Reports of Cases

ORDER OF THE COURT (Grand Chamber)

8 April 2020 *

(Interim relief – Article 279 TFEU – Application for interim measures – Second subparagraph of Article 19(1) TEU – Independence of the Izba Dyscyplinarna (Disciplinary Chamber) of the Sąd Najwyższy (Supreme Court, Poland))

In Case C-791/19 R,

APPLICATION for interim measures under Article 279 TFEU and Article 160(2) of the Rules of Procedure of the Court of Justice, lodged on 23 January 2020,

European Commission, represented by K. Banks, H. Krämer and S.L. Kalėda, acting as Agents,

applicant,

supported by:

Kingdom of Belgium, represented by C. Pochet, M. Jacobs and L. Van den Broeck, acting as Agents,

Kingdom of Denmark, represented by M. Wolff, acting as Agent,

Kingdom of the Netherlands, represented by M.K. Bulterman and J. Langer, acting as Agents,

Republic of Finland, represented by M. Pere, acting as Agent,

Kingdom of Sweden, represented by A. Falk, C. Meyer-Seitz, H. Shev, J. Lundberg and H. Eklinder, acting as Agents,

interveners,

v

Republic of Poland, represented by B. Majczyna and D. Kupczak and by S. Żyrek, A. Dalkowska and A. Gołaszewska, acting as Agents,

defendant,

THE COURT (Grand Chamber),

* Language of the case: Polish.

composed of K. Lenaerts, President, R. Silva de Lapuerta (Rapporteur), Vice-President, J.-C. Bonichot, M. Vilaras, E. Regan, S. Rodin and P.G. Xuereb, Presidents of Chambers, E. Juhász, C. Toader, D. Šváby, F. Biltgen, K. Jürimäe, C. Lycourgos, N. Piçarra and N. Wahl, Judges,

after hearing the Advocate General, E. Tanchev,

makes the following

Order

1 By its application for interim measures, the European Commission claims that the Court should:

– order the Republic of Poland, pending the judgment of the Court of Justice ruling on the substance of the case:

  – to suspend the application of the provisions of Article 3(5), Article 27 and Article 73(1) of the ustawa o Sądzie Najwyższym (Law on the Supreme Court) of 8 December 2017 (Dz. U. of 2018, item 5), as amended ('the Law on the Supreme Court'), forming the basis of the jurisdiction of the Izba Dyscyplinarna (Disciplinary Chamber) of the Sąd Najwyższy (Supreme Court, Poland) ('the Disciplinary Chamber') to rule, both at first instance and on appeal, in disciplinary cases concerning judges;

  – to refrain from referring the cases pending before the Disciplinary Chamber to a panel whose composition does not meet the requirements of independence defined, in particular, in 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; 'the judgment in *A.K.*'), and

  – to inform the Commission, at the latest one month after being notified of the order of the Court imposing the requested interim measures, of all the measures that it has adopted in order to comply fully with that order;

– order the Republic of Poland to pay the costs of the proceedings.

2 Furthermore, the Commission maintains that it reserves the right to submit an additional application seeking an order for a periodic penalty payment if ever it becomes apparent from the information notified to the Commission that the Republic of Poland is not fully complying with the provisional measures ordered following its application for interim measures.

3 That application has been made in an action for failure to fulfil obligations under Article 258 TFEU brought by the Commission on 25 October 2019 ('the action for failure to fulfil obligations') seeking a declaration that the Republic of Poland has failed to meet its obligations:

– under the second subparagraph of Article 19(1) TEU:

– by allowing the content of judicial decisions to be treated as a disciplinary offence so far as concerns judges of the ordinary courts (Article 107(1) of the ustawa- Prawo o ustroju sądów powszechnych (Law on the organisation of the ordinary courts) of 27 July 2001 (Dz. U. No 98, item 1070), as amended (Dz. U. of 2019, item 1495) ('the Law on the organisation of the ordinary courts') and Article 97(1) and (3) of the Law on the Supreme Court);

– by failing to guarantee the independence and impartiality of the Disciplinary Chamber, which has jurisdiction for the review of decisions issued in disciplinary proceedings against judges (Article 3(5), Article 27 and Article 73(1) of the Law on the Supreme Court, in conjunction with Article 9a of the ustawa o Krajowej Radzie Sądownictwa (Law on the National Council of the Judiciary) of 12 May 2011 (Dz. U. No 126, item 714), as amended 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 Law on the KRS'));

– by conferring on the President of the Disciplinary Chamber the discretionary power to designate the competent disciplinary court of first instance in cases concerning the judges of the ordinary courts (Article 110(3) and Article 114(7) of the Law on the organisation of the ordinary courts) and, therefore, by failing to guarantee that disciplinary cases are adjudicated on by a court 'established by law', and

– by conferring on the Minister for Justice the power to appoint a Disciplinary Representative of the Minister for Justice (Article 112b of the Law on the organisation of the ordinary courts) and, therefore, by failing to guarantee that disciplinary cases against judges of the ordinary courts are heard within a reasonable period, and by providing that acts connected with the designation of counsel for the defence and that counsel's conduct of the defence do not have a suspensory effect on the course of the disciplinary proceedings (Article 113a of the Law on the organisation of the ordinary courts) and that the disciplinary court is to conduct the proceedings despite the justified absence of the notified accused or his or her defence counsel (Article 115a(3) of the Law on the organisation of the ordinary courts) and, therefore, by failing to guarantee the rights of the defence of accused judges of the ordinary courts;

– under the second and third paragraphs of Article 267 TFEU, by allowing the right of courts to refer questions for a preliminary ruling to the Court to be limited by the possibility of the initiation of disciplinary proceedings.

4 Pursuant to Article 161(1) of the Rules of Procedure of the Court of Justice, the Vice-President of the Court referred this application to the Court, which, in the light of the importance of the case, assigned it to the Grand Chamber, in accordance with Article 60(1) of those rules.

5 On 9 March 2020 the parties presented oral observations at a hearing before the Grand Chamber.

Legal context

The Law on the Supreme Court

6 The Law on the Supreme Court, which entered into force on 3 April 2018, created, within the Sąd Najwyższy (Supreme Court), two new chambers, including the Disciplinary Chamber referred to in Article 3, point 5 of that law.

