Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

13 January 2022 *

(Reference for a preliminary ruling – Admissibility – Article 267 TFEU – Definition of 'court or tribunal of a Member State' – Bar Association Disciplinary Court – Disciplinary investigation initiated against a lawyer – Decision of the Disciplinary Agent finding that there was no disciplinary offence and terminating the investigation – Appeal by the Minister for Justice to the Bar Association Disciplinary Court – Directive 2006/123/EC – Services in the internal market – Article 4, point (6), and Article 10(6) – Authorisation scheme – Withdrawal of authorisation – Article 47 of the Charter of Fundamental Rights of the European Union – Not applicable)

In Case C-55/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Dyscyplinarny Izby Adwokackiej w Warszawie (Bar Association Disciplinary Court, Warsaw, Poland), made by decision of 24 January 2020, received at the Court on 31 January 2020, in the proceedings initiated by

Minister Sprawiedliwości

intervening parties:

Prokurator Krajowy – Pierwszy Zastępca Prokuratora Generalnego,

Rzecznik Dyscyplinarny Izby Adwokackiej w Warszawie,

THE COURT (Third Chamber),

composed of A. Prechal (Rapporteur), President of the Second Chamber, acting as President of the Third Chamber, J. Passer, F. Biltgen, L.S. Rossi and N. Wahl, Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Prokurator Krajowy – Pierwszy Zastępca Prokuratora Generalnego, by R. Hernand and B. Święczkowski,

* Language of the case: Polish.

– the Polish Government, by B. Majczyna, acting as Agent,

– the Netherlands Government, by M.K. Bulterman and J.M. Hoogveld, acting as Agents,

– the European Commission, initially by L. Armati, K. Herrmann, S.L. Kalėda and H. Støvlbæk, and subsequently by L. Armati, K. Herrmann and S.L. Kalėda, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 June 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36) and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings brought by the Minister Sprawiedliwości (Minister for Justice, Poland) against the decision of a disciplinary agent who closed an investigation initiated against a lawyer after finding that there was no disciplinary offence attributable to the person concerned.

Legal context

EU law

Directive 2006/123

3 Recitals 33 and 39 of Directive 2006/123 are worded as follows:

'(33) The services covered by this Directive concern a wide variety of ever-changing activities … The services covered are also services provided both to businesses and to consumers, such as legal or fiscal advice …

…

(39) The concept of "authorisation scheme" should cover, inter alia, the administrative procedures for granting authorisations, licences, approvals or concessions, and also the obligation, in order to be eligible to exercise the activity, to be registered as a member of a profession or entered in a register, roll or database, to be officially appointed to a body or to obtain a card attesting to membership of a particular profession. …'

4 Article 1(5) of that directive states:

'This Directive does not affect Member States' rules of criminal law. However, Member States may not restrict the freedom to provide services by applying criminal law provisions which specifically regulate

or affect access to or exercise of a service activity in circumvention of the rules laid down in this Directive.'

5 Article 3(1) of that directive states:

'If the provisions of this Directive conflict with a provision of another Community act governing specific aspects of access to or exercise of a service activity in specific sectors or for specific professions, the provision of the other Community act shall prevail and shall apply to those specific sectors or professions. …'

6 Article 4 of that directive states:

'For the purposes of this Directive, the following definitions shall apply:

(1) "service" means any self-employed economic activity, normally provided for remuneration, as referred to in Article [57 TFEU];

…

(6) "authorisation scheme" means any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof;

(7) "requirement" means any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the Member States or in consequence of case-law, administrative practice, the rules of professional bodies, or the collective rules of professional associations or other professional organisations, adopted in the exercise of their legal autonomy; …

…'

7 In Section 1, entitled 'Authorisations', of Chapter III, entitled 'Freedom of establishment for providers', of Directive 2006/123, Article 9(3) provides:

'This section shall not apply to those aspects of authorisation schemes which are governed directly or indirectly by other Community instruments.'

8 Also in Section 1, Article 10 of Directive 2006/123, entitled 'Conditions for the granting of authorisation', provides in paragraph 6 thereof:

'Except in the case of the granting of an authorisation, any decision from the competent authorities, including refusal or withdrawal of an authorisation, shall be fully reasoned and shall be open to challenge before the courts or other instances of appeal.'

9 Section 2 of Chapter III of Directive 2006/123, which comprises Articles 14 and 15 thereof, concerns requirements relating to access to or the exercise of a service activity which are prohibited or subject to evaluation.

Directive 98/5/EC

10 Recital 7 of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ 1998 L 77, p. 36) states as follows:

'Whereas, in keeping with its objective, this Directive does not lay down any rules concerning purely domestic situations, and where it does affect national rules regulating the legal profession it does so no more than is necessary to achieve its purpose effectively; whereas it is without prejudice in particular to national legislation governing access to and practice of the profession of lawyer under the professional title used in the host Member State'.

11 Under Article 1(1) of that law:

'The purpose of this Directive is to facilitate practice of the profession of lawyer on a permanent basis in a self-employed or salaried capacity in a Member State other than that in which the professional qualification was obtained.'

Polish law

The Law on the Bar

12 Article 9 of the ustawa z dnia 26 maja 1982 r. – Prawo o adwokaturze (Law on the Bar), of 26 May 1982 (Dz. U. No 16, item 124), as amended, provides as follows:

'1. The following are the bodies of the Bar: the National Bar Assembly, the Supreme Bar Council, the Higher Disciplinary Court, the Bar Disciplinary Agent and the Higher Audit Committee.

2. Only lawyers may be members of the bodies of the Bar.'

13 Under Article 11 of that law:

'1. Elections to the bodies of the Bar and to the bodies of the local Bar Associations … shall be conducted by secret ballot with an unlimited number of candidates.

2. The term of office of the bodies of the Bar and of the bodies of the local Bar Associations … shall be four years, but they are obliged to operate until such time as newly elected bodies have been established.

…

4. Individual members of the bodies referred to in paragraph 1 may be dismissed before the expiry of their term of office by the body which elected them.

