Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

18 December 2025 * [i]

Table of contents

Legal context 4
European Union law 4
The Act of Accession 4
The EU Treaty 5
The FEU Treaty 6
The Charter 7
Declaration No 17 concerning primacy 7
Polish law 8
The Polish Constitution 8
The legislative provisions relating to the organisation and functioning of the Trybunał Konstytucyjny (Constitutional Court) 10
Background to the dispute 14
The procedures relating to the appointment of three judges and the President of the Trybunał Konstytucyjny (Constitutional Court) 14
The procedure relating to the appointment of three judges of the Trybunał Konstytucyjny (Constitutional Court) in December 2015 14
Procedure relating to the appointment of the President of the Trybunał Konstytucyjny (Constitutional Court) 17
The judgments of the Trybunał Konstytucyjny (Constitutional Court) of 14 July 2021 and of 7 October 2021 17

* Language of the case: Polish.

The judgment of 14 July 2021 . . . 17

The judgment of 7 October 2021 . . . 18

Pre-litigation procedure . . . 19

Procedure before the Court . . . 20

The action . . . 20

The first complaint . . . 21

Arguments of the parties . . . 21

Findings of the Court . . . 23

– The first part of the first complaint . . . 24

– The second part of the first complaint . . . 28

The second complaint . . . 30

Arguments of the parties . . . 30

Findings of the Court . . . 34

– The alleged breach of the principles of autonomy, primacy, effectiveness and the uniform application of EU law . . . 34

– The alleged breach of the principle of the binding effect of the case-law of the Court . 40

The third complaint . . . 45

Arguments of the parties . . . 45

Findings of the Court . . . 49

– The first part of the third complaint . . . 49

– The second part of the third complaint . . . 52

Costs . . . 56

(Failure of a Member State to fulfil obligations – Article 2 TEU – Article 4(3) TEU – Second subparagraph of Article 19(1) TEU – Rule of law – Effective judicial protection in the fields covered by Union law – Principles of autonomy, primacy, effectiveness and the uniform application of EU law – Principle of the binding effect of the case-law of the Court – Judgments of the Trybunał Konstytucyjny (Constitutional Court, Poland) – Judgments of the Court and interim measures under Article 279 TFEU relating to the second subparagraph of Article 19(1) TEU – Rejection by the Trybunał Konstytucyjny (Constitutional Court) of those judgments and of those measures as *ultra vires* – National constitutional identity – Prohibition issued by the Trybunał Konstytucyjny (Constitutional Court) preventing all public

authorities from applying Article 2 TEU and the second subparagraph of Article 19(1) TEU – Second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union – Requirement of an independent and impartial tribunal previously established by law – Improper composition of the Trybunał Konstytucyjny (Constitutional Court))

In Case C-448/23,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 17 July 2023,

European Commission, represented by K. Herrmann, C. Ladenburger and P.J.O. Van Nuffel, acting as Agents,

applicant,

supported by:

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

Kingdom of the Netherlands, represented by M.K. Bulterman, J.M. Hoogveld and C.S. Schillemans, acting as Agents,

interveners,

v

Republic of Poland, represented initially by B. Majczyna and S. Żyrek, acting as Agents, and subsequently by B. Majczyna, acting as Agent,

defendant,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, T. von Danwitz (Rapporteur), Vice-President, F. Biltgen, I. Jarukaitis, M.L. Arastey Sahún, I. Ziemele, J. Passer, O. Spineanu-Matei, M. Condinanzi and F. Schalin, Presidents of Chambers, A. Kumin, N. Jääskinen, D. Gratsias, Z. Csehi, and B. Smulders, Judges,

Advocate General: D. Spielmann,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 11 March 2025,

gives the following

Judgment

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

– declare that, in the light of the interpretation of the Konstytucja Rzeczypospolitej Polskiej (Constitution of the Republic of Poland; 'the Polish Constitution') made by the Trybunał Konstytucyjny (Constitutional Court, Poland) in its judgments of 14 July 2021 (Case P 7/20) and of 7 October 2021 (Case K 3/21), the Republic of Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU;

– declare that, in the light of the interpretation of the Polish Constitution made by the Trybunał Konstytucyjny (Constitutional Court) in its judgments of 14 July 2021 (Case P 7/20) and of 7 October 2021 (Case K 3/21), the Republic of Poland has failed to fulfil its obligations under the general principles of autonomy, primacy, effectiveness and the uniform application of EU law and under the principle of the binding effect of judgments of the Court of Justice;

– declare that, since the Trybunał Konstytucyjny (Constitutional Court) does not satisfy the requirements of an independent and impartial tribunal previously established by law, as a result of irregularities in the procedures for the appointment of three judges to that court in December 2015 and for the appointment of its President in December 2016, the Republic of Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU; and

– order the Republic of Poland to pay the costs.

Legal context

European Union law

The Act of Accession

2 Article 2 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33; 'the Act of Accession') states:

'From the date of accession, the provisions of the original Treaties and the acts adopted by the institutions and the European Central Bank before accession shall be binding on the new Member States and shall apply in those States under the conditions laid down in those Treaties and in this Act.'

3 Article 10 of the Act of Accession is worded as follows:

'The application of the original Treaties and acts adopted by the institutions shall, as a transitional measure, be subject to the derogations provided for in this Act.'

The EU Treaty

4 Under the first and second paragraphs of Article 1 TEU:

'By this Treaty, the High Contracting Parties establish among themselves a European Union, hereinafter called "the Union", on which the Member States confer competences to attain objectives they have in common.

This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.'

5 Article 2 TEU reads as follows:

'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'

6 Article 4 TEU provides:

'1. In accordance with Article 5, competences not conferred upon the Union in the Treaties remain with the Member States.

2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.

3. Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.'

7 Article 5(1) and (2) TEU provides:

'1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.

2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.'

8 Article 13(2) TEU reads as follows:

'Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice mutual sincere cooperation.'

9 Article 19(1) TEU provides:

'The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed.

Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.'

10 Article 49 TEU provides:

'Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.

The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.'

The FEU Treaty

11 Under Article 267 TFEU:

'The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

(a) the interpretation of the Treaties;

(b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

…'

12 Article 279 TFEU provides:

'The Court of Justice of the European Union may in any cases before it prescribe any necessary interim measures.'

The Charter

13 Title VI of the Charter of Fundamental Rights of the European Union ('the Charter'), entitled 'Justice', includes, in particular, Article 47 thereof, entitled 'Right to an effective remedy and to a fair trial', which is worded as follows:

'Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. …

…'

14 Article 52(1) and (3) of the Charter provides:

'1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

…

3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.'

Declaration No 17 concerning primacy

15 Declaration No 17 concerning primacy, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon (OJ 2012 C 326, p. 346), is worded as follows:

'The Conference recalls that, in accordance with well settled case-law of the Court of Justice of the European Union, the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of Member States, under the conditions laid down by the said case-law.

The Conference has also decided to attach as an Annex to this Final Act the Opinion of the Council Legal Service on the primacy of EC law as set out in 11197/07 (JUR 260):

"Opinion of the Council Legal Service of 22 June 2007

It results from the case-law of the [Court] that primacy of EC law is a cornerstone principle of Community law. According to the Court, this principle is inherent to the specific nature of the European Community. At the time of the first judgment of this established case-law ([judgment of 15 July 1964, *Costa*, 6/64, EU:C:1964:66]) there was no mention of primacy in the treaty. It is still the case today. The fact that the principle of primacy will not be included in the future treaty shall not in any way change the existence of the principle and the existing case-law of the [Court].'"

Polish law

The Polish Constitution

16 Article 2 of the Polish Constitution states:

'The Republic of Poland shall be a democratic State subject to the rule of law and implementing the principles of social justice.'

17 Article 4(1) of that constitution provides:

'Supreme power in the Republic of Poland shall be vested in the Nation.'

18 Article 7 of that constitution states that 'the organs of public authority shall function on the basis of, and within the limits of, the law.'

19 According to Article 8(1) of the Polish Constitution, 'the Constitution shall be the supreme law of the Republic of Poland.'

20 Article 90(1) of that constitution provides that 'the Republic of Poland may, by virtue of an international agreement, delegate to an international organisation or international institution the competence of organs of State authority in relation to certain matters.'

21 Article 91(1) and (2) of the Polish Constitution is worded as follows:

'1. After promulgation thereof in the Journal of Laws of the Republic of Poland [(*Dziennik Ustaw*)], a ratified international agreement shall constitute part of the domestic legal order and shall be directly applicable, unless its application depends on the enactment of a statute.

2. An international agreement ratified upon prior consent granted by statute shall have precedence over that statute if such an agreement cannot be reconciled with the provisions of such statutes.'

22 Article 144 of that constitution provides:

'1. The President of the Republic [of Poland], exercising his or her constitutional and statutory authority, shall issue Official Acts.

2. Official Acts of the President [of the Republic of Poland] shall require, for their validity, the signature of the Prime Minister who, by such signature, accepts responsibility therefor before the Sejm. [(Lower Chamber of the Polish Parliament, Poland)].

3. The provisions of paragraph 2 above shall not apply in the following cases:

…

17. the appointment of judges,

…'

23 Article 178(1) of that constitution provides:

'Judges, within the exercise of their office, shall be independent and subject only to the [Polish Constitution] and statutes.'

24 Article 179 of the Polish Constitution is worded as follows:

'The President of the Republic [of Poland] shall appoint judges, on a proposal from the Krajowa Rada Sądownictwa [(National Council of the Judiciary, Poland; "the KRS")], for an indefinite period.'

25 In accordance with Article 188 of that constitution:

'The Trybunał Konstytucyjny [(Constitutional Court)] shall adjudicate regarding the following matters:

1. the conformity of statutes and international agreements with the [Polish Constitution];

2. the conformity of a statute with ratified international agreements whose ratification required prior consent granted by statute;

3. the conformity of legal provisions issued by central State organs with the [Polish Constitution], ratified international agreements and statutes;

4. the conformity with the [Polish Constitution] of the purposes or activities of political parties;

5. complaints concerning constitutional infringements, as specified in Article 79(1).'

26 Article 190 of the Polish Constitution provides:

'1. Judgments of the Trybunał Konstytucyjny [(Constitutional Court)] shall be of universally binding application and shall be final.

2. Judgments of the Trybunał Konstytucyjny [(Constitutional Court)] regarding matters specified in Article 188 shall be immediately published in the official publication in which the original legislative act was published. If a legislative act has not been published, then the judgment shall be published in the *Dziennik Urzędowy Rzeczypospolitej Polskiej "Monitor Polski"* [(Official Gazette of the Republic of Poland)].

3. A judgment of the Trybunał Konstytucyjny [(Constitutional Court)] shall take effect from the day of its publication …

…

5. The Trybunał Konstytucyjny [(Constitutional Court)] shall reach its decisions by a majority of votes.'

27 Article 193 of the Polish Constitution is worded as follows:

'Any court may refer a question of law to the Trybunał Konstytucyjny [(Constitutional Court)] as to the conformity of a normative act with the [Polish Constitution], ratified international agreements or statute, if the answer to such question of law will determine an issue currently before such court.'

28 Article 194 of the Polish Constitution states:

'1. The Trybunał Konstytucyjny [(Constitutional Court)] shall be composed of 15 judges chosen individually by the Sejm [(Lower Chamber of the Polish Parliament)] for a term of office of nine years from amongst persons distinguished by their knowledge of the law. No person may be chosen for more than one term of office at the Trybunał Konstytucyjny [(Constitutional Court)].

2. The President and Vice-President of the Trybunał Konstytucyjny [(Constitutional Court)] shall be appointed by the President of the Republic [of Poland] from among candidates proposed by the General Assembly of the Judges of the Trybunał Konstytucyjny [(Constitutional Court)] [("the General Assembly")].'

29 Under Article 197 of the Polish Constitution, 'the organisation of the Trybunał Konstytucyjny [(Constitutional Court)], as well as the mode of proceedings before it, shall be specified by statute.'

The legislative provisions relating to the organisation and functioning of the Trybunał Konstytucyjny (Constitutional Court)

30 In 2015 and 2016, the Sejm (Lower Chamber of the Polish Parliament) adopted several laws amending the organising and functioning of the Trybunał Konstytucyjny (Constitutional Court).

31 On 25 June 2015, the Sejm (Lower Chamber of the Polish Parliament) adopted the ustawa o Trybunale Konstytucyjnym (Law on the Constitutional Court) (Dz. U., item 1064; 'the Law of 25 June 2015 on the Constitutional Court), which entered into force on 30 August 2015.

32 Article 19(1) and (2) of that law provided:

'1. The right to propose a candidate for the office of judge at the [Trybunał Konstytucyjny (Constitutional Court)] shall be conferred on the office of the Sejm [(Lower Chamber of the Polish Parliament)] and a group of at least 50 members of parliament.

2. The proposal for the appointment of a candidate to the position of judge of the [Trybunał Konstytucyjny (Constitutional Court)] shall be submitted to the President of the Sejm [(Lower Chamber of the Polish Parliament)] no later than three months before the expiry date of the current term of office of a judge of the [Trybunał Konstytucyjny (Constitutional Court)].'

33 According to Article 21(1) of that law, a person elected to the position of judge of the Trybunał Konstytucyjny (Constitutional Court) must take an oath before the President of the Republic of Poland in accordance with the wording laid down in that provision.

34 Article 137 of the Law of 25 June 2015 on the Constitutional Court provided, by way of a transitional measure, concerning judges of the Trybunał Konstytucyjny (Constitutional Court) whose term of office was to expire in 2015, that the proposal referred to in Article 19(2) of that law had to be submitted within 30 days of the date of entry into force of that law.

35 On 19 November 2015, the Sejm (Lower Chamber of the Polish Parliament) adopted, in the context of an urgent procedure, the ustawa o zmianie ustawy z dnia 25 czerwca 2015 r. o Trybunale Konstytucyjnym (Law amending the Law of 25 June 2015 on the Constitutional Court) (Dz. U., item 1928; 'the amending law of 19 November 2015'), which entered into force on 5 December 2015.

36 Article 1(3) of that law amended Article 19(2) of the Law of 25 June 2015 on the Constitutional Court, which was then worded as follows:

'A proposal for the appointment of a candidate to the position of judge of the Trybunał Konstytucyjny [(Constitutional Court)] shall be submitted to the President of the Sejm [(Lower Chamber of the Polish Parliament)] 30 days before the expiry of the term of office of a judge of the Trybunał Konstytucyjny [(Constitutional Court)].'

37 Article 1(4)(a) of the amending law of 19 November 2015 amended Article 21(1) of the Law of 25 June 2015 on the Constitutional Court, which was then worded as follows:

'A person elected to the position of judge of the Trybunał Konstytucyjny [(Constitutional Court)] shall take an oath before the President of the Republic [of Poland] within 30 days of the date of his or her election …'

38 Article 1(4)(b) of the amending law of 19 November 2015 on the Constitutional Court inserted in the Law of 25 June 2015 on the Constitutional Court Article 21(1a), which is worded as follows:

'The taking of the oath shall mark the start of the term of office of the judge of the [Trybunał Konstytucyjny (Constitutional Court)].'

39 Article 1 of the amending law of 19 November 2015, by paragraph 5, repealed Article 137 of the Law of 25 June 2015 on the Constitutional Court and, by paragraph 6, inserted in that law Article 137a providing, as regards judges of the Trybunał Konstytucyjny (Constitutional Court) whose term of office expired in 2015, that the proposal referred to in Article 19(2) was to be submitted within seven days of the date of entry into force of Article 137a.

40 Article 2 of the amending law of 19 November 2015 provided as follows:

'The term of office of the current President and Vice-President of the [Trybunał Konstytucyjny (Constitutional Court)] shall expire three months after the date of entry into force of the law.'

41 On 22 July 2016, the Sejm (Lower Chamber of the Polish Parliament) adopted the ustawa o Trybunale Konstytucyjnym (Law on the Constitutional Court) (Dz. U., item 1157; 'the Law of 22 July 2016 on the Constitutional Court'), which was intended to replace the law of 25 June 2015 on the Constitutional Court and which was to enter into force on 16 August 2016.

42 Article 16(4) and (7) of the Law of 22 July 2016 on the Constitutional Court was worded as follows:

'4. The part of the session of the General Assembly concerning the election of candidates to the position of President or Vice-President of the [Trybunał Konstytucyjny (Constitutional Court)] shall be presided over by the oldest judge of the [Trybunał Konstytucyjny (Constitutional Court)] taking part in the General Assembly.

…

7. Candidates shall be elected if at least 10 of the total number of judges of the [Trybunał Konstytucyjny (Constitutional Court)], as defined in Article 194(1) of the [Polish Constitution], take part in the General Assembly. Each judge of the [Trybunał Konstytucyjny (Constitutional Court)] taking part in the election procedure shall have one vote only and may vote for one candidate only.'

43 Under Article 90 of the Law of 22 July 2016 on the Constitutional Court:

'The President of the [Trybunał Konstytucyjny (Constitutional Court)] shall include in the judicial panels judges of the [Trybunał Konstytucyjny (Constitutional Court)] who have taken an oath before the President of the Republic [of Poland] but who have not yet taken office on the date of entry into force of this law, and shall assign cases to them.'