7 Article 20 of that Law states:

'With regard to the Disciplinary Chamber and the judges who adjudicate in it, the powers of the First President of the [Sąd Najwyższy (Supreme Court)] as defined in:

– Article 14(1)(1), (4) and (7), Article 31(1), Article 35(2), Article 36(6), Article 40(1) and (4) and Article 51(7) and (14) shall be exercised by the President of the [Sąd Najwyższy (Supreme Court)] who shall direct the work of the Disciplinary Chamber;

– Article 14(1)(2) and the second sentence of Article 55(3) shall be exercised by the First President of the [Sąd Najwyższy (Supreme Court)] in agreement with the President of the [Sąd Najwyższy (Supreme Court)] who shall direct the work of the Disciplinary Chamber.'

8 Article 27(1) of that Law provides:

'The following cases shall fall within the jurisdiction of the Disciplinary Chamber:

1) disciplinary proceedings:
   (a) involving [Sąd Najwyższy (Supreme Court)] judges,
   (b) examined by the [Sąd Najwyższy (Supreme Court) in connection with disciplinary proceedings under the following laws:

   …

   – Law on the organisation of the ordinary courts of 27 July 2001,

   …

2) proceedings in the field of labour law and social security involving [Sąd Najwyższy (Supreme Court)] judges;

3) proceedings concerning the compulsory retirement of a [Sąd Najwyższy (Supreme Court)] judge.'

9 Article 73(1) of the Law on the Supreme Court provides:

'Disciplinary courts in disciplinary cases concerning judges of the [Sąd Najwyższy (Supreme Court)] are:

1) at first instance: the [Sąd Najwyższy (Supreme Court)], constituted by two judges of the Disciplinary Chamber and one of the [Sąd Najwyższy (Supreme Court)];

2) on appeal: the [Sąd Najwyższy (Supreme Court)], constituted by three judges of the Disciplinary Chamber and two members of the [Sąd Najwyższy (Supreme Court)].'

10 Article 97 of that Law is worded as follows:

'1. The [Sąd Najwyższy (Supreme Court)], if it finds that there has been a manifest infringement of the rules during the examination of a case – irrespective of its other prerogatives – shall address a finding of error to the court concerned. Before making the finding of error, it is required to inform the judge or judges forming part of the panel of judges of the possibility of submitting written explanations within seven days. The detection and finding of an error shall not affect the outcome of the case.

…

3. The [Sąd Najwyższy (Supreme Court)], when it submits a finding of error, may apply to a disciplinary court for a disciplinary case to be examined. The disciplinary court of first instance is the [Sąd Najwyższy (Supreme Court)].'

The Law on the organisation of the ordinary courts

11 Article 107(1) of the Law on the organisation of the ordinary courts provides:

'A judge shall be liable, from a disciplinary point of view, for breaches of professional duty (disciplinary offences), inter alia if he or she:

1) commits manifest and flagrant infringements of rules of law

…

5) compromises the dignity of his or her judicial office.'

12 Article 110(1) and (3) of the Law is worded as follows:

'1. In disciplinary cases involving judges, the following shall adjudicate:

1) at first instance:
   (a) the disciplinary courts at appeal level, constituted by three judges,
   (b) the [Sąd Najwyższy (Supreme Court)], constituted by two judges from the Disciplinary Chamber and one lay [Sąd Najwyższy (Supreme Court)] judge, in cases of disciplinary offences having the characteristics of deliberate crimes prosecuted by public indictment or deliberate tax crimes or cases in which the [Sąd Najwyższy (Supreme Court)] has submitted a request for the examination of a disciplinary case in the context of a finding of error;

2) on appeal: the [Sąd Najwyższy (Supreme Court)], constituted by two judges of the Disciplinary Chamber and one lay [Sąd Najwyższy (Supreme Court)] judge.

…

3. The disciplinary court within whose jurisdiction the judge who is the subject of the disciplinary proceedings exercises his or her supervisory jurisdiction shall not be allowed to hear the cases referred to in paragraph 1(1)(a). The disciplinary court with jurisdiction to hear the case shall be designated by the President of the [Sąd Najwyższy (Supreme Court)] directing the work of the Disciplinary Chamber at the request of the Disciplinary Representative.'

The Law on the KRS

13 Under Article 9a of the Law on the KRS:

'1. The Sejm [(Lower Chamber of the Polish Parliament] shall elect from among the judges of the Sąd Najwyższy [(Supreme Court)], ordinary courts, administrative courts and military courts, 15 members of the Krajowa Rada Sądownictwa [(National Council of the Judiciary)] for a collective term of four years.

2. In the election referred to in paragraph 1, the Lower Chamber shall, as far as possible, take into account the need for representativeness within [the National Council of the Judiciary] of various types and levels of the courts.

3. The collective term of the new members of the [National Council of the Judiciary] elected among the judges shall begin the day following their election. Outgoing members of the [National Council of the Judiciary] shall exercise their posts until the day on which the collective term of the new members of the [National Council of the Judiciary] begins.'

14 The transitional provision contained in Article 6 of the Law amending the Law on the National Council of the Judiciary and certain other laws, which entered into force on 17 January 2018, provides:

'The term of office of the members of the [National Council of the Judiciary] referred to in Article 187(1)(2) of the Konstytucja Rzeczypospolitej Polskiej [(Constitution of the Republic of Poland)], elected pursuant to provisions now in force, shall continue until the day preceding the term of the new members of the [National Council of the Judiciary], without, however, exceeding 90 days from the date of the entry into force of the present law, unless that term has not already expired.'

Pre-litigation procedure

15 Taking the view that, by adopting the new disciplinary regime for the judges of the Sąd Najwyższy (Supreme Court) and the ordinary courts, the Republic of Poland had failed to fulfil its obligations under the combined provisions of the second subparagraph of Article 19(1) TEU and the second and third paragraphs of Article 267 TFEU, the Commission sent a letter of formal notice to that Member State on 3 April 2019. The Republic of Poland replied by letter of 1 June 2019 in which it denied any infringement of EU law.

16 On 17 July 2019, the Commission issued a reasoned opinion in which it maintained that the regime infringed those provisions of EU law. Consequently, the Commission invited the Republic of Poland to take the measures necessary to comply with the reasoned opinion within two months of receiving it. That Member State replied by letter of 17 September 2019 in which it maintained that the objections raised by the Commission in the reasoned opinion were unfounded and requested closure of the procedure.

17 Unconvinced by that reply, the Commission decided to bring the action for failure to fulfil obligations.

Factors arising after the action for failure to fulfil obligations was brought

The judgment in A. K.