…'

14 Article 39 of that law states:

‘The bodies of the local Bar Association shall be:

(1) the General Assembly of the local Bar Association, composed of lawyers practising the profession and representatives of other lawyers;

…

(3) the Disciplinary Court;

(3a) the Disciplinary Agent;

…’

15 Article 40 of that law reads:

‘The scope of the responsibilities of the General Assembly of the local Bar Association shall include:

…

(2) selection of the chairperson, the president of the Disciplinary Court, the Disciplinary Agent, … and the members and alternate members of … the Disciplinary Court …;

…’

16 Under Article 51 of the Law on the Bar:

‘1. The Disciplinary Court shall consist of a president, a vice-president, members and alternate members.

2. The Disciplinary Court adjudicates as a full Court, comprised of three judges.’

17 Article 58 of that law states:

‘The scope of the responsibilities the Supreme Bar Council shall include:

…

(13) suspension of the right to perform functions for breach of the essential obligations of individual members of the bodies of local Bar Associations and bodies of Bar Chambers, with the exception of members of Disciplinary Courts, and applying to the competent bodies for their dismissal;

…’

18 Article 80 of that law states:

'Lawyers … shall be subject to disciplinary liability for conduct contrary to the law, ethical principles or dignity of the profession or for infringement of their professional obligations …'

19 Under Article 81(1) of that law:

'The disciplinary penalties are as follows:

(1) caution;

(2) reprimand;

(3) fine;

(4) suspension of the right to engage in professional activity for a period of between three months and five years;

(5) *[repealed]*

(6) expulsion from the Bar.'

20 Article 82(2) of the Law on the Bar provides:

'Expulsion from the Bar shall entail removal from the register of lawyers with no right to apply for re-registration in that register for a period of 10 years from the date on which the ruling imposing expulsion from the Bar becomes final.'

21 Article 88a(1) and (4) of that law states:

'1. Decisions and orders closing disciplinary proceedings shall be notified *ex officio*, together with the reasons on which they are based, to the parties and to the Minister for Justice.

…

4. The parties to the proceedings and the Minister for Justice shall have the right to lodge an appeal against decisions and orders terminating disciplinary proceedings within 14 days of the date of delivery of a copy of the decision or order, together with a statement of grounds, and instruction regarding the time limit for, and manner of lodging an appeal.'

22 Under Article 89(1) of that law:

'A Disciplinary Court shall be independent as regards its rulings.'

23 Article 91(2) and (3) of that law provides as follows:

'2. The Disciplinary Court … shall hear all cases as the court of first instance, with the exception of … hearings of an appeal against a decision of a Disciplinary Agent not to initiate disciplinary proceedings or to discontinue disciplinary proceedings.

3. The Higher Disciplinary Court shall hear:

(1) as the court of second instance, cases heard at first instance by Disciplinary Courts …;

…'

24 Article 91a (1) of the Law on the Bar is worded as follows:

'The parties, the Minister for Justice, the Ombudsman and the President of the Supreme Bar Council may bring an appeal on a point of law before the [Sąd Najwyższy (Supreme Court)] against decisions delivered at second instance by the Higher Disciplinary Court.'

25 Article 91b of that law provides:

'An appeal on a point of law may be lodged on the grounds of a manifest infringement of the law and on the grounds of a disciplinary measure which is manifestly disproportionate.'

26 Article 91c of that law states:

'An appeal on a point of law shall be lodged before the [Sąd Najwyższy (Supreme Court)] through the Higher Disciplinary Court within 30 days of the date of delivery of the ruling, together with the statement of grounds.'

27 Article 95n of the Law on the Bar states:

'In cases not governed by this Law, the appropriate provisions of the following shall apply *mutatis mutandis* to disciplinary proceedings:

(1) the Kodeks postępowania karnego (Code of Criminal Procedure);

…'

The Code of Criminal Procedure

28 Under Paragraph 100(8) of the Code of Criminal Procedure:

'After pronouncement or delivery of the decision or order, the parties to the proceedings shall be instructed regarding their right to lodge an appeal, and the time limit for, and manner of doing so, or that the decision or order is not amenable to appeal.'

29 Article 521 of that code provides as follow:

'The [Prokurator Generalny (Prosecutor General)] and the [Rzecznik Praw Obywatelskich (Ombudsman)] may lodge an appeal on a point of law against any final ruling of the court terminating proceedings.'

30 Article 525 of that code provides as follows:

'1. The appellant shall lodge an appeal on a point of law before the [Sąd Najwyższy (Supreme Court)] through the appeal court.

2. In the case referred to in Article 521, the appeal on a point of law shall be brought directly before the [Sąd Najwyższy (Supreme Court)].'

Law on the Public Prosecutor's Office

31 Article 1(2) of the ustawa z dnia 28 stycznia 2016 r. – Prawo o prokuraturze (Law on the Public Prosecutor's Office) of 28 January 2016 (Dz. U. of 2016, item 177), states as follows:

'The Prosecutor General shall be the highest department of the public prosecutor's office. The post of Prosecutor General shall be exercised by the Minister for Justice. …'

The Law on the Supreme Court

32 Under the ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym (Law on the Supreme Court), of 8 December 2017 (Dz. U. of 2018, item 5) the Sąd Najwyższy (Supreme Court) is composed of various chambers, including the Criminal Chamber and the Disciplinary Chamber.

33 In accordance with Article 24 of that law, inter alia, cases examined in the light of the Code of Criminal Procedure and the other cases to which the provisions of that code apply fall within the jurisdiction of the Criminal Chamber of the Sąd Najwyższy (Supreme Court).

34 Under the first indent of Article 27(1), point (1), (b) of that law, inter alia, cases relating to disciplinary proceedings conducted under the Law on the Bar fall within the jurisdiction of the Disciplinary Chamber of the Sąd Najwyższy (Supreme Court).

The case-law of the Criminal and Disciplinary Chambers of the Sąd Najwyższy (Supreme Court)

35 The Criminal Chamber of the Sąd Najwyższy (Supreme Court) and academic writings have, to date, adopted the position that the Prosecutor General and the Ombudsman are not entitled to appeal against decisions of the Bar Association Disciplinary Court confirming a decision of the Disciplinary Agent not to initiate a disciplinary investigation. The Sąd Najwyższy (Supreme Court) considers, in that regard, that the Law on the Bar fully governs the admissibility of the appeal on a point of law and that, in accordance with Article 95n of that law, Article 521 of the Code of Criminal Procedure does not therefore apply.