44 By judgment of 11 August 2016 (Case K 39/16), the Trybunał Konstytucyjny (Constitutional Court) held that Article 90 of the Law of 22 July 2016 on the Constitutional Court was incompatible with Article 194(1) of the Polish Constitution.

45 On 13 December 2016, the Sejm (Lower Chamber of the Polish Parliament) adopted the ustawa przepisy wprowadzające ustawę o organizacji i trybie postępowania przed Trybunałem Konstytucyjnym oraz o statusie sędziów Trybunału Konstytucyjnego (Law laying down introductory provisions in the Law on the organisation of the Constitutional Court and procedures before it and the Law on the status of judges of the Constitutional Court) (Dz. U., item 2074; 'the Law laying down introductory provisions'), which entered into force, for certain of those provisions, on 20 December 2016.

46 Article 3 of that law repealed the Law of 22 July 2016 on the Constitutional Court.

47 Article 18 of the Law laying down introductory provisions provides that the President of the Republic of Poland may entrust the exercise of the duties of the President of the Trybunał Konstytucyjny (Constitutional Court) to a judge of that court.

48 Article 20 of that law provides:

'The judge acting as President of the [Trybunał Konstytucyjny (Constitutional Court)] shall, within one month of the day following the date of promulgation of this law, carry out the procedure for submitting candidates for the position of President of the [Trybunał Konstytucyjny (Constitutional Court)] to the President of the Republic of Poland under the conditions laid down in Article 21.'

49 Article 21 of that law, which lays down the procedure for appointing candidates to the position of President of the Trybunał Konstytucyjny (Constitutional Court) with a view to their presentation to the President of the Republic of Poland, states:

'1. The judge acting as President of the [Trybunał Konstytucyjny (Constitutional Court)] shall without delay convene a meeting of the General Assembly concerning the presentation to the President of the Republic of Poland of candidates for the position of President of the [Trybunał Konstytucyjny (Constitutional Court)] and shall notify the judges of the [Trybunał Konstytucyjny (Constitutional Court)] of the date of that meeting.

2. Judges of the [Trybunał Konstytucyjny (Constitutional Court)] who have taken an oath before the President of the Republic of Poland shall attend the meeting referred to in paragraph 1. The judge acting as President of the [Trybunał Konstytucyjny (Constitutional Court)] shall draw up the agenda and preside over the sitting.

3. The General Assembly shall select the candidates for the position of President of the [Trybunał Konstytucyjny (Constitutional Court)] by vote, in accordance with the principles set out in paragraphs 4 to 9.

4. Any judge of the [Trybunał Konstytucyjny (Constitutional Court)] referred to in paragraph 2 may put him- or herself forward for the selection procedure for candidates for the position of President of the [Trybunał Konstytucyjny (Constitutional Court)]. The judge acting as President of the [Trybunał Konstytucyjny (Constitutional Court)] shall collect applications from candidates from the date of publication of the date of the meeting of the General Assembly referred to in paragraph 1 up to the opening of that meeting.

5. The last names and first names of judges of the [Trybunał Konstytucyjny (Constitutional Court)] proposed in accordance with paragraph 4 shall be entered on the ballot paper in alphabetical order. The proposed applicants shall be the subject of a joint vote. The vote shall be valid if the sign 'x' or '+' (two crossed lines) appears in the box provided for that purpose on the ballot paper next to the name of a judge of the [Trybunał Konstytucyjny (Constitutional Court)]. The vote shall be taken by secret ballot.

…

7. The General Assembly shall propose as candidates for the position of President of the [Trybunał Konstytucyjny (Constitutional Court)], in the form of a resolution, all judges of the [Trybunał Konstytucyjny (Constitutional Court)] who have obtained at least five votes in the vote referred to in paragraph 5.

8. If the number of votes required under paragraph 7 has been obtained by one judge of the [Trybunał Konstytucyjny (Constitutional Court)] only, the General Assembly shall propose as candidates for the position of President of the [Trybunał Konstytucyjny (Constitutional Court)], in the form of a resolution, the judge of the [Trybunał Konstytucyjny (Constitutional Court)] who obtained the required minimum number of five votes and the judge of the [Trybunał Konstytucyjny (Constitutional Court)] who received the most support from among the judges of the [Trybunał Konstytucyjny (Constitutional Court)] who did not reach the required number of at least five votes.

9. Where, in the situation referred to in paragraph 8, more than one judge of the [Trybunał Konstytucyjny (Constitutional Court)] received the highest number of votes among the judges of the [Trybunał Konstytucyjny (Constitutional Court)] who did not receive the number of votes required in paragraph 7, the General Assembly – including the judge of the [Trybunał Konstytucyjny (Constitutional Court)] who received at least five votes – shall, by resolution, propose all judges of the [Trybunał Konstytucyjny (Constitutional Court)] who received the same highest number of votes as candidates for the position of President of the [Trybunał Konstytucyjny (Constitutional Court)].

…

11. Where the procedure provided for in paragraphs 4 to 9 has not resulted in the selection of at least two judges of the [Trybunał Konstytucyjny (Constitutional Court)] as candidates from the General Assembly for the position of President of the [Trybunał Konstytucyjny (Constitutional Court)], the judge acting as President of the [Trybunał Konstytucyjny (Constitutional Court)] shall close the session and reconvene the General Assembly for the purpose of submitting candidates for the position of President of the [Trybunał Konstytucyjny (Constitutional Court)].

…'

Background to the dispute

The procedures relating to the appointment of three judges and the President of the Trybunał Konstytucyjny (Constitutional Court)

The procedure relating to the appointment of three judges of the Trybunał Konstytucyjny (Constitutional Court) in December 2015

50 By resolutions of 8 October 2015 adopted during the seventh parliamentary term, the Sejm (Lower Chamber of the Polish Parliament) elected five persons as judges of the Trybunał Konstytucyjny (Constitutional Court). Three of them, R.H., A.J. and K.Ś., were to replace judges whose term of office was to expire on 6 November 2015, and two of them were judges whose term of office was to expire in December 2015.

51 The eighth parliamentary term of the Sejm (Lower Chamber of the Polish Parliament), following the parliamentary elections of 25 October 2015, held its first session on 12 November 2015. On 25 November 2015, the Sejm (Lower Chamber of the Polish Parliament) adopted five resolutions declaring the 'lack of legal effect' of the resolutions of 8 October 2015 and calling on the President of the Republic of Poland to refrain from hearing the oath of the persons elected by those resolutions.

52 By resolutions of 2 December 2015, the Sejm (Lower Chamber of the Polish Parliament) elected five persons as judges of the Trybunał Konstytucyjny (Constitutional Court). Three of them, H.C., L.M. and M.M., were to replace judges whose term of office had expired on 6 November 2015, and two of them were judges whose term of office was to expire in December 2015. On 3 and 9 December 2015, those five persons took an oath before the President of the Republic of Poland. However, on 3 December 2015, the President of the Trybunał Konstytucyjny

(Constitutional Court) refused to allow four of those judges who had been sworn in to sit until the question of the validity of their election by the Sejm (Lower Chamber of the Polish Parliament) had been clarified.

53 By judgment of 3 December 2015 (Case K 34/15), the Trybunał Konstytucyjny (Constitutional Court) ruled on an application for a declaration that several provisions of the Law of 25 June 2015 on the Constitutional Court were unconstitutional. That court held, in essence, that, in accordance with Article 194(1) of the Polish Constitution, it was for the Sejm (Lower Chamber of the Polish Parliament) during the parliamentary term in which the nine-year term of office of a judge of the Trybunał Konstytucyjny (Constitutional Court) had expired to elect a new judge. In those circumstances, it concluded, inter alia, that Article 137 of the Law of 25 June 2015 on the Constitutional Court was constitutional in so far as it concerned the judges of the Trybunał Konstytucyjny (Constitutional Court) whose term of office had expired on 6 November 2015, but unconstitutional in so far as it concerned the judges of that court whose term of office ended in December 2015.

54 Consequently, the Trybunał Konstytucyjny (Constitutional Court) held that the election, on 8 October 2015, during the seventh parliamentary term of the Sejm (Lower Chamber of the Polish Parliament), of three judges to replace judges whose term of office was to end on 6 November 2015 was valid. In addition, that court emphasised that the President of the Republic of Poland was required to hear the oath of those three judges, as he had no discretion in that regard. By contrast, that court pointed out that the Sejm (Lower Chamber of the Polish Parliament) was not entitled, during the seventh parliamentary term, to elect two judges to replace judges whose term of office was due to expire in December 2015.

55 By judgment of 9 December 2015 (Case K 35/15), the Trybunał Konstytucyjny (Constitutional Court) declared Article 1(6) of the amending law of 19 November 2015 to be incompatible with Article 194(1), read in conjunction with Article 7, of the Polish Constitution, in so far as, in essence, Article 137a which that provision had inserted in the Law of 25 June 2015 on the Constitutional Court provided for the election, during the eighth parliamentary term of the Sejm (Lower Chamber of the Polish Parliament), of judges to replace those whose term of office had expired during the seventh parliamentary term. By contrast, that court confirmed, as in its judgment of 3 December 2015, the compatibility with the Polish Constitution of Article 137 of the Law of 25 June 2015 on the Constitutional Court as the legal basis for the election by the Sejm (Lower Chamber of the Polish Parliament), during the seventh parliamentary term, of three judges to replace judges whose term of office had expired on 6 November 2015. In addition, it held that the election, during the eighth parliamentary term, on the basis of Article 137a of the Law of 25 June 2015 on the Constitutional Court, resulting from the amending law of 19 November 2015, of 3 judges intended to replace those whose term of office had expired on 6 November 2015 would have the effect of increasing the number of judges sitting in the Trybunał Konstytucyjny (Constitutional Court) to 18.

56 Despite those two judgments of the Trybunał Konstytucyjny (Constitutional Court), none of the three persons elected on 8 October 2015 by the Sejm (Lower Chamber of the Polish Parliament) to replace the judges whose term of office had expired on 6 November 2015 took an oath before the President of the Republic of Poland and took office within that court.

57 On 12 January 2016, A.R., who was then President of the Trybunał Konstytucyjny (Constitutional Court), authorised the two persons elected by the Sejm (Lower Chamber of the Polish Parliament) on 2 December 2015 to replace the two judges whose term of office had expired in December 2015 to sit in the Trybunał Konstytucyjny (Constitutional Court).

58 On 19 December 2016, A.R.'s term of office as President of the Trybunał Konstytucyjny (Constitutional Court) ended.

59 On 20 December 2016, in accordance with Article 18 of the Law laying down introductory provisions, the President of the Republic of Poland entrusted the exercise of the duties of the President of the Trybunał Konstytucyjny (Constitutional Court) to the judge J.P. On the same day, J.P. authorised H.C., L.M. and M.M., who had been elected by the Sejm (Lower Chamber of the Polish Parliament) on 2 December 2015 as replacements for the three judges whose term of office had expired on 6 November 2015, to sit in the Trybunał Konstytucyjny (Constitutional Court).

60 Since two judges of the Trybunał Konstytucyjny (Constitutional Court) had died in July and December 2017, the Sejm (Lower Chamber of the Polish Parliament) elected two new judges to replace them, on 19 September 2017 and 30 January 2018. Neither of them was among the three judges who had been elected on 8 October 2015 to replace the judges whose term of office had expired on 6 November 2015.

61 By judgment of 7 May 2021, *Xero Flor w Polsce sp. z o.o. v. Poland* (CE:ECHR:2021:0507JUD000490718, §§ 290 and 291), the European Court of Human Rights, hearing a case brought by a company whose constitutional complaint had been dismissed by the Trybunał Konstytucyjny (Constitutional Court), held that the appointment within that court of M.M., one of the judges who had sat on the panel which had examined its constitutional complaint, had been vitiated by grave irregularities that impaired the very essence of the right to a 'tribunal established by law' enshrined in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), signed in Rome on 4 November 1950. That court held that the applicant had been deprived of that right on account of M.M.'s participation in the proceedings before the Trybunał Konstytucyjny (Constitutional Court).

62 In order to reach that conclusion, the European Court of Human Rights held that there had been a manifest breach of Polish law on the appointment of judges of the Trybunał Konstytucyjny (Constitutional Court) by both the Sejm (Lower Chamber of the Polish Parliament) and the President of the Republic of Poland. It pointed out that, on 2 December 2015, during the eighth parliamentary term, the Sejm (Lower Chamber of the Polish Parliament) had elected three persons as judges at the Trybunał Konstytucyjny (Constitutional Court), including M.M., to replace three judges whose term of office had expired on 6 November 2015, even though those posts had already been filled by three persons elected by the Sejm (Lower Chamber of the Polish Parliament) on 8 October 2015, during the seventh parliamentary term. Furthermore, the European Court of Human Rights noted that the President of the Republic of Poland had refused to receive the oath of the three persons elected on 8 October 2015, even though he had received the oath from the three persons elected on 2 December 2015 (§§ 261 to 270 and 275).

63 The European Court of Human Rights held that the breach thus committed concerned a fundamental rule of Polish law applicable to the election of judges of the Trybunał Konstytucyjny (Constitutional Court), namely Article 194(1) of the Polish Constitution, and that that breach was of such gravity as to impair the legitimacy of the election process and undermine the very essence of the right to a 'tribunal established by law' and the principle of the rule of law (§§ 276 to 287).

Procedure relating to the appointment of the President of the Trybunał Konstytucyjny (Constitutional Court)

64 On 20 December 2016 at 09:30, J.P., who had just been entrusted with carrying out the duties of President of the Trybunał Konstytucyjny (Constitutional Court), called a meeting of the General Assembly for the same day at 13:30, in order to elect candidates for the position of President of that court to be proposed to the President of the Republic of Poland. One of the judges requested that the General Assembly be postponed, explaining that, in view of the short notice given, it would not be possible for all the judges to participate in the General Assembly. J.P. did not grant that request.

65 Of the 14 judges of the Trybunał Konstytucyjny (Constitutional Court) who thus attended the General Assembly, only 6, including H.C., L.M. and M.M., then agreed to take part in the election of candidates for the position of President of that court. J.P. received five votes and M.M. one and they were both proposed as candidates for that position to the President of the Republic of Poland.

66 On 21 December 2016, the President of the Republic of Poland appointed J.P. as President of the Trybunał Konstytucyjny (Constitutional Court).

The judgments of the Trybunał Konstytucyjny (Constitutional Court) of 14 July 2021 and of 7 October 2021

67 On 14 July 2021 and 7 October 2021, the Trybunał Konstytucyjny (Constitutional Court) delivered two judgments concerning the compatibility with the Polish Constitution of the Court's case-law relating, inter alia, to the obligation of the Republic of Poland arising from the second subparagraph of Article 19(1) TEU to ensure effective judicial protection ('the judgments at issue').

The judgment of 14 July 2021

68 On 14 July 2021, the Trybunał Konstytucyjny (Constitutional Court) delivered its judgment in Case P 7/20, the grounds of which were published on 7 October 2021 ('the judgment of 14 July 2021').

69 In that judgment, the Trybunał Konstytucyjny (Constitutional Court), hearing a case brought by the Izba Dyscyplinarna (Disciplinary Chamber) of the Sąd Najwyższy (Supreme Court, Poland), examined the compatibility with the Polish Constitution of the interim measures imposed on the Republic of Poland by the order of 8 April 2020, *Commission* v *Poland* (C-791/19 R, EU:C:2020:277), in particular that requiring it to suspend the application of the legislative provisions conferring on that chamber jurisdiction in disciplinary cases relating to judges.

70 The Trybunał Konstytucyjny (Constitutional Court) held that 'in so far as the [Court] has imposed *ultra vires* obligations on [the Republic of] Poland as an EU Member State by adopting interim measures relating to the organisation and jurisdiction of the Polish courts and to the procedure before the Polish courts, the second subparagraph of Article 4(3) [TEU], read in conjunction with Article 279 [TFEU], is contrary to Article 2, Article 7, Article 8(1) and Article 90(1), read in conjunction with Article 4(1) of the [Polish] Constitution, with the result that it is not covered by the principles of primacy and direct application laid down in Article 91(1) to (3) of the [Polish] Constitution'.

71 As regards the effects of the judgment of 14 July 2021, the Trybunał Konstytucyjny (Constitutional Court) held that 'the norms created by the Court', which were adopted *ultra vires*, were contrary to the Polish Constitution. That court also noted the following:

'Pursuant to Article 190(1) of the [Polish] Constitution, the present judgment, declaring the hierarchical non-compliance of the contested norm with the [Polish] Constitution, is final and universally binding. The judgment of the Trybunał Konstytucyjny [(Constitutional Court)] is aimed at all parties applying [EU] law in … [the] territory [of the Republic of Poland]. … The judgment of the Trybunał Konstytucyjny [(Constitutional Court)] produces *ex tunc* effects and is applicative in nature. The effect of a ruling stating that an EU act imposes *ultra vires* obligations on the Republic of Poland with regard to the organisation and jurisdiction of courts and procedure before the courts is that the norm the court is asking about has no legal effect in the Republic of Poland. In particular, the principle of direct effect (direct application) and the principle of primacy of EU law over national statutes, provided for by Article 91(1) to (3) of the [Polish] Constitution, do not apply to normative acts issued *ultra vires* by EU authorities, institutions and organisational bodies.'

