Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

19 December 2024*

(Reference for a preliminary ruling – Second subparagraph of Article 19(1) TEU – Effective legal protection in the fields covered by EU law – Second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union – Access to an independent and impartial tribunal – Liability of a Member State for damage caused to individuals by an infringement of EU law – Infringement by a national court adjudicating at last instance in relation to value added tax (VAT) – Jurisdiction of a court adjudicating at last instance while having the capacity of defendant in the dispute – Composition of the adjudicating panel)

In Case C-369/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), made by decision of 9 June 2023, received at the Court on 9 June 2023, in the proceedings

'Vivacom Bulgaria' EAD

v

Varhoven administrativen sad,

Natsionalna agentsia za prihodite,

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Court of Justice, acting as President of the Fourth Chamber, C. Lycourgos (Rapporteur), President of the Third Chamber, S. Rodin, J. Passer and O. Spineanu-Matei, Judges,

Advocate General: T. Ćapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– 'Vivacom Bulgaria' EAD, by S. Kostov and S. Yordanova, advokati,

* Language of the case: Bulgarian.

– the Varhoven administrativen sad, by A. Adamova-Petkova, T. Kutsarova-Hristova and M. Semov,

– the Bulgarian Government, by T. Mitova and R. Stoyanov, acting as Agents,

– the European Commission, by K. Herrmann and E. Rousseva, and P.J.O. Van Nuffel, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 July 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the second subparagraph of Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between 'Vivacom Bulgaria' EAD, on the one hand, and the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria) and the Natsionalna agentsia za prihodite (National Revenue Agency, Bulgaria) ('the NAP'), on the other hand, concerning compensation for the damage allegedly suffered by the Balgarska telekomunikatsionna kompania EAD ('BTK'), now Vivacom Bulgaria, as a result of an infringement of EU law.

Legal context

European Union law

3 The second subparagraph of Article 19(1) TEU provides:

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

4 Article 47 of the Charter provides:

'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. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.'

Bulgarian law

Code of Administrative Procedure

5 Article 1(3) of the Administrativnoprotsesualen kodeks (Code of Administrative Procedure), in the version applicable to the main proceedings (DV No 94 of 29 November 2019) ('the Code of Administrative Procedure'), is worded as follows:

'This code governs: … the procedure for compensation for damage caused by unlawful acts, actions or omissions of administrative authorities and officials, as well as damage arising from the judicial functions of the administrative courts and of the Varhoven administrativen sad [(Supreme Administrative Court)].'

6 Under Article 128(1)(6) of that code:

'All cases relating to claims for damages arising from the judicial functions of the administrative courts and of the Varhoven administrativen sad [(Supreme Administrative Court)] shall fall within the jurisdiction of the administrative courts.'

7 Article 203 of that code provides:

'(1) Actions seeking compensation for damage suffered by citizens or legal persons as a result of unlawful acts, actions or omissions of administrative authorities and their officials shall be examined in accordance with the procedure laid down in this chapter.

(2) Matters not governed by this code concerning financial liability under paragraph 1 shall be governed by the provisions of the Zakon za otgovornostta na darzhavata i obshtinite za vredi [(Law on the liability of the State and of municipalities for damage (DV No 60 of 5 August 1988))] or by the Zakon za izpalnenie na nakazaniyata i zadarzhaneto pod strazha [(Law on the enforcement of sentences and pre-trial detention (DV No 25 of 3 April 2009))].

(3) This chapter also covers actions for compensation for damage caused by a sufficiently serious breach of EU law, with the financial liability and admissibility of the action being governed by the rules governing the non-contractual liability of the State for breach of EU law.'

Law on the liability of the State and of municipalities for damage

8 Article 2c of the Zakon za otgovornostta na darzhavata i obshtinite za vredi (Law on the liability of the State and of municipalities for damage), in the version applicable to the main proceedings (DV No 94 of 29 November 2019) ('the law on liability of the State and municipalities for damage'), is worded as follows:

'(1) Where the damage is the result of a sufficiently serious breach of EU law, actions shall be examined by the courts in accordance with the detailed rules of:

1. the Code of Administrative Procedure, as regards damage … arising from the exercise of judicial functions of the administrative courts and of the Varhoven administrativen sad [(Supreme Administrative Court)];

2. the Code of Civil Procedure, in cases other than those referred to in point 1 …

(2) Where an action within the meaning of paragraph 1 is brought against several defendants, it shall be examined in accordance with the detailed rules of the Code of Administrative Procedure, if the party to the proceedings is an administrative court, the Varhoven administrativen sad [(Supreme Administrative Court)] or a legal person for damage arising in the course of or in connection with an administrative activity.'