36 However, in a judgment delivered on 27 November 2019, the Disciplinary Chamber of the Sąd Najwyższy (Supreme Court) adopted the opposite position, holding that Article 521 of the Code of Criminal Procedure applies in respect of such decisions of the Bar Association Disciplinary Court and, consequently, declaring admissible an appeal on a point of law brought by the Prosecutor General against an order of the Sąd Dyscyplinarny Izby Adwokackiej w Warszawie (Bar Association Disciplinary Court, Warsaw, Poland) which upheld the decision of the Disciplinary Agent to close a disciplinary investigation conducted against a lawyer.

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

37 By letter of 20 July 2017, the Prokurator Krajowy – Pierwszy Zastępca Prokuratora Generalnego (National Public Prosecutor – First Deputy of the Prosecutor General) ('the National Prosecutor') asked the Rzecznik Dyscyplinarny Izby Adwokackiej w Warszawie (Disciplinary

Agent of the Warsaw Bar Association, Poland) ('the Disciplinary Agent') to initiate disciplinary proceedings against Mr R.G. on the ground that, by certain public statements, he had exceeded the limits of a lawyer's freedom of expression and committed disciplinary misconduct on account of the threats that those statements allegedly conveyed to the Minister for Justice.

38 By decision of 7 November 2017, the Disciplinary Agent refused to open that disciplinary investigation. Following the appeal brought by the National Prosecutor, that decision was annulled by an order of the Sąd Dyscyplinarny Izby Adwokackiej w Warszawie (Bar Association Disciplinary Court, Warsaw) of 23 May 2018, as a result of which the case was referred back to the Disciplinary Agent for a fresh examination. By decision of 18 June 2018, the latter opened a disciplinary investigation into Mr R.G., which was closed by a decision of 28 November 2018 in which that agent concluded that Mr R.G. was not guilty of disciplinary misconduct. Following appeals brought by the Minister for Justice and the National Prosecutor, the Sąd Dyscyplinarny Izby Adwokackiej w Warszawie (Bar Association Disciplinary Court), on 13 June 2019, annulled that decision of the Disciplinary Agent and the case was again referred back to the Disciplinary Agent.

39 By decision of 8 August 2019, the Disciplinary Agent once again closed the disciplinary investigation after finding that there were no elements constituting disciplinary misconduct on the part of Mr R.G. The Sąd Dyscyplinarny Izby Adwokackiej w Warszawie (Bar Association Disciplinary Court, Warsaw) is currently seised of an appeal brought by the Minister for Justice against that decision.

40 In that context, the Sąd Dyscyplinarny Izby Adwokackiej w Warszawie (Bar Association Disciplinary Court, Warsaw) states, as a preliminary point, that it considers that it satisfies all the conditions necessary for it to be regarded as a court or tribunal within the meaning of Article 267 TFEU, so that it is entitled to make a reference to the Court for a preliminary ruling.

41 The Sąd Dyscyplinarny Izby Adwokackiej w Warszawie (Bar Association Disciplinary Court, Warsaw) is uncertain, first, whether Article 47 of the Charter is applicable in the context of proceedings such as those before it in the main proceedings. According to that court, that would be the case if it were to be considered that those proceedings fell within the ambit of the rules governing inclusion on the register of lawyers, that is to say, according to that court, an authorisation scheme within the meaning of Article 4, point 6, of Directive 2006/123 and Chapter III thereof, in so far as those proceedings may, as the case may be, lead to the expulsion of the lawyer concerned from the Bar and, in that case, to the removal of that lawyer from the register of lawyers. Such removal from the register amounts to withdrawal of authorisation within the meaning of Article 10(6) of that directive.

42 Secondly, and in the event that Article 47 of the Charter is thus applicable in the context of the main proceedings, the Sąd Dyscyplinarny Izby Adwokackiej w Warszawie (Bar Association Disciplinary Court, Warsaw) raises issues on various aspects of the interpretation of that provision.

43 First, that court observes that, if an appeal against the decision which it is called upon to give in the main proceedings were to be held admissible, the body with jurisdiction to hear that appeal would, in accordance with the first indent of Article 27(1), point 1, (b) of the Law on the Supreme Court, be the Disciplinary Chamber of the Sąd Najwyższy (Supreme Court). It follows from the judgment of 5 December 2019 of the latter court, delivered following 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), that that chamber is not an independent and impartial tribunal within the meaning of Article 47 of the Charter.

44 In those circumstances, the Sąd Dyscyplinarny Izby Adwokackiej w Warszawie (Bar Association Disciplinary Court, Warsaw), which will be required, once it has given its decision in the main proceedings, to inform the parties of the possibility for them to bring an appeal against that decision, wishes to know whether the onus will be on it, on that occasion, to disapply the first indent of Article 27(1), point 1, (b) of the Law on the Supreme Court and, consequently, to inform those parties about the possibility of bringing an appeal before the Criminal Chamber of the Sąd Najwyższy (Supreme Court). Similarly, and in the event that such an appeal is actually lodged, the Disciplinary Court wishes to know whether it will then be required to address that appeal to that Criminal Chamber rather than to the Disciplinary Chamber of the Sąd Najwyższy (Supreme Court).

45 Secondly, the Sąd Dyscyplinarny Izby Adwokackiej w Warszawie (Bar Association Disciplinary Court, Warsaw) wonders whether, when it is thus called upon to inform the parties of the existence or otherwise of a remedy against its future decision, the onus will be on it, where appropriate, not to take account of the case-law of the Disciplinary Chamber of the Sąd Najwyższy (Supreme Court) referred to in paragraph 36 above, according to which, in cases such as that pending in the main proceedings, an appeal may be brought by the Prosecutor General, and to follow, in that regard, the settled case-law of the Criminal Chamber of that court referred to in paragraph 35 above, according to which such an appeal is precluded.