The judgment of 7 October 2021

72 On 7 October 2021, the Trybunał Konstytucyjny (Constitutional Court), hearing a case brought by the President of the Council of Ministers and sitting as a full court, delivered its judgment in Case K 3/21 ('the judgment of 7 October 2021'), the grounds of which were published on 16 November 2022 and the operative part of which, published on 12 October 2021, states:

'1. The first and second paragraphs of Article 1 [TEU], read in conjunction with Article 4(3) [TEU] …, in so far as the European Union, established by equal and sovereign States, creating "an ever closer union among the peoples of Europe", the integration of which, based on EU law and the interpretation thereof by the [Court of Justice], is entering a "new stage" in which:

(a) the bodies of the European Union act outside the scope of the competences conferred upon them by the Republic of Poland in the Treaties;

(b) the [Polish] Constitution is not the supreme law of the Republic of Poland, having primacy as regards its binding force and application;

(c) the Republic of Poland cannot function as a sovereign and democratic State,

are contrary to Article 2, Article 8 and Article 90(1) of the [Polish] Constitution.

2. The second subparagraph of Article 19(1) [TEU], in so far as, for the purpose of ensuring effective legal protection in the fields covered by EU law, it confers on national courts (ordinary courts, administrative courts, military courts and the Sąd Najwyższy [(Supreme Court)]) competence to:

(a) disregard the provisions of the [Polish] Constitution in the decision-making process, is contrary to [Articles 2 and 7], Article 8(1), Article 90(1) and Article 178(1) of the [Polish] Constitution;

(b) adjudicate on the basis of non-binding provisions which have been repealed by the Sejm [(Lower Chamber of the Polish Parliament)] or declared unconstitutional by the Trybunał Konstytucyjny [(Constitutional Court)] and are no longer in force, is contrary to [Articles 2 and 7], Article 8(1), Article 90(1), Article 178(1) and Article 190(1) of the [Polish] Constitution.

3. The second subparagraph of Article 19(1) and Article 2 [TEU], in so far as, for the purpose of guaranteeing effective legal protection in the fields covered by EU law and ensuring the independence of judges, they confer on national courts (courts of general jurisdiction, administrative courts, military courts and the Sąd Najwyższy [(Supreme Court)]) powers to:

(a) review the legality of the procedure for the appointment of judges, including the legality of the act by which the President of the Republic of Poland appoints a judge, are contrary to Article 2, Article 8(1), Article 90(1) and Article 179, in conjunction with point 17 of Article 144(3) of the [Polish] Constitution;

(b) review the legality of a resolution by which the [KRS] submits to the President of the Republic [of Poland] a proposal for the appointment of a judge are contrary to Article 2, Article 8(1), Article 90(1) and Article 186(1) of the [Polish] Constitution;

(c) to rule on the defective nature of the process of appointing a judge and, consequently, to refuse to recognise the status of judge of a person appointed to the office of judge in accordance with Article 179 of the [Polish] Constitution are contrary to Article 2, Article 8(1), Article 90(1) and Article 179, in conjunction with point 17 of Article 144(3) of the [Polish] Constitution.'

Pre-litigation procedure

73 On 22 December 2021, the Commission sent a letter of formal notice to the Republic of Poland.

74 In that letter, the Commission stated that, on account of the interpretation of the Polish Constitution by the Trybunał Konstytucyjny (Constitutional Court), in particular in the judgments at issue, the Republic of Poland failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU and the general principles of autonomy, primacy, effectiveness and the uniform application of EU law and disregarded the binding effect of judgments of the Court. The Commission also considered that the Trybunał Konstytucyjny (Constitutional Court) did not satisfy the requirement of an independent and impartial tribunal previously established by law and that, also in that regard, that Member State had failed to fulfil its obligation under the second subparagraph of Article 19(1) TEU.

75 In its reply of 18 February 2022, the Republic of Poland disputed the Commission's complaints.

76 By letter of 15 July 2022, the Commission sent a reasoned opinion to the Republic of Poland and stated that:

– in the light of the interpretation of the Polish Constitution by the Trybunał Konstytucyjny (Constitutional Court), in particular in the judgments at issue, the Republic of Poland had failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU;

– in the light of the interpretation of the Polish Constitution by the Trybunał Konstytucyjny (Constitutional Court), in particular in the judgments at issue, the Republic of Poland had failed to fulfil its obligations under the general principles of autonomy, primacy, effectiveness and the uniform application of EU law and under the principle of the binding effect of judgments of the Court of Justice;

– the Republic of Poland had failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU in that, on account of irregularities vitiating the procedures for appointing three judges in December 2015 and its President in December 2016, the Trybunał Konstytucyjny (Constitutional Court) no longer satisfied the requirements of an independent and impartial tribunal previously established by law.

77 In its reply of 14 September 2022, the Republic of Poland argued that all of those complaints were unfounded.

78 In those circumstances, the Commission decided to bring the present action.

Procedure before the Court

79 By decisions of the President of the Court of 23 October 2023 and 7 November 2023, the Kingdom of Belgium and the Kingdom of the Netherlands, respectively, were granted leave to intervene in the proceedings in support of the form of order sought by the Commission.

The action

80 The Commission's action contains three complaints.

81 By its first and second complaints, the Commission asserts that the judgments at issue infringe the obligations on the part of the Republic of Poland by virtue, first, of the second subparagraph of Article 19(1) TEU and, second, the principles of autonomy, primacy, effectiveness and the uniform application of EU law as well as the principle of the binding effect of judgments of the Court. The third complaint alleges infringement of the second subparagraph of Article 19(1) TEU on account of irregularities vitiating the procedures for appointing three members of the Trybunał Konstytucyjny (Constitutional Court) in December 2015 and the President of that court in December 2016.

82 The Republic of Poland, in its defence, contended that the Court should dismiss the action as unfounded in its entirety. However, in its rejoinder, that Member State expressly withdrew the defence and fully accepted the complaints raised by the Commission, stressing that it shared the views put forward by that institution.

83 In those circumstances, the facts underlying the failure to fulfil obligations alleged in the present action may be considered to be established (see, to that effect, judgment of 7 December 2023, *Commission* v *Hungary (Collection of urban waste water)*, C-587/22, EU:C:2023:963, paragraph 27).

84 Nevertheless, it is for the Court to determine whether or not the alleged breach of obligations exists, even if the Member State concerned does not deny or no longer denies that breach (see, to that effect, judgments of 16 January 2014, *Commission* v *Spain*, C-67/12, EU:C:2014:5, paragraph 30, and of 14 September 2017, *Commission* v *Greece*, C-320/15, EU:C:2017:678, paragraph 21).

The first complaint

Arguments of the parties

85 By its first complaint, which contains two parts, the Commission maintains that the Republic of Poland has failed to fulfil its obligation under the second subparagraph of Article 19(1) TEU, to ensure effective judicial protection in the fields covered by EU law. That breach of obligations results from the interpretation of the Polish Constitution by the Trybunał Konstytucyjny (Constitutional Court) in the judgments at issue.

86 In support of the first part of its first complaint, the Commission asserts that the judgment of 7 October 2021 is incompatible with the second subparagraph of Article 19(1) TEU.

87 According to that institution, it follows from points 2 and 3 of the operative part of that judgment that the Trybunał Konstytucyjny (Constitutional Court) rejected the interpretation of the second subparagraph of Article 19(1) TEU in the Court's case-law, in particular in that resulting from the judgments of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)* (C-824/18, EU:C:2021:153), and 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).

88 According to the Commission, it is clear from that case-law that the second subparagraph of Article 19(1) TEU precludes the limitation and, a fortiori, the elimination of the judicial review of resolutions such as those taken by the KRS in the procedures for the appointment of judges to the Sąd Najwyższy (Supreme Court). It also follows from that case-law that verification of the proper conduct of those appointment procedures forms an integral part of the requirement, set out by EU law, of an 'independent and impartial tribunal previously established by law', with the result that the national courts may, when assessing whether a court decision is lawful, verify the lawfulness of the appointment procedure of a judge who delivered a decision that has been challenged.

89 However, in the first place, the Trybunał Konstytucyjny (Constitutional Court), in point 2(b) and point 3(b) of the operative part and in points 6.2, 6.4, 6.5, 8.3 and 8.5 of the legal grounds of the judgment of 7 October 2021, held that the effects arising from the application by the national courts of the second subparagraph of Article 19(1) TEU, as interpreted by the Court in the judgment of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)* (C-824/18, EU:C:2021:153), are incompatible with Articles 2 and 7, Article 8(1), Article 90(1), Article 178(1), Article 186(1), and Article 190(1) of the Polish Constitution. The Trybunał Konstytucyjny (Constitutional Court) based its findings on its own interpretation of the second subparagraph of Article 19(1) TEU, without taking the Court's interpretation into

account, and ruled out the jurisdiction of the national courts, arising from that provision, first, to hear and determine disputes on the basis of national provisions no longer in force after they were repealed by the national legislature or declared unconstitutional by the Trybunał Konstytucyjny (Constitutional Court) and, second, to assess the lawfulness of a resolution of the KRS proposing that the President of the Republic of Poland appoint the candidates referred to in that resolution to judicial posts.

90 In the second place, the Trybunał Konstytucyjny (Constitutional Court) held, in point 3(a) to (c) of the operative part of the judgment of 7 October 2021, that the jurisdiction of the national courts, as resulting from the Court's case-law on the second subparagraph of Article 19(1) TEU, to review the lawfulness of the procedure for the appointment of a judge, to rule on whether a judicial appointment process is defective and to declare a decision handed down by a judge appointed in the context of such a procedure to be invalid is incompatible with Article 2, Article 8(1), Article 90(1) and Article 179, read in conjunction with point 17 of Article 144(3), of the Polish Constitution.

91 It follows, in that regard, according to the Commission, from points 6.4 and 8.4 of the legal grounds of that judgment that the Trybunał Konstytucyjny (Constitutional Court) held to be incompatible with the Polish Constitution the interpretation of the second subparagraph of Article 19(1) TEU given by the Court in the 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), to the effect that national courts are, by virtue of that provision, empowered to verify, in specific cases, the proper conduct of the process of appointing a judge in the light of the requirements arising from it.

92 Here again, the Trybunał Konstytucyjny (Constitutional Court) relied on its own interpretation of the second subparagraph of Article 19(1) TEU without taking into account the Court's case-law. In general, it disputes the possibility for national courts to verify, on the basis of the second subparagraph of Article 19(1) TEU, the proper conduct of a judicial appointment procedure in order to ensure effective judicial protection. However, the fact that such a possibility is ruled out entirely is incompatible with the requirement of a 'tribunal previously established by law', within the meaning of EU law, based specifically on an assessment of the lawfulness of the procedure for appointing judges, as interpreted, in particular, in the judgments of 26 March 2020, *Review Simpson* v *Council* and *HG* v *Commission* (C-542/18 RX-II and C-543/18 RX-II, EU:C:2020:232), and 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).

93 In support of the second part of its first complaint, the Commission asserts that the judgment of 14 July 2021 is incompatible with the second subparagraph of Article 19(1) TEU.

94 In that judgment, the Trybunał Konstytucyjny (Constitutional Court) held that the interim measures imposed by the Court on the basis of Article 279 TFEU may only, in accordance with the principle of sincere cooperation provided for in Article 4(3) TEU, be applied directly by the bodies of a Member State, in particular by the courts, where those measures are covered by the 'principle of delegation of competences to the European Union' and respect the constitutional identity of the Member State concerned and the principles of subsidiarity and proportionality.

95 In the present case, the Trybunał Konstytucyjny (Constitutional Court) considered that the interim measures on the organisation and functioning of the Polish courts and the procedure before those courts, set out in the order of 8 April 2020, *Commission* v *Poland* (C-791/19 R,

EU:C:2020:277), were adopted *ultra vires* in so far as the Treaties have not conferred any competence on the European Union as regards the organisation and jurisdiction of the Polish courts and the procedure before those courts, which are a reflection of the constitutional identity of the Republic of Poland.

96 In addition, the Trybunał Konstytucyjny (Constitutional Court), also held that those interim measures are in breach of the principles of subsidiarity and proportionality, since they interfere in a disproportionate manner in the organisation of Polish judicial authority by depriving judges of the Disciplinary Chamber of the possibility of ruling on disciplinary cases, which is contrary to the principle of judicial independence.

97 The Commission maintains that the Trybunał Konstytucyjny (Constitutional Court) manifestly infringed the right to effective legal protection enshrined in the second subparagraph of Article 19(1) TEU, in considering that the Court had ruled *ultra vires* and in thus calling into question its jurisdiction to order interim measures under Article 279 TFEU where those measures are necessary to ensure effective judicial protection before an independent and impartial tribunal previously established by law. The interpretation of the Polish Constitution by the Trybunał Konstytucyjny (Constitutional Court) precludes recognition of the binding effect of such interim measures ordered by the Court, which constitutes a manifest infringement of the requirements provided for in the second subparagraph of Article 19(1) TEU, as interpreted by the Court.

98 The line of argument of the Trybunał Konstytucyjny (Constitutional Court), to the effect that it is with a view to preserving the independence of Polish judges that it opposes the Court's interpretation of the second subparagraph of Article 19(1) TEU and its interim measures which seek to ensure that that provision is applied should be rejected. As the Court explained in its order of 8 April 2020, *Commission* v *Poland* (C-791/19 R, EU:C:2020:277), the interim measures sought by the Commission intended precisely to preserve the independence of judges of the Polish courts and not to weaken it.

99 The Republic of Poland considers that the first complaint is well founded.

Findings of the Court

100 Before examining the first complaint, it should be noted that the obligation of the Member States to comply with the provisions of the Treaties is binding on all their authorities, including, for matters within their jurisdiction, all the courts. Thus, a Member State's failure to fulfil obligations may, in principle, be established under Article 258 TFEU whatever the agency of that State whose action or inaction is the cause of the failure to fulfil its obligations, even in the case of a constitutionally independent institution (see, to that effect, judgment of 4 October 2018, *Commission* v *France (Advance payment)*, C-416/17, EU:C:2018:811, paragraphs 106 and 107 and the case-law cited).

101 In those circumstances, the case-law of a constitutional court of a Member State may be the subject of an action for failure to fulfil obligations where it is likely to constitute a failure on the part of that Member State to fulfil its obligations under EU law.

– *The first part of the first complaint*

102 It is settled case-law that, although the organisation of justice in the Member States, in particular the establishment, composition, powers and functioning of national courts, falls within the competence of those 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 Articles 2 and 19 TEU (see, to that effect, judgments of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, paragraph 48, and of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)*, C-204/21, EU:C:2023:442, paragraph 63 and the case-law cited).

103 In particular, the Member States must ensure that the rules they establish by virtue of that competence do not infringe the requirements arising from Articles 2 and 19 TEU or undermine their effective application.

104 That is the case, in particular, as regards national rules relating to the substantive conditions and procedural rules governing the adoption of decisions appointing judges and, where applicable, rules relating to the judicial review that applies in the context of such appointment procedures (see, to that effect, 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 68 and the case-law cited).

105 As regards the obligations deriving from Article 19(1) TEU, that provision, 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 effective judicial protection of the rights of individuals under that law to national courts and tribunals and to the Court of Justice (judgments of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraph 217, and of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 39).

106 The principle of effective judicial protection of rights that individuals derive from EU law, to which the second subparagraph of Article 19(1) TEU thus refers, constitutes a general principle of EU law stemming from the constitutional traditions common to the Member States. Such judicial protection is also enshrined in Articles 6 and 13 ECHR, the substance of which corresponds to Article 47 of the Charter. The latter provision must, therefore, be duly taken into consideration for the purposes of the interpretation of the second subparagraph of Article 19(1) TEU (see, to that effect, judgments of 29 March 2022, *Getin Noble Bank*, C-132/20, EU:C:2022:235, paragraph 89, and of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)*, C-204/21, EU:C:2023:442, paragraph 69 and the case-law cited).

107 In order for that effective judicial protection to be guaranteed, every Member State must, in accordance with the second subparagraph of Article 19(1) TEU, ensure that the bodies which are called upon, as 'courts or tribunals' within the meaning of EU law, to rule on questions relating to the application or interpretation of EU law and thus come within its judicial system in the fields covered by EU law, meet the requirements of effective judicial protection, including, in particular, the guarantees of access to an independent and impartial tribunal previously established by law, as confirmed by the second paragraph of Article 47 of the Charter (see, to that effect, judgments of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraphs 220 and 221; of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 40; and of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)*, C-204/21, EU:C:2023:442, paragraphs 70 and 71 and the case-law cited).

108 It is important, in particular, to point out that the requirements that courts be independent and impartial form part of the essence of the right to effective judicial protection and to a fair trial, which is of cardinal importance as a guarantee that all the rights which individuals derive from EU law will be protected and that the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law, will be safeguarded. Those requirements laid down, inter alia, in Article 19 TEU thus give concrete expression to one of the fundamental values of the European Union and of the Member States enshrined in Article 2 TEU, which define the very identity of the European Union as a common legal order and which must be complied with both by the European Union and by the Member States (see, to that effect, judgments of 26 March 2020, *Review Simpson* v *Council* and *HG* v *Commission*, C-542/18 RX-II and C-543/18 RX-II, EU:C:2020:232, paragraph 71; of 29 March 2022, *Getin Noble Bank*, C-132/20, EU:C:2022:235, paragraph 94; and of 29 July 2024, *Valančius*, C-119/23, EU:C:2024:653, paragraphs 46 and 47).

