduction in their sentences under the provisions of the Criminal Code.

6 The requests for a preliminary ruling express concern that disciplinary proceedings could be brought against the single judge in charge of each case in the main proceedings if that judge were to give a ruling along the lines outlined in paragraphs 4 and 5 above.

7 Those concerns are prompted, in essence, by the fact that, as a result of various recent legislative reforms which took place in Poland, the objectivity and impartiality of disciplinary proceedings concerning judges are no longer guaranteed and the independence of the referring courts is thereby affected.

8 In that regard, those courts consider, in the first place, that the composition of the Izba Dyscyplinarna Sądu Nawyższego (Disciplinary Chamber of the Supreme Court, Poland), newly established within that court by virtue of the ustawa o Sądzie Najwyższym (Law on the Supreme Court) of 8 December 2017 (Dz. U. of 2018, items 5, 650, 771, 847, 848, 1045 and 1443) and called upon under that same law to hear and determine disciplinary cases concerning judges, both at first instance and on appeal, is problematic.

9 The judges called upon to sit in that Disciplinary Chamber were appointed by the President of the Republic on a proposal from the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland). As a result of the recent amendments to the ustawa o Krajowej Radzie Sądownictwa (Law on the National Council of the Judiciary) of 12 May 2011 (Dz. U. of 2011, item 714), by the ustawa o zmianie ustawy o Krajowej Radzie Sądownictwa oraz niektórych innych ustaw (Law amending the Law on the National Council of the Judiciary and certain other laws) of 8 December 2017 (Dz. U. of 2018, item 3), the National Council of the Judiciary, whose 15 members with judicial status are now appointed by the Sejm (lower chamber of the Polish Parliament) and not, as before, by their peers, no longer constitutes a body which is independent of political authority.

10 In the second place, the newly composed National Council of the Judiciary has itself become a quasi-disciplinary body, since it has jurisdiction to hear appeals against decisions of court presidents on the transfer of judges to other judicial formations. Moreover, a large number of court presidents were appointed by the current Minister for Justice and some of them have been elected members of the National Council of the Judiciary.

11 In the third place, the new provisions inserted in the ustawa — Prawo o ustroju sądów powszechnych (Law on the organisation of the ordinary courts) of 27 July 2001 (Dz. U. of 2018, items 23, 3, 5, 106, 138, 771, 848, 1000, 1045 and 1443), which deal with the disciplinary proceedings applicable to judges of the ordinary courts, have conferred on the Minister for Justice, who also fulfils the role of chief prosecutor, practically unlimited power in that regard.

12 The Minister for Justice is empowered, first, to appoint the disciplinary officer responsible for cases concerning judges sitting in the ordinary courts, secondly, to initiate investigation procedures and, where the disciplinary officer refuses to launch a disciplinary procedure, to oblige that officer to do so, thirdly, to appoint a disciplinary officer on an ad hoc basis to deal with a particular case and, fourthly, to appoint the judges who act as disciplinary judges in an appeal court.

13 Furthermore, the considerable influence thus conferred on the Minister for Justice does not have adequate safeguards. First, the legal definition of the infringements which give rise to the imposition of disciplinary measures on judges is unclear. Secondly, disciplinary proceedings may be conducted even in the justified absence of the judge under investigation or of his or her representative. Thirdly, evidence obtained improperly can now be used in such proceedings. Fourthly, no provision has been made for any guarantee

as to the length of the disciplinary proceedings. Fifthly, the Minister for Justice may apply for disciplinary proceedings to be reopened up to five years after their closure or for a decision to be delivered should new evidence come to light.

14 The referring courts consider that the disciplinary proceedings thus conceived confer on the legislature and the executive the means to remove judges whose decisions displease them and accordingly to influence the judicial decisions they are called upon to make through the deterrent effect that the prospect of such proceedings has on such persons.

15 According to those courts, it follows from all of the foregoing that, as regards the court decision which each of them is required to make in the dispute before them in the main proceedings, it is necessary to determine, first of all, whether the abovementioned national rules on the disciplinary regime for judges undermines the independence of those judges by depriving the litigants concerned of their right to an effective judicial remedy guaranteed by the second subparagraph of Article 19(1) TEU. That provision, read in conjunction with Article 2 and Article 4(3) TEU, requires the Member States to ensure that bodies, like the referring courts, which are empowered to rule on questions relating to the application or interpretation of EU law, satisfy the requirements inherent in the right to effective judicial protection; those requirements include the independence of those bodies which is of essential importance.

