



InfoCuria

Giurisprudenza



[Pagina iniziale](#) > [Formulario di ricerca](#) > [Elenco dei risultati](#) > **Documenti**



[Avvia la stampa](#)

Lingua del documento :

ECLI:EU:C:2024:70

Provisional text

JUDGMENT OF THE COURT (First Chamber)

25 January 2024 (*)

(Reference for a preliminary ruling – Charter of Fundamental Rights of the European Union – Article 50 – Principle ne bis in idem – Criminal proceedings brought in rem – Order that no further action be taken adopted by a public prosecutor’s office – Admissibility of later criminal proceedings brought in personam in respect of the same facts – Conditions to be satisfied for it to be held that a person has been finally acquitted or convicted – Requirement for a detailed investigation – No interview of a potential witness – No interview of the person concerned as a ‘suspect’)

In Case C58/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Craiova (Court of Appeal, Craiova, Romania), made by decision of 13 January 2022, received at the Court on 28 January 2022, in the criminal proceedings against

NR

intervener:

Parchetul de pe lângă Curtea de Apel Craiova,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, T. von Danwitz, P.G. Xuereb (Rapporteur), A. Kumin and I. Ziemele, Judges,

Advocate General: N. Emiliou,

Registrar: R. Șereș, Administrator,

having regard to the written procedure and further to the hearing on 22 March 2023,

after considering the observations submitted on behalf of:

- the Romanian Government, by E. Gane, A. Rotăreanu and A. Wellman, acting as Agents,
- the European Commission, by I. Rogalski and M. Wasmeier, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 June 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 50 of the Charter of Fundamental Rights of the European Union ('the Charter'), read in conjunction with Commission Decision 2006/928/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (OJ 2006 L 354, p. 56).

2 The request has been made in criminal proceedings brought against NR concerning the charge of passive corruption.

Legal context

International law

3 Entitled 'Right not to be tried or punished twice', Article 4 of Protocol No 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, is worded as follows:

'1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

...'

European Union law

Decision 2006/928

4 Decision 2006/928 was adopted in the context of the accession of Romania to the European Union on 1 January 2007.

5 The first paragraph of Article 1 of that decision provides:

‘Romania shall, by 31 March of each year, and for the first time by 31 March 2007, report to the [European] Commission on the progress made in addressing each of the benchmarks provided for in the Annex.’

6 The annex to that decision provides:

‘Benchmarks to be addressed by Romania, referred to in Article 1:

1. Ensure a more transparent, and efficient judicial process notably by enhancing the capacity and accountability of the Superior Council of Magistracy. Report and monitor the impact of the new civil and penal procedures codes.
2. Establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken.
3. Building on progress already made, continue to conduct professional, non-partisan investigations into allegations of high-level corruption.
4. Take further measures to prevent and fight against corruption, in particular within the local government.’

Framework Decision 2003/568/JHA

7 Article 2 of Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ 2003 L 192, p. 54), entitled ‘Active and passive corruption in the private sector’ provides in paragraph (1)(b):

‘Member States shall take the necessary measures to ensure that the following intentional conduct constitutes a criminal offence, when it is carried out in the course of business activities:

...

(b) directly or through an intermediary, requesting or receiving an undue advantage of any kind, or accepting the promise of such an advantage, for oneself or for a third party, while in any capacity directing or working for a private-sector entity, in order to perform or refrain from performing any act, in breach of one’s duties.’

8 Article 4 of that framework decision, entitled ‘Penalties and other sanctions’, provides:

1. Each Member State shall take the necessary measures to ensure that the conduct referred to in Articles 2 and 3 is punishable by effective, proportionate and dissuasive criminal penalties.
2. Each Member State shall take the necessary measures to ensure that the conduct referred to in Article 2 is punishable by a penalty of a maximum of at least one to three years of imprisonment.
3. Each Member State shall take the necessary measures in accordance with its constitutional rules and principles to ensure that where a natural person in relation to a certain business activity has been convicted of the conduct referred to in Article 2, that person may, where appropriate, at least in cases where he or she had a leading position in a company within the business concerned, be temporarily prohibited from carrying on this particular or comparable business activity in a

similar position or capacity, if the facts established give reason to believe there to be a clear risk of abuse of position or of office by active or passive corruption.’