109 It must be pointed out, in that regard, that it is for the Court, in performing the task conferred on it by the first subparagraph of Article 19(1) TEU, to ensure that in the interpretation and application of the Treaties the law is observed.

110 As is apparent from settled case-law, since the Court has exclusive jurisdiction to give the definitive and binding interpretation of EU law, it is for the Court to specify the requirements arising from the second subparagraph of Article 19(1) TEU, read in conjunction with Article 47 of the Charter, as regards the criteria of independence, impartiality and the previous establishment by law of courts. In order to ensure the uniform application of EU law in all the Member States, as is required by Article 19(1) TEU, those requirements cannot depend on the interpretation of provisions of national law, or on the interpretation of provisions of EU law by a national court, which does not correspond to that of the Court (see, to that effect, judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21, EU:C:2023:442, paragraph 79 and the case-law cited).

111 In that context, it should be noted that the preliminary ruling procedure provided for in Article 267 TFEU sets up a dialogue between one court and another, specifically between the Court of Justice and the courts and tribunals of the Member States, with the precise object of securing the uniform interpretation of EU law, thereby serving to ensure its consistency, its full effect and its autonomy as well as, ultimately, the particular nature of the law established by the Treaties (see, to that effect, judgment of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraph 222 and the case-law cited).

112 This is consequently the path that a national court must take when it has doubts as to the compatibility of national law with a provision of EU law requiring interpretation of the latter.

113 As regards verification of compliance with the requirements arising from the second subparagraph of Article 19(1) TEU, it is settled case-law that that provision imposes on the Member States a clear and precise obligation, which is not subject to any condition as regards the independence which must characterise the courts called upon to interpret and apply EU law (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 146).

114 Therefore, national courts called upon, in the exercise of their jurisdiction, to apply EU law must give full effect to the requirements of that law and consequently to the second subparagraph of Article 19(1), by disapplying, if necessary, on account of the direct effect of that provision, any

provision of national law that is contrary to EU law (see, to that effect, judgments of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraph 61, and of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraph 252 and the case-law cited).

115 Thus, in the event of an established infringement of the second subparagraph of Article 19(1) TEU, the principle of primacy of EU law requires national courts called upon, within the exercise of their jurisdiction, to apply EU law, to disapply, of their own motion, national provisions which are contrary to the second subparagraph of Article 19(1) TEU, whether they are of legislative or constitutional origin, and it is not necessary for those courts to request or await the prior setting aside of those provisions by legislative or other constitutional means (see, to that effect, judgments of 18 May 2021, *Asociația 'Forumul Judecătorilor Din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 251, and of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 53 and the case-law cited).

116 Compliance with that obligation to apply in full any provision of EU law with direct effect must be regarded as essential in order to ensure the full application of EU law in all Member States, as is required by Article 19(1) TEU (judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 54).

117 Consequently any provision of a national legal system and any legislative, administrative or judicial practice which impairs the effectiveness of EU law by withholding from the national court having jurisdiction to apply such law the power to do everything necessary at the moment of its application to disregard national legislative provisions which might prevent directly applicable EU rules from having full force and effect is incompatible with the requirements which are the very essence of EU law (judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)*, C-204/21, EU:C:2023:442, paragraph 272 and the case-law cited).

118 Thus, in the judgment of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)* (C-824/18, EU:C:2021:153), the Court, hearing a request for a preliminary ruling on the interpretation of the second subparagraph of Article 19(1) TEU in the context of an action brought by candidates for posts as judges of the Sąd Najwyższy (Supreme Court) against resolutions of the KRS, held, in essence, in paragraphs 128, 136 and 139 of that judgment that that provision precludes national legislative amendments which deprive of effectiveness and then entirely rule out the judicial review of resolutions adopted by a body of that kind in the course of procedures for the appointment of judges. The Court held that, if such a body does not offer sufficient guarantees of independence, the existence of a judicial remedy available to unsuccessful candidates, albeit restricted to verifying that there was no *ultra vires* or improper exercise of authority, error of law or manifest error of assessment, is necessary in order to protect the process of appointing the judges concerned from direct or indirect influence.

119 The Court also specified, in that judgment, the requirements arising from the principle of primacy applicable to the referring court, where the national legislature has not designated a court or tribunal, other than the referring court, which meets the requirements of independence under EU law and which is called upon to rule, after receiving an answer from the Court of Justice to the questions raised by the referring court, on the disputes in the main proceedings which had been brought before the referring court. Thus, the Court held, in paragraph 149 of that judgment, that, in that case, the only effective manner for the referring court to remedy the

infringements of Article 267 TFEU and the second subparagraph of Article 19(1) TEU resulting from the adoption of the national law at issue, which had, in essence, deprived it of any effective jurisdiction to rule on the substance of those disputes by reviewing KRS resolutions, was for that court to continue to assume the jurisdiction under which it had submitted a request for a preliminary ruling to the Court under the national rules hitherto applicable.

120 In addition, in paragraphs 154, 155 and 161 of the 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), the Court specified the obligations on the part of a national court or tribunal which has referred a question to the Court for a preliminary ruling where that court concludes that it is apparent from all the conditions and circumstances surrounding the process of appointing a national judge that (i) that appointment took place in clear breach of fundamental rules which form an integral part of the establishment and functioning of the judicial system concerned and (ii) the integrity of the outcome of that procedure is undermined, giving rise to reasonable doubt in the minds of individuals as to the independence and impartiality of the judge concerned. In that case, it follows from the requirements laid down in the second subparagraph of Article 19(1) TEU and from the principle of primacy of EU law that that national court or tribunal must find the decision at issue delivered by that judge to be null and void, where such a consequence is essential in view of the procedural situation at issue in order to ensure the primacy of EU law, without any provision of national law being able to preclude this.

121 In the present case, it is apparent from the judgment of 7 October 2021 that the interpretation of the Polish Constitution by the Trybunał Konstytucyjny (Constitutional Court) in that judgment prevents the requirements arising from the second subparagraph of Article 19(1) TEU, as interpreted by the Court in the judgments referred to, inter alia, in paragraphs 118 to 120 of the present judgment, from being able to produce their effects in Poland and ensure the full effectiveness of that provision.

122 In the first place, as the Advocate General observed, in essence, in point 50 of his Opinion, it follows from point 2(b) and point 3(b) of the operative part and from points 6.2, 6.4, 6.5, 8.3 and 8.5 of the legal grounds of the judgment of 7 October 2021 that the Trybunał Konstytucyjny (Constitutional Court) rejects the effects arising, for national courts, from the application of the second subparagraph of Article 19(1) TEU, as interpreted by the Court, by ruling out, in general, the jurisdiction of those courts to review the lawfulness of resolutions of the KRS proposing the appointment of candidates to judicial office.

123 In the second place, as the Advocate General noted, in essence, in point 51 of his Opinion, it is apparent from point 3(a) and (c) of the operative part and from points 6.4 and 8.4 of the legal grounds of the judgment of 7 October 2021 that the Trybunał Konstytucyjny (Constitutional Court) rules out, in general, the jurisdiction of the national courts under the second subparagraph of Article 19(1) TEU to review, for the matters within their jurisdiction, the legality of procedures for the appointment of judges, including appointment decisions, in order to rule on the defective nature of the process for appointing a judge and consequently to find a decision delivered by a judge appointed by such a procedure null and void, where such a consequence is essential in the light of the procedural situation at issue.

124 However, the Court has already held that the fact that a national court performs the tasks entrusted to it by the Treaties and complies with its obligations under those Treaties, by giving effect to provisions such as the second subparagraph of Article 19(1) TEU, cannot, by definition,

be prohibited (judgment of 13 July 2023, *YP and Others (Lifting of a judge's immunity and his or her suspension from duties)*, C-615/20 and C-671/20, EU:C:2023:562, paragraph 85 and the case-law cited).

125 Therefore, the judgment of 7 October 2021 precludes the Polish courts from being able to apply, for matters within their jurisdiction, the second subparagraph of Article 19(1) TEU, as interpreted by the Court in particular in the judgments referred to in paragraphs 118 to 120 of the present judgment, and to implement any measure necessary to ensure the observance of the right of the individuals concerned to effective judicial protection in the fields covered by EU law. The judgment of 7 October 2021 is, therefore, as is apparent, in particular, from the findings set out in paragraphs 103, 104, 107, 110, 117 and 119 of the present judgment, manifestly incompatible with the requirements inherent in that provision, as interpreted by the Court on the basis of its exclusive jurisdiction to provide the definitive and binding interpretation of EU law.

126 It follows that the Republic of Poland, in the light of the interpretation of the Polish Constitution by the Trybunał Konstytucyjny (Constitutional Court) in the judgment of 7 October 2021, has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU.

127 The first part of the Commission's first complaint must therefore be upheld.

– *The second part of the first complaint*

128 The second part of the first complaint concerns the judgment of 14 July 2021, by which the Trybunał Konstytucyjny (Constitutional Court) called into question the direct application of the interim measures imposed by the Court, under Article 279 TFEU, in the order of 8 April 2020, *Commission* v *Poland* (C-791/19 R, EU:C:2020:277).

129 In accordance with the findings set out, in particular, in paragraphs 102 to 104, 107, 109 and 110 of the present judgment, the review of Member States' compliance with the requirements arising from the second subparagraph of Article 19(1) TEU, as interpreted by the Court, falls fully within the jurisdiction of the Court, in particular where an action for failure to fulfil obligations is brought before it by the Commission under Article 258 TFEU (see, to that effect, judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)*, C-204/21, EU:C:2023:442, paragraph 62 and the case-law cited).

130 In order to guarantee the full effectiveness of a final decision to be taken and to ensure that there is no lacuna in the legal protection provided by the Court, and to ensure the effective application of EU law, which is inherent in the value of the rule of law enshrined in Article 2 TEU and on which the European Union is founded, Article 279 TFEU confers on the Court jurisdiction to prescribe, on application by a party in proceedings for interim relief, any interim measures that it considers necessary (see, to that effect, order of 20 November 2017, *Commission* v *Poland*, C-441/17 R, EU:C:2017:877, paragraphs 94, 97 and 102).

131 Consequently, national provisions governing the organisation of justice may be subject, in the context of an action for failure to fulfil obligations, not only to review in the light of the second subparagraph of Article 19(1) TEU, but also to interim measures that are ordered by the Court and aimed at, in particular, the suspension of those provisions (see, to that effect, order of the Vice-President of the Court of 14 July 2021, *Commission* v *Poland*, C-204/21 R, EU:C:2021:593, paragraph 54).

132 In that regard, it follows from Article 160(3) of the Rules of Procedure of the Court of Justice that the court hearing an application for interim relief may order an interim measure if it is established that granting such a measure is justified, prima 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 or to ensure observance of other interim measures previously ordered, it must be made and produce its effects before a decision is reached regarding the substance in the main action, where the court hearing the application for interim relief must, where appropriate, also weigh up the interests involved (see, to that effect, orders of 20 November 2017, *Commission* v *Poland*, C-441/17 R, EU:C:2017:877, paragraphs 99 and 104, and of 17 December 2018, *Commission* v *Poland*, C-619/18 R, EU:C:2018:1021, paragraph 29).

133 The full effectiveness of EU law would be called into question if a provision of national law could preclude recognition of the binding effect of interim measures ordered by the Court under Article 279 TFEU and, consequently, prevent a national court hearing a dispute governed by EU law from giving effect to those interim measures in order to ensure, inter alia, the full effectiveness of the Court's decision to be given on the existence of the rights claimed under EU law.

134 In the order of 8 April 2020, *Commission* v *Poland* (C-791/19 R, EU:C:2020:277), the Court ordered, on the basis of Article 279 TFEU, the suspension, pending delivery of the final judgment in *Commission* v *Poland* (C-791/19), of the application of the Polish provisions conferring on the Disciplinary Chamber jurisdiction to rule, both at first instance and on appeal, in disciplinary cases concerning judges. Furthermore, in that order, the Court ordered the Republic of Poland, pending delivery of that judgment, to refrain from referring the cases pending before the Disciplinary Chamber before a panel whose composition 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).

135 In paragraph 77 of that order, the Court held, in essence, that it could not, prima facie, be ruled out that the national provisions whose suspension the Commission sought infringed 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 body which satisfies the requirements of effective judicial protection, including that of independence.

136 The Court found, in paragraph 78 of that order, 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 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 arguments put forward by that institution in the context of the second complaint of the first plea in the action for failure to fulfil obligations in *Commission* v *Poland* (C-791/19), which formed the basis of the application for interim measures leading to the adoption of that order, appeared, prima facie, not to be unfounded.

137 As is apparent from paragraph 53 of the order of 8 April 2020, *Commission* v *Poland* (C-791/19 R, EU:C:2020:277), the second complaint of the first plea in that action for failure to fulfil obligations alleged infringement of the second subparagraph of Article 19(1) TEU, in so far as the Republic of Poland failed to guarantee the independence and impartiality of the Disciplinary Chamber.

138 The interim measures ordered by the Court in that order were therefore intended to ensure the full effectiveness of the judgment to be delivered in the action for failure to fulfil obligations in Case C-791/19, *Commission* v *Poland*, making it possible to ensure there is no lacuna in the legal protection afforded by the Court under the second subparagraph of Article 19(1) TEU.

139 In the present case, in the judgment of 14 July 2021, the Trybunał Konstytucyjny (Constitutional Court) held that the interim measures imposed by the Court of Justice in the order of 8 April 2020, *Commission* v *Poland* (C-791/19 R, EU:C:2020:277), had been adopted *ultra vires* since the Treaties did not confer any competence on the European Union as regards the organisation and jurisdiction of the Polish courts and procedure before those courts. According to that judgment, those measures were incompatible with the binding *erga omnes* and definitive nature of judgments of the Trybunał Konstytucyjny (Constitutional Court), resulting from Article 190(1) of the Polish Constitution.

140 It is thus apparent from that judgment that the Trybunał Konstytucyjny (Constitutional Court) disputed the very principle of the Republic of Poland's obligation to comply with its obligations, which derive, for the latter, as regards the organisation of justice, from the second subparagraph of Article 19(1) TEU, as noted in particular in paragraphs 102 to 104 of the present judgment. By that judgment, that court in particular refused to recognise, in a general manner and in clear breach of what has been found in paragraphs 130 to 132 of the present judgment, the Court's jurisdiction to order, pursuant to Article 279 TFEU, interim measures to preserve the right to effective judicial protection before an independent tribunal in Poland, provided for in the second subparagraph of Article 19(1) TEU.

141 In those circumstances, it must be held that, in the light of the interpretation of the Polish Constitution by the Trybunał Konstytucyjny (Constitutional Court) in the judgment of 14 July 2021, the Republic of Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU.

142 It follows that the second part of the Commission's first complaint is also well founded and that that complaint must therefore be upheld in its entirety.

The second complaint

Arguments of the parties

143 By its second complaint, which consists of two parts, the Commission maintains that the Republic of Poland has failed to fulfil its obligations under the principles of autonomy, primacy, effectiveness and the uniform application of EU law as well as the principle of the binding effect of judgments of the Court. That failure to fulfil obligations stems from the fact that the Trybunał Konstytucyjny (Constitutional Court), in the judgments at issue, interpreted the Polish Constitution in such a way as to reject unilaterally the principle of the primacy and effectiveness of fundamental provisions of the Treaties such as Article 2, Article 4(3) and Article 19(1) TEU and Article 279 TFEU, and ordered all Polish bodies to disapply those provisions. As a result, the Trybunał Konstytucyjny (Constitutional Court) prevents national bodies from effectively applying the second subparagraph of Article 19(1) TEU and complying with the interim measures imposed by the Court.

144 In the first part of its second complaint, the Commission asserts that the Trybunał Konstytucyjny (Constitutional Court) held, in the judgment of 7 October 2021, that Article 2 and the second subparagraph of Article 19(1) TEU, as interpreted by the Court, inter alia in the judgments of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)* (C-824/18, EU:C:2021:153), and 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), were incompatible with the Polish Constitution. In addition, referring to the binding *erga omnes* and definitive nature of its judgments in accordance with Article 190(1) of the Polish Constitution, the Trybunał Konstytucyjny (Constitutional Court) prohibited, in the judgment of 7 October 2021, all bodies of Polish public authorities, in particular the courts, from applying those rules of the EU Treaty, as interpreted by the Court.

145 A specific consequence of the judgment of 7 October 2021 is the prohibition imposed on the Polish courts on ensuring that the second subparagraph of Article 19(1) TEU, as interpreted by the Court in the judgment of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)* (C-824/18, EU:C:2021:153), produces its full effects, the Trybunał Konstytucyjny (Constitutional Court) having considered that such an interpretation was incompatible with Article 8(1) of the Polish Constitution, in that, in accordance with that interpretation, the second subparagraph of Article 19(1) TEU requires that KRS resolutions proposing the appointment of candidates for judicial posts at the Sąd Najwyższy (Supreme Court) may be subject to judicial review.

146 In addition, the Polish courts are required to refrain from ensuring the effectiveness of the Court's case-law on the jurisdiction of national courts to review a court's compliance with the requirement, arising from EU law, of an independent tribunal previously established by law, where that review amounts to evaluating the procedure for appointing a judge.