16 In those circumstances, the Sąd Okręgowy w Łodzi (Regional Court, Łódz) and the Sąd Okręgowy w Warszawie (Regional Court, Warsaw) each decided to stay the proceedings and to refer a question to the Court of Justice for a preliminary ruling.

17 The question referred by the Sąd Okręgowy w Łodzi (Regional Court, Łódz) is worded as follows:

‘On a proper construction of the second subparagraph of Article 19(1) of the Treaty on European Union, does the resulting obligation for Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law preclude provisions which materially increase the risk of undermining the guarantee of independent disciplinary proceedings against judges in Poland through:

(1) political influence on the conduct of disciplinary proceedings;

(2) the emerging risk that the system of disciplinary measures will be used to control the content of judicial decisions politically; and

(3) the possibility of evidence obtained by [means of a criminal act] being used in disciplinary proceedings against judges?’

18 The Sąd Okręgowy w Warszawie (Regional Court, Warsaw) referred the following question to the Court:

‘On a proper construction of the second subparagraph of Article 19(1) of the Treaty on European Union, does the resulting obligation for Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law preclude provisions which remove the guarantee of independent disciplinary proceedings against judges in Poland by permitting disciplinary proceedings to be conducted under political influence, giving rise to a risk that the system of disciplinary measures will be used to politically control the content of judicial decisions?’

Procedure before the Court

19 By decision of the President of the Court of Justice of 1 October 2018, Cases C-558/18 and C-563/18 were joined for the purposes of the written and oral procedure, and the judgment.

20 In the course of the written part of the procedure before the Court, the Sąd Okręgowy w Łodzi (Regional Court, Łódź), by letters of 7 and 11 December 2018, and the Sąd Okręgowy w Warszawie (Regional Court, Warsaw), by letters of 30 October and 12 December 2018, informed the Court that both judges who

had referred the questions to the Court for a preliminary ruling in those cases had received from an assistant to the disciplinary officer responsible for cases relating to judges in the ordinary courts a summons to attend a hearing, as witnesses, concerning the grounds which led them to refer those questions and the issue whether judicial independence could have been undermined by the fact that the two judges in question did not adopt their respective orders for reference independently.

21 In those letters, the two referring courts also note, first, that during those hearings questions relating to the confidentiality of deliberations were put to the judges concerned. Secondly, those judges both received from the assistant to the disciplinary officer an order to file a written statement concerning potential '*ultra vires* conduct' for having referred those questions for a preliminary ruling, in breach of the conditions laid down in Article 267 TFEU.

22 By documents lodged at the Court Registry on 24 December 2019, 13 February and 2 March 2020, the Rzecznik Praw Obywatelskich (Ombudsman, Poland) requested that the oral part of the procedure be reopened.

23 In support of his request of 24 December 2019, the Ombudsman argues that the Advocate General stated in his Opinion that the present requests for a preliminary ruling should be declared inadmissible on the ground, in essence, that the Court does not have sufficient factual and legal material to enable it to rule on those requests and to establish whether there has been a breach of the Member States' obligation to guarantee judicial independence. In those circumstances, the Court should order the reopening of the oral part of the procedure in order, first, to allow the parties to express their views on such a potential ground for the inadmissibility of those requests, which, as the Advocate General stated, was neither advanced nor discussed by the parties and, secondly, to clarify further the circumstances of the cases as required.

24 In the same request, the Ombudsman also refers to new facts that have arisen since the closure of the oral part of the procedure and which demonstrate that the questions put to the Court are not hypothetical and may therefore have a decisive influence on the decision which the Court is called upon to give in the present joined cases. Those new facts consist, first, of a number of specific cases in which disciplinary proceedings have recently been brought against judges as a result of the content of decisions which they adopted and, in particular, decisions in which those judges intended to follow the lessons to be drawn from the judgment of the Court of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)* (C-585/18, C-624/18 and C-625/18, EU:C:2019:982).