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

9 Between 2007 and 2008, BTK Mobile EOOD, the predecessor in title of BTK, sent invoices to two Romanian companies for the supply of pre-paid cards and vouchers for telecommunications services. In those invoices, those transactions were considered to be supplies of services the place of performance of which was in Romania, and which, accordingly, were not subject to value added tax (VAT) in Bulgaria.

10 On 20 June 2012, the NAP issued BTK with a tax adjustment notice establishing VAT debts corresponding to those invoices. In its view, the transactions at issue should have been classified as supplies of services the place of performance of which was in Bulgaria and were, therefore, taxable in that Member State.

11 By judgment of 22 November 2013, supplemented by a judgment of 28 January 2014, the Administrativen sad Sofia grad (Administrative Court, Sofia City, Bulgaria) upheld that tax adjustment notice in respect of the tax periods between December 2007 and June 2008, while finding that the transactions at issue were supplies of goods the place of performance of which was in Bulgaria. By a judgment, which became final, of 16 December 2014, the Varhoven administrativen sad (Supreme Administrative Court) upheld the judgment at first instance in its entirety.

12 By an action brought on 12 December 2019 before the Administrativen sad Sofia grad (Administrative Court, Sofia City) against the NAP and the Varhoven administrativen sad (Supreme Administrative Court), BTK sought, on the basis of Article 2c of the Law on the liability of the State and municipalities for damage, read in conjunction with Article 4(3) TEU, an award of damages in the amount of the sum paid pursuant to the tax adjustment notice and statutory interest, in the total amount of 1 808 638.32 leva (BGN) (approximately EUR 925 000). That company also claimed statutory interest on part of that sum for the period from the date on which the action was brought until its definitive settlement.

13 Those amounts correspond to the damage arising from a sufficiently serious infringement, by the NAP and the Varhoven administrativen sad (Supreme Administrative Court), of certain provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), in the version applicable between December 2007 and June 2008 ('the VAT Directive'), as interpreted by the Court in the judgment of 3 May 2012, *Lebara* (C-520/10, EU:C:2012:264).

14 By judgment of 18 April 2022, the Administrativen sad Sofia grad (Administrative Court, Sofia City) dismissed BTK's action, holding, inter alia, that neither the NAP nor the Varhoven administrativen sad (Supreme Administrative Court) had committed a serious infringement of EU law. The NAP correctly classified the transactions at issue as supplies of services and did not

infringe EU law by considering that one of the conditions for determining the place of performance of those services in a Member State other than the Republic of Bulgaria, namely the obtaining of pre-paid cards and vouchers by taxable persons established in such a Member State, was not met.

15 The Administrativen sad Sofia grad (Administrative Court, Sofia City) also held that the classification of the transactions at issue as supplies of goods and not as supplies of services by the Varhoven administrativen sad (Supreme Administrative Court) was contrary to the VAT Directive and the judgment of 3 May 2012, *Lebara* (C-520/10, EU:C:2012:264). However, irrespective of that error, the action against the tax adjustment notice could not have led to a different outcome, since it was not established that the recipients of the supplies of the pre-paid cards and vouchers were indeed taxable persons established in another Member State. Furthermore, the Varhoven administrativen sad (Supreme Administrative Court) correctly found that the circumstances of the case which gave rise to the judgment of 3 May 2012, *Lebara* (C-520/10, EU:C:2012:264) and those giving rise to the NAP's adoption of the tax adjustment notice at issue were not identical.

16 BTK brought an appeal on a point of law before the Varhoven administrativen sad (Supreme Administrative Court) seeking to have set aside the first-instance judgment of 18 April 2022, on the ground that it is vitiated by an infringement of substantive law, a substantial infringement of procedural rules and a failure to state reasons. BTK submits, inter alia, that the infringement of EU law resulting from the incorrect classification by the Varhoven administrativen sad (Supreme Administrative Court) of the transactions at issue is apparent from infringement procedure No EU Pilot 8498/1/TAXU, brought against the Republic of Bulgaria by the European Commission. That breach, which is the result of a manifest failure to have regard to the case-law of the Court, is sufficiently serious in the light of the criteria set out in paragraph 43 of the judgment of 13 June 2006, *Traghetti del Mediterraneo* (C-173/03, EU:C:2006:391).