147 In that regard, according to the Commission, it is apparent from points 8.3 to 8.6 of the legal grounds of the judgment of 7 October 2021 that the Court's interpretation of the second subparagraph of Article 19(1) TEU, which allows national courts having jurisdiction to carry out an effective judicial review of resolutions of the KRS, thereby disapplying, where appropriate, national provisions and the case-law of the Trybunał Konstytucyjny (Constitutional Court) and to assess the proper conduct of the procedure for appointing a judge in order to preserve the parties' right to effective judicial protection, was deemed by the Trybunał Konstytucyjny (Constitutional Court) to be *ultra vires* and to constitute an unlawful breach of the constitutional identity of the Republic of Poland.

148 First, the jurisdiction of the national courts to review the proper conduct of the procedure for appointing judges leads, according to the Trybunał Konstytucyjny (Constitutional Court), to a restriction of the constitutional prerogative of the President of the Republic of Poland to appoint a person as a judge on a proposal from the KRS. Second, the application, by the Polish courts, of the requirement of an independent and impartial tribunal previously established by law, in accordance with the second subparagraph of Article 19(1) TEU, calls into question the legality of acts of appointment to a position of judge issued by the President of the Republic of Poland, even though those acts are not amenable to judicial review on account of the prerogative conferred on the President, and the revocation or review of the appointment of judges once that appointment has been made by that President is prohibited, in accordance with Article 179, read in conjunction with point 17 of Article 144(3), of the Polish Constitution.

149 Furthermore, in points 2.4 and 4.1 of the legal grounds of the judgment of 7 October 2021, the Trybunał Konstytucyjny (Constitutional Court) held that Article 4(2) TEU defines the limits of the application of the principle of primacy of EU law and of the jurisdiction of the Court of Justice in order to respect the constitutional identity of the Member States and the essential functions of the State.

150 As regards the effects of that judgment, it follows from Section 10 of the legal grounds of that judgment that the Trybunał Konstytucyjny (Constitutional Court) not only prohibited the Polish courts from effectively applying the second subparagraph of Article 19(1) TEU in a manner consistent with the Court's interpretation of that provision and from disapplying, if necessary, of their own motion, the national provisions contrary to that interpretation, but also held that the interpretation of that provision by the Court, read in conjunction with Article 2 TEU, had no legal effects in the Polish legal order.

151 Lastly, point 1 of the operative part of that judgment contains an 'extremely worrying' statement as regards the acceptance by the Republic of Poland of the legal consequences arising from its accession to the European Union. That statement is, however, formulated in ambiguous terms, which makes it difficult, if not impossible, to infer specific legal consequences from it.

152 On the one hand, that statement could be interpreted as reflecting a challenge, on the part of the Trybunał Konstytucyjny (Constitutional Court), to the current validity of the most fundamental provisions of the Treaties, that is to say the first and second paragraphs of Article 1 TEU, and Article 4(3) TEU, that challenge then being based on the 'provocative assertion' that European integration has entered a new stage in which the bodies of the European Union act outside the limits of the powers conferred on them, with the result that the Polish Constitution is not the supreme law of the Republic of Poland and that that Member State can no longer function as a sovereign and democratic State. Such a position would constitute a frontal attack on the very design of the European Union as a legal order common to the Member States, based on the values referred to in Article 2 TEU, and within which any action of the EU institutions forms part and is assumed to be consistent with the principle of conferral of powers set out in Article 5(2) TEU.

153 On the other hand, the statement in point 1 of the operative part of the judgment of 7 October 2021 could also be perceived as referring to a situation which has not yet taken place, and in respect of which the Trybunał Konstytucyjny (Constitutional Court) has expressed a 'reservation' while recalling the importance of observing the principle of conferral of powers in order to maintain European integration within the limits defined by the Treaties on which the European Union is founded. The 'concluding observations' in Section 11 of the legal grounds of that judgment appear, to a certain extent, to confirm such an interpretation, since the Trybunał Konstytucyjny (Constitutional Court) refers to the possibility of EU legislative acts and the case-law of the Court being subject to a review of constitutionality in a hypothetical future situation where the Court's activity could be regarded as encroaching on the exclusive jurisdiction of the Polish State.

154 The Commission adds that the passages of the judgment of 7 October 2021 concerning the EU institutions which are allegedly acting beyond the scope of the powers conferred on them and the unconditionally superior nature of the Polish Constitution merely reinforce its deep concern about the general consequences of the interpretation of the Polish Constitution by the Trybunał Konstytucyjny (Constitutional Court) as regards EU law. It maintains that, in so far as such ambiguous statements contribute to calling into question the effective application of Article 4(3)

TEU, the principle of primacy and the effectiveness of the provisions of EU law examined in that judgment, they in any event aggravate the breach of the principles of autonomy, primacy, effectiveness and the uniform application of EU law and of the principle of the binding effect of judgments of the Court.

155 By the second part of its second complaint, the Commission notes that the Trybunał Konstytucyjny (Constitutional Court), in the judgment of 14 July 2021, disregarded the binding effect of all the interim measures ordered by the Court under Article 279 TFEU concerning the organisation, jurisdiction and exercise of the jurisdiction of the Polish courts and the procedure before those courts. In the legal grounds of that judgment, the Trybunał Konstytucyjny (Constitutional Court) held that the interim measures ordered by the Court of Justice in the order of 8 April 2020, *Commission* v *Poland* (C-791/19 R, EU:C:2020:277), are in breach of the principle of conferral of powers and Polish constitutional identity, and are incompatible with the constitutional principle of the democratic rule of law, enshrined in Article 2 of the Polish Constitution.

156 In addition, the Trybunał Konstytucyjny (Constitutional Court) expressly affirmed the primacy of the Polish Constitution, as the supreme source of law in Poland, over that order and thus refused to recognise that that order has precedence over national provisions, emphasising in that regard that it had been adopted *ultra vires* and that it was contrary to the Polish Constitution. The Trybunał Konstytucyjny (Constitutional Court) also declared unconstitutional any future interim measure taken under Article 279 TFEU concerning the Polish judicial system, thus depriving such measures of any binding legal effect in Poland in breach of the principles of the primacy and effectiveness of EU law and of the principle that the Court's decisions are binding.

157 It is apparent from the operative part of the judgment of 14 July 2021 that Article 4(3) TEU, read in conjunction with Article 279 TFEU, is regarded by the Trybunał Konstytucyjny (Constitutional Court) as being contrary to several provisions of the Polish Constitution, namely Article 2, which enshrines the principle of the rule of law, Article 7, which enshrines the principle of legality, Article 8(1), which enshrines the principle of supremacy of the Polish Constitution, Article 90(1), which governs the transfer of powers from the State to an intergovernmental organisation, or even Article 4(1), which enshrines the principle of sovereignty, by reason of the fact that the Court imposed *ultra vires* on the Republic of Poland interim measures relating to the organisation and jurisdiction of the Polish courts and to procedure before those courts.

158 The Commission submits that that interpretation of the Polish Constitution undermines Article 4(3) TEU and Article 279 TFEU and the principles of primacy and effectiveness of EU law and that, consequently, it calls into question the uniform application of those provisions of the Treaties and the autonomous nature of the EU legal order. Furthermore, by disregarding the legally binding nature of the interim measures ordered by the Court against the Republic of Poland under Article 279 TFEU concerning the organisation and functioning of the Polish courts, the Trybunał Konstytucyjny (Constitutional Court) disputes the legally binding nature of judgments of the Court.

159 The Republic of Poland considers that the second complaint is well founded.

160 That Member State adds that, while the Member States regulate the relationship between national constitutional law and EU law differently in their respective constitutions, the effectiveness of EU law cannot differ from one Member State to another. The achievement of the objectives of the Treaties would not be possible without the uniform application of EU law, which, as a

well-established principle, takes precedence over national law, including that having constitutional status. Moreover, only the Court of Justice is empowered to interpret EU law in a binding manner. Furthermore, although the decisions of the Trybunał Konstytucyjny (Constitutional Court) are final, it may depart from a point of view which it has previously expressed. In any event, in the present case, given the irregular composition of that court and several other factual circumstances raised in the present case, its decisions are open to challenge.

Findings of the Court

161 By the two parts of its second complaint, which it is appropriate to examine together, the Commission maintains, in essence, that the judgments at issue are in breach of the principles of autonomy, primacy, effectiveness and the uniform application of EU law, as well as the principle of the binding effect of the case-law of the Court.

162 In that regard, the Commission submits, in essence, that the Trybunał Konstytucyjny (Constitutional Court) considered, first, on the basis of its own interpretation of EU law, that the case-law of the Court of Justice relating to the second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 TEU, as well as the interim measures ordered by it under Article 279 TFEU, was *ultra vires*, and, second, that that case-law and those measures therefore infringed Polish constitutional identity and various provisions of the Polish Constitution, in particular those which enshrine the primacy of that constitution. In holding that that case-law and those interim measures had no legal effects in the Polish legal order, the Trybunał Konstytucyjny (Constitutional Court) prevents national bodies from being able to apply the second subparagraph of Article 19(1) TEU effectively and comply with those interim measures.

– The alleged breach of the principles of autonomy, primacy, effectiveness and the uniform application of EU law

163 Breach of the principles of autonomy, primacy, effectiveness and the uniform application of EU law may be the subject of an action for failure to fulfil obligations under Article 258 TFEU (see, as regards the principle of primacy, judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)*, C-204/21, EU:C:2023:442, paragraph 271 and 287). Those principles are closely linked and should therefore be examined together.

164 In that regard, it should be borne in mind that, in accordance with the settled case-law relating to the EEC Treaty, the latter, although concluded in the form of an international agreement, constitutes the constitutional charter of a Community based on the rule of law (see, to that effect, Opinion 1/91 *(First Opinion on the EEA Agreement)* of 14 December 1991, EU:C:1991:490, paragraph 21).

165 Furthermore and also in accordance with that settled case-law, unlike standard international treaties, the Community Treaties established a new legal order, integrated into the legal systems of the Member States on their entry into force and which is binding on their courts. The Member States have limited, in the fields defined by the Treaties, their sovereign rights, for the benefit of that new legal order possessing its own institutions and whose subjects comprise not only Member States but also their nationals (see, to that effect, judgments of 5 February 1963, *van Gend & Loos*, 26/62, EU:C:1963:1, p. 12, and of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 47 and the case-law cited).

166 That legal order thus created and developed by the subsequent treaties, most recently by the Treaty of Lisbon, has its own constitutional framework and founding principles, a particularly sophisticated institutional structure and a complete set of legal rules which ensure its functioning, and enjoys autonomy from the law of the Member States and from international law (see, to that effect, Opinion 2/13 *(Accession of the European Union to the ECHR)* of 18 December 2014, EU:C:2014:2454, paragraphs 158 and 170 and the case-law cited, and judgment of 16 February 2022, *Poland* v *Parliament and Council*, C-157/21, EU:C:2022:98, paragraph 143).

167 Added to this are the essential characteristics of the EU legal order arising from that autonomous nature, such as its primacy over the laws of the Member States and the direct effect of a whole series of provisions which are applicable to their nationals and to the Member States themselves. Those essential characteristics of EU law have given rise to a structured network of principles, rules and mutually interdependent legal relations binding the European Union and its Member States reciprocally and binding its Member States to each other (see, to that effect, Opinion 2/13 *(Accession of the European Union to the ECHR)* of 18 December 2014, EU:C:2014:2454, paragraphs 166 and 167, and Opinion 1/17 *(EU-Canada CET Agreement)* of 30 April 2019, EU:C:2019:341, paragraph 109 and the case-law cited).

168 As regards the principle of the primacy of EU law, it must be borne in mind that, in the judgment of 15 July 1964, *Costa* (6/64, EU:C:1964:66, pp. 593 and 594), the Court laid down that principle as enshrining the precedence of Community law over the law of the Member States. In that regard, it found that the establishment by the EEC Treaty of the Community's own legal system, accepted by the Member States on a basis of reciprocity, means, as a corollary, that they cannot accord precedence to a unilateral and subsequent measure over that legal system or rely on rules of national law of any kind against the law stemming from the EEC Treaty, without depriving the latter law of its character as Community law and without the legal basis of the Community itself being called into question. In addition, the executive force of Community law cannot vary from one Member State to another in deference to subsequent domestic laws, without jeopardising the attainment of the objectives of the EEC Treaty or giving rise to discrimination on grounds of nationality prohibited by that Treaty (judgment of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraph 246).

169 Those essential characteristics of the EU legal order and the importance of compliance with that legal order were, moreover, confirmed by the ratification, without reservation, of the Treaties amending the EEC Treaty and, in particular, the Treaty of Lisbon. When the latter Treaty was adopted, the conference of representatives of the governments of the Member States was keen to state expressly, in its Declaration No 17 concerning primacy that, in accordance with settled case-law of the Court, the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of the Member States, under the conditions laid down by that case-law (see, to that effect, judgments of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraph 248, and of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)*, C-204/21, EU:C:2023:442, paragraph 76 and the case-law cited).

170 Following the entry into force of the Treaty of Lisbon, the Court has consistently confirmed the earlier case-law on the principle of the primacy of EU law, a principle which requires all Member State bodies to give full effect to the various EU provisions, and the law of the Member States may not undermine the effect accorded to those various provisions in the territory of those States

(judgments of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraph 250, and of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 50).

171 Thus, by virtue of the principle of the primacy of EU law, a Member State's reliance on rules of national law, even of a constitutional nature, cannot be allowed to undermine the unity and effectiveness of EU law. In accordance with settled case-law, the effects of the principle of the primacy of EU law are binding on all the bodies of a Member State, without, inter alia, provisions of domestic law, including constitutional provisions, being able to prevent that (judgments of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraph 251, and of 16 January 2024, *Österreichische Datenschutzbehörde*, C-33/22, EU:C:2024:46, paragraph 70 and the case-law cited).

172 It must be added that Article 4(2) TEU provides that the Union is to respect the equality of Member States before the Treaties. However, the Union can respect such equality only if the Member States are unable, under the principle of the primacy of EU law, to rely on, as against the EU legal order, a unilateral measure, whatever its nature (judgment of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraph 249).

173 In that same vein, it should also be noted that the uniform application of EU law is a fundamental requirement of the EU legal order. Such a requirement is inherent in the very existence of a community based on the rule of law and is necessary in order to ensure respect for the equality of Member States before the Treaties.

174 In that context, it should be noted that, in order to be able to accede to the European Union, the Republic of Poland had to satisfy criteria to be fulfilled by the States which are candidates for accession, such as those established by the European Council in Copenhagen on 21 and 22 June 1993. Those criteria require inter alia that the State which is candidate must ensure the 'stability of institutions guaranteeing democracy, the rule of law, human rights, and the respect for and protection of minorities' (judgments of 29 March 2022, *Getin Noble Bank*, C-132/20, EU:C:2022:235, paragraph 104, and of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)*, C-204/21, EU:C:2023:442, paragraph 65).

175 In particular, it follows from Article 2 TEU that the European Union is founded on values, such as the rule of law, which are common to the Member States in a society in which, inter alia, justice prevails (see, to that effect, judgments of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraph 30, and of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 160 and the case-law cited).

176 EU law is thus based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the European Union is founded, as stated in Article 2 TEU. That premiss is based on the specific and essential characteristics of EU law, which stem from the very nature of EU law and the autonomy it enjoys in relation to the laws of the Member States and to international law. It implies and justifies the existence of mutual trust between the Member States that those values will be recognised, and therefore that the law of the European Union that implements them will be

respected (see, to that effect, judgments of 6 March 2018, *Achmea*, C-284/16, EU:C:2018:158, paragraph 34, and of 16 February 2022, *Hungary* v *Parliament and Council*, C-156/21, EU:C:2022:97, paragraph 125 and the case-law cited).

177 Article 2 TEU is not, consequently, merely a statement of policy guidelines or intentions, but contains values which are an integral part of the very identity of the European Union as a common legal order, values which are given concrete expression in principles containing legally binding obligations for the Member States. Compliance with those values cannot be reduced to an obligation which a candidate State must meet in order to accede to the European Union and which it may disregard after its accession (see, to that effect, judgments of 16 February 2022, *Hungary* v *Parliament and Council*, C-156/21, EU:C:2022:97, paragraphs 126, 127 and 232, and of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)*, C-204/21, EU:C:2023:442, paragraphs 67 and 68).

178 Article 49 TEU, which provides for the possibility for any European State to apply to become a member of the European Union, states that the European Union is composed of States which have freely and voluntarily committed themselves to the common values now referred to in Article 2 TEU, which respect those values and which undertake to promote them (see, to that effect, judgments of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531, paragraph 42, and of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, paragraph 61).

179 It follows that a Member State's compliance with the values enshrined in Article 2 TEU is a condition for the enjoyment of all of the rights derived from the application of the Treaties to that Member State. A Member State cannot, therefore, amend its legislation, or indeed its case-law, in such a way as to bring about a reduction in the protection of the value of the rule of law, a value which is given concrete expression by, inter alia, Article 19 TEU. The Member States are thus required to ensure that, in the light of that value, any regression of their laws and case-law on the organisation of justice is prevented, by refraining from adopting rules which would undermine the independence of the judiciary (see, to that effect, judgments of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, paragraphs 63 and 64, and of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraph 162 and the case-law cited).