25 Secondly, on 20 December 2019, the Sejm adopted the ustawa o zmianie ustawy — Prawo o ustroju sądów powszechnych, ustawy o Sądzie Najwyższym oraz niektórych innych ustaw (Law amending the Law on the organisation of the ordinary courts, the Law on the Sąd Najwyższy (Supreme Court) and several other laws), which is intended to bolster considerably the disciplinary regime applicable to judges, and which provides, inter alia — in order to render that judgment of the Court of Justice ineffective — that, if the validity of a judge's appointment or the legitimacy of a constitutional body is called into question by a court, disciplinary measures will be taken against the judge or judges sitting in that court. To those ends, that law now makes any examination of complaints relating to the lack of independence of a judge or court subject to the exclusive jurisdiction of the Izba Kontroli Nadzwyczajnej i Spraw Publicznych Sądu Nawyższego (Chamber of Extraordinary Control and Public Affairs of the Supreme Court, Poland), which has recently been established and which exhibits defects — in particular in relation to the process for appointing its members — that are similar to those highlighted by the Court of Justice in relation to the Disciplinary Chamber of the Supreme Court in its judgment of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)* (C-585/18, C-624/18 and C-625/18, EU:C:2019:982).

26 In his further request of 13 February 2020, the Ombudsman states, first, that the Law of 20 December 2019 has since been signed by the President of the Republic of Poland, on 4 February 2020, and published (Dz. U. of 2020, item 190), and that its entry into force was set for 14 February 2020. Secondly, he refers to the continuance and to the growing number of disciplinary proceedings and administrative measures and, thereafter, to the adoption of disciplinary measures against judges, in particular for the reasons already

mentioned in paragraph 24 above. In his further request of 2 March 2020, the Ombudsman refers to the fact that the Prokuratura Krajowa (National Prosecutor, Poland), under the Law of 20 December 2019, recently brought an action before the Disciplinary Chamber of the Supreme Court to waive immunity for the judge who made the reference for a preliminary ruling in Case C-563/18 and to authorise criminal proceedings against that judge for allowing the media to record the pronouncement of a decision handed down in a case concerning a challenge to the change of location of the sittings of the Sejm, in which the judge ordered the prosecutor to resume the investigation relating to that move. According to the Ombudsman, those new developments should be taken into consideration by the Court for the purposes of assessing the admissibility and substance of the questions referred to it in the present cases, which justifies the Court reopening the oral part of the procedure.

27 In that regard, it should be noted, first, that the Statute of the Court of Justice of the European Union and the Rules of Procedure of the Court make no provision for the interested parties referred to in Article 23 of the Statute to submit observations in response to the Advocate General's Opinion (judgment of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)* (C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 61 and the case-law cited).

28 Secondly, under the second paragraph of Article 252 TFEU, the Advocate General, acting with complete impartiality and independence, must make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require the Advocate General's involvement. The Court is not bound either by the Advocate General's Opinion or by the reasoning which led to that Opinion. Consequently, a party's disagreement with the Opinion of the Advocate General, irrespective of the questions which were examined in that Opinion, cannot in itself constitute grounds justifying the reopening of the oral part of the procedure (judgment of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)* (C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 62 and the case-law cited).

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

30 In the present case, however, after hearing the Advocate General, the Court considers that it has at its disposal, following the written procedure and the hearing which took place before it, all the information necessary to give a ruling and that the new facts relied on by the Ombudsman are not of such a nature as to have a decisive influence on the decision which the Court is called upon to give. Furthermore, the Court finds that the present joined cases do not have to be decided on the basis of an argument which was not the subject of exchanges between the interested persons. In such circumstances, it is not necessary to order the reopening of the oral procedure.

The jurisdiction of the Court

31 The State Treasury, the Prokurator Generalny (General Public Prosecutor, Poland) and the Polish Government maintain that the Court has no jurisdiction to hear the present requests for a preliminary ruling, arguing, in essence, that both the disputes in the main proceedings, which are purely domestic in nature and do not fall within the areas covered by EU law, and the national provisions relating to the organisation of national courts and the disciplinary measures applicable to judges, which fall within the exclusive competence of the Member States, are outside the scope of EU law.

32 In that regard, it should be recalled that, under the second subparagraph of Article 19(1) TEU, the interpretation of which is, in the present case, the subject of the questions referred to the Court for a preliminary ruling, Member States are to provide remedies sufficient to ensure effective judicial protection

for individual parties in the fields covered by EU law. It is therefore for the Member States to establish a system of legal remedies and procedures ensuring effective judicial review in those fields (judgments of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraph 34 and the case-law cited, and of 5 November 2019, *Commission* v *Poland (Independence of the ordinary courts)*, C-192/18, EU:C:2019:924, paragraph 99 and the case-law cited).

33 As regards the scope of the second subparagraph of Article 19(1) TEU, it follows, moreover, from the Court's case-law that that provision refers to the 'fields covered by Union law', irrespective of whether the Member States are implementing Union law within the meaning of Article 51(1) of the Charter of Fundamental Rights of the European Union (judgments of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraph 29, and of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)* (C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 82 and the case-law cited).