17 In that context, BTK requested the Varhoven administrativen sad (Supreme Administrative Court), which is the referring court, to make a reference to the Court of Justice for a preliminary ruling. That party acknowledges that the adjudicating panel of that court, before which the dispute in the main proceedings was brought, differs from that which delivered the judgment of 16 December 2014 referred to in paragraph 11 of the present judgment. However, there are legitimate doubts as to the impartiality of all the panels of that court, which was the defendant at first instance and had already expressed the view that the action brought against it was inadmissible or, in any event, unfounded.

18 The referring court, while observing that BTK has not put forward specific arguments as to the subjective or objective impartiality of the adjudicating panel, considers that it needs clarification as to whether it has jurisdiction to hear and determine the dispute in the main proceedings, before being able to rule on the substance of that dispute.

19 That court states that, in the light of the specific features of administrative proceedings, the Bulgarian legislature provided that actions for compensation for damage arising from the judicial functions of the administrative courts and of the Varhoven administrativen sad (Supreme Administrative Court) fall within the jurisdiction of the administrative courts of which the referring court is the court of last instance. It asks whether that legislation satisfies the requirements of the second subparagraph of Article 19(1) TEU, which enshrines effective judicial protection in the fields covered by EU law, and of the second paragraph of Article 47 of the Charter, concerning the requirement for an independent and impartial tribunal.

20 The relevant case-law of the European Court of Human Rights ('the ECtHR') concerning actions brought against the Republic of Bulgaria does not make it possible to determine definitively whether a court may hear an action in which it is a defendant, without thereby infringing Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR').

21 Thus, the referring court states that, in the judgments of the ECtHR of 10 April 2008, *Mihalkov v. Bulgaria* (CE:ECHR:2018:0410JUD006771901) and of 5 April 2018, *Boyan Gospodinov v. Bulgaria* (CE:ECHR:2018:0405JUD002841707), the European Court of Human Rights found an infringement of Article 6(1) ECHR, in the context of actions for damages brought against the State in connection with the exercise of a court's functions, on account of the professional connection of judges with one of the parties to the dispute and the fact that payment of the compensation that could be awarded had to be set against the budget of the court concerned.

22 By contrast, in the judgments of 18 June 2013, *Valcheva and Abrashev v. Bulgaria* (CE:ECHR:2013:0618DEC000619411), and of 18 June 2013, *Balakchiev and Others v. Bulgaria* (CE:ECHR:2013:0618DEC006518710), the European Court of Human Rights concluded that there was no violation of the ECHR because compensation for the damage caused by the activity of each court or tribunal came from an independent budget item of each court.

23 The referring court states that, in the present case, the budgetary rules applicable to the payment of any damages following the decision ruling on the dispute in the main proceedings are similar to those described in the cases cited in the preceding paragraph and that the budgets of the courts for compensation could be increased, where appropriate, by the Supreme Judicial Council at the request of the court concerned. Thus, the remuneration of judges and their conditions of employment within a court are not dependent on any damages payable by that court.

24 Under those circumstances, the Varhoven administrativen sad (Supreme Administrative Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Do the second subparagraph of Article 19(1) TEU and Article 47 of the [Charter] preclude national legislation such as Article 2c(1)(1) of the [Law on Liability of the State and of municipalities for damage], read in conjunction with Article 203(3) and Article 128(1)(6) of the [Code of Administrative Procedure], under which an action for compensation for damage caused by an infringement of EU law by the Varhoven administrativen sad [(Supreme Administrative Court)], in which [that court] is the defendant, must be examined by that court at last instance?'

Consideration of the question referred

25 By its question, the referring court asks, in essence, whether the second subparagraph of Article 19(1) TEU and the second paragraph of Article 47 of the Charter must be interpreted as precluding national legislation under which a court hears at last instance, in the context of an appeal on a point of law, a case, relating to the liability of the State for an alleged infringement of EU law on account of a judgment delivered by that court, in which that court has the status of defendant.