180 Even though, as is apparent from Article 4(2) TEU, the European Union respects the national identities of the Member States, inherent in their fundamental structures, political and constitutional, such that those States enjoy a certain degree of discretion in implementing the principles of the rule of law, it in no way follows that that obligation as to the result to be achieved may vary from one Member State to another. Whilst they have separate national identities, inherent in their fundamental structures, political and constitutional, which the European Union respects, the Member States adhere to a concept of 'the rule of law' which they share, as a value common to their own constitutional traditions, and which they have undertaken to respect at all times (judgments of 16 February 2022, *Hungary* v *Parliament and Council*, C-156/21, EU:C:2022:97, paragraphs 233 and 234, and of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)*, C-204/21, EU:C:2023:442, paragraph 73).

181 It follows that, in choosing their respective constitutional model, the Member States are required to comply, inter alia, with the requirement that the courts be independent stemming from Article 2 and the second subparagraph of Article 19(1) TEU (see, to that effect, judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)*, C-204/21, EU:C:2023:442, paragraph 74 and the case-law cited).

182 Similarly, in order to ensure, inter alia, the effectiveness of EU law, a principle which is also referred to in the second complaint, they are under an obligation to comply with the principle of the primacy of EU law and to refrain from taking measures which disregard the autonomy of the EU legal order.

183 Lastly, it should be noted that, under Article 2 of the Act of Accession, the provisions of the original Treaties and the acts adopted by the institutions and the European Central Bank before accession are to be binding on the new Member States and are to apply in those States under the conditions laid down in those Treaties and in the act of accession. The Court has already held that it is apparent from Articles 2 and 10 of the Act of Accession that that act is based on the principle that the provisions of EU law apply *ab initio* and *in toto* to new Member States and that derogations are allowed only on a transitional basis in so far as they are expressly provided for by transitional provisions (judgment of 21 March 2019, *Commission* v *Poland*, C-127/17, EU:C:2019:236, paragraph 103 and the case-law cited).

184 The Republic of Poland has therefore, since its accession to the European Union on 1 May 2004, been bound without reservation by the provisions of primary law and by the acts adopted before accession by the EU institutions, as interpreted by the Court, in the absence of any express derogation in that regard.

185 By ratifying the Act of Accession, that Member State thus accepted the very concept of the European Union as a legal order common to the Member States, having all the characteristics and specific features described in paragraphs 163 to 181 of the present judgment, and acceded to that legal order.

186 In those circumstances, it is for the Republic of Poland, in particular, by virtue of the principle of sincere cooperation set out in the first subparagraph of Article 4(3) TEU, to ensure, within its territory, the application of and respect for EU law and, under the second subparagraph of Article 4(3) TEU, to take any appropriate measure, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the European Union. Provisions prevailing in its domestic legal system, even its constitutional system, cannot, in accordance with the settled case-law of the Court, justify a failure to observe those obligations (see, to that effect, judgment of 8 April 2014, *Commission* v *Hungary*, C-288/12, EU:C:2014:237, paragraph 35 and the case-law cited).

187 In the present case, as regards the judgment of 7 October 2021, it is apparent from points 2 and 3 of the operative part of that judgment that the interpretation of the Polish Constitution by the Trybunał Konstytucyjny (Constitutional Court) in that judgment has the effect of preventing the requirements arising from Article 2 and the second subparagraph of Article 19(1) TEU, as interpreted by the Court, from producing legal effects in the Polish legal order. In addition, as is apparent from Section 10 of the legal grounds of that judgment, that court ordered all Polish public authorities, in particular the courts, to refrain from applying those rules, as interpreted by the Court, by referring to the binding *erga omnes* and definitive nature of its judgments.

188 Lastly, in that judgment, the Trybunał Konstytucyjny (Constitutional Court), as is apparent in particular from point 1 of the operative part and points 6.2 and 6.4 of the legal grounds, gave an interpretation of the Polish Constitution rejecting the primacy of EU law over Polish constitutional rules, as explained, inter alia, in paragraphs 167 to 171 of the present judgment.

189 As regards the judgment of 14 July 2021, the Trybunał Konstytucyjny (Constitutional Court) held, in essence, as stated in paragraph 140 of the present judgment, that any interim measure ordered by the Court pursuant to Article 279 TFEU and which seeks to preserve the right to effective judicial protection before an independent tribunal in Poland, provided for in the second subparagraph of Article 19(1) TEU, is deprived of any binding effect in the Polish legal order. In particular, it is apparent from points 6.8 to 6.10 of the legal grounds of that judgment that the Trybunał Konstytucyjny (Constitutional Court) based its position on the primacy of the Polish Constitution as the supreme law of the national legal order.

190 In that regard, it should also be noted that, as may be inferred from the legal grounds and operative parts of the judgments at issue, the Trybunał Konstytucyjny (Constitutional Court) considers that, first, Article 2 and the second subparagraph of Article 19(1) TEU, and, second, Article 4(3) TEU and Article 279 TFEU, as interpreted by the Court, are contrary to various principles enshrined in the Polish Constitution and undermine Poland's constitutional identity.

191 However, in the light of the considerations set out, in particular, in paragraphs 177 to 180 and 186 of the present judgment, it cannot validly be argued that respect for values and principles such as the rule of law, effective judicial protection and the independence of the judiciary, enshrined in Article 2 and in the second subparagraph of Article 19(1) TEU, to which the accession of a Member State to the European Union and its participation in the functioning thereof are subject, entails requirements capable of affecting the national identity of that Member State, within the meaning of Article 4(2) TEU. Therefore, the latter provision, which must be read taking into account the provisions, of the same rank, such as, in particular, Article 2 and the second subparagraph of Article 19(1) TEU, cannot exempt Member States from the obligation to comply with the requirements arising from those provisions (see, to that effect, judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)*, C-204/21, EU:C:2023:442, paragraph 72).

192 That finding also applies to Article 4(3) TEU and Article 279 TFEU, which seek to ensure full compliance with and effectiveness of EU law.

193 Thus, it cannot be accepted that the Republic of Poland can escape its obligations under Article 2, Article 4(3) and the second subparagraph of Article 19(1) TEU and Article 279 TFEU by considering that the requirements arising from those provisions are liable to affect Polish constitutional identity, while the values and principles which they enshrine form part of the very identity of the European Union as a common legal order to which that Member State has voluntarily acceded.

194 It follows from the foregoing that the interpretation of the Polish Constitution by the Trybunał Konstytucyjny (Constitutional Court) in the judgments at issue manifestly undermines the primacy of Article 2, Article 4(3) and the second subparagraph of Article 19(1) TEU and Article 279 TFEU, provisions referred to in those judgments.

195 Moreover, by unilaterally preventing the Polish public authorities from applying those rules of EU law, the judgments at issue are also manifestly in breach of the principles of autonomy, effectiveness and the uniform application of EU law.

196 In those circumstances, it must be held that, in the light of the interpretation of the Polish Constitution by the Trybunał Konstytucyjny (Constitutional Court) in the judgments at issue, the Republic of Poland has failed to fulfil its obligations under the general principles of autonomy, primacy, effectiveness and the uniform application of EU law.

– *The alleged breach of the principle of the binding effect of the case-law of the Court*

197 It is apparent from the judgments at issue that the Trybunał Konstytucyjny (Constitutional Court) held that, first, the case-law of the Court relating to Article 2 and the second subparagraph of Article 19(1) TEU and, second, the interim measures ordered by the Court under Article 279 TFEU, which are intended to preserve the right to effective judicial protection before an independent tribunal in Poland, infringe Polish constitutional identity because that case-law and those interim measures are *ultra vires* acts.

198 It is also apparent from those judgments that the Trybunał Konstytucyjny (Constitutional Court) stated that it reserved the right to carry out, in the future, an *ultra vires* review of the decisions of the Court in order to protect that identity.

199 In that regard, it should be pointed out that the findings in paragraphs 185 and 186 of the present judgment apply without reservation concerning the rules governing the EU judicial system and, therefore, the allocation of jurisdiction between the Court of Justice and the national courts, as laid down in the Treaties.

200 It is settled case-law that, in order to ensure that the specific characteristics and the autonomy of the EU legal order are preserved, the Treaties have established a judicial system intended to ensure consistency and uniformity in the interpretation of EU law (judgments of 6 March 2018, *Achmea*, C-284/16, EU:C:2018:158, paragraph 35, and of 24 October 2018, *XC and Others*, C-234/17, EU:C:2018:853, paragraph 39 and the case-law cited).

201 In that context, it is, as is apparent from Article 19(1) TEU, for the national courts and tribunals and the Court of Justice to ensure the full application of EU law in all Member States and the judicial protection of the rights that individuals derive from EU law (see, to that effect, judgments of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 50, and of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)*, C-204/21, EU:C:2023:442, paragraph 128).

202 In that regard, the first paragraph of Article 267 TFEU confers jurisdiction on the Court to give preliminary rulings both on the interpretation of the Treaties and the acts of the EU institutions and on the validity of those acts.

203 It is thus for the Court alone to declare an EU act invalid and to provide the definitive and binding interpretation of EU law (see, to that effect, judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraphs 52 and 71 and the case-law cited).

204 As regards the role of national courts or tribunals, the second paragraph of Article 267 TFEU provides that they may refer questions to the Court of Justice for a preliminary ruling and the third paragraph that they are required to do so if there is no judicial remedy under national law against their decisions.

205 That obligation on courts or tribunals against whose decisions there is no judicial remedy under national law is based, as the Court has repeatedly held, on cooperation, established with a view to ensuring the proper application and uniform interpretation of EU law in all the Member States, between national courts, as courts responsible for the application of EU law, and the Court of Justice. That obligation is intended in particular to prevent a body of national case-law that is not in accordance with the rules of EU law from being established in any of the Member States (judgment of 15 October 2024, *KUBERA*, C-144/23, EU:C:2024:881, paragraph 35 and the case-law cited).

206 Furthermore, the obligation on national courts against whose decisions there is no judicial remedy under national law to refer a question to the Court of Justice for a preliminary ruling is the corollary of the exclusive jurisdiction of the Court to rule on the validity of EU acts and to provide the definitive and binding interpretation of EU law.

207 That exclusive jurisdiction of the Court is, moreover, confirmed by Article 344 TFEU, according to which Member States undertake not to submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided for therein (see, to that effect, Opinion 1/91 *(First Opinion on the EEA Agreement)* of 14 December 1991, EU:C:1991:490, paragraph 35).

208 The tasks and jurisdiction thus attributed to the national courts and to the Court of Justice, respectively, are indispensable to the preservation of the very nature of the law established by the Treaties (see, to that effect, Opinion 1/09 *(Agreement creating a Unified Patent Litigation System)* of 8 March 2011, EU:C:2011:123, paragraph 85, and judgment of 25 June 2020, *SatCen* v *KF*, C-14/19 P, EU:C:2020:492, paragraph 61).

209 They are intended to ensure that EU law has in all circumstances the same effect in all Member States, thereby ensuring the very unity of the EU legal order, its consistency, its full effect and its autonomy and, ultimately, the particular nature of the law established by the Treaties (see, to that effect, judgments of 22 October 1987, *Foto-Frost*, 314/85, EU:C:1987:452, paragraph 15; of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 73; and of 9 April 2024, *Profi Credit Polska (Reopening of proceedings concluded with a final judicial decision)*, C-582/21, EU:C:2024:282, paragraph 51).

210 As regards the question whether national courts are entitled to rule on the extent of the competences conferred on the European Union and on compliance with the limits of those competences, it is true that Article 5(2) TEU states, first, that, 'under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein' and, second, that 'competences not conferred upon the Union in the Treaties remain with the Member States.' That principle is also enshrined in Article 4(1) TEU.

211 In addition, under the first sentence of Article 13(2) TEU, each institution is to act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them.

212 However, contrary to the view that the Trybunał Konstytucyjny (Constitutional Court) appears to take in the judgments at issue, the rules and principles recalled in the preceding two paragraphs do not permit national courts or tribunals to rule unilaterally and definitively on the extent of the competences conferred on the European Union or on compliance with the limits of those competences.

213 While the determination of the scope of the European Union's competences, as well as the review of compliance with the limits of those competences, necessarily involves interpreting the provisions of the Treaties, the Court alone has jurisdiction to provide the definitive and binding interpretation of those provisions in the same way as for all other provisions of EU law.

214 In those circumstances, to recognise that national courts have jurisdiction enabling them to rule definitively on the extent of the competences conferred on the European Union and on compliance with the limits of those competences would be incompatible with the nature of EU law in several respects.

215 In that regard, first, it follows from settled case-law that the Treaties do not confer on national courts, in the complete system of legal remedies established by those Treaties, the power to declare acts of the EU institutions invalid or to give the definitive interpretation of EU law (see, to that effect, judgments of 21 December 2011, *Air Transport Association of America and Others*, C-366/10, EU:C:2011:864, paragraph 47 and the case-law cited, and of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 52 and the case-law cited).

216 Second, the autonomy and effectiveness of the EU legal order preclude any external review of decisions of the Court in the exercise of its exclusive jurisdiction to give a definitive and binding interpretation of EU law and to review the legality of EU acts.

217 Third, the competences conferred on the European Union and the executive force of EU law may not vary from one Member State to another. Differences between the courts of the Member States in that regard would be liable to jeopardise the very unity of the EU legal order, compromise the attainment of the objectives of the Treaties and undermine the fundamental requirement of legal certainty and equality of Member States and their nationals before EU law (see, to that effect, judgments of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 80 and the case-law cited, and of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 48 and the case-law cited).

218 Thus, contrary to what the Trybunał Konstytucyjny (Constitutional Court) held, in essence, in the judgments at issue, jurisdiction to rule on the extent of the competences conferred on the European Union in a given area and to review compliance with the limits of those competences is a matter for the Courts of the European Union alone and not for the national courts.

219 Moreover, nor can the possibility, for national courts, of ruling on the extent of the jurisdiction conferred on the European Union be reconciled with the necessary coherence of the system of judicial protection established by the Treaties.

220 It is true that it is for the national courts having jurisdiction to interpret the constitution of the Member State to which they belong and to determine any limits which that constitution imposes on the accession of that Member State to the European Union, as established by the EU Treaty and the FEU Treaty.

221 However, from the date of its accession to the European Union, a Member State is, as is apparent from paragraph 184 of the present judgment, bound without any reservation other than those which may be provided for by the Act of Accession, by all the provisions of primary law and by the acts adopted by the EU institutions before accession, as interpreted by the Court.

222 If a national court is uncertain, within the framework of its jurisdiction, as to the extent of the competences of the European Union in a given area or has doubts as to the validity of an act of EU law on account of the fact that it goes beyond the sphere of the competences of the European Union or of the fact that it disregards the requirement that the European Union, under Article 4(2) TEU, respect the national identities of the Member States, inherent in their fundamental political and constitutional structures, it is for the Court alone, in the context of a reference for a preliminary ruling under Article 267 TFEU, to provide the definitive and binding interpretation of the provisions of EU law at issue and, where appropriate, to declare that act invalid.

223 Thus, in the light of that exclusive jurisdiction of the Court, a court of a Member State cannot, on the basis of its own interpretation of provisions of EU law, validly hold that the Court has given a decision disregarding the limits of the jurisdiction conferred on the European Union and, therefore, refuse to give effect to that decision of the Court (see, to that effect, judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 72) or prohibit the public authorities of the Member State of that court from complying with the case-law of the Court of Justice or applying provisions of EU law, as interpreted by the Court.

224 The findings set out in the preceding two paragraphs also apply in a situation where a decision of the constitutional court or of a supreme court of a Member State refuses, as is the case with the judgments at issue, to comply with decisions of the Court of Justice on the ground, inter alia, that the Court exceeded its jurisdiction or that those decisions disregarded the constitutional identity of the Member State concerned in the light of Article 4(2) TEU.

225 In that regard, it is true that the Court must, under Article 13(2) TEU, act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them.

226 In addition, the Court may, under Article 4(2) TEU, be called upon to determine that an obligation under EU law does not undermine the national identity of a Member State (judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 69 and the case-law cited).

227 However, although it is for the Member States to define their respective national identities, Article 4(2) TEU cannot be interpreted in such a way as to confer on them the power to derogate unilaterally from the provisions of EU law by relying on that national identity.

228 In particular, the autonomy which EU law enjoys in relation to the laws of the Member States requires that the interpretation of Article 4(2) TEU take account of the structure and objectives of the European Union, which can be ensured only if that interpretation is adopted in accordance with the system of judicial protection of the European Union and, in particular, with the exclusive jurisdiction of the Court referred to in paragraph 213 of the present judgment.

229 That provision has neither the object nor the effect of authorising a constitutional or supreme court of a Member State, in disregard of the requirements arising, in particular, from Article 4(2) and (3) and the second subparagraph of Article 19(1) TEU, which are binding upon it, to disapply a rule of EU law, on the ground that that rule undermines the national identity of that Member State, as defined by that constitutional or supreme court (see, to that effect, judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 70).