46 Thirdly, the Sąd Dyscyplinarny Izby Adwokackiej w Warszawie (Bar Association Disciplinary Court, Warsaw) observes that the appeal before it was brought by the Minister for Justice. One of the factors that led the Sąd Najwyższy (Supreme Court) to hold, in its abovementioned judgment of 5 December 2019, that the Disciplinary Chamber of that court is not an independent and impartial tribunal is the very dependence of that chamber on the Executive and the influence of the Minister for Justice on the composition of that chamber. In the light of those circumstances, that Disciplinary Court takes the view that, even if it were to hold, having regard to the answers to be given by the Court of Justice to the questions raised in paragraphs 44 and 45 above, that an appeal is not possible in the present case and any actions against the dismissal of that appeal should be referred to the Criminal Chamber of the Sąd Najwyższy (Supreme Court), there would still be a risk that such an appeal brought by the Minister for Justice, in his capacity as Prosecutor General, before the Disciplinary Chamber of the Sąd Najwyższy (Supreme Court) would be declared admissible and examined by the latter. Accordingly, the Disciplinary Court wonders whether, in order to deal with that eventuality, it may be justified not to rule on the appeal currently pending before it.

47 In those circumstances, the Sąd Dyscyplinarny Izby Adwokackiej w Warszawie (Bar Association Disciplinary Court, Warsaw) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Are the provisions of Chapter III of Directive [2006/123], including Article 10(6) [thereof], applicable to proceedings concerning the disciplinary liability of Polish advocates and foreign lawyers registered with a Bar Association, in connection with which liability an advocate may, inter alia, be fined, suspended, or expelled from the Bar, and a foreign lawyer may, inter alia, be fined, have his right to provide legal assistance in the Republic of Poland suspended, or be prohibited from providing legal assistance in the Republic of Poland? If the

answer to the above question is in the affirmative, do the provisions of the [the Charter], including Article 47 thereof, apply to the above proceedings before Bar Association [Disciplinary] Courts in cases where there is no right of appeal against the rulings of those courts to national courts or where such rulings are subject only to an extraordinary appeal, such as an appeal on a point of law to the Sąd Najwyższy (Supreme Court), also in cases where all the essential elements are present within a single Member State?

(2) In a case where, in the proceedings referred to in Question 1, under the national legislation in force the body competent to hear an appeal on a point of law against a ruling or decision of a Bar Association Disciplinary Court or an objection to an order refusing such an appeal on a point of law is a body that, in the view of that court, which is consistent with the view expressed by the Sąd Najwyższy (Supreme Court) in its judgment of 5 December 2019 …, is not an independent and impartial tribunal for the purposes of Article 47 of the Charter, is it necessary to disregard the national provisions establishing the jurisdiction of that body and is it the duty of the Bar Association Disciplinary Court to refer such an appeal on a point of law or objection to a judicial body which would have jurisdiction if those national provisions had not precluded it?

(3) In a case where – in the proceedings referred to in Question 1 – no appeal on a point of law can be lodged against a ruling or decision of a Bar Association Disciplinary Court, according to the position of that court, either by the Prosecutor General or the Ombudsman, and that position is:
   (a) contrary to the position expressed in the resolution of 27 November 2019, … adopted by a seven-judge panel of the Disciplinary Chamber of the Sąd Najwyższy (Supreme Court), that is, the body which, under the national legislation in force, is competent to hear an objection to an order refusing an appeal on a point of law, but which, in the view of the Bar Association Disciplinary Court, which is consistent with the view expressed by the Sąd Najwyższy (Supreme Court) in its judgment of 5 December 2019, … is not an independent and impartial tribunal for the purposes of Article 47 of the Charter;
   (b) in accordance with the position previously expressed by the Criminal Chamber of the Sąd Najwyższy (Supreme Court), that is to say, the judicial body which would have jurisdiction to examine that appeal if the abovementioned provisions did not preclude it,

   may (or should) the Bar Association Disciplinary Court disregard the position expressed by the Disciplinary Chamber of the Sąd Najwyżsy (Supreme Court)?

(4) If in the case referred to in Question 3, an appeal by the Minister for Justice has been lodged with a Bar Association Disciplinary Court, and:
   (a) one of the factors which in the view of the Sąd Najwyższy (Supreme Court) as expressed in its judgment of 5 December 2019, … as well as in the view of the Bar Association Disciplinary Court, justify the assumption that the Disciplinary Chamber of the Sąd Najwyższy (Supreme Court), that is, the body referred to in Question 3(a), is not an independent and impartial tribunal for the purposes of Article 47 of the Charter, is the influence of the executive, including the Minister for Justice, on its composition;
   (b) the function of Prosecutor General, who – according to the position expressed by the Disciplinary Chamber of the Sąd Najwyższy (Supreme Court), that is, the body referred to in Question 3(a), would be entitled to lodge an appeal on a point of law against the decision made on appeal, and according to the position of the Criminal Chamber of the Sąd Najwyższy (Supreme Court), that is, the judicial body referred to in Question 3(b),

and also according to the position of the Bar Association Disciplinary Court, is not entitled to lodge such an appeal, is by operation of law actually performed by the Minister for Justice,

should the Bar Association Disciplinary Court ignore that appeal if it is the only way in which it can ensure that the proceedings are compatible with Article 47 of the Charter and, in particular, prevent interference in those proceedings by a body which is not an independent and impartial tribunal for the purposes of that provision?'

Admissibility of the request for a preliminary ruling

48 The National Prosecutor and the Polish Government take the view that the present request for a preliminary ruling is inadmissible on the ground that the Sąd Dyscyplinarny Izby Adwokackiej w Warszawie (Bar Association Disciplinary Court, Warsaw) does not constitute a court or tribunal within the meaning of Article 267 TFEU.

49 In that regard, the Polish Government submits that, in accordance with Article 17(1) of the Polish Constitution, such a disciplinary court is responsible for ensuring the proper practice of the profession of lawyer by ruling on whether the conduct of the persons concerned complies with the rules of professional ethics and not for bringing justice in the name of the Republic of Poland as a court or tribunal within the meaning of Article 179 of that Constitution.

50 Furthermore, the Disciplinary Court does not satisfy the requirement of independence required under the case-law of the Court of Justice. First, since such a body is not a court or tribunal within the meaning of the Polish Constitution, it likewise does not enjoy the guarantees of independence provided for by that Constitution in respect of courts and tribunals alone.

51 Secondly, the Disciplinary Board is not protected from indirect external influence likely to have an effect on its decisions, since its members are elected by the General Assembly of the local Bar Association pursuant to Article 40(2) of the Law on the Bar and are therefore called upon to rule on disciplinary matters concerning colleagues thanks to whose support they have been elected and by whom their term of office may subsequently be renewed several times.