26 In that regard, it should be recalled, first, that, under the second subparagraph of Article 19(1) TEU, Member States are to provide remedies sufficient to ensure effective judicial protection for individuals in the fields covered by EU law, including VAT, which is at issue in the main proceedings.

27 Second, it should be noted that the second paragraph of Article 47 of the Charter, which sets out, inter alia, the fundamental right to an independent and impartial tribunal, applies to the Member States, in accordance with Article 51(1) thereof, when they are implementing EU law. That is the situation in the present case, since the dispute in the main proceedings concerns the liability of the State for an alleged infringement of the VAT Directive.

28 In so far as the Charter sets out rights corresponding to rights guaranteed under the ECHR, Article 52(3) of the Charter is intended to ensure the necessary consistency between the rights contained in the Charter and the corresponding rights guaranteed under the ECHR, without thereby adversely affecting the autonomy of EU law. According to the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17), the second paragraph of Article 47 of the Charter corresponds to Article 6(1) ECHR. The Court must therefore ensure that its interpretation in the present case safeguards a level of protection which does not fall below the level of protection established in Article 6(1) ECHR, as interpreted by the European Court of Human Rights (judgment of 11 July 2024, *Hann-Invest and Others*, C-554/21, C-622/21 and C-727/21, EU:C:2024:594, paragraph 46 and the case-law cited).

29 In that regard, it should be recalled, first, that the requirement that courts be independent, which is inherent in the task of adjudication, forms part of the essence of the right to effective judicial protection and the fundamental right to a fair hearing, 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 (judgment of 11 July 2024, *Hann-Invest and Others*, C-554/21, C-622/21 and C-727/21, EU:C:2024:594, paragraph 49 and the case-law cited).

30 In accordance with settled case-law, the requirement that courts be independent has two aspects to it. The first aspect, which is external, requires that the court concerned exercise its functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, being thus protected against external interventions or pressure liable to impair the independent judgement of its members and to influence their decisions (judgment of 11 July 2024, *Hann-Invest and Others*, C-554/21, C-622/21 and C-727/21, EU:C:2024:594, paragraph 50 and the case-law cited).

31 The second aspect, which is internal in nature, is linked to 'impartiality' and seeks to ensure that an equal distance is maintained from the parties to the proceedings and their respective interests with regard to the subject matter of those proceedings. That aspect requires objectivity and the absence of any interest in the outcome of the proceedings apart from the strict application of the rule of law (judgment of 11 July 2024, *Hann-Invest and Others*, C-554/21, C-622/21 and C-727/21, EU:C:2024:594, paragraph 51 and the case-law cited).

32 Thus, the guarantees of independence and impartiality required under EU law presuppose rules that are such as to dispel any reasonable doubt, in the minds of individuals, in particular as to the neutrality of the body in question with respect to the interests before it (see, to that effect, judgment of 8 May 2024, *Asociația 'Forumul Judecătorilor din România' (Associations of judges)*, C-53/23, EU:C:2024:388, paragraph 51 and the case-law cited).

33 As regards the condition of 'impartiality', within the meaning of Article 6(1) ECHR, its objective assessment, which alone is relevant in the present case in the light of the referring court's questions, consists in determining whether that court offered, by way of, among other aspects, its composition, sufficient guarantees to exclude any legitimate doubt in respect of its impartiality. Thus, it is necessary to ask whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to his or her impartiality. In this connection, even appearances may be of a certain importance. According to the case-law of the European Court of Human Rights, in deciding whether there is reason to fear that the requirements of independence and objective impartiality are not met in a given case, the perspective of a party to the proceedings is relevant but not decisive. What is decisive is whether such fear can be held to be objectively justified (see, to that effect, 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, paragraphs 128 to 129 and the case-law cited).

34 It is in the light of that case-law that it is necessary to examine the particular situation which is the subject of the question referred to the Court, namely that of a court which is ultimately hearing, in the context of an appeal on a point of law, a case concerning State liability arising from an alleged infringement of EU law as a result of a judgment delivered by that court, in which that court has the status of defendant.