230 If a constitutional or supreme court of a Member State considers that a provision of secondary EU law, as interpreted by the Court, infringes the obligation to respect the national identity of that Member State, that constitutional or supreme court must stay the proceedings and make a reference to the Court for a preliminary ruling under Article 267 TFEU, in order to assess the validity of that provision in the light of Article 4(2) TEU, the Court alone having jurisdiction to declare an EU act invalid (see, to that effect, judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 71).

231 As regards primary law, the Court takes account of the requirements stemming from Article 4(2) TEU when interpreting the obligations of the Member States under other provisions of primary law (see, to that effect, judgments of 22 December 2010, *Sayn-Wittgenstein*, C-208/09, EU:C:2010:806, paragraph 92, and of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 68 and the case-law cited).

232 That said, where a court of a Member State considers that the interpretation of a provision of primary law, made in a decision of the Court, fails to comply with the requirements arising from Article 4(2) TEU, it cannot, on the basis of its own interpretation of EU law, validly hold that the Court has given a decision exceeding its jurisdiction and, therefore, refuse to give effect to that decision (see, to that effect, judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 72). In such a case, it must, if necessary, make a request for a preliminary ruling to the Court in order to enable it to assess any effect on that interpretation of the need to take into account the national identity of the Member State concerned, inherent in its fundamental structures, both political and constitutional.

233 More generally, where a question relating to the scope of the European Union's competence or to the legality of an act of secondary law is raised before a national court, that court is bound, where that question relates to the interpretation of EU law and irrespective of the ground of invalidity relied on, to respect the exclusive jurisdiction of the Court, which is a fundamental characteristic of the judicial system of the European Union.

234 In the present case, it follows from the foregoing considerations that the arguments of the Trybunał Konstytucyjny (Constitutional Court) set out in the contested decisions, as referred to in paragraphs 197 and 198 of the present judgment, based on the need to protect Polish constitutional identity, cannot validly be accepted.

235 In those circumstances, it must be held that the Republic of Poland, in the light of the interpretation of the Polish Constitution by the Trybunał Konstytucyjny (Constitutional Court) in the judgments at issue, has infringed the binding effect of the Court's case-law.

236 It follows that the Commission's second complaint must be upheld in its entirety.

The third complaint

Arguments of the parties

237 By its third complaint, which contains two parts, the Commission submits that the Republic of Poland has failed to fulfil its obligation under the second subparagraph of Article 19(1) TEU to ensure that the Trybunał Konstytucyjny (Constitutional Court) satisfies the guarantee of an independent and impartial tribunal previously established by law within the meaning of the second subparagraph of Article 19(1) TEU, read in conjunction with Article 47 of the Charter.

238 It follows from the Court's case-law in the 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), that irregularities in the procedure for appointment as a judge may result in an infringement not only of the requirement of a tribunal previously established by law, but also of the independence and impartiality of the tribunal. According to that judgment, that is the case where a judge is appointed in manifest disregard of the fundamental rules of the procedure for appointing judges of the Trybunał Konstytucyjny (Constitutional Court) as an integral part of the establishment and functioning of the Polish judicial system, which creates a real risk of undermining the integrity of the outcome of the appointment process. Thus, that would give rise to reasonable doubts in the minds of individuals as to the imperviousness of that judge to external factors and his or her neutrality with respect to the interests before him or her, and a lack of appearance of independence or impartiality on his or her part likely to prejudice the trust which justice in a democratic society governed by the rule of law must inspire in those individuals.

239 According to the Commission, the Trybunał Konstytucyjny (Constitutional Court) no longer offers the guarantees of an independent and impartial tribunal previously established by law, within the meaning of the second subparagraph of Article 19(1) TEU in conjunction with Article 47 of the Charter, on account, first, of obvious irregularities in the appointment of judges to that court in December 2015, in manifest disregard of Polish constitutional law, and, second, of serious irregularities in the appointment of the President of that court in December 2016. Each of those irregularities gives rise, in the minds of individuals, on account of the activity of the Trybunał Konstytucyjny (Constitutional Court) composed of the persons thus appointed, to reasonable doubts as to the impartiality of that court and its imperviousness to external factors.

240 By the first part of the third complaint, the Commission submits that the election of H.C., L.M. and M.M. to the post of judge of the Trybunał Konstytucyjny (Constitutional Court) to replace judges whose nine-year term of office had expired on 6 November 2015 and their taking office within that court constitute a manifest infringement of Article 194(1) of the Polish Constitution, according to which a new judge may be elected by the Sejm (Lower Chamber of the Polish Parliament) only during the parliamentary term during which the seat in question has become vacant. As confirmed, in particular, by the judgments of the Trybunał Konstytucyjny (Constitutional Court) of 3 and 9 December 2015, the election of H.C., L.M. and M.M. on 2 December 2015 and their taking office at the Trybunał Konstytucyjny (Constitutional Court) on 20 December 2016 were contrary to that provision.

241 The Sejm (Lower Chamber of the Polish Parliament) elected those three persons on 2 December 2015, that is to say during the eighth parliamentary term, even though, on 8 October 2015, that is to say during the seventh parliamentary term, three other persons, namely R.H., A.J. and K.Ś., had already been elected by the Sejm (Lower Chamber of the Polish Parliament) to replace judges whose nine-year term of office expired on 6 November 2015. The

three persons elected on 2 December 2015 took an oath on the same day before the President of the Republic of Poland and were authorised to sit on 20 December 2016 by J.P., who was President of the Trybunał Konstytucyjny (Constitutional Court) at the time. By contrast, the President of the Republic of Poland did not receive the oath of the persons elected on 8 October 2015, with the result that they could not take up their duties.

242 Thus, neither on the date of expiry of the period for replying to the Commission's reasoned opinion of 15 July 2022 nor even on the date on which the present action was brought, were the judgments of the Trybunał Konstytucyjny (Constitutional Court) of 3 and 9 December 2015 implemented by the Republic of Poland.

243 In addition, the Commission asserts that, in its judgment of 7 May 2021, *Xero Flor w Polsce sp. z o.o. v. Poland* (CE:ECHR:2021:0507JUD000490718), the European Court of Human Rights has already held, on the basis of the same facts, that there had been an infringement of a fundamental national rule applicable to the election of judges of the Trybunał Konstytucyjny (Constitutional Court), that infringement having been committed in particular by the Sejm (Lower Chamber of the Polish Parliament) during the eighth parliamentary term, and by the President of the Republic of Poland. Using the three-step review developed in its case-law arising in particular from the judgment of 1 December 2020, *Guðmundur Andri Ástráðsson v. Iceland* (CE:ECHR:2020:1201JUD002637418), the European Court of Human Rights held, in that judgment of 7 May 2021, that the applicant company had been deprived of the right to a 'tribunal established by law' provided for in Article 6(1) ECHR on account of M.M.'s involvement in proceedings before the Trybunał Konstytucyjny (Constitutional Court), since the election of that judge had been vitiated by serious irregularities violating the very essence of that right.

244 By the second part of the third complaint, the Commission maintains that the appointment of J.P. to the position of President of the Trybunał Konstytucyjny (Constitutional Court) on 21 December 2016 was vitiated by serious irregularities, thereby infringing the necessary guarantees of independence and impartiality, arising from the second subparagraph of Article 19(1) TEU.

245 In that regard, the Commission explains that the President of the Trybunał Konstytucyjny (Constitutional Court) plays a fundamental role in the functioning of that constitutional body in that he or she directs the work of that constitutional body, represents it and performs other functions provided for by law. According to the Rules of Procedure of the Trybunał Konstytucyjny (Constitutional Court), the President of that court also decides on the internal procedure relating to applications, legal questions and constitutional appeals, and designates the formations of the court, the presidents of those formations and the reporting judges.

246 As regards the conduct of the selection procedure which led to the appointment of J.P., the Commission submits that, following the expiry, on 19 December 2016, of the term of office of the previous President of the Trybunał Konstytucyjny (Constitutional Court), the Polish legislature adopted a series of laws revising the procedure for selecting candidates for the position of President of that court, previously provided for in Article 16 of the Law of 22 July 2016 on the Constitutional Court, the compliance of which with the Polish Constitution had been confirmed by a judgment of the Trybunał Konstytucyjny (Constitutional Court) of 7 November 2016 (Case K 44/16).

247 First of all, the Sejm (Lower Chamber of the Polish Parliament) adopted, on 30 November 2016, the ustawa o organizacji i trybie postępowania przed Trybunałem Konstytucyjnym (Law on organisation and procedure before the Constitutional Court) (Dz. U., item 2072). Then, on 13 December 2016, the Sejm (Lower Chamber of the Polish Parliament) adopted the Law laying down introductory provisions, Article 21 of which laid down a special transitional procedure for the selection of candidates to be submitted to the President of the Republic of Poland for the appointment of the new President of the Trybunał Konstytucyjny (Constitutional Court). The procedure was to be conducted by the 'judge acting as President of the Trybunał Konstytucyjny [(Constitutional Court)]', that new post having been established by Article 18 of that law.

248 On 20 December 2016, that is to say, the day on which Articles 16 to 22 of the Law laying down introductory provisions entered into force and the day after A.R., until then President of the Trybunał Konstytucyjny (Constitutional Court), retired, the President of the Republic of Poland appointed J.P., in accordance with Article 18 of that law, to the new position of 'judge acting as President of the Trybunał Konstytucyjny (Constitutional Court)', even though a vice-president of that court, namely S.B., was in office. However, that new position is not provided for in the Polish Constitution, since Article 194(2) thereof refers only to the President and Vice-President of the Trybunał Konstytucyjny (Constitutional Court). Moreover, the previous laws governing the functioning of that court provided that its vice-president or, if he or she was prevented from attending, any other judge appointed by the oldest president or judge, would perform the duties of President in his or her absence.

249 On the same date, J.P., newly appointed to serve as President of the Trybunał Konstytucyjny (Constitutional Court), authorised the three judges elected on 2 December 2015, in breach of Article 194(1) of the Polish Constitution, to sit in that court after they had taken an oath before the President of the Republic of Poland. In addition, J.P. immediately convened the General Assembly, of which those three persons were already members.

250 Of the 14 judges present when that General Assembly was convened, 8 refused to take part in the vote on the selection of candidates for the position of President of the Trybunał Konstytucyjny (Constitutional Court) and one unsuccessfully requested beforehand that the General Assembly be postponed by one day so that all judges could participate in that meeting.

251 However, although, in accordance with Article 20 of the Law laying down introductory provisions, J.P. had one month, from 20 December 2016, to conduct the procedure for submitting to the President of the Republic of Poland the candidates for the position of President of the Trybunał Konstytucyjny (Constitutional Court), in accordance with the arrangements laid down in Article 21 of that law, J.P. refused to postpone the General Assembly.

252 Consequently, on 20 December 2016, the General Assembly, by six votes of the 14 judges present, selected and presented to the President of the Republic of Poland two candidates, namely, first, J.P., who had had five votes, and, second, M.M., elected judge at the Trybunał Konstytucyjny (Constitutional Court) on 2 December 2015 in breach of Article 194(1) of the Polish Constitution, who had had one vote. On 21 December 2016, the President of the Republic of Poland appointed J.P. to the position of President of the Trybunał Konstytucyjny (Constitutional Court).

253 The Commission asserts that, although the rules and principles for the election of the President and Vice-President of the Trybunał Konstytucyjny (Constitutional Court) fall within the legislative sphere in Poland, the Polish legislature is, in accordance with the case-law of the

Trybunał Konstytucyjny (Constitutional Court), required to comply with the constitutional principles of integrity and effectiveness of acts of public institutions, separation and balance of powers and respect for the jurisdiction of that court.

254 The procedure for selecting candidates for the position of President of the Trybunał Konstytucyjny (Constitutional Court) was conducted on the basis of the transitional provisions of the Law laying down introductory provisions, which fundamentally amended that selection procedure. In accordance with Article 16(4) of the Law of 22 July 2016 on the Constitutional Court, the election of candidates for the position of President or Vice-President of that court was to be held during a session chaired by the oldest judge participating in the General Assembly. In addition, under Article 16(7) of that law, the election could take place only if at least 10 judges out of the total number of judges of the Trybunał Konstytucyjny (Constitutional Court) took part in the General Assembly.

255 Article 21 of the Law laying down introductory provisions entered into force on 20 December 2016 and was immediately applied by the judge acting as President of the Trybunał Konstytucyjny (Constitutional Court), who was appointed President of that court the following day.

256 In its judgment of 7 November 2016, the Trybunał Konstytucyjny (Constitutional Court) held that the presentation to the President of the Republic of Poland of candidates who were not supported by a majority of the judges of the Trybunał Konstytucyjny (Constitutional Court) or who received only one vote was contrary to Article 194(2) of the Polish Constitution. It follows from paragraph 61 et seq. of the legal grounds of that judgment that that provision requires that the persons in question be candidates from the General Assembly, and not candidates proposed by minority groups or by certain judges.

257 According to the Commission, it was therefore in breach of the Polish Constitution that J.P. was elected and presented to the President of the Republic of Poland as a candidate for the position of President of the Trybunał Konstytucyjny (Constitutional Court) since she received only five votes from the 14 judges present at the General Assembly, three of those votes being furthermore from judges appointed to the Trybunał Konstytucyjny (Constitutional Court) in breach of Article 194(1) of the Polish Constitution.

258 The Commission maintains that the infringements of Article 194 of the Polish Constitution which vitiated the procedure for the appointment of those three judges and the procedure for appointing the President of the Trybunał Konstytucyjny (Constitutional Court) in several stages were made possible by a series of legislative amendments and decisions of the President of the Republic of Poland which created a situation in which the legislature and the executive could be perceived as having directly influenced the composition and functioning of the Trybunał Konstytucyjny (Constitutional Court). That chain of events consists of irregularities, each of which is of such a nature and gravity as to create a real risk that the legislature and the executive could exercise undue discretion over the Trybunał Konstytucyjny (Constitutional Court), undermining the integrity of the outcome to which those appointment procedures ought to lead and thus giving rise to reasonable doubt, in the minds of individuals, as to the independence and impartiality of that court.

259 The Republic of Poland acknowledges that the third complaint is well founded.

Findings of the Court

– *The first part of the third complaint*

260 As was recalled in paragraphs 105, 107 and 108 of the present judgment, the second subparagraph of Article 19(1) TEU requires Member States to establish a system of legal remedies and procedures ensuring for individuals compliance with their right to effective judicial protection in the fields covered by EU law, in particular by guaranteeing that bodies which are called upon, as courts or tribunals, to rule on questions concerning the application or interpretation of EU law, meet the requirements which ensure such compliance, including the independence and impartiality of those bodies.

261 In the present case, it is common ground that the Trybunał Konstytucyjny (Constitutional Court) may be called upon to rule on questions concerning the application or interpretation of EU law, with the result that it falls, as a 'court or tribunal' within the meaning of EU law, within the Polish system of legal remedies in the 'fields covered by Union law', within the meaning of the second subparagraph of Article 19(1) TEU, as evidenced, moreover, by the reference for a preliminary ruling made by that court in the case which gave rise to the judgment of 7 March 2017, *RPO* (C-390/15, EU:C:2017:174). Thus, the Trybunał Konstytucyjny (Constitutional Court) must satisfy the requirements of effective judicial protection (see, to that effect, judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraph 35 and the case-law cited).

262 In that regard, the guarantees of access to an independent and impartial tribunal previously established by law, and in particular those which determine what constitutes a tribunal and how it is composed, represent the cornerstone of the right to a fair trial. Checking whether, as composed, a court constitutes such a tribunal where a serious doubt arises on that point is necessary for the confidence which the courts in a democratic society must inspire in those subject to their jurisdiction (see, to that effect, judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 58 and the case-law cited).

263 It is settled case-law of the Court that the guarantees of independence and impartiality required under EU law presuppose rules, particularly as regards the composition of the body concerned and the appointment, length of service and grounds for abstention, rejection and dismissal of its members, that are such as 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 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 109, and of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)*, C-204/21, EU:C:2023:442, paragraph 93 and the case-law cited).

264 In that regard, it is necessary that judges be protected from external intervention or pressure liable to jeopardise their independence. The rules applicable to the status of judges and the performance of their duties 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, and thus preclude a lack of appearance of independence or impartiality on their part likely to prejudice the trust which justice in a democratic society governed by the rule of law must inspire in individuals (judgments 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 110, and of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)*, C-204/21, EU:C:2023:442, paragraph 94 and the case-law cited).

265 Moreover, the reason for the requirement relating to a 'tribunal previously established by law', within the meaning of EU law, is to ensure that the organisation of the judicial system does not depend on the discretion of the executive, but that it is regulated by law emanating from the legislature in compliance with the rules governing its jurisdiction. That phrase reflects, in particular, the principle of the rule of law and covers not only the legal basis for the very existence of a tribunal, but also the composition of the bench in each case and any other provision of domestic law which, if breached, would render the participation of one or more judges in the examination of a case irregular, including, in particular, provisions concerning the independence and impartiality of the members of the court concerned (judgment of 26 March 2020, *Review Simpson* v *Council* and *HG* v *Commission*, C-542/18 RX-II and C-543/18 RX-II, EU:C:2020:232, paragraph 73 and the case-law cited).

266 That requirement, which is therefore closely linked, in particular, to the requirement of independence, encompasses, by its very nature, the process of appointing judges, while the independence of a tribunal may be measured, inter alia, by the way in which its members are appointed (see, to that effect, judgment of 29 July 2024, *Valančius*, C-119/23, EU:C:2024:653, paragraphs 49 and 50 and the case-law cited).