18 In paragraph 2 of the operative part of the judgment in *A.K.*, the Court held as follows:

'Article 47 of the Charter of Fundamental Rights of the European Union and Article 9(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [(OJ 2000 L 303, p. 16)] must be interpreted as precluding cases concerning the application of EU law from falling within the exclusive jurisdiction of a court which is not an independent and impartial tribunal, within the meaning of the former provisions. That is the case where the objective circumstances in which that court was formed, its characteristics and the means by which its members have been appointed are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of that court to external factors, in particular, as to the direct or indirect influence of the legislature and the executive and its neutrality with respect to the interests before it and, thus, may lead to that court not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society must inspire in subjects of the law. It is for the referring court to determine, in the light of all the relevant factors established before it, whether that applies to a court such as the Disciplinary Chamber of the Sąd Najwyższy (Supreme Court).'

The judgments of the Sąd Najwyższy (Supreme Court) in the cases which gave rise to the judgment in A.K.

The judgment of 5 December 2019

19 In its judgment of 5 December 2019, the Sąd Najwyższy – Izba Pracy i Ubezpieczeń Społecznych (Supreme Court – Labour and Social Insurance Chamber), ruling in the dispute which gave rise to the request for a preliminary ruling in Case C-585/18, held that the National Council of the Judiciary ('the KRS') is not, as currently constituted, an impartial body independent of the legislature and the executive.

20 Similarly, that court held that the Disciplinary Chamber cannot be regarded as a tribunal within the meaning of Article 47 of the Charter of Fundamental Rights ('the Charter'), Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and Article 45(1) of the Constitution of the Republic of Poland. The court reached that conclusion on the basis of the following factors:

– the Disciplinary Chamber, set up ad hoc, has jurisdiction in the area of labour and social insurance law for the judges of the Sąd Najwyższy (Supreme Court) and the retirement of those judges, although those matters previously fell within the jurisdiction of the ordinary courts and the Labour, Social Insurance and Public Affairs Chamber of the Sąd Najwyższy (Supreme Court), now the Izba Pracy i Ubezpieczeń Społecznych (Labour and Social Insurance Chamber);

– the Disciplinary Chamber may consist only of new judges chosen by the KRS, which is not a body independent of the legislature and the executive;

– all judges appointed to sit in the Disciplinary Chamber have very clear links with the legislature or the executive, which may give rise to objective doubts in the minds of individuals as to the unconditional respect for the right to an impartial and independent tribunal;

– the conditions of the selection procedure for the purpose of appointing judges to the Disciplinary Chamber were changed in the course of the proceedings and the possibility for a candidate to challenge a decision of the KRS was restricted;

– the change in the method of selecting the judges of the Sąd Najwyższy (Supreme Court) removes all participation and any involvement of that court in the procedure for the appointment of judges;

– the Disciplinary Chamber enjoys, within the Sąd Najwyższy (Supreme Court), a large degree of autonomy and a special status as a special court and its connection with the structure of the Sąd Najwyższy (Supreme Court) is merely superficial;

– since its formation, the Disciplinary Chamber has focused on taking steps to withdraw the questions referred for a preliminary ruling leading to the judgment in *A.K.*, and

– the nature of the disciplinary proceedings conducted by the Disciplinary Chamber shows that a judge may now be accused of professional misconduct because of the adoption of a judicial decision, whereas that was not previously the case.

The judgments of 15 January 2020

21 In its judgments of 15 January 2020, the Sąd Najwyższy – Izba Pracy i Ubezpieczeń Społecznych (Supreme Court – Labour and Social Insurance Chamber), ruling in the disputes which gave rise to the questions referred for a preliminary ruling in Cases C-624/18 and C-625/18, also held that the Disciplinary Chamber is not an independent and impartial tribunal in the light of the circumstances of its creation, the scope of its powers, its composition and the involvement of the KRS in its constitution.

Activity of the Disciplinary Chamber since the delivery of the judgments of the Sąd Najwyższy (Supreme Court) in the cases which gave rise to the judgment in A.K.

22 On 10 December 2019, the First President of the Sąd Najwyższy (Supreme Court) published a declaration in which she stated that the continuation of the activities of the Disciplinary Chamber would constitute a serious threat to the stability of the Polish legal order. Consequently, she called on its members to refrain from any judicial activity.

23 On the same day, in response to that statement, the President of the Disciplinary Chamber stated, inter alia, that the judgment of 5 December 2019 of the Sąd Najwyższy (Supreme Court) did not affect the functioning of that chamber, since that judgment had been delivered in a specific factual context. He added that that chamber would continue to exercise the judicial functions conferred on it by the constitutional bodies of the Republic of Poland.

24 On 13 December 2019, eight members of the Disciplinary Chamber made their views known on the declaration of the First President of the Sąd Najwyższy (Supreme Court), stating, first, that the impartiality and independence of the Disciplinary Chamber had not been called into question by the judgment in *A. K.*, secondly, that the judgment of 5 December 2019 of the Sąd Najwyższy (Supreme Court) did not produce any legal effects in cases other than that to which it related and had no effect on the legal provisions in force, and, thirdly, that the assumption that the Disciplinary Chamber had to suspend its judicial activity in order to comply with that judgment was devoid of any rational basis.

The application for interim measures

Admissibility

25 The Republic of Poland submits that the Commission's application for interim measures is manifestly inadmissible.

26 In the first place, the Republic of Poland asserts that the interim measures sought by the Commission seek the suspension of the activity of one of the chambers of a constitutional body of that Member State, namely the Sąd Najwyższy (Supreme Court), and to intervene in the internal organisation of that jurisdiction, which would constitute an unacceptable interference with the Polish constitutional and judicial structures. Neither the European Union itself nor any of its institutions, including the Court, have jurisdiction to intervene in matters relating to the political regime of the various Member States, the powers of the various constitutional bodies of those States or the internal organisation of those bodies. Thus, the Court clearly has no jurisdiction to adopt the interim measures requested by the Commission.

27 The Republic of Poland maintains that that assessment is confirmed by the fact that the Court has never adopted provisional measures of the kind which are the subject of the present application, although the Commission has, on numerous occasions, brought actions against Member States before the Court on the ground of breach of various obligations arising from their accession to the European Union, and by the fact that the infringements at issue in those actions could, as a general rule, be attributed to a specific body of the Member State concerned.