34 Thus, the second subparagraph of Article 19(1) TEU is intended inter alia to apply to any national body which can rule, as a court or tribunal, on questions concerning the application or interpretation of EU law and which therefore fall within the fields covered by that law (see, to that effect, judgments of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraph 40, and of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)* (C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 83 and the case-law cited).

35 This is true of the referring courts, which may be called upon, in their capacity as ordinary Polish courts, to rule on questions relating to the application or interpretation of EU law and, as 'courts or tribunals' within the meaning of EU law, come under the Polish judicial system in the 'fields covered by Union law', within the meaning of the second subparagraph of Article 19(1) TEU, so that those courts must meet the requirements of effective judicial protection (judgment of 5 November 2019, *Commission* v *Poland (Independence of the ordinary courts)*, C-192/18, EU:C:2019:924, paragraph 104).

36 Furthermore, it should be recalled that, although the organisation of justice in the Member States falls within the competence of those Member States, the fact remains that, when exercising that competence, the Member States are required to comply with their obligations deriving from EU law and, in particular, from the second subparagraph of Article 19(1) TEU (judgment of 5 November 2019, *Commission* v *Poland (Independence of the ordinary courts)*, C-192/18, EU:C:2019:924, paragraph 102 and the case-law cited).

37 It follows from the foregoing that the Court has jurisdiction to interpret the second subparagraph of Article 19(1) TEU.

Admissibility

38 The Public Treasury, the General Prosecutor and the Polish Government also submit that the requests for a preliminary ruling are inadmissible on the following grounds. First, the orders for reference do not satisfy the requirements arising from Article 94 of the Rules of Procedure, in particular because they have not specified the link between the provision of EU law for which an interpretation is sought and the national legislation applicable to the disputes in the main proceedings.

39 Secondly, the questions referred bear no relation to the procedures and the subject matter of the disputes in the main proceedings and are general and hypothetical in nature, in that the referring courts are not called upon to apply, in those disputes, either the national provisions relating to the disciplinary regime for judges or the second subparagraph of Article 19(1) TEU. The hypothetical nature of the questions also stems from the fact that the opening of disciplinary proceedings following the decisions which the referring courts will deliver in the main proceedings appears, at this stage, to be a mere possibility, so that the questions do not relate to the disputes in the main proceedings, but to possible future disputes which might arise between the judges concerned and the national disciplinary authorities. An answer to those

questions will not affect the obligation of the referring courts to rule on the cases in the main proceedings on the basis of the applicable substantive and procedural provisions of national law, nor will it alter the scope of that obligation. It is not therefore necessary for the resolution of those cases.

40 The European Commission also maintains that the present requests for a preliminary ruling are inadmissible, in so far as the rule of EU law to which the questions put to the Court relate bears no relation to the subject matter of the disputes in the main proceedings, which concern, first, the payment of expenses incurred by a Polish town in the performance of certain tasks entrusted to it in respect of government administration and, secondly, criminal proceedings brought against certain persons as a result of their involvement in kidnappings, in which an exceptional reduction in the sentence is anticipated. Moreover, the answer which the Court might give to the questions referred for a preliminary ruling would not be of a sort capable of determining the content of any preliminary decision which the referring courts would be required to make, either in terms of procedure or as regards their own jurisdiction, before ruling, as necessary, on the substance of the disputes in the main proceedings. Such an answer would not therefore be necessary for the resolution of those disputes, but would amount to the Court giving an advisory opinion on general or hypothetical questions.

41 In those various respects, it should be noted at the outset that, in their respective requests for a preliminary ruling, the referring courts, first, described, to the requisite legal standard, the circumstances of the disputes in the main proceedings and, secondly, set out in detail the provisions constituting the new national legal framework on the disciplinary regime applicable to judges. Thirdly, those courts have indicated both the reasons why, as national courts capable of ruling on the application or interpretation of EU law, they entertained doubts as to the compatibility of those rules with the second subparagraph of Article 19(1) TEU, and the reasons why they considered that an answer to the questions of interpretation addressed to the Court was necessary in view of the judgments which they are called upon to deliver in the main proceedings that are pending, given their fear, in the particular context of those proceedings, that the judges concerned may be subject to disciplinary proceedings if they were to rule on those disputes along the lines set out, respectively, in paragraphs 4 and 5 of this judgment.