35 In that regard, it must be observed, in the first place, that the principle of that liability concerns not the personal liability of the judge but that of the State. The possibility that under certain conditions the State may be rendered liable for judicial decisions contrary to EU law does not appear to entail any particular risk that the independence of a court adjudicating at last instance will be called in question (see, to that effect, judgment of 30 September 2003, *Köbler*, C-224/01, EU:C:2003:513, paragraph 42).

36 The Court has also recalled that, in the absence of EU rules in the field, it is for the internal legal order of each Member State to designate the competent courts and lay down the detailed procedural rules for legal proceedings intended fully to safeguard the rights which individuals derive from EU law. Subject to the reservation that it is for the Member States to ensure in each case that individual rights derived from EU law are effectively protected, it is not for the Court to become involved in resolving questions of jurisdiction to which the classification of certain legal situations based on EU law may give rise in the national judicial system (see, to that effect, judgment of 30 September 2003, *Köbler*, C-224/01, EU:C:2003:513, paragraphs 46 and 47 and the case-law cited).

37 Therefore, a Member State is not prohibited as a matter of principle from designating a court as having jurisdiction to hear and determine at last instance, in the context of an appeal on a point of law, the liability of the State for damage caused to individuals as a result of breaches of EU law arising, as the case may be, from one of the judgments of that court, provided that the necessary measures are taken to guarantee the independence and impartiality of that court, within the meaning of the case-law cited in paragraphs 30 to 33 of the present judgment.

38 In the second place, as regards the fact that, in a dispute such as that in the main proceedings, the court ruling at last instance may have adopted a position, as defendant at first instance, on the questions of fact and law forming the subject matter of that dispute, it must be observed that that procedural status is not such as to call into question the impartiality of that court, provided that the members of the adjudicating panel of the court hearing the case at last instance did not participate in any way in the defence of that court at first instance.

39 In that regard, it should be noted that the fact that the Court of Justice of the European Union, as an institution, is the defendant in the proceedings does not preclude a case from being determined by the Court of Justice (see, to that effect, judgments of 25 May 2000, *Kögler* v *Court of Justice*, C-82/98 P, EU:C:2000:282, and of 4 May 2023, *KY* v *Court of Justice of the European Union*, C-100/22 P, EU:C:2023:377). Similarly, the fundamental right to an independent and impartial tribunal, as set out in the second paragraph of Article 47 of the Charter, is not infringed where the Court of Justice is the court hearing an appeal brought by the European Union, represented by the institution of the Court of Justice of the European Union (see, to that effect, judgment of 13 December 2018, *European Union* v *Kendrion*, C-150/17 P, EU:C:2018:1014, paragraph 36).

40 However, where the President of the Court of Justice of the European Union, as President of that institution, has decided to bring an appeal against a judgment of the General Court concerning that institution, the fundamental right to an independent and impartial tribunal of the other party to the proceedings is regarded as guaranteed only where the President of the Court of Justice as a judicial body does not intervene in the judicial handling of the case, and is replaced by the Vice-President (see, to that effect, judgment of 13 December 2018, *European Union* v *Kendrion*, C-150/17 P, EU:C:2018:1014, paragraph 38).

41 While it is true that it is for the referring court to examine whether the condition referred to in paragraph 38 of the present judgment is satisfied in the dispute in the main proceedings, the Court may, however, in the framework of the judicial cooperation provided for in Article 267 TFEU, on the basis of the material presented to it, provide the national court with an interpretation of EU law which may be useful to it in assessing the effects of one or other of its provisions (see, to that effect, judgment of 11 July 2024, *Hann-Invest and Others*, C-554/21, C-622/21 and C-727/21, EU:C:2024:594, paragraph 60 and the case-law cited).

42 In the present case, as Vivacom Bulgaria submitted and as is apparent from the observations of the defendant in the main proceedings, the position of the Varhoven administrativen sad (Supreme Administrative Court), as defendant at first instance, was expressed by an official of that court instructed by the president of that court. By contrast, it is not apparent from the case file before the Court that the members of the adjudicating panel hearing the case in the main proceedings played any part in the defence of the Varhoven administrativen sad (Supreme Administrative Court). It is, however, for the referring court to verify that information.

43 In those circumstances, if it were to be confirmed, the case-law referred to by Vivacom Bulgaria, according to which the concept of 'independence' implies that the body in question acts as a third party in relation to the authority which adopted the contested decision (see, to that effect, judgments of 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraph 62 and of 7 May 2024, *NADA and Others*, C-115/22, EU:C:2024:384, paragraph 46), would not be incompatible with the jurisdiction of a court adjudicating at last instance to hear an appeal on a point of law in a case in which it has the status of defendant.