28 At the hearing, the Commission argued that the national provisions which it seeks to have suspended ('the national provisions at issue') fall within the scope of the second subparagraph of Article 19(1) TEU and, consequently, may be the subject of the interim measures sought.

29 In that regard, it is important to point out 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 26 March 2020, *Miasto Łowicz and Prokurator Generalny zastępowany przez Prokuraturę Krajową* (Disciplinary regime applicable to judges), C-558/18 and C-563/18, EU:C:2020:234, paragraph 36 and the case-law cited).

30 Under that provision, 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 judicial system and procedures ensuring effective judicial review in those

fields (judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny zastępowany przez Prokuraturę Krajową* (Disciplinary regime applicable to judges), C-558/18 and C-563/18, EU:C:2020:234, paragraph 32 and the case-law cited).

31 It follows that every Member State must, under the second subparagraph of Article 19(1) TEU, ensure that the bodies which, as 'courts or tribunals' within the meaning of EU law, come within its judicial system in the fields covered by EU law meet the requirements of effective judicial protection (judgment of 24 June 2019, *Commission* v *Poland* (Independence of the Supreme Court), C-619/18, EU:C:2019:531, paragraph 55 and the case-law cited).

32 Article 19 TEU, which gives concrete expression to the value of the rule of law affirmed in Article 2 TEU, entrusts the responsibility for ensuring the full application of EU law in all Member States and judicial protection of the rights of individuals under that law to national courts and tribunals and to the Court of Justice (judgment of 24 June 2019, *Commission* v *Poland* (Independence of the Supreme Court), C-619/18, EU:C:2019:531, paragraph 47 and the case-law cited).

33 In order for that protection to be ensured, maintaining the independence of those bodies is essential, as confirmed by the second paragraph of Article 47 of the Charter, which refers to access to an 'independent' tribunal as one of the requirements linked to the fundamental right to an effective remedy (judgment of 25 July 2018, *Minister for Justice and Equality* (Deficiencies in the judicial system), C-216/18 PPU, EU:C:2018:586, paragraph 53 and the case-law cited).

34 In that context, the Court has held that the requirement of judicial independence means, in particular, that the rules governing the disciplinary regime of those who have the task of adjudicating in a dispute must provide the necessary guarantees in order to prevent any risk of that disciplinary regime being used as a system of political control of the content of judicial decisions. Thus, rules which define, in particular, both conduct amounting to disciplinary offences and the penalties actually applicable, which provide for the involvement of an independent body in accordance with a procedure which fully safeguards the rights enshrined in Articles 47 and 48 of the Charter, in particular the rights of the defence, and which lay down the possibility of bringing legal proceedings challenging the disciplinary bodies' decisions constitute a set of guarantees that are essential for safeguarding the independence of the judiciary (judgment of 24 June 2019, *Commission* v *Poland* (Independence of the Supreme Court), C-619/18, EU:C:2019:531, paragraph 77 and the case-law cited).

35 It is therefore for all Member States, pursuant to the second subparagraph of Article 19(1) TEU, to ensure that the disciplinary regime applicable to the judges of national courts within their judicial system in the fields covered by EU law complies with the principle of judicial independence, in particular by ensuring that decisions given in disciplinary proceedings brought against the judges of those courts are reviewed by a body which itself satisfies the guarantees inherent in effective judicial protection, including that of independence.

36 In those circumstances, the Court has jurisdiction, in the context of an action for failure to fulfil obligations seeking to challenge the compatibility with the second subparagraph of Article 19(1) TEU of national provisions on the disciplinary regime applicable to the judges of courts called upon to rule on questions of EU law, in particular provisions concerning the body responsible for adjudicating in disciplinary cases concerning those judges, to order, under Article 279 TFEU, interim measures aimed at suspending the application of such provisions.

37 In the present case, it is common ground that the Disciplinary Chamber was entrusted, by the national provisions at issue, with the power to rule in disciplinary cases concerning the judges of the Sąd Najwyższy (Supreme Court) and the ordinary courts.

38 It is also common ground that both the Sąd Najwyższy (Supreme Court) and the ordinary courts, in so far as they may address questions relating to the application or interpretation of EU law, fall, as a 'court or tribunal' within the meaning of that law, within the Polish judicial system in the fields covered by that law, for the purposes of the second subparagraph of Article 19(1) TEU.

39 Furthermore, as is apparent from paragraph 3 of the present order, the action for failure to fulfil obligations concerns, inter alia, the compatibility with the second subparagraph of Article 19(1) TEU of the national provisions relating to the disciplinary regime applicable to judges of the Sąd Najwyższy (Supreme Court) and the ordinary courts, in particular those relating to the Disciplinary Chamber.

40 Finally, as is apparent from paragraph 1 of the present order, this application for interim measures seeks, inter alia, suspension of the application of those provisions pending the judgment of the Court on the substance of the case ('the final judgment').

41 Consequently, and contrary to the Republic of Poland's submissions, the Court has jurisdiction to adopt interim measures of the kind sought by the Commission.

42 The fact relied on by the Republic of Poland that the Court has not so far adopted any interim measure of that kind is not capable of calling that assessment into question. If the Court's jurisdiction to grant such a measure is not to be deprived of meaning, the allegedly unprecedented nature of an interim measure cannot affect that jurisdiction.

43 In the second place, the Republic of Poland claims that the interim measures sought by the Commission seek to have certain judges of the Sąd Najwyższy (Supreme Court), namely those of the Disciplinary Chamber, removed from office. In those circumstances, the grant of such measures would infringe the principle of the irremovability of judges and would therefore undermine the guarantees of the independence of judges protected both by the legal order of the European Union and by the Constitution of the Republic of Poland.

44 In that regard, it should be noted that, if they were ordered, the interim measures requested by the Commission would have the effect not of removing the judges of the Disciplinary Chamber but of suspending provisionally the application of the contested national provisions and, consequently, the exercise by those judges of their duties until delivery of the final judgment.

45 Consequently, and contrary to the Republic of Poland's assertions, the adoption of such measures cannot be regarded as being contrary to the principle of the irremovability of judges.

46 In the third place, the Republic of Poland submits that the interim measures sought by the Commission not only cannot ensure full compliance with the final judgment but would even make it impossible, if the action is allowed, to comply with that judgment, in so far as granting them would have the practical effect of dissolving the Disciplinary Chamber.