42 In so doing, those courts have satisfied the requirements laid down in Article 94 of the Rules of Procedure, including, inter alia, the requirement in paragraph (c) of that article, by adequately stating the reasons which prompted them to inquire about the interpretation of the second subparagraph of Article 19(1) TEU and, in particular, the connection which they see between that Treaty provision and the national provisions which, in their view, are liable to influence the judicial process before delivery of their judgments and, accordingly, the outcome of the actions brought before them in the main proceedings.

43 Furthermore, it must be noted that, according to settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance (judgments of 15 May 2003, *Salzmann*, C-300/01, EU:C:2003:283, paragraph 31, and of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503, paragraph 16 and the case-law cited).

44 However, it has also been consistently held that the procedure provided for in Article 267 TFEU is an instrument of cooperation between the Court of Justice and the national courts, by means of which the Court provides the national courts with the points of interpretation of EU law which they need in order to decide the disputes before them (judgments of 18 October 1990, *Dzodzi*, C-297/88 and C-197/89, EU:C:1990:360, paragraph 33, and of 19 December 2013, *Fish Legal and Shirley*, C-279/12, EU:C:2013:853, paragraph 29 and the case-law cited). The justification for a reference for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute (judgments of 15 June 1995, *Zabala Erasun and Others*, C-422/93 to C-424/93, EU:C:1995:183, paragraph 29, and of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 28 and the case-law cited).

45 As is apparent from the actual wording of Article 267 TFEU, the question referred for a preliminary ruling must be ‘necessary’ to enable the referring court to ‘give judgment’ in the case before it (see, to that effect,

judgment of 17 February 2011, *Weryński*, C-283/09, EU:C:2011:85, paragraph 35).

46 The Court has thus repeatedly held that it is clear from both the wording and the scheme of Article 267 TFEU that a national court or tribunal is not empowered to bring a matter before the Court by way of a request for a preliminary ruling unless a case is pending before it in which it is called upon to give a decision which is capable of taking account of the preliminary ruling (judgments of 21 April 1988, *Pardini*, 338/85, EU:C:1988:194, paragraph 11; of 4 October 1991, *Society for the Protection of Unborn Children Ireland*, C-159/90, EU:C:1991:378, paragraphs 12 and 13; and of 27 February 2014, *Pohotovosť*, C-470/12, EU:C:2014:101, paragraph 28 and the case-law cited).

47 In that context, the task of the Court must be distinguished according to whether it is requested to give a preliminary ruling or to rule on an action for failure to fulfil obligations. Whereas, in an action for failure to fulfil obligations, the Court must ascertain whether the national measure or practice challenged by the Commission or another Member State, contravenes EU law in general, without there being any need for there to be a relevant dispute before the national courts, the Court's function in proceedings for a preliminary ruling is, by contrast, to help the referring court to resolve the specific dispute pending before that court (see, to that effect, judgment of 15 November 2016, *Ullens de Schooten*, C-268/15, EU:C:2016:874, paragraph 49).

48 In such proceedings, there must therefore be a connecting factor between that dispute and the provisions of EU law whose interpretation is sought, by virtue of which that interpretation is objectively required for the decision to be taken by the referring court (see, to that effect, order of 25 May 1998, *Nour*, C-361/97, EU:C:1998:250, paragraph 15 and the case-law cited).

49 In the present case, it must be held, first, that the disputes in the main proceedings are not substantively connected to EU law, in particular to the second subparagraph of Article 19(1) TEU to which the questions referred relate, and that the referring courts are not therefore required to apply that law, or that provision, in order to determine the substantive solution to be given to those disputes. In that respect, the present joined cases can be distinguished, in particular, from the case which gave rise to the judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses* (C-64/16, EU:C:2018:117), in which the referring court had to rule on an action seeking annulment of administrative decisions reducing the remuneration of the members of the Tribunal de Contas (Court of Auditors, Portugal) pursuant to national legislation which provided for such a reduction and whose compatibility with the second subparagraph of Article 19(1) TEU was challenged before that referring court.

50 Secondly, although the Court has already held to be admissible questions referred for a preliminary ruling on the interpretation of procedural provisions of EU law which the referring court is required to apply in order to deliver its judgment (see, to that effect, inter alia, judgment of 17 February 2011, *Weryński*, C-283/09, EU:C:2011:85, paragraphs 41 and 42), that is not the scope of the questions raised in the present joined cases.

