

## Questions referred

1. Must EU law – in particular Article 47 of the Charter and the right to an effective remedy before a tribunal and to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law expressed therein – be interpreted as precluding national legislation, referred to in details in Questions 2 and 3 of this request, which reserves jurisdiction to authorise waiving of judge’s immunity and to suspend him in his official duties, and, as a result, effectively removing this judge from hearing cases pending before him, to the Disciplinary Chamber of the Supreme Court, taking into consideration, among other things, that:
  - a) the Disciplinary Chamber does not constitute a “court” within the meaning of Article 47 of the Charter, Article 6 ECHR and Article 45(1) of the Constitution of the Republic of Poland [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];
  - b) members of the Disciplinary Chamber demonstrate particularly strong connections with the legislature and the executive [order of 8 April 2020, *Commission v Poland (Disciplinary regime for judges)*, C-791/19 R, EU:C:2020:277];
  - c) the Republic of Poland was required to suspend the application of certain provisions of the Law on the Supreme Court of 8 April 2017 regarding the Disciplinary Chamber and to refrain from referring cases pending before this chamber before a panel whose composition does not meet the requirements of independence [order of 8 April 2020, *Commission v Poland (Disciplinary regime for judges)*, C-791/19 R, EU:C:2020:277]?
  
2. Must EU law – in particular Article 2 TEU and the value of the rule of law expressed therein, and the requirements of effective judicial protection referred to in the second subparagraph of Article 19(1) TEU – be interpreted as meaning that “the rules governing the disciplinary regime for those who have the task of adjudicating” also cover national provisions relating to criminal prosecution or detention of a judge, such as Article 181 of the Constitution of the Republic of Poland in conjunction with Article 80 and Article 129 of the Law on the system of ordinary courts of 27 July 2001, according to which:

- a) criminal prosecution or detention of a judge, as a rule at the application of the public prosecutor, requires the authorisation of the competent disciplinary court;
  - b) the disciplinary court, having authorised the criminal prosecution or detention of a judge, is allowed (and in some cases is obliged) to suspend this judge in his official duties;
  - c) while suspending the judge in his official duties, the disciplinary court is at the same time obliged to reduce his remuneration, within the limits set by those provision, for the duration of the suspension?
3. Must EU law – in particular the provisions referred to in Question 2 – be interpreted as precluding national legislation, such as Article 110(2a) of the Law on the system of ordinary courts of 27 July 2001 and Article 27(1)(1a) of the Law on the Supreme Court of 8 December 2017, which reserves an exclusive jurisdiction to authorise criminal prosecution or detention of a judge, both at first instance and on appeal, to a body, such as the Disciplinary Chamber, taking into consideration, either individually or cumulatively, that:
- a) the establishment of the Disciplinary Chamber coincided with the change in the rules regarding the composition of a body, such as the National Council of the Judiciary, which takes part in judicial appointments and on whose application all members of the Disciplinary Chamber were appointed;
  - b) the legislature has made impossible to transfer judges of the court of the last instance, such as the Supreme Court, within which the Disciplinary Chamber operates, to this chamber, so that only new members appointed at the application of the National Council of the Judiciary may sit in the Disciplinary Chamber;
  - c) the Disciplinary Chamber enjoys a particularly high degree of autonomy within the Supreme Court;
  - d) the Supreme Court in its rulings 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) confirmed that the National Council of the Judiciary in its current composition is not independent of the legislature and the executive and that the Disciplinary Chamber does not constitute a “court” within the meaning of Article 47 of the Charter, Article 6 ECHR and Article 45(1) of the Constitution of the Republic of Poland;

- e) the application for criminal prosecution or detention of a judge is submitted, as a rule, by the public prosecutor whose hierarchical superior is a member of the executive, such as the Minister of Justice, who is competent to give binding orders for prosecutors concerning the content of an act in court proceedings, while the members of the Disciplinary Chamber and the National Council of the Judiciary demonstrate, as confirmed by the Supreme Court in its rulings referred to in Question 2d, particularly strong connections with the legislature and the executive, so that the Disciplinary Chamber cannot be regarded as a third party in relation to the public prosecutor;
  - f) the Republic of Poland was required to suspend the application of certain provisions of the Law on the Supreme Court of 8 April 2017 concerning the Disciplinary Chamber and to refrain from referring cases pending before this chamber before a panel whose composition does not meet the requirements of independence, following the order of 8 April 2020, *Commission v Poland (Disciplinary regime for judges)*, (C-791/19 R, EU:C:2020:277)?
4. Where the authorisation for the criminal prosecution of the judge, including his suspension in official duties and the reduction of his remuneration for the duration of this suspension, was issued, must EU law – in particular the provisions referred to in Question 2 and the principles of the primacy of EU law, sincere cooperation, expressed in Article 4(3) TEU, and legal certainty – be interpreted as precluding the binding force of such authorisation, in particular with regard to the suspension of the judge in his official duties, if it was issued by a body, such as the Disciplinary Chamber, therefore:
- a) all bodies of the Member State (including the referring court, composed of the judge in question, as well as judicial authorities competent to allocate cases to judges and to change this allocation) are obliged to disregard this authorisation and to allow the judge subject to it to be included in panels of that court;
  - b) the court, composed of the judge in question, constitutes a court previously established by law, alternatively an independent and impartial court, and, therefore, can rule, as a “court”, on questions concerning the application or interpretation of EU law?