47 However, apart from the fact that the grant of the interim measures requested by the Commission would not entail the dissolution of the Disciplinary Chamber, it must be pointed out that, if the Court were to uphold, in the context of the action for failure to fulfil obligations, the

Commission's complaint alleging that the Republic of Poland has infringed its obligation under the second subparagraph of Article 19(1) TEU to guarantee the independence of that Chamber, that Member State would be required, in order to give effect to the final judgment, to organise its national law so as to ensure that disciplinary cases concerning the judges of the Sąd Najwyższy (Supreme Court) and of the ordinary courts are heard by a court which complies with the principle of the independence of judges.

48 Consequently, contrary to what the Republic of Poland claims, if the Court were to decide to grant the interim measures sought by the Commission, those measures would not in any way impede the full effectiveness of the final judgment.

49 It follows from the foregoing that the application for interim measures is admissible.

Substance

50 Article 160(3) of the Rules of Procedure provides that applications for interim measures must state 'the subject matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for'.

51 Accordingly, the court hearing an application for interim measures may order interim relief only if it is established that such an order is justified, prime facie, in fact and in law (*fumus boni juris*) and that it is urgent in so far as, in order to avoid serious and irreparable harm to the applicant's interests, it must be made and produce its effects before judgment is given on the merits. The court hearing the application for interim relief must, where appropriate, also weigh up the interests involved. Those conditions are cumulative, so that an application for interim measures must be dismissed if one of them is not met (order of 17 December 2018, *Commission* v *Poland*, C-619/18 R, EU:C:2018:1021, paragraph 29 and the case-law cited).

The requirement to establish a prima facie case

52 According to the settled case-law of the Court, the condition relating to the establishment of a prima facie case is satisfied where at least one of the pleas in law relied on by the applicant for interim measures in support of the main action appears, prima facie, not unfounded. That is the case, inter alia, where one of those pleas reveals the existence of difficult legal issues the solution to which is not immediately obvious and therefore calls for a detailed examination that cannot be carried out by the judge hearing the application for interim measures but must be the subject of the main proceedings, or where the discussion of issues by the parties reveals that there is a major legal disagreement whose resolution is not immediately obvious (order of the Vice-President of the Court of 20 December 2019, *Puigdemont i Casamajó and Comín i Oliveres* v *Parliament*, C-646/19 P(R), not published, EU:C:2019:1149, paragraph 52 and the case-law cited).

53 In the present case, in order to establish the existence of a prima facie case, the Commission relies on one plea, which corresponds to the second complaint of the first plea raised in the action for failure to fulfil obligations, alleging that, by failing to guarantee the independence and impartiality of the Disciplinary Chamber, the Republic of Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU.

54 To that end, after recalling the case-law of the Court resulting, in particular, from the judgments of 25 July 2018, *Minister for Justice and Equality* (Deficiencies in the judicial system) (C-216/18 PPU, EU:C:2018:586, paragraph 67), and of 24 June 2019, *Commission* v *Poland* (Independence of the Supreme Court) (C-619/18, EU:C:2019:531, paragraph 77), the Commission puts forward a number of factors which, in its view, demonstrate the lack of independence and impartiality of the Disciplinary Chamber.

55 First, the Commission points out that the establishment of the Disciplinary Chamber coincided with the amendment to the rules on the appointment of members of the KRS, and adds that that amendment had the effect of politicising that constitutional body, which is involved in the procedure for selecting judges in Poland and is responsible for ensuring the independence of Polish courts and tribunals.

56 The Commission submits that Article 6 of the Law amending the Law on the National Council of the Judiciary and certain other laws interrupted the term of office of the members of the KRS and that, in accordance with the new Article 9a of the Law on the KRS, the Lower Chamber elected 15 judges as members of that constitutional body, which had the effect of increasing the influence of the legislature on the functioning of that body and, consequently, on the procedure for the appointment of judges to the Disciplinary Chamber.

57 In accordance with those legislative amendments, the KRS is currently composed of 15 judges elected by the Lower Chamber, four members appointed by the Lower Chamber from among the members of parliament, two members appointed by the Senat (Upper Chamber of the Polish Parliament) and chosen from among the senators, one representative of the President of the Republic of Poland, a representative of the Minister for Justice and two ex-officio members, namely the First President of the Sąd Najwyższy (Supreme Court) and the President of the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland). Thus, 23 of the 25 members of the KRS have been appointed by legislative or executive authorities or represent such authorities.

58 The Commission submits that it is on a proposal from the KRS, constituted as described in the preceding paragraph, that all the judges of the Disciplinary Chamber are appointed by the President of the Republic of Poland.

59 Secondly, the Commission maintains that the national legislature excluded the possibility of appointing as a member of the Disciplinary Chamber a judge already serving in the Sąd Najwyższy (Supreme Court), so that only new judges, appointed on the proposal of the KRS, could be appointed to sit in that Chamber.

60 Thirdly, the Commission points out that the Disciplinary Chamber is characterised, within the Sąd Najwyższy (Supreme Court), by a high degree of organisational and financial autonomy. Thus, by way of illustration, in accordance with Article 20 of the Law on the Supreme Court, the powers normally enjoyed by the First President of the Sąd Najwyższy (Supreme Court) with regard to the judges of that court are exercised, as regards the particular case of the judges of the Disciplinary Chamber, by the President of the latter. Also, similar special powers concern the financial autonomy of the Disciplinary Chamber.

61 The Commission submits that the combined examination of the abovementioned factors and their simultaneous introduction into Polish law reveal a structural separation which makes it impossible to dispel all reasonable doubt as to the independence of the Disciplinary Chamber with regard to external factors and its impartiality in relation to the interests before it on which it is empowered to adjudicate.

62 Thus, the Commission considers that the national provisions at issue, read in conjunction with Article 9a of the Law on the KRS, guarantee neither the independence nor the impartiality of the Disciplinary Chamber and, consequently, are contrary to the Republic of Poland's obligations under the second subparagraph of Article 19(1) TEU.

63 Lastly, in the Commission's view, the merits of the legal reasoning of the second complaint of the first plea in the action for failure to fulfil obligations are confirmed by a combined reading of the judgment in *A.K.* and the judgment of 5 December 2019 of the Sąd Najwyższy (Supreme Court).

64 In order to determine whether the condition relating to a prima facie case is satisfied in the present case, it should be noted that the second complaint concerns the question of whether the Disciplinary Chamber satisfies the requirement of judicial independence laid down in the second subparagraph of Article 19(1) TEU.