51 Thirdly, an answer by the Court to those questions does not appear capable of providing the referring courts with an interpretation of EU law which would allow them to resolve procedural questions of national law before being able to rule on the substance of the disputes before them. In that regard, the present cases also differ, for example, from the cases giving rise to the judgment of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)* (C-585/18, C-624/18 and C-625/18, EU:C:2019:982), in which the interpretation sought from the Court was such as to have a bearing on the issue of determining which court had jurisdiction for the purposes of settling disputes relating to EU law, as is clear specifically from paragraphs 100, 112 and 113 of that judgment.

52 In those circumstances, it is not apparent from the orders for reference that there is a connecting factor between the provision of EU law to which the questions referred for a preliminary ruling relate and the disputes in the main proceedings, and which makes it necessary to have the interpretation sought so that the referring courts may, by applying the guidance provided by such an interpretation, make the decisions needed to rule on those disputes.

53 Those questions do not therefore concern an interpretation of EU law which meets an objective need for the resolution of those disputes, but are of a general nature.

54 As regards the circumstance, mentioned by the national courts in their letters referred to in paragraphs 20 and 21 above, in which the two judges who made the present requests for a preliminary ruling were, as a result of those requests, the subject of an investigation prior to the initiation of potential disciplinary proceedings against them, it should be noted that the disputes in the main proceedings in respect of which the Court is requested to provide a preliminary ruling in the present joined cases do not relate to that circumstance. Moreover, it should be noted, as the Polish Government stated in its written observations and at the hearing before the Court, that those investigation proceedings have since been closed on the ground that no disciplinary misconduct, involving a failure to respect the dignity of their office as a result of making those requests for a preliminary ruling, had been established.

55 In that context, it is important to note, as is clear from the Court's settled case-law, that the keystone of the judicial system established by the Treaties is the preliminary ruling procedure provided for in Article 267 TFEU, which, by setting up a dialogue between one court and another, between the Court of Justice and the courts and tribunals of the Member States, has the object of securing uniformity in the interpretation of EU law, thereby serving to ensure its consistency, its full effect and its autonomy as well as, ultimately, the particular nature of the law established by the Treaties (Opinion 2/13 of 18 December 2014, EU:C:2014:2454, paragraph 176, and judgment of 24 October 2018, *XC and Others*, C-234/17, EU:C:2018:853, paragraph 41).

56 In accordance with equally settled case-law, Article 267 TFEU gives national courts the widest discretion in referring matters to the Court if they consider that a case pending before them raises questions involving the interpretation of provisions of EU law, or consideration of their validity, which are necessary for the resolution of the case before them. National courts are, moreover, free to exercise that discretion at whatever stage of the proceedings they consider appropriate (judgments of 5 October 2010, *Elchinov*, C-173/09, EU:C:2010:581, paragraph 26, and of 24 October 2018, *XC and Others*, C-234/17, EU:C:2018:853, paragraph 42 and the case-law cited).

57 Therefore, a rule of national law cannot prevent a national court from using that discretion, which is an inherent part of the system of cooperation between the national courts and the Court of Justice established in Article 267 TFEU and of the functions of the court responsible for the application of EU law, entrusted by that provision to the national courts (judgment of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)* (C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 103 and the case-law cited).

58 Provisions of national law which expose national judges to disciplinary proceedings as a result of the fact that they submitted a reference to the Court for a preliminary ruling cannot therefore be permitted (see, to that effect, order of the President of the Court of 1 October 2018, *Miasto Łowicz and Prokuratura Okręgowa w Płocku*, C-558/18 and C-563/18, not published, EU:C:2018:923, paragraph 21). Indeed, the mere prospect, as the case may be, of being the subject of disciplinary proceedings as a result of making such a reference or deciding to maintain that reference after it was made is likely to undermine the effective exercise by the national judges concerned of the discretion and the functions referred to in the preceding paragraph.

59 For those judges, not being exposed to disciplinary proceedings or measures for having exercised such a discretion to bring a matter before the Court, which is exclusively within their jurisdiction, also constitutes a guarantee that is essential to judicial independence (see, to that effect, order of 12 February 2019, *RH*, C-8/19 PPU, EU:C:2019:110, paragraph 47), which independence is, in particular, essential to the proper working of the judicial cooperation system embodied by the preliminary ruling mechanism under Article 267 TFEU (see, to that effect, judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 54 and the case-law cited).

60 It follows from all of the foregoing that the present requests for a preliminary ruling must be declared inadmissible.

Costs

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

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

The requests for a preliminary ruling made by the Sąd Okręgowy w Łodzi (Regional Court, Łódź, Poland) and by the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland), by decisions of 31 August 2018 and 4 September 2018, are inadmissible.

[Signatures]

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* Language of the case: Polish