

2. Article 15(1) of Directive 2002/58, as amended by Directive 2009/136, read in the light of Articles 7, 8 and 11 and Article 52(1) of the Charter of Fundamental Rights, must be interpreted as precluding national legislation that confers upon the public prosecutor's office, whose task is to direct the criminal pre-trial procedure and to bring, where appropriate, the public prosecution in subsequent proceedings, the power to authorise access of a public authority to traffic and location data for the purposes of a criminal investigation.

(¹) OJ C 54, 11.2.2019.

Judgment of the Court (Grand Chamber) of 2 March 2021 (request for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — A.B., C.D., E.F., G.H., I.J. v Krajowa Rada Sądownictwa (Case C-824/18) (¹)

(Reference for a preliminary ruling — Article 2 and the second subparagraph of Article 19(1) TEU — Rule of law — Effective judicial protection — Principle of judicial independence — Procedure for appointment to a position as judge at the Sąd Najwyższy (Supreme Court, Poland) — Appointment by the President of the Republic of Poland on the basis of a resolution emanating from the National Council of the Judiciary — Lack of independence of that council — Lack of effectiveness of the judicial remedy available against such a resolution — Judgment of the Trybunał Konstytucyjny (Constitutional Court, Poland) repealing the provision on which the referring court's jurisdiction is based — Adoption of legislation declaring the discontinuance of pending cases by operation of law and precluding in the future any judicial remedy in such cases — Article 267 TFEU — Option and/or obligation for national courts to make a reference for a preliminary ruling and to maintain that reference — Article 4(3) TEU — Principle of sincere cooperation — Primacy of EU law — Power to disapply national provisions which do not comply with EU law)

(2021/C 148/03)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicants: A.B., C.D., E.F., G.H., I.J.

Defendant: Krajowa Rada Sądownictwa

Intervening parties: Prokurator Generalny, Rzecznik Praw Obywatelskich

Operative part of the judgment

1. Where amendments are made to the national legal system which, first, deprive a national court of its jurisdiction to rule in the first and last instance on appeals lodged by candidates for positions as judges at a court such as the Sąd Najwyższy (Supreme Court, Poland) against decisions of a body such as the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland) not to put forward their application, but to put forward that of other candidates to the President of the Republic of Poland for appointment to such positions, which, secondly, declare such appeals to be discontinued by operation of law while they are still pending, ruling out the possibility of their being continued or lodged again, and which, thirdly, in so doing, deprive such a national court of the possibility of obtaining an answer to the questions that it has referred to the Court for a preliminary ruling:

— Article 267 TFEU and Article 4(3) TEU must be interpreted as precluding such amendments where it is apparent — a matter which it is for the referring court to assess on the basis of all the relevant factors — that those amendments have had the specific effects of preventing the Court from ruling on questions referred for a preliminary ruling such as those put to it by that court and of precluding any possibility of a national court repeating in the future questions similar to those questions;

- the second subparagraph of Article 19(1) TEU must be interpreted as precluding such amendments where it is apparent — a matter which it is for the referring court to assess on the basis of all the relevant factors — that those amendments are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of the judges appointed, by the President of the Republic of Poland, on the basis of those decisions of the Krajowa Rada Sądownictwa (National Council of the Judiciary), to external factors, in particular, to the direct or indirect influence of the legislature and the executive, and as to their neutrality with respect to the interests before them and, thus, may lead to those judges not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society governed by the rule of law must inspire in subjects of the law.

Where it is proved that those articles have been infringed, the principle of primacy of EU law must be interpreted as requiring the referring court to disapply the amendments at issue, whether they are of a legislative or constitutional origin, and, consequently, to continue to assume the jurisdiction previously vested in it to hear disputes referred to it before those amendments were made.

2. The second subparagraph of Article 19(1) TEU must be interpreted as precluding provisions amending the state of national law in force under which:

- notwithstanding the fact that a candidate for a position as judge at a court such as the Sąd Najwyższy (Supreme Court) lodges an appeal against the decision of a body such as the Krajowa Rada Sądownictwa (National Council of the Judiciary) not to accept his or her application, but to put forward that of other candidates to the President of the Republic of Poland, that decision is final inasmuch as it puts forward those other candidates, with the result that that appeal does not preclude the appointment of those other candidates by the President of the Republic of Poland and that any annulment of that decision inasmuch as it did not put forward the appellant for appointment may not lead to a fresh assessment of the appellant's situation for the purposes of any assignment of the position concerned, and,
- moreover, such an appeal may not be based on an allegation that there was an incorrect assessment of the candidates' fulfilment of the criteria taken into account when a decision on the presentation of the proposal for appointment was made,

where it is apparent — a matter which it is for the referring court to assess on the basis of all the relevant factors — that those provisions are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of the judges thus appointed, by the President of the Republic of Poland, on the basis of the decisions of the Krajowa Rada Sądownictwa (National Council of the Judiciary), to external factors, in particular, to the direct or indirect influence of the legislature and the executive, and as to their neutrality with respect to the interests before them and, thus, may lead to those judges not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society governed by the rule of law must inspire in subjects of the law.

Where it is proved that the second subparagraph of Article 19(1) TEU has been infringed, the principle of primacy of EU law must be interpreted as requiring the referring court to disapply those provisions and to apply instead the national provisions previously in force while itself exercising the judicial review envisaged by those latter provisions.

⁽¹⁾ OJ C 164, 13.5.2019.

Judgment of the Court (Grand Chamber) of 2 March 2021 — European Commission v Italian Republic, Banca Popolare di Bari Società Cooperativa per Azioni, Fondo interbancario di tutela dei depositi, Banca d'Italia

(Case C-425/19 P) ⁽¹⁾

(Appeal — State aid — Measures adopted by a consortium of banks governed by private law for the benefit of one of its members — Measures authorised by the Central Bank of the Member State — Concept of 'State aid' — Whether imputable to the State — State resources — Evidence supporting the conclusion that a measure is imputable — Distortion of elements of fact and of law — Decision declaring the aid incompatible with the internal market)

(2021/C 148/04)

Language of the case: Italian

Parties

Appellant: European Commission (represented by: P. Stancanelli, L. Flynn, A. Bouchagiar and by D. Recchia, acting as Agents)