65 In that regard, it should be pointed out that, according to settled case-law, the guarantees of independence and impartiality require rules, particularly as regards the composition of the body concerned and the appointment, length of service and the 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 (judgment in *A.K.*, paragraph 123 and the case-law cited).

66 In accordance with the principle of the separation of powers which characterises the operation of the rule of law, the independence of the judiciary must be guaranteed in relation to the legislature and the executive. In that regard, it is necessary that judges are protected from external intervention or pressure liable to jeopardise their independence. In that context, the rules referred to in the above paragraph 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 in *A.K.*, paragraphs 124 and 125 and the case-law cited).

67 In the judgment in *A.K.*, the Court was called upon to clarify the scope of those requirements of independence and impartiality in the context of the creation of a body such as the Disciplinary Chamber.

68 As regards, first of all, the circumstances in which the appointments of the members of the Disciplinary Chamber took place, the Court, after noting that the judges of that Chamber are appointed by the President of the Republic of Poland on a proposal from the KRS, held, in paragraphs 137 and 138 of the judgment in *A.K.*, on the basis, inter alia, of paragraphs 115 and 116 of the judgment of 24 June 2019, *Commission* v *Poland* (Independence of the Supreme Court) (C-619/18, EU:C:2019:531), that, although the participation of the KRS in the appointment process may be such as to contribute to making that process more objective, by circumscribing the President of the Republic of Poland's discretion in exercising the power

conferred on him, that is only the case, however, provided, inter alia, that the KRS is itself sufficiently independent of the legislature and executive and of the President of the Republic of Poland.

69 On that point, the Court identified, in paragraphs 142 to 145 of the judgment in *A.K.*, from the information provided by the referring court, factors which, when taken together, may cast doubt on the independence of a body such as the KRS.

70 In particular, in paragraph 143 of the judgment in *A.K.*, the Court expressly referred to three circumstances which may be relevant for the purposes of such an overall assessment, including the fact that the KRS, as newly composed, was formed by reducing the ongoing four-year term in office of the members of that body at that time, and the fact that, whereas the 15 members of the KRS elected from among members of the judiciary were previously elected by their peers, they are now elected by a branch of the legislature from among candidates who may be proposed inter alia by groups of 2 000 citizens or 25 judges, such a reform leading to appointments bringing the number of members of the KRS directly originating from or elected by the political authorities to 23 of the 25 members of that body.

71 Next, and notwithstanding the circumstances in which the new judges of the Disciplinary Chamber were appointed and the role of the KRS in that regard, the Court identified, in paragraphs 147 to 151 of the judgment in *A.K.*, other facts characterising more directly the Disciplinary Chamber and held, in paragraph 152 of that judgment, that, although any one of those facts is not capable, per se and taken in isolation, of calling into question the independence of that chamber, that may, by contrast, not be true once they are taken together, particularly if the assessment as regards the KRS were to find that that body lacks independence in relation to the legislature and executive.

72 In particular, in paragraphs 150 and 151 of the judgment in *A.K.*, the Court referred, first, to the fact that the Disciplinary Chamber must be constituted solely of newly appointed judges, thereby excluding judges already serving in the Sąd Najwyższy (Supreme Court), and, secondly, to the fact that the Disciplinary Chamber appears, in contrast to the other chambers of that court, and as is clear inter alia from Article 20 of the Law on the Supreme Court, to enjoy a particularly high degree of autonomy within the Sąd Najwyższy (Supreme Court).

73 Admittedly, as the Republic of Poland submits, in the judgment in *A.K.* the Court did not find that the national provisions relating to the Disciplinary Chamber and those amending the rules on the composition of the KRS did not comply with the second subparagraph of Article 19(1) TEU, but left it to the referring court to carry out the assessments required for that purpose.

74 In that regard, it is clear, however, from settled case-law that it is not the task of the Court, in preliminary ruling proceedings, to rule on the compatibility of provisions of national law or national practice with the legal rules of the European Union. However, the Court has jurisdiction to give the national court full guidance on the interpretation of EU law in order to enable it to determine the issue of compatibility for the purposes of the case before it (judgment of 15 July 2010, *Pannon Gép Centrum*, C-368/09, EU:C:2010:441, paragraph 28 and the case-law cited).

75 In accordance with that case-law, the Court, in paragraph 132 of the judgment in *A.K.*, stated that it had restricted its analysis to the provisions of EU law by providing an interpretation of them which would be of use to the referring court, which had the task of determining, in the light of

the interpretative guidance thus given by the Court, the compatibility of the national provisions referred to in paragraph 73 of the present order with EU law, for the purposes of deciding the disputes before it (see, by analogy, the judgment of 15 July 2010, *Pannon Gép Centrum*, C-368/09, EU:C:2010:441, paragraph 29 and the case-law cited).

76 With regard specifically to those matters, in so far as they relate essentially to the powers of the Disciplinary Chamber – to its composition, to the conditions and process for the appointment of its members and to its degree of autonomy within the Sąd Najwyższy (Supreme Court) – their relevance cannot be limited to the facts specific to the judgment of the Sąd Najwyższy (Supreme Court) of 5 December 2019. Thus, the Republic of Poland's argument seeking to deny that that judgment is relevant, on the ground that it was delivered in a specific factual context, cannot succeed.

77 In the light of the factors set out, inter alia, in paragraphs 136 to 151 of the judgment in *A.K.*, and of the judgments, referred to in paragraphs 19 to 21 of the present order, delivered by the Sąd Najwyższy (Supreme Court) on 5 December 2019 and 15 January 2020 following the judgment in *A.K.*, it cannot, prima facie, be ruled out that the national provisions at issue, read in conjunction with Article 20 of the Law on the Supreme Court and Article 9a of the Law on the KRS, infringe the Republic of Poland's obligation, under the second subparagraph of Article 19(1) TEU, to ensure that the decisions given in disciplinary proceedings concerning the judges of the Sąd Najwyższy (Supreme Court) and the ordinary courts are reviewed by a court which satisfies the requirements of effective judicial protection, including that of independence.