52 Thirdly, those same members could, as is apparent from Article 11(4) of the Law on the Bar, be dismissed before the end of their term of office by the body which thus elected them, so that they do not enjoy guaranteed irremovability.

53 For his part, the National Prosecutor considers that the classification of a body as a court or tribunal within the meaning of Article 267 TFEU must be made in the light of all the circumstances of the case, including the subject matter of the proceedings at issue and the position and function of the body concerned in the national legal system. Thus, professional disciplinary courts can be regarded as such courts or tribunal only if they fulfil the functions of the State and, in particular, that of ruling on the right to pursue a professional activity. However, given the subject matter of the dispute in the main proceedings and the current stage of the disciplinary proceedings, that is not the case, in the present case, as regards the Sąd Dyscyplinarny Izby Adwokackiej w Warszawie (Bar Association Disciplinary Court, Warsaw). In the absence of a decision by the Disciplinary Agent criticising Mr R.G. for having committed a disciplinary offence, that Disciplinary Court is not called upon to rule on *inter partes* proceedings

concerning the disciplinary liability of the person concerned or, therefore, on his right to carry out his professional activity, but only called on to review the merits of that agent's decision to close the disciplinary investigation.

54 In that regard, it follows from settled case-law that, in order to determine whether a body making a reference is a 'court or tribunal' for the purposes of Article 267 TFEU, and whether, as a result, a request for a preliminary ruling sent by it to the Court on the basis of that provision may be admissible, the Court takes account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is *inter partes*, whether it applies rules of law and whether it is independent (judgment of 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraph 51 and the case-law cited).

55 However, with regard to the *inter partes* nature of the proceedings before the national court, Article 267 TFEU does not make the reference to the Court subject to those proceedings being of such a nature. On the other hand, it follows from that article that a national court may refer a question to the Court only if there is a case pending before it and if it is called upon to give judgment in proceedings intended to lead to a decision of a judicial nature (judgments of 16 December 2008, *Cartesio*, C-210/06, EU:C:2008:723, paragraph 56, and of 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)*, C-658/18, EU:C:2020:572, paragraph 63).

56 In the present case, it seems, first of all, to be common ground, in the light of the provisions of the Law on the Bar referred to by the Sąd Dyscyplinarny Izby Adwokackiej w Warszawie (Bar Association Disciplinary Court, Warsaw), that that body satisfies the criteria relating to being established by law, being permanent, having compulsory jurisdiction and applying rules of law.

57 Next, as regards the doubts expressed by the National Prosecutor as to the function of the Sąd Dyscyplinarny Izby Adwokackiej w Warszawie (Bar Association Disciplinary Court, Warsaw) in the context of the main proceedings, it must be stated that that body is called upon to decide a case pending before it by adjudicating in proceedings intended to lead to a decision of a judicial nature, within the meaning of the case-law referred to in paragraph 55 above.

58 It is apparent from the statements in the order for reference that that disciplinary court is seised of an appeal brought by the Minister for Justice against a decision by which a Disciplinary Agent decided to close a disciplinary investigation opened in respect of a lawyer and that such an appeal may, inter alia, result in the annulment of that decision by the Disciplinary Court and, in that event, in the case being referred back to that disciplinary agent for re-examination of the file.

59 It follows from the case-law of the Court that the conditions in which the Court performs its duties in respect of preliminary rulings are independent of the nature and objective of the proceedings brought before the national courts. Article 267 TFEU refers to the judgment to be given by the national court without laying down special rules in terms of the nature of such judgments (judgment of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, C-487/19, EU:C:2021:798, paragraph 83 and the case-law cited).

60 As regards, finally, the arguments put forward by the Polish Government, first, the fact that the Bar Association Disciplinary Courts do not constitute courts or tribunals within the meaning of Article 179 of the Polish Constitution is not such as to preclude such bodies from being a 'court or

tribunal' within the meaning of Article 267 TFEU. As is apparent from settled case-law, the question whether a body constitutes a court or tribunal within the meaning of that provision of EU law is a question governed by EU law alone (see, to that effect, judgment of 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraph 51 and the case-law cited).

61 Moreover, the Court has, on several occasions, already held that professional bodies, in particular those with jurisdiction over lawyers, may constitute courts or tribunals within the meaning of Article 267 TFEU provided that those bodies satisfy the requirements laid down in the case-law referred to in paragraphs 54 and 55 above (see, inter alia, judgments of 22 December 2010, *Koller*, C-118/09, EU:C:2010:805, paragraphs 22 and 23, and of 17 July 2014, *Torresi*, C-58/13 and C-59/13, EU:C:2014:2088, paragraphs 17, 19 and 30).

62 As regards, secondly, the condition relating to the independence of the body making the reference, it must be borne in mind that, in accordance with settled case-law, that condition is essential to the proper working of the judicial cooperation system embodied by the preliminary ruling mechanism established by Article 267 TFEU, which may be activated only by a body responsible for applying EU law, which satisfies, inter alia, that criterion of independence (see, to that effect, judgment of 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraph 56 and the case-law cited).

63 According to the case-law of the Court, the concept of 'independence' has two aspects. The first aspect, which is external, requires that the body concerned exercise its functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, being thus protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions (judgments 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 121 and the case-law cited, and of 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraph 57 and the case-law cited).

64 The second aspect, which is internal, is linked to impartiality and seeks to ensure that an equal distance is maintained from the parties to the proceedings and their respective interests with regard to the subject matter of those proceedings. That aspect requires objectivity and the absence of any interest in the outcome of the proceedings apart from the strict application of the rule of law (judgments 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 122 and the case-law cited, and of 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraph 61 and the case-law cited).

65 Those guarantees of independence and impartiality require rules, particularly as regards the composition of the body and the appointment, length of service and grounds for abstention, rejection and dismissal of its members, in order to dispel any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it (judgments 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 123 and the case-law cited, and of 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraph 63 and the case-law cited).

66 In particular, that freedom of the judges from all external intervention or pressure, which is essential, requires, as the Court has held on several occasions, certain guarantees appropriate for protecting the individuals who have the task of adjudicating in a dispute, such as guarantees against removal from office (judgments of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531, paragraph 75 and the case-law cited, and of 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraph 58 and the case-law cited).

