(2) Must Article 2, Article 6(1) and (3), and the second subparagraph of Article 19(1) TEU, read in conjunction with Article 47 of the Charter and Article 267 TFEU, be interpreted as precluding the application of national laws such as Article 29(2) and (3), Article 26(3), and Article 72(1), (2) and (3) of the Ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym (Law of 8 December 2017 on the Supreme Court, consolidated text: Dz. U. of 2021, item 154) ['the Law on the Supreme Court'], in so far as those laws prohibit judges of the Supreme Court, on pain of the disciplinary penalty of dismissal, from determining or assessing the lawfulness of a judge's appointment or his or her resulting authority to perform judicial tasks as well as from assessing in substantive terms motions to exclude a judge based on those grounds, assuming that that prohibition were to be justified by the need for the Union to respect the constitutional identity of the Member States?

(3) Must Article 2 and Article 4(2) and (3) TEU, read in conjunction with Article 19 TEU and Article 267 TFEU, be interpreted as meaning that a judgment of the constitutional court of a Member State (Trybunał Konstytucyjny (Constitutional Court, Poland) declaring a ruling of the national court of last instance (the Supreme Court) to be incompatible with the Constitution of the Republic of Poland cannot constitute an obstacle to assessing the independence of a court and determining whether a court is a tribunal established by law within the meaning of European Union law, given that, in addition, the ruling of the Supreme Court aimed to implement the judgment of the Court of Justice of the European Union to the effect that the provisions of the Constitution of the Republic of Poland and applicable laws (national laws) do not confer upon the Constitutional Court the competence to review judicial rulings, including resolutions resolving discrepancies in the interpretation of laws adopted pursuant to Article 83 of the [Law on the Supreme Court] and, furthermore, the Constitutional Court, due to the manner in which it is currently constituted, is not a tribunal established by law within the meaning of Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (Dz. U. of 1993, No 61, item 284, as amended)?

Request for a preliminary ruling from the Landgericht Berlin (Germany) lodged on 24 October 2022 — Criminal proceedings against M.N.

(Case C-670/22)

(2023/C 35/37)

Language of the case: German

Referring court

Landgericht Berlin

Party to the main proceedings

M.N.

Questions referred

1. Interpretation of the concept of 'issuing authority' under Article 6(1) of Directive 2014/41, [1] in conjunction with Article 2(c) thereof:

(a) Must a European Investigation Order ('EIO') for obtaining evidence already located in the executing State (*in casu*: France) be issued by a judge where, under the law of the issuing State (*in casu*: Germany), the underlying gathering of evidence would have had to be ordered by a judge in a similar domestic case?

(b) In the alternative, is that the case at least where the executing State carried out the underlying measure on the territory of the issuing State with the aim of subsequently making the data gathered available to the investigating authorities in the issuing State, which are interested in the data for the purposes of criminal prosecution?

(c) Does an EIO for obtaining evidence always have to be issued by a judge (or an independent authority not involved in criminal investigations), irrespective of the national rules of jurisdiction of the issuing State, where the measure entails serious interference with high-ranking fundamental rights?

2. Interpretation of Article 6(1)(a) of Directive 2014/41:

(a) Does Article 6(1)(a) of Directive 2014/41 preclude an EIO for the transmission of data already available in the executing State (France), obtained from the interception of telecommunications, in particular traffic and location data and recordings of the content of communications, where the interception carried out by the executing State covered all the users subscribed to a communications service, the EIO seeks the transmission of the data of all terminal devices used on the territory of the issuing State and there was no concrete evidence of the commission of serious criminal offences by those individual users either when the interception measure was ordered and carried out or when the EIO was issued?

(b) Does Article 6(1)(a) of Directive 2014/41 preclude such an EIO where the integrity of the data gathered by the interception measure cannot be verified by the authorities in the executing State by reason of blanket secrecy?

3. Interpretation of Article 6(1)(b) of Directive 2014/41:

(a) Does Article 6(1)(b) of Directive 2014/41 preclude an EIO for the transmission of telecommunications data already available in the executing State (France) where the executing State's interception measure underlying the gathering of data would have been impermissible under the law of the issuing State (Germany) in a similar domestic case?

(b) In the alternative: does this apply in any event where the executing State carried out the interception on the territory of the issuing State and in its interest?

4. Interpretation of Article 31(1) and (3) of Directive 2014/41:

(a) Does a measure entailing the infiltration of terminal devices for the purpose of gathering traffic, location and communication data of an internet-based communication service constitute interception of telecommunications within the meaning of Article 31 of Directive 2014/41?

(b) Must the notification under Article 31(1) of Directive 2014/41 always be addressed to a judge, or is that the case at least where the measure planned by the intercepting State (France) could be ordered only by a judge under the law of the notified State (Germany) in a similar domestic case?

(c) In so far as Article 31 of Directive 2014/41 also serves to protect the individual telecommunications users concerned, does that protection also extend to the use of the data for criminal prosecution in the notified State (Germany) and, if so, is that purpose of equal value to the further purpose of protecting the sovereignty of the notified Member State?

5. Legal consequences of obtaining evidence in a manner contrary to EU law

(a) In the case where evidence is obtained by means of an EIO which is contrary to EU law, can a prohibition on the use of evidence arise directly from the principle of effectiveness under EU law?

(b) In the case where evidence is obtained by means of an EIO which is contrary to EU law, does the principle of equivalence under EU law lead to a prohibition on the use of evidence where the measure underlying the gathering of evidence in the executing State should not have been ordered in a similar domestic case in the issuing State and the evidence obtained by means of such an unlawful domestic measure could not be used under the law of the issuing State?

(c) Is it contrary to EU law, in particular the principle of effectiveness, if the use in criminal proceedings of evidence, the obtaining of which was contrary to EU law precisely because there was no suspicion of an offence, is justified in a balancing of interests by the seriousness of the offences which first became known through the analysis of the evidence?

(d) In the alternative: does it follow from EU law, in particular the principle of effectiveness, that infringements of EU law in the obtaining of evidence in national criminal proceedings cannot remain completely without consequence, even in the case of serious criminal offences, and must therefore be taken into account in favour of the accused person at least when assessing evidence or determining the sentence?

(1) Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ 2014 L 130, p. 1).

Request for a preliminary ruling from the Sąd Rejonowy Katowice — Wschód w Katowicach (Poland) lodged on 2 November 2022 — Przedsiębiorstwo Produkcyjno-Handlowo-Usługowe A. v P. S.A.

(Case C-677/22)

(2023/C 35/38)

Language of the case: Polish

Referring court

Sąd Rejonowy Katowice — Wschód w Katowicach

Parties to the main proceedings

Applicant: Przedsiębiorstwo Produkcyjno-Handlowo-Usługowe A.

Defendant: P. S.A.

Question referred

Must Article 3(5) of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (recast) (1) be interpreted as meaning that a period for payment longer than 60 days may be expressly stipulated by undertakings only in contracts in which the contractual terms are not determined unilaterally by one of the contracting parties?

(1) OJ 2011 L 48, p. 1.

Request for a preliminary ruling from the Sąd Rejonowy dla Krakowa — Podgórza w Krakowie (Poland) lodged on 3 November 2022 — Profi Credit Polska S.A. v G.N.

(Case C-678/22)

(2023/C 35/39)

Language of the case: Polish

Referring court

Sąd Rejonowy dla Krakowa — Podgórza w Krakowie

Parties to the main proceedings

Applicant: Profi Credit Polska S.A.

Defendant: G.N.