78 Consequently, without ruling at this stage on the merits of the arguments put forward by the parties in the action for failure to fulfil obligations, which falls within the exclusive jurisdiction of the court adjudicating on the substance, it must be held that, in the light of the facts put forward by the Commission and the interpretative guidance provided, inter alia, by the judgment of 24 June 2019, *Commission* v *Poland* (Independence of the Supreme Court) (C-619/18, EU:C:2019:531), and by the judgment in *A.K.*, the arguments presented by the Commission in the second complaint of the first plea in the action for failure to fulfil obligations, which underlies this application for interim measures, appear, prima facie, not to be unfounded, within the meaning of the case-law cited in paragraph 52 of this order.

79 The Republic of Poland's argument that the Commission should have shown that the condition relating to a prima facie case is satisfied in respect of all the complaints raised in support of the first plea in the action for failure to fulfil obligations cannot succeed.

80 Having regard to the limited purpose of the application for interim measures, namely suspension of the application of the national provisions referred to solely in the second complaint of the first plea in the action for failure to fulfil obligations, the Commission is required to establish the existence of a prima facie case only in respect of that complaint.

81 In the light of the foregoing considerations, it must be concluded that the requirement that a prima facie case be established has been satisfied in this case.

Urgency

82 According to the settled case-law of the Court, the purpose of interim proceedings is to guarantee the full effectiveness of the final future decision in order to ensure that there is no lacuna in the legal protection afforded by the Court. For the purpose of attaining that objective, urgency must

be assessed in the light of the need for an interlocutory order in order to avoid serious and irreparable damage to the party seeking the interim protection. It is for that party to prove that it cannot wait for the outcome of the main proceedings without suffering damage of that nature. In order to establish the existence of serious and irreparable damage, it is not necessary for the occurrence of the damage to be demonstrated with absolute certainty. It is sufficient that it be foreseeable with a sufficient degree of probability (order of 17 December 2018, *Commission* v *Poland*, C-619/18 R, EU:C:2018:1021, paragraph 60 and the case-law cited).

83 In addition, the court hearing an application for interim relief must postulate – solely for the purposes of assessing urgency, without this involving it taking any position as regards the merits of the complaints put forward in the main action by the applicant for interim relief – that those complaints might be upheld. The serious and irreparable damage whose likely occurrence must be established is that which would result, where relevant, from a refusal to grant the interim measures sought in the event that the action in the main proceedings was subsequently successful (order of 17 December 2018, *Commission* v *Poland*, C-619/18 R, EU:C:2018:1021, paragraph 61 and the case-law cited).

84 Consequently, in the present case, the Court must, for the purposes of assessing urgency, postulate that the national provisions referred to in the second complaint of the first plea in the action for failure to fulfil obligations might jeopardise the independence of the Disciplinary Chamber and might thus be at odds with the Republic of Poland's obligation, under the second subparagraph of Article 19(1) TEU, to ensure that decisions delivered in disciplinary proceedings brought against the judges of national courts called upon to rule on questions of EU law are reviewed by a body which satisfies the requirements inherent in effective judicial protection, including that of independence.

85 For the purposes of that assessment, it is necessary, moreover, to take account of the fact that the Disciplinary Chamber is already constituted as a result of the application of the national provisions referred to in the action for failure to fulfil obligations, in particular those concerning the appointment of judges called upon to sit in it, and that that Chamber has already commenced its activities.

86 In that context, it is necessary to examine whether, as the Commission submits, the application of the national provisions at issue is likely to cause serious and irreparable harm to the functioning of the EU legal order.

87 In that regard, it is apparent from the national provisions at issue that the Disciplinary Chamber is, as regards judges of the ordinary courts, the disciplinary court of second instance and, in certain cases, of first instance, and, as regards the judges of the Sąd Najwyższy (Supreme Court), the disciplinary court of first and second instance.

88 The guarantee of the independence of the Disciplinary Chamber as the court having jurisdiction to rule in disciplinary cases concerning the judges of the Sąd Najwyższy (Supreme Court) and the ordinary courts is, in accordance with the case-law referred to in paragraph 34 of the present order, essential in order to safeguard the independence of both the Sąd Najwyższy (Supreme Court) and the ordinary courts.

89 It follows that the fact that the independence of the Disciplinary Chamber may not be guaranteed until delivery of the final judgment will also have the effect of compromising the independence of the Sąd Najwyższy (Supreme Court) and the ordinary courts during that period.

90 The mere prospect, for the judges of the Sąd Najwyższy (Supreme Court) and the ordinary courts, of being exposed to the risk of a disciplinary procedure capable of leading to proceedings being brought before a body whose independence is not guaranteed is liable to affect their own independence. The number of proceedings actually brought, to date, with regard to such judges and the outcome of those proceedings is irrelevant in that regard.

91 In accordance with the case-law referred to in paragraph 33 of the present order, preserving the independence of the Sąd Najwyższy (Supreme Court) and the ordinary courts is essential in order that judicial protection of an individual's rights under EU law is ensured.

92 The Court has thus previously held that the fact that the independence of the Sąd Najwyższy (Supreme Court) may not be guaranteed is liable to cause serious harm, which is by nature irreparable, to the EU legal order and, consequently, to the rights which individuals derive from EU law and to the values, set out in Article 2 TEU, on which that Union is founded, in particular, that of the rule of law (see, to that effect, order of 17 December 2018, *Commission* v *Poland*, C-619/18 R, EU:C:2018:1021, paragraphs 68, 70 and 71).

93 It follows from the foregoing that the application of the national provisions at issue, in so far as they confer jurisdiction to rule on disciplinary matters relating to the judges of the Sąd Najwyższy (Supreme Court) and the ordinary courts to a body, in the present case the Disciplinary Chamber, whose independence may not be guaranteed, is liable to cause serious and irreparable harm to the EU legal order.

94 The Republic of Poland's argument that the condition relating to urgency is not satisfied in the present case on the ground that the Commission was late in taking steps to put an end to the alleged failure to fulfil obligations cannot succeed.

95 It is sufficient to recall that the action for failure to fulfil obligations to which the present application for interim measures is an adjunct is part of a series of measures adopted by the Commission in respect of all the legislative reforms relating to the judicial system introduced by the Republic of Poland since 2015, those measures including the adoption, on 20 December 2017, of a reasoned proposal in accordance with Article 7(1) [TEU] concerning the rule of law in Poland (COM (2017) 835 final), in which that institution set out, inter alia, the problems raised by the national provisions referred to in the action for failure to fulfil obligations in the light of the principle of independence of the judges.