67 The Court has also held that the rules set out in paragraph 65 above must, in particular, be such as to preclude not only any direct influence, in the form of instructions, but also types of influence which are more indirect and which are liable to have an effect on the decisions of the judges concerned (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 125 and the case-law cited).

68 As regards the Sąd Dyscyplinarny Izby Adwokackiej w Warszawie (Bar Association Disciplinary Court, Warsaw), it should be noted, in the first place, that, as provided for in Article 89 of the Law on the Bar, the Bar Association disciplinary courts must be 'independent' as regards their rulings in disciplinary matters.

69 In the second place, the Polish Government's argument that the fact that the members of such a disciplinary court are elected by the college of lawyers enrolled on the register of the Bar Association concerned and the fact that that college may, in future, re-elect those members give rise to doubts as to the ability of that disciplinary court to rule impartially on the disciplinary matters before it cannot be accepted.

70 Having regard, in particular, to their collective nature, acts of election or re-election of the members of the disciplinary court of the local Bar Association concerned by the General Assembly of lawyers enrolled on the register of that Bar, that is, with regard to the Warsaw Bar, and as is apparent from the information provided by the referring body, some 5 500 lawyers, are not such as to give rise to doubts as to the independence and impartiality of the members thus elected where they are called upon to rule, in the public interest, on a possible infringement of the ethical rules governing the profession of lawyer committed by any particular lawyer enrolled on that register.

71 In the third place, the fact that, according to its wording, Article 11(4) of the Law on the Bar provides that members of the bodies of the Bar and of the local Bar Associations may be dismissed before the end of their term of office by the body which elected them is not, in the present case, such as to cast doubt on the independence of the Sąd Dyscyplinarny Izby Adwokackiej w Warszawie (Bar Association Disciplinary Court, Warsaw).

72 In that regard, and as the Polish Government points out, it is true that the Court has recently held, with regard to the Spanish Tribunales Economico-Administrativos (economico-administrative courts), that the rules governing the dismissal of their members were not determined by specific legislation, by means of express legislative provisions, but that it was governed solely by the general rules of administrative law and, in particular, by the basic regulations relating to civil servants, so that the dismissal of those members consequently was not limited, as required by the principle of irremovability, to certain exceptional cases reflecting legitimate and compelling grounds that warrant the adoption of such a measure. The Court concluded that the national legislation in question did not ensure that the members of those bodies were protected from

external pressures liable to cast doubt on their independence and that such a system did not constitute an effective safeguard against undue pressure from the executive with the result that those bodies could not be regarded as courts or tribunals within the meaning of Article 267 TFEU (judgment of 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraphs 66 to 69).

73 In the present case, it should however first be noted that the judicial function conferred on the Bar Association Disciplinary Courts is particularly specialised since it is, in essence, for those courts to ensure that the members of the profession concerned comply with the rules of professional ethics specifically laid down in order to control the practice of the profession of lawyer by penalising, where appropriate, those of the members who infringe those rules.

74 In such a context, the fact that the possible dismissal of the members of such a disciplinary body is a matter for an internal authority of the profession concerned is not, in principle, such as to pave the way for pressure or any direct or indirect intervention emanating from a power outside that profession which is allegedly intended to interfere in the exercise of the judicial task thus conferred on that disciplinary body.

75 Secondly, it is apparent from the information provided by the Sąd Dyscyplinarny Izby Adwokackiej w Warszawie (Bar Association Disciplinary Court, Warsaw), in response to various questions put to it by the Court, on the one hand, that, even though Article 58(13) of the Law on the Bar provides that it falls within the remit of the Supreme Bar Council alone to request the competent authorities to dismiss members of the bodies of the Bar, that provision expressly derogates from that rule as regards members of the disciplinary bodies. According to the Sąd Dyscyplinarny Izby Adwokackiej w Warszawie (Bar Association Disciplinary Court, Warsaw), it follows that the Supreme Bar Council cannot make such a request for the dismissal of a member of a disciplinary court before the expiry of that member's mandate.

76 On the other hand, that information shows that the General Assembly of the Warsaw Bar has never exercised the power of dismissal which Article 11(4) of the Law on the Bar appears to confer upon it and that that provision must be held to be ineffective, which is, moreover, also borne out by the fact that the Bar regulations do not contain any provision specifying the substantive or procedural conditions which would allow actual implementation of the possibility thus theoretically made available by that provision.

77 As the Advocate General observed in points 52 and 53 of his Opinion, it thus follows from those various items of information that, as regards the possibility of dismissing members of the Sąd Dyscyplinarny Izby Adwokackiej w Warszawie (Bar Association Disciplinary Court, Warsaw), Article 11(4) of the Law on the Bar has always been a dead letter of the law and devoid of any practical effect.

78 Thirdly, it should also be pointed out that the mere prospect that the general assembly of a local Bar Association, as a collective body bringing together all the lawyers enrolled in the professional register of the Bar Association concerned – that is, as regards the Warsaw Bar and as has already been observed, some 5 500 members – may, where appropriate, be led, under substantive and procedural conditions which would remain to be determined in such a case, to exercise a power of dismissal with regard to a member of the disciplinary court of that Bar Association, does not in itself seem to be such as to give rise to well-grounded fears that the independence of any such member, or of that Council itself, would be undermined in the exercise of their judicial activity.

79 In the light of all the foregoing considerations, it must be held that the Sąd Dyscyplinarny Izby Adwokackiej w Warszawie (Bar Association Disciplinary Court, Warsaw) meets the conditions required to be regarded as a court or tribunal within the meaning of Article 267 TFEU. It follows that the present request for a preliminary ruling is admissible.

The first question

80 By its first question, the referring court asks, in essence, whether Article 10(6) of Directive 2006/123 must be interpreted as having the effect of rendering Article 47 of the Charter applicable to appeal proceedings brought by a State authority before a Bar Association Disciplinary Court and seeking annulment of a decision by which a Disciplinary Agent closed an investigation into a lawyer after finding that there was no disciplinary offence attributable to that lawyer and, should that decision be annulled, to the referral back of the file to that disciplinary agent.