267 It is true that not every error that may take place during the procedure for the appointment of a judge is of such a nature as to cast doubt on the independence and impartiality of that judge and, accordingly, on whether a formation which includes that judge can be considered to be an 'independent and impartial tribunal previously established by law' within the meaning of EU law (judgment of 29 March 2022, *Getin Noble Bank*, C-132/20, EU:C:2022:235, paragraph 123).

268 However, it is settled case-law that an irregularity committed during the appointment of judges within the judicial system concerned entails an infringement of the requirement of a tribunal previously established by law where, in particular, that irregularity is of such a kind and of such gravity as to create a real risk that other branches of the State, in particular the executive, could exercise undue discretion undermining the integrity of the outcome of the appointment process and thus give rise to reasonable doubt in the minds of individuals as to the independence and the impartiality of the judge or judges concerned. That is the case where what is at issue are fundamental rules forming an integral part of the establishment and functioning of that judicial system (see, to that effect, judgments 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 130, and of 29 July 2024, *Valančius*, C-119/23, EU:C:2024:653, paragraph 52 and the case-law cited).

269 A finding that there has been a breach of the requirement for a tribunal previously established by law and the consequences of such a breach is subject to an overall assessment of a number of factors which, taken together, serve to create in the minds of individuals reasonable doubt as to the independence and impartiality of the judges (judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 74 and the case-law cited).

270 In the present case, it is common ground that the factual and legal elements described in paragraphs 50 to 56 and 59 of the present judgment lead to the conclusion that the election of H.C., L.M. and M.M., on 2 December 2015, during the eighth parliamentary term of the Sejm (Lower Chamber of the Polish Parliament) to serve as judges of the Trybunał Konstytucyjny (Constitutional Court) to replace judges whose nine-year term had expired on 6 November 2015 was made in manifest disregard of a fundamental rule governing the appointment of judges of that court, namely Article 194(1) of the Polish Constitution, as interpreted by the Trybunał Konstytucyjny (Constitutional Court), according to which a judge must be elected during the Sejm (Lower Chamber of the Polish Parliament) parliamentary term during which the seat of the judge in question has become vacant. In addition, that election concerned the seats of judges of the Trybunał Konstytucyjny (Constitutional Court) which had already been lawfully filled by the three judges elected on 8 October 2015 during the seventh parliamentary term of the Sejm (Lower Chamber of the Polish Parliament) (see, to that effect, ECtHR, 7 May 2021, *Xero Flor w Polsce sp. z o.o. v. Poland*, CE:ECHR:2021:0507JUD000490718, § 268, 275 and 277).

271 Under the fundamental rule relating to the procedure for appointing judges of the Trybunał Konstytucyjny (Constitutional Court) referred to in the preceding paragraph, the President of the Republic of Poland was required immediately to hear the oath of the judges elected by the Sejm (Lower Chamber of the Polish Parliament) on 8 October 2015 and had no power to interfere in the selection of judges within that court, which was a matter for the Sejm (Lower Chamber of the Polish Parliament), or to refuse to hear the oath of those three judges. Thus, that refusal of the President of the Republic of Poland and his acceptance of the oath of the three judges elected on 2 December 2015 were also contrary to the fundamental national rules governing the appointment of judges to the Trybunał Konstytucyjny (Constitutional Court) (see, to that effect, ECtHR, 7 May 2021, *Xero Flor w Polsce sp. z o.o. v. Poland*, CE:ECHR:2021:0507JUD000490718, §§ 269, 270 and 278).

272 It was in the light of those findings, in particular, that the European Court of Human Rights held that the failure by the Polish legislature and executive to comply with the judgments of the Trybunał Konstytucyjny (Constitutional Court) of 3 and 9 December 2015 concerning the validity of the election of judges of that court had undermined the purpose of the requirement relating to a 'tribunal previously established by law' to protect the judiciary from unlawful external influence and that the election of three judges on 2 December 2015 had been vitiated by serious irregularities violating the very essence of the right to a 'tribunal established by law' provided for in Article 6 ECHR (see, to that effect, ECtHR, 7 May 2021, *Xero Flor w Polsce sp. z o.o. v. Poland*, CE:ECHR:2021:0507JUD000490718, §§ 281, 289 and 290, and ECtHR, 15 March 2022, *Grzęda v. Poland*, CE:ECHR:2022:0315JUD00435721, § 277).

273 Thus, in the same way as in relation to the findings of the European Court of Human Rights, the factual and legal elements described in paragraphs 50 to 56 and 59 of the present judgment lead to the conclusion that the appointment of H.C., L.M. and M.M. and the taking up of their duties took place in manifest disregard of the fundamental rules relating to the procedure for the appointment of judges of the Trybunał Konstytucyjny (Constitutional Court) as an integral part of the establishment and functioning of the Polish judicial system, within the meaning of the case-law referred to in paragraph 268 of the present judgment.

274 Those elements also lead to the conclusion that the circumstances in which H.C., L.M. and M.M. were thus appointed and took office constitute disregard for the requirements arising from the second subparagraph of Article 19(1) TEU, in that they undermined the integrity of the outcome of the appointment process by contributing to giving rise, in the minds of individuals, to

reasonable doubt as to the imperviousness of those judges to external factors, their neutrality with respect to the interests before them and their independence and impartiality, those doubts being such as to undermine the trust which justice in a democratic society governed by the rule of law must inspire in individuals.

275 It is true that it is common ground that, on the date of expiry of the period set out in the reasoned opinion, which is the reference date for assessing whether there has been a failure to fulfil obligations under Article 258 TFEU, of the three judges elected on 2 December 2015 during the eighth parliamentary term of the Sejm (Lower Chamber of the Polish Parliament), only M.M. was still a judge of the Trybunał Konstytucyjny (Constitutional Court). However, it is also common ground that, on that reference date, the three judges lawfully elected on 8 October 2015 during the seventh parliamentary term of the Sejm (Lower Chamber of the Polish Parliament) had not taken an oath before the President of the Republic of Poland and had therefore not been able to take office as judges at the Trybunał Konstytucyjny (Constitutional Court). In addition, the decisions in which the three judges elected on 2 December 2015 were involved continued, on that reference date, to exist in the Polish legal order.

276 It must therefore be held that the Republic of Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU since the Trybunał Konstytucyjny (Constitutional Court) does not meet the requirements of an independent and impartial tribunal previously established by law, on account of irregularities in the procedures to appoint three of its members in December 2015.

277 In the light of the foregoing considerations, the first part of the Commission's third complaint must be upheld.

– *The second part of the third complaint*

278 It is common ground that the President of the Trybunał Konstytucyjny (Constitutional Court) plays a fundamental role in the functioning of that court. According to the rules of procedure of that court, he or she is to decide on the internal procedure relating to applications, legal questions and constitutional appeals, and designate the formations of the Court, the presidents of those formations and the reporting judges. In addition, the President directs the work of that court, represents it and performs other functions provided for by law.

279 Since the person occupying the position of President of the Trybunał Konstytucyjny (Constitutional Court) is thus undoubtedly capable of influencing the activity of that court, it is particularly important that he or she acts objectively and impartially, when performing his or her duties, and that, for that purpose, is free from any external influence liable to jeopardise his or her independence. To that end, it is necessary, in particular, that the rules governing the procedure for appointment to that post be designed in such a way that they cannot give rise to any legitimate doubt as to the use of the President's prerogatives and duties as an instrument to influence the judicial activity of that court or to exercise political control over that activity and, more generally, as to the imperviousness of that court to external factors and its neutrality with respect to the interests before it, as required by the case-law cited in paragraphs 263 and 264 of the present judgment.

280 In addition, in accordance with what has been stated in paragraphs 266 to 269 of the present judgment, the requirement relating to a 'tribunal previously established by law' and the requirement of independence include the process of appointing the President of the Trybunał Konstytucyjny (Constitutional Court) and require compliance with the fundamental rules relating to the procedure governing his or her appointment.

281 In that regard, it is common ground that the rule in Article 194(2) of the Polish Constitution, which must be regarded as a fundamental rule of the appointment procedure within the meaning of the case-law referred to in paragraph 268 of the present judgment, requires, in accordance with the case-law of the Trybunał Konstytucyjny (Constitutional Court) referred to in paragraph 256 of the present judgment, that the candidates presented to the President of the Republic of Poland for the position of President of that court have been elected by the General Assembly. That rule, as interpreted by that court, means that the presentation of a candidate who has received only one vote or candidates proposed by minority groups or by only some judges is contrary to the Polish Constitution.

282 The procedure for the election of candidates to the position of President of the Trybunał Konstytucyjny (Constitutional Court) with a view to their presentation to the President of the Republic of Poland was conducted pursuant to transitional provisions provided for by the Law laying down introductory provisions which was adopted by the Polish legislature on 13 December 2016, that is to say, on the basis of the expiry, on 19 December 2016, of the term of office of the then President of that court, and which fundamentally altered the conduct of that procedure.

283 Thus, the Law laying down introductory provisions provides, in Article 18 thereof, that the President of the Republic of Poland may entrust the exercise of the functions of President of the Trybunał Konstytucyjny (Constitutional Court) to a judge of that court and, in Article 20, that the procedure for presenting to the President of the Republic of Poland candidates for the position of President of that court is to be conducted by the 'judge acting as President' of that court. However, the previous rules in Article 16(4) of the Law of 22 July 2016 on the Constitutional Court provided that the session of the General Assembly on the election of candidates for the position of President or Vice-President was to be chaired by the oldest judge participating in the General Assembly.

284 In addition, Article 21 of the Law laying down introductory provisions states, in paragraph 7 thereof, that the General Assembly is to propose as candidates for the position of President of the Trybunał Konstytucyjny (Constitutional Court) judges of that court who have obtained at least five votes in the vote, and adds, in paragraph 8 thereof, that, if that number of votes has been obtained by only one judge, the General Assembly is to propose as candidates the judge who obtained the required minimum number of five votes and the judge who obtained the highest level of support from among the judges who did not reach the required number of at least five votes.

285 In the present case, on 20 December 2016, namely the day after the retirement of the previous President of the Trybunał Konstytucyjny (Constitutional Court), the President of the Republic of Poland, in accordance with Article 18 of the Law laying down introductory provisions, appointed J.P. to the newly created post of 'judge acting as President' of that court, even though a Vice-President was in office there. Also on 20 December 2016, J.P., who had authorised the three judges elected on 2 December 2015 in manifest breach of Article 194(1) of the Polish Constitution

to sit, convened, for the same day, a meeting of the General Assembly with a view to the election of candidates for the position of President of that court to be proposed to the President of the Republic of Poland, as Article 20 of that law authorised her to do.

286 One of the judges of the Trybunał Konstytucyjny (Constitutional Court), asked for that meeting to be postponed, in view of the short time frame in which it was convened, in order to enable all judges to take part in it. J.P., who had a month under Article 20 of the Law laying down introductory provisions to carry out the election procedure however refused to grant that request. Accordingly, of the 14 judges of the Trybunał Konstytucyjny (Constitutional Court) who were present at the meeting of the General Assembly, only 6 judges, including H.C., L.M. and M.M. who had been elected by the Sejm (Lower Chamber of the Polish Parliament) on 2 December 2015, agreed to take part in the vote. Following the vote, J.P. obtained five votes and M.M. one vote. Those two judges were then presented to the President of the Republic of Poland as candidates for the position of President of the Trybunał Konstytucyjny (Constitutional Court). On 21 December 2016, J.P., who had thus obtained only five votes of the 14 judges present at the General Assembly, was appointed to the position of President of the Trybunał Konstytucyjny (Constitutional Court) by the President of the Republic of Poland.

287 It is true that the presentation of J.P. and M.M. to the President of the Republic of Poland as candidates for the position of President of the Trybunał Konstytucyjny (Constitutional Court) might appear to have been made in accordance with Article 21(7) and (8) of the Law laying down introductory provisions.

288 However, it should be noted that H.C., L.M. and M.M., who had been elected on 2 December 2015, were among the six judges who participated, during the General Assembly of 20 December 2016, in the election of candidates to the position of President of the Trybunał Konstytucyjny (Constitutional Court). The fact that the election of those three judges was vitiated by a manifest infringement of Article 194(1) of the Polish Constitution and by a failure to comply with the requirements arising from the second subparagraph of Article 19(1) TEU was such as to render their participation in the General Assembly irregular, as well as the votes which they cast with a view to the selection of candidates for the position of President of the Trybunał Konstytucyjny (Constitutional Court). Therefore, it must be held that J.P. cannot be regarded as having lawfully obtained the five votes required by Article 21(8) of the Law laying down introductory provisions.

289 It is therefore apparent that the presentation of J.P. and M.M. to the President of the Republic of Poland as candidates for the position of President of the Trybunał Konstytucyjny (Constitutional Court) and the appointment of J.P. to that post by the President were made in breach of the fundamental rule relating to the procedure for the appointment of that President, laid down in Article 21(8) of the Law laying down introductory provisions.

290 In addition and above all, J.P.'s appointment was made in manifest breach of Article 194(2) of the Polish Constitution, since that provision precludes, in accordance with what has been stated in paragraph 281 of the present judgment, the presentation to the President of the Republic of Poland of candidates proposed by minority groups or by certain judges only.

291 Therefore, the irregularities referred to in the preceding two paragraphs are capable of giving rise to reasonable doubt, in the minds of individuals, as to J.P.'s use of the powers and functions associated with the position of President of the Trybunał Konstytucyjny (Constitutional Court) as an instrument for influencing the judicial activity of that court or for the political control of that activity and, therefore, as to the independence and impartiality of that court.

292 In those circumstances, it is not necessary to examine whether the transitional provisions which are laid down in the Law laying down introductory provisions and on the basis of which the procedure for the election of candidates to the position of President of the Trybunał Konstytucyjny (Constitutional Court) was conducted or the other circumstances mentioned in paragraphs 285 and 286 of the present judgment relating to that procedure meet the requirements referred to in paragraphs 263 and 264 of the present judgment.

293 Lastly, it should be noted that, on the date of expiry of the period laid down in the reasoned opinion, J.P. continued to hold the position of President of the Trybunał Konstytucyjny (Constitutional Court). Furthermore, it is common ground that the decisions in the adoption of which she took part continued, on that date, to exist in the Polish legal order.

294 It must therefore be held that the Republic of Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU since the Trybunał Konstytucyjny (Constitutional Court) does not meet the requirements of an independent and impartial tribunal previously established by law, on account of irregularities in the procedure for the appointment of its President in December 2016.

295 It follows that the second part of the Commission's third complaint is also well founded and that that complaint must therefore be upheld in its entirety.

296 In the light of all of the foregoing, it must be held that:

– in the light of the interpretation of the Polish Constitution by the Trybunał Konstytucyjny (Constitutional Court) in its judgments of 14 July 2021 (Case P 7/20) and of 7 October 2021 (Case K 3/21), the Republic of Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU;

– in the light of the interpretation of the Polish Constitution by the Trybunał Konstytucyjny (Constitutional Court) in its judgments of 14 July 2021 (Case P 7/20) and of 7 October 2021 (Case K 3/21), the Republic of Poland has failed to fulfil its obligations under the principles of autonomy, primacy, effectiveness and the uniform application of EU law, as well as under the principle of the binding effect of the Court's case-law; and

– since the Trybunał Konstytucyjny (Constitutional Court) does not meet the requirements of an independent and impartial tribunal previously established by law, on account of irregularities in the procedures for the appointment of three of its members in December 2015 and of its President in December 2016, the Republic of Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU.

Costs

297 Under Article 138(1) of the Rules of Procedure, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for the Republic of Poland to pay the costs and the Republic of Poland has been unsuccessful in the present action, the latter must be ordered to bear its own costs and to pay those of the Commission.

298 In accordance with Article 140(1) of the Rules of Procedure, the Kingdom of Belgium and the Kingdom of the Netherlands are to bear their own costs.

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

1. – Declares that in the light of the interpretation of the Konstytucja Rzeczypospolitej Polskiej (Constitution of the Republic of Poland) by the Trybunał Konstytucyjny (Constitutional Court, Poland) in its judgments of 14 July 2021 (Case P 7/20) and of 7 October 2021 (Case K 3/21), the Republic of Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU;

– Declares that in the light of the interpretation of the Constitution of the Republic of Poland by the Trybunał Konstytucyjny (Constitutional Court) in its judgments of 14 July 2021 (Case P 7/20) and of 7 October 2021 (Case K 3/21), the Republic of Poland has failed to fulfil its obligations under the principles of autonomy, primacy, effectiveness and the uniform application of EU law, as well as under the principle of the binding effect of the case-law of the Court of Justice; and

– Declares that since the Trybunał Konstytucyjny (Constitutional Court) does not meet the requirements of an independent and impartial tribunal previously established by law, on account of irregularities in the procedures for the appointment of three of its members in December 2015 and of its President in December 2016, the Republic of Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU;

2. Orders the Republic of Poland to bear its own costs and to pay the costs incurred by the European Commission;

3. Orders the Kingdom of Belgium and the Kingdom of the Netherlands to bear their own costs.

[Signatures]

[i] The wording of paragraph 296 and of point 1 of the operative part of this document has been amended since it was first put online.