96 Nor can the Republic of Poland's claim that there was no urgency on the ground that the Commission made the application for interim measures three months after bringing the action for failure to fulfil obligations be upheld.

97 It should be noted, first of all, that, on the date on which that action for failure to fulfil obligations was brought, the Polish Government and the Commission had been informed of the date of delivery of the judgment in *A.K.*

98 Since that judgment raised the question of the independence of the Disciplinary Chamber, it was reasonable for the Commission, before making an application for interim measures, to await the Court's answer to that question and, if necessary, to assess the effects of that judgment in Poland.

99 Next, it should be noted that, at the same time as bringing the action for failure to fulfil obligations, the Commission requested that the expedited procedure under Article 23a of the Statute of the Court of Justice of the European Union and Article 133(1) of the Rules of Procedure be applied to that action, on the ground, inter alia, that the infringements alleged in the action are systemic and that an early examination of the case would serve legal certainty in the interests of both the European Union and the Member State concerned.

100 Contrary to what the Republic of Poland claims, the fact that that request was rejected by the Court does not demonstrate a lack of urgency.

101 There is no correlation between the question whether to rule on the substance of a case under the expedited procedure and that of whether the interim measures applied for in that case are urgent in order to avoid serious harm to the party requesting them (order of the Vice-President of the Court of 22 March 2018, *Wall Street Systems UK* v *ECB*, C-576/17 P (R) and C-576/17 P (R) -R, not published, EU:C:2018:208, paragraph 51).

102 In that context, the expedited procedure may not be applied where the sensitive and complex nature of the legal problems raised by a case does not lend itself easily to the application of such a procedure, in particular where it is not appropriate to shorten the written part of the procedure before the Court (see, by analogy, order of the President of the Court of 18 October 2017, *Weiss and Others*, C-493/17, not published, EU:C:2017:792, paragraph 13). It should be noted that that is the position in the present case.

103 In the light of the above considerations, it must be held that the requirement that a prima facie case be established has been satisfied in the present case.

Balancing of interests

104 It is clear that, in most interim proceedings, the decision to grant or to refuse the suspension of application sought is likely to produce, to a certain extent, certain definitive effects and it is for the court hearing the application for interim relief to weigh up the risks attaching to each of the possible solutions. In practical terms, this involves, in particular, examining whether or not the interest of the applicant for interim measures in obtaining suspension of the application of provisions of national legislation outweighs the interest in their immediate implementation. In that examination, it must be determined whether the possible repeal of those provisions after the Court has upheld the action in the main proceedings would make it possible to reverse the situation that would have been brought about by their immediate implementation and, conversely, where the suspension of their application would be such as to impede the objectives pursued by those provisions in the event of the action in the main proceedings being dismissed (order of 17 December 2018, *Commission* v *Poland*, C-619/18 R, EU:C:2018:1021, paragraph 91 and the case-law cited).

105 In the present case, the Commission submits that, if the Court were to uphold the action for failure to fulfil obligations after refusing to order the interim measures sought, the proper functioning of the EU legal order would be systematically affected and irreparable damage would be caused to the rights which individuals derive from EU law. On the other hand, if the Court were to dismiss the action for failure to fulfil obligations after ordering interim measures, the only consequence would be that the activity of the Disciplinary Chamber would have been temporarily suspended.

106 The Republic of Poland submits that the application of the interim measures sought would compel the Polish legislature and executive to adopt measures the practical effect of which would be the dissolution of a judicial authority which, in accordance with the law, carries out its structural tasks relating to the administration of justice. The application of such interim measures would thus undermine the fundamental structural principles of the Polish State, by diminishing, in the eyes of persons subject to legal proceedings, the appearance of independence of the Sąd Najwyższy (Supreme Court).

107 The application of the interim measures sought would also have the effect of terminating an entity whose budget is implemented by its President, separately from the budget of the other chambers of the Sąd Najwyższy (Supreme Court). Similarly, the place of work of the employees responsible for the administrative and financial service of that entity would disappear.

108 Finally, the application of such measures would adversely affect the right of persons subject to legal proceedings whose cases are pending for those cases to be examined by the court previously established in accordance with the law.

109 In that regard, it should, first of all, be noted that, as recalled in paragraph 29 of the present order, although the organisation of justice of the Member States falls within their competence, the fact remains that, in exercising that power, the Member States are required to comply with their obligations under EU law and, in particular, the second subparagraph of Article 19(1) TEU.

110 Next, as has been pointed out in paragraphs 44 and 47 of the present order, the grant of the interim measures sought would entail neither the dissolution of the Disciplinary Chamber nor, accordingly, the removal of its administrative and financial services, but the provisional suspension of its activity until delivery of the final judgment.

111 Furthermore, inasmuch as granting those measures would mean that the processing of cases pending before the Disciplinary Chamber must be suspended until delivery of the final judgment, the harm resulting for the individuals concerned from the suspension of those cases would be less than that resulting from the examination of those cases by a body, namely the Disciplinary Chamber, whose lack of independence and impartiality cannot, prima facie, be ruled out.

112 Finally, the budgetary difficulties invoked by the Republic of Poland which would be connected with the grant of the interim measures sought cannot take precedence over the risk of harm to the general interest of the European Union with regard to the proper functioning of its legal order.

113 In those circumstances, it must be concluded that the balance of interests leans in favour of granting the interim measures requested by the Commission.

114 In the light of all the foregoing, the Court grants the Commission's application for interim measures referred to in paragraph 1 of the present order.

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

1. The Republic of Poland is required, immediately and pending delivery of the judgment closing the proceedings in Case C-791/19,

– **to suspend the application of the provisions of Article 3(5), Article 27 and Article 73(1) of the ustawa o Sądzie Najwyższym (Law on the Supreme Court) of 8 December 2017**

(Dz. U. of 2018, item 5), as amended, forming the basis of the jurisdiction of the Izba Dyscyplinarna (Disciplinary Chamber) of the Sąd Najwyższy (Supreme Court) to rule, both at first instance and on appeal, in disciplinary cases concerning judges;

– **to refrain from referring the cases pending before the Izba Dyscyplinarna (Disciplinary Chamber) of the Sąd Najwyższy (Supreme Court) before a panel that does not meet the requirements of independence defined, inter alia, in 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), and**

– **to inform the European Commission, at the latest one month after being notified of the order of the Court granting the requested interim measures, of all the measures it has adopted in order to comply fully with this order.**

2. The costs are reserved.

[Signatures]