

Questions referred

1. Should Article 47 of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 9(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation,⁽¹⁾ be interpreted as meaning that, where an appeal is brought before a court of last instance in a Member State against an alleged infringement of the prohibition of discrimination on the ground of age in respect of a judge of that court, together with a motion for granting security in respect of the reported claim, that court — in order to protect the rights arising from EU law by ordering an interim measure provided for under national law — must refuse to apply national provisions which confer jurisdiction, in the case in which the appeal was lodged, on an organisational unit of that court which is not operational by reason of a failure to appoint judges adjudicating within it?
2. In the event that judges are appointed to adjudicate within the organisational unit having jurisdiction under national law to hear and determine the action brought, on a proper construction of the third paragraph of Article 267 TFEU, read in conjunction with Article 19(1) and Article 2 TEU and Article 47 of the Charter of Fundamental Rights of the European Union, is a newly-created chamber of a court of last instance of a Member State which has jurisdiction to hear the case of a national court judge at first or second instance and which is composed exclusively of judges selected by a national body tasked with safeguarding the independence of the courts, namely the Krajowa Rada Sądownictwa (National Council of the Judiciary), which, having regard to the systemic model for the way in which it is formed and the way in which it operates, is not guaranteed to be independent from the legislative and executive authorities, an independent court or tribunal within the meaning of EU law?
3. If the answer to the second question is negative, should the third paragraph of Article 267 TFEU, read in conjunction with Article 19(1) and Article 2 TEU and Article 47 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that a chamber of a court of last instance of a Member State which does not have jurisdiction in the case but which meets the requirements of EU law for a court seised with an appeal in an EU case, should disregard the provisions of national legislation which preclude it from having jurisdiction in that case?

⁽¹⁾ OJ 2000 L 303, p. 16.

Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 17 October 2018 — Unitel Sp. z o.o. w Warszawie v Dyrektor Izby Skarbowej w Warszawie

(Case C-653/18)

(2019/C 44/16)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: Unitel Sp. z o.o. w Warszawie

Respondent: Dyrektor Izby Skarbowej w Warszawie

Questions referred

1. In the light of Article 146(1)(a) and (b) and Article 131 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax⁽¹⁾ and of the principles of taxation of consumption, neutrality and proportionality, should the correct national practice be to apply an exemption with the right to deduct (which in Poland means application of a 0 % rate) in each case where both of the following conditions are met:
 - (a) the goods have been exported to an unidentified recipient outside the European Union; and

- (b) there is clear evidence that the goods have left the territory of the European Union, and this is not disputed?
2. Do the provisions of Article 146(1)(a) and (b) and Article 131 of Directive 2006/112/EC and the principles of taxation of consumption, neutrality and proportionality preclude a national practice whereby it is assumed that no supply of goods has taken place in the case where the goods have been indubitably exported outside the territory of the European Union, and following their exportation the tax authorities establish in the course of their investigation that the person actually acquiring the goods was not the entity to whom the taxable person issued the invoice documenting the supply, but was another entity unidentified by the authorities, as a result of which the authorities refuse to exempt such a transaction from tax with the right to deduct (which in Poland means application of a 0 % rate)?
 3. In the light of Article 146(1)(a) and (b) and Article 131 of Directive 2006/112/EC and of the principles of taxation of consumption, neutrality and proportionality, should the correct national practice be to apply the domestic rate to the supply of goods where there is clear evidence that the goods have left the territory of the European Union, but the authorities, in the absence of an identified recipient, conclude that no supply of goods has taken place, or should it rather be assumed that no taxable transaction for VAT purposes has taken place at all in those circumstances and therefore that the taxable person is not entitled to deduct input VAT on the purchase of the exported goods under Article 168 of Directive 2006/112/EC?

⁽¹⁾ OJ 2006 L 347, p. 1.

**Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 26 October 2018 — BP
v UNIPARTS sàrl, having its registered office in Nyon**

(Case C-668/18)

(2019/C 44/17)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Claimant: BP

Defendant: UNIPARTS sàrl, having its registered office in Nyon

Questions referred

1. Should the second sentence of Article 19(1) TEU, in conjunction with the third sentence of Article 4(3) TEU and Article 2 TEU, the third paragraph of Article 267 TFEU and Article 47 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that the principle of the irremovability of judges, forming part of the principle of effective judicial protection and of the principle of the rule of law, is infringed in every case where a national legislature lowers the retirement age for judges of the court of last instance in a Member State (for example, from 70 to 65 years) and applies the new lower retirement age to judges in active service, without leaving the decision on whether to take advantage of the lower retirement age to the sole discretion of the judge concerned?
2. Should the second sentence of Article 19(1) TEU, in conjunction with the third sentence of Article 4(3) TEU and Article 2 TEU, the third paragraph of Article 267 TFEU and Article 47 of the Charter of Fundamental Rights, be interpreted as meaning that the principle of the rule of law and the standard of independence required to ensure effective judicial protection in cases involving EU law are infringed when a national legislature, in breach of the principle of the irremovability of judges, lowers the normal age at which a judge of the court of last instance in a Member State may hold a judicial post from 70 to 65 years, such that continuing in that post is dependent on the discretionary consent of an executive body?