44 In the third place, as regards the requirement of independence and impartiality of judges, it should be recalled that the rules applicable to the status of judges and the performance of their duties must 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 (see, to that effect, judgment of 11 July 2024, *Hann-Invest and Others*, C-554/21, C-622/21 and C-727/21, EU:C:2024:594, paragraph 53 and the case-law cited).

45 In that regard, first of all, it is not apparent from the documents before the Court that the judges of the Varhoven administrativen sad (Supreme Administrative Court) do not enjoy, in accordance with Bulgarian legislation, guarantees capable of ensuring their independence and impartiality, which it is, however, for the referring court to verify.

46 Next, the order for reference states that the remuneration and conditions of employment of those judges are not dependent on the payment of any damages by that court. In those circumstances, the budgetary rules governing the payment of any damages resulting from the decision settling the dispute in the main proceedings are not such as to give rise to reasonable doubt in the minds of individuals as to the independence or impartiality of those judges.

47 Finally, it must be observed that the mere fact that several judicial panels of the court hearing the case are successively responsible for cases concerning distinct legal issues arising from the same situation is not sufficient to give rise to reasonable doubts, in the minds of individuals, as to the independence or impartiality of that court in each of those cases.

48 As the Advocate General noted in point 39 of her Opinion, it is apparent, however, from the judgments of the ECtHR of 29 July 2004, *San Leonard Band Club v. Malta* (CE:ECHR:2004:0729JUD007756201), and of 7 July 2020, *Scerri v. Malta* (CE:ECHR:2020:0707JUD003631818), that, if the same judges were to rule, in a given case, on whether they made errors of interpretation or application of the law in an earlier decision, an infringement of Article 6 ECHR would have to be found.

49 It should also be recalled that the Court of Justice has held that the fundamental right to an independent and impartial tribunal, as laid down in the second paragraph of Article 47 of the Charter, is respected where the General Court, hearing a claim for damages seeking compensation for the alleged damage resulting from the failure to adjudicate within a reasonable time, rules on that claim sitting in a different composition from that which heard the dispute giving rise to the procedure whose duration is criticised (see, to that effect, judgments of 26 November 2013, *Gascogne Sack Deutschland* v *Commission*, C-40/12 P, EU:C:2013:768, paragraph 96, and of 13 December 2018, *European Union* v *Kendrion*, C-150/17 P, EU:C:2018:1014, paragraphs 36 and 37 and the case-law cited).

50 In the present case, it is apparent from the order for reference and from the written observations submitted by Vivacom Bulgaria that none of the judges comprising the adjudicating panel of the court hearing the dispute in the main proceedings sat on the panel which delivered the judgment giving rise to that dispute. It is thus sufficient to state, without it being necessary for the Court to rule on whether it would be compatible with the provisions of EU law which it is asked to interpret for both panels to be composed, if only partially, of the same judges, that, in the circumstances of the dispute in the main proceedings, no reasonable doubt in the minds of individuals as to the independence or impartiality of the Varhoven administrativen sad (Supreme Administrative Court) can arise from the respective composition of those two adjudicating panels.

51 In the light of all the foregoing considerations, the answer to the question referred is that the second subparagraph of Article 19(1) TEU and the second paragraph of Article 47 of the Charter must be interpreted as not precluding national legislation under which a court hears at last

instance, in the context of an appeal on a point of law, a case, in which that court has the status of defendant, relating to the liability of the State for an alleged infringement of EU law on account of a judgment delivered by that court, provided that that national legislation and the measures taken to deal with that case are such as to dispel any reasonable doubt in the minds of individuals as to the independence and impartiality of the court concerned.

Costs

52 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

The second subparagraph of Article 19(1) TEU and the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding national legislation under which a court hears at last instance, in the context of an appeal on a point of law, a case, in which that court has the status of defendant, relating to the liability of the State for an alleged infringement of EU law on account of a judgment delivered by that court, provided that that national legislation and the measures taken to deal with that case are such as to dispel any reasonable doubt in the minds of individuals as to the independence and impartiality of the court concerned.

[Signatures]