Admissibility

81 The Polish Government raises doubts as to the admissibility of the first question on the ground that Directive 2006/123 is, in its view, inapplicable to the case in the main proceedings. In that regard, that government submits, first, that the situation at issue in the main proceedings is purely internal in nature, secondly, that Directive 98/5 constitutes a *lex specialis* which prevails over Directive 2006/123, thirdly, that only inclusion on the register of lawyers is covered by the authorisation scheme referred to in that directive and that such inclusion or removal from that register are not at issue in the main proceedings, and, fourthly, that since disciplinary proceedings are related to criminal proceedings, they must therefore, like criminal proceedings, fall outside the scope of that directive as provided for in Article 1(5) thereof.

82 According to the Polish Government, Article 47 of the Charter is not applicable in the present case either, since there is thus no implementation of Union law within the meaning of Article 51(1) of the Charter and the European Union, in any event, does not have competence with regard to disciplinary proceedings and appeals in disciplinary cases.

83 In those various connections, however, it must first be stated that the arguments put forward by the Polish Government relate, in essence, to the field of application and scope, and therefore to the interpretation, of the provisions of EU law to which the first question relates. Such arguments, which concern the substance of the question referred, cannot therefore, by their very nature, lead to the inadmissibility of the question (see, by analogy, judgment of 2 March 2021, *A.B. and Others (Appointment of Judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 80).

84 Secondly, the objection alleging that the enactment of disciplinary rules and procedures applicable to lawyers falls within the exclusive competence of the Member States must also be rejected. Even if such exclusive competence were established, the fact would remain, as is clear from the settled case-law of the Court, that the Member States are required, when exercising such competences, to comply with their obligations under EU law (see, by analogy, judgment of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)* (C-619/18, EU:C:2019:531, paragraph 52 and the case-law cited).

85 The National Prosecutor, for his part, submits that the first question was raised only as an essential prerequisite to the formulation of the second to fourth questions. He argues that, since those three other questions are themselves inadmissible, an answer to the first question is of no use for the purpose of resolving the dispute in the main proceedings and cannot, therefore, be regarded as necessary in order for the referring court to give judgment within the meaning of Article 267 TFEU.

86 In that regard, it must however be noted that the first question raises a difficulty in interpreting EU law which is related to the subject matter of the dispute in the main proceedings and that it is, moreover, and as the referring court has pointed out, preliminary in relation to the other three questions referred. In those circumstances, the Court considers that it is appropriate to examine the first question, following, in that regard, the logical order in which the various questions raised were thus referred to it by the national court.

87 It follows from all the foregoing that the first question is admissible.

Substance

88 As regards the applicability of Directive 2006/123 in general and of Article 10(6) thereof, to which the first question specifically relates, it should be noted in the first place that, as is apparent from recital 33 of that directive, the services covered by it concern, inter alia, legal advice services. Furthermore, under Article 4(1) of Directive 2006/123, 'service', for the purposes of that directive, means any self-employed economic activity, normally provided for remuneration, as referred to in Article 57 TFEU. It is therefore common ground that legal services provided by lawyers fall within the material scope of that directive.

89 In the second place, as regards the fact, highlighted by the referring court in its first question, that the case in the main proceedings seems prima facie to concern a purely internal situation, inasmuch as that case seems not to concern a situation falling within the scope of the freedom of establishment or the freedom of lawyers to provide services, within the meaning of Articles 49 to 55 and 56 to 62 TFEU, it is sufficient to recall that such a fact is not such as to exclude the applicability of the provisions of Chapter III of Directive 2006/123 and therefore, Article 10 thereof. As is apparent from the Court's case-law, the provisions of Chapter III must be interpreted as also applying to a situation where all the relevant elements are confined to a single Member State (judgment of 30 January 2018, *X and Visser*, C-360/15 and C-31/16, EU:C:2018:44, paragraph 110).

90 In the third place, as regards the argument put forward by the Polish Government that the applicability of the provisions of Directive 2006/123 is precluded in the present case on the ground that the provisions of Directive 98/5, as a *lex specialis*, prevail over them, it must be borne in mind that Article 3(1) of Directive 2006/123 merely provides that if the provisions of that directive conflict with a provision of another EU act governing specific aspects of access to or exercise of a service activity in specific sectors or for specific professions, the provision of the other act is to prevail and is to apply to those specific sectors or professions.

91 However, it must be stated in that regard and as the Advocate General also observed in points 77, 78, 80 and 81 of his Opinion, that Directive 98/5 does not apply to a lawyer who, like Mr R.G., does not appear to have acquired his professional qualification in a Member State other than the Republic of Poland or have exercised the right to freedom of establishment guaranteed by Article 49 TFEU for the purposes of establishing himself in the Republic of Poland as a lawyer. It

follows that in the context of a situation such as that at issue in the main proceedings, no conflict within the meaning of Article 3(1) of Directive 2006/123 can arise between the provisions of that directive and those of Directive 98/5.

92 Similarly, and in the absence of the applicability of Directive 98/5 in that context, Article 9(3) of Directive 2006/123, which provides that Section 1 of Chapter III thereof does not apply to those aspects of authorisation schemes which are governed directly or indirectly by other EU instruments, seems to be wholly irrelevant in the present case.

93 In the fourth place, as regards the Polish Government's argument that the provisions of Directive 2006/123 are, by analogy, inapplicable to disciplinary proceedings on the ground that Article 1(5) of that directive specifies, subject to certain reservations, that it does not affect Member States' rules of criminal law, it is sufficient to note that there is nothing in the wording of that provision to suggest that the derogation scheme thus established in respect of Member States' rules of criminal law is also applicable so far as concerns the rules applicable with regard to professional disciplinary proceedings.

94 Moreover, in this connection, various provisions of Directive 2006/123 show, on the contrary, that provisions relating to disciplinary proceedings cannot be accorded the same treatment as that provided for in Article 1(5) of that directive in respect of Member States' rules of criminal law. Thus, for example, the concept of 'requirement' – which plays an essential transversal role in Directive 2006/123 and in particular in the context of Chapter III thereof, as is apparent from Articles 14 and 15 thereof – is defined in Article 4(7) of that directive as encompassing, inter alia, any obligation, prohibition, condition or limit in consequence of the 'rules of professional bodies' adopted in the exercise of their legal autonomy.

95 In the light of the foregoing considerations and as regards, in the fifth place, the possible applicability in the present case of Article 10(6) of Directive 2006/123, it should be noted that that provision states, under the heading 'Conditions for the granting of authorisation', that any decision from the competent authorities, including refusal or withdrawal of an authorisation, shall be fully reasoned and shall be open to challenge before the courts or other instances of appeal.

96 In this respect, it is important to point out that under Article 4(6) of Directive 2006/123, an authorisation scheme is defined as any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof.

97 There is therefore no doubt that legislation which makes the exercise of the activity of a lawyer subject to prior enrolment in the professional register of lawyers and thus obliges interested parties to undergo a procedure requiring them to take steps in order to obtain a formal decision from a competent authority allowing them to access and exercise that activity, establishes an authorisation scheme within the meaning of Article 4(6) and Chapter III of Directive 2006/123 (see, to that effect, judgment of 22 September 2020, *Cali Apartments*, C-724/18 and C-727/18, EU:C:2020:743, paragraphs 47, 49, 51 and 52). That is, moreover, expressly confirmed by recital 39 of that directive, which states that the concept of 'authorisation scheme' should cover, inter alia, 'the obligation, in order to be eligible to exercise the activity, to be registered as a member of a profession'.

98 An 'authorisation scheme' within the meaning of Article 4(6) of Directive 2006/123 is distinct from a 'requirement' within the meaning of Article 4(7) of that directive, which covers in particular any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the Member States or in consequence of the rules of professional bodies adopted in the exercise of their legal autonomy (see, to that effect, judgment of 22 September 2020, *Cali Apartments*, C-724/18 and C-727/18, EU:C:2020:743, paragraphs 48 and 49). Thus, rules of a disciplinary nature specific to such professions do not constitute rules which render access to the professional activity concerned conditional upon a formal decision by the competent authorities authorising that activity, but rather constitute 'requirements' relating to the exercise, as such, of that activity, which do not, in principle, fall within the scope of such an authorisation scheme.

99 Furthermore, it must also be acknowledged that a decision of the State authority ordering removal from the register of the Bar Association constitutes, in principle, a 'withdrawal of an authorisation' within the meaning of Article 10(6) of Directive 2006/123. It follows that, as the referring court points out, a disciplinary decision adopted on the basis of Article 81(1) of the Law on the Bar holding that a lawyer was to be expelled from the Bar Association must be regarded as such a withdrawal of authorisation. It is apparent from Article 82(2) of that law that such an expulsion decision entails removal from the register of lawyers with no right to apply for re-registration in that register for a period of 10 years from the date on which the ruling imposing expulsion from the Bar becomes final.

100 However, as the Polish and Netherlands Governments and the European Commission have pointed out, the appeal currently pending before the referring court cannot result in such a decision to expel a lawyer from the Bar Association that would thus entail the removal of the person concerned from the register of lawyers and therefore a withdrawal of authorisation within the meaning of Article 10(6) of Directive 2006/123.

101 It is apparent from the statements in the order for reference that the case in the main proceedings concerns an appeal brought by the Minister for Justice against a decision by which a Disciplinary Agent, on the contrary, took the view, having carried out a preliminary investigation, that in the instant case there were no grounds for bringing disciplinary proceedings before the body competent to rule thereon and for deciding, on the basis of the proceedings brought before that body, as to any expulsion from the Bar by way of a disciplinary penalty. It also follows from those statements that, in the procedural context of the case in the main proceedings, the decision that the referring court is required to make may thus consist exclusively of either dismissing that appeal or upholding it, in the latter case by referring the case back to the Disciplinary Agent for a fresh examination of the file.

102 It thus follows from the foregoing, first, that the proceedings currently pending before the referring court are not capable of leading to the imposition of a disciplinary penalty on a lawyer, including his or her potential expulsion from the Bar, and, secondly, that those proceedings, which relate exclusively to a decision of the Disciplinary Agent not to bring disciplinary proceedings against such a lawyer, are between that disciplinary agent and the Minister for Justice, since the lawyer concerned himself is not at that stage subject to disciplinary proceedings or a party to those proceedings.

103 In the light of the foregoing, Article 10(6) of Directive 2006/123 is not applicable in the context of the proceedings currently pending in the case referred to the Court of Justice. Consequently, nor is that provision, in the same context, capable of rendering Article 47 of the Charter applicable.

104 It should be recalled that Article 47 of the Charter constitutes a reaffirmation of the principle of effective judicial protection and enshrines the right to an effective remedy before a tribunal for every person whose rights and freedoms guaranteed by EU law are infringed (judgment of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, paragraph 40 and the case-law cited).

105 Thus, the recognition of that right, in a given case, presupposes, as is apparent from the first paragraph of Article 47 of the Charter, that the person invoking that right is relying on rights or freedoms guaranteed by EU law (judgment of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, paragraph 41 and the case-law cited).

106 The information contained in the order for reference does not show that, given the current configuration of the main proceedings, Mr R.G., who is not at the present stage himself a party to those proceedings, would be in a position to rely on a right conferred on him by EU law, since Article 10(6) of Directive 2006/123, in particular and as set out above, is not applicable in the present case.

107 In the light of all the foregoing, the answer to the first question is that Article 10(6) of Directive 2006/123 must be interpreted as not having the effect of rendering Article 47 of the Charter applicable to appeal proceedings brought by a State authority before a Bar Association Disciplinary Court and seeking annulment of a decision by which a Disciplinary Agent closed an investigation into a lawyer after finding that there was no disciplinary offence attributable to that lawyer and, should that decision be annulled, to the referral back of the file to that disciplinary agent.

The second, third and fourth questions

108 Having regard to the answer given to the first question, there is no need to examine the second to fourth questions, which were raised by the referring court only if it were to follow from the answer to the first question that Article 47 of the Charter is applicable in the context of the main proceedings.

Costs

109 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 (Third Chamber) hereby rules:

Article 10(6) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market must be interpreted as not having the effect of rendering Article 47 of the Charter of Fundamental Rights of the European Union applicable to appeal proceedings brought by a State authority before a Bar Association Disciplinary Court and seeking annulment of a decision by which a Disciplinary Agent closed an investigation into a lawyer after finding that there was no disciplinary offence attributable to that lawyer and, should that decision be annulled, to the referral back of the file to that disciplinary agent.

[Signatures]