Romanian law

The Criminal Code

9 Article 207 of the Cod penal (Criminal Code), entitled ‘Extortion’, provides, in paragraph 1 thereof:

‘Compelling a person to give, to do or not to do, or to be subject to something in order unjustly to obtain an advantage ... for themselves or for another person, shall be punished by a term of imprisonment of between one and five years.’

10 Article 289 of that code, entitled ‘Passive corruption’, provides:

‘1. A public official who claims or receives, directly or indirectly, for himself or herself or another person, money or other benefits that are not due to him or her, or who accepts a promise of such an advantage, in connection with the performance or non-performance, acceleration or delay of the accomplishment of an act that is amongst his or her duties, or when performing an act contrary to those duties, shall be punished by a term of imprisonment of between 3 and 10 years and by a prohibition on the exercise of the right to hold public office or to exercise the profession or business in the performance of which that public official committed that act.

...’

11 Article 308 of that code, entitled ‘Offences of corruption and of service committed by other persons’, is worded as follows:

‘1. The provisions of Articles 289 to 292, 295, 297 to 300 and 304 relating to public officials shall also apply, by analogy, to acts committed by or in connection with persons who, permanently or temporarily, whether remunerated or unremunerated, exercise functions of whatever kind in the service of a natural person covered by Article 175(2), or a legal person.

...’

The Code of Criminal Procedure

12 Article 6 of the Codul de procedură penală (Code of Criminal Procedure), entitled ‘*Ne bis in idem*’, provides:

‘No one may be prosecuted or tried for an offence if a final judgment in criminal matters has already been handed down for the same facts, albeit with a different legal classification.’

13 Article 335 of the code, entitled ‘Resumption in the event of criminal proceedings being reopened’, provides:

‘1. If a more senior public prosecutor than the one who issued the decision subsequently finds that the circumstance on which the discontinuance of the case is based does not exist, that prosecutor shall set aside the order and instruct the reopening of the criminal proceedings. The provisions of Article 317 shall consequently apply.’

2. If new facts or circumstances emerge which show that the circumstance on which the discontinuance was based no longer exists, the public prosecutor shall annul the order and instruct the reopening of the criminal proceedings.

...

4. The reopening of criminal proceedings is subject to the confirmation by the judge of the pre-trial chamber, within a maximum period of three days, failing which it shall be nullified. The judge of the pre-trial chamber shall rule, by a reasoned decision, in closed session, on the legality and merits of the order to re-open the criminal proceedings, after having summoned the suspect to appear, or given him or her notice, as well as with the participation of the public prosecutor. The absence of persons lawfully summoned does not preclude the application for confirmation from being dealt with.

4¹. When processing the application for confirmation, the judge of the pre-trial chamber ascertains the lawfulness and the merits of the order to reopen the criminal proceedings on the basis of the documents and evidence in the criminal investigation file and any new document submitted. The decision of the judge of the pre-trial chamber shall be final.

...’

Law No 78/2000

14 Article 6 of *Legea nr. 78/2000 pentru prevenirea, descoperirea și sancționarea faptelor de corupție* (Law No 78/2000 on the prevention, detection and punishment of acts of corruption), of 8 May 2000 (*Monitorul Oficial al României*, Part I, No 219, of 18 May 2000), in the version applicable in the main proceedings, provides:

‘Offences of passive corruption (provided for in Article 289 of the Criminal Code), of active corruption (provided for in Article 290 of the Criminal Code), of trading in influence (provided for in Article 291 of the Criminal Code) and of active trading of influence (provided for in Article 292 of the Criminal Code) shall be punished in accordance with the legal provisions relating to them. The provisions of Article 308 of the Criminal Code shall apply accordingly.’

The main proceedings and the question referred

15 GL, HS, JK, MT and PB (‘the complainants in the main proceedings’) are employees of the cooperative company BX. On 12 February 2014, by a decision of the general meeting of the members of that company, its president, NR, was removed from her position.

16 That decision was the subject of an action for annulment brought by NR, in the context of which she was represented by a lawyer to whom she agreed to pay a ‘success fee’ of EUR 4 400. That action was upheld and NR resumed her position of president of that company.

17 On 30 April 2015, a meeting of the cooperative company BX took place in which NR, the complainants in the main proceedings and the other members of the administrative board of that company, namely AX, BD, CH, FX and LM, participated. An audio recording of the discussions that took place during that meeting was made by one of those complainants.

18 According to the *Curtea de Apel Craiova* (Court of Appeal, Craiova, Romania), which is the referring court, at that meeting NR demanded that the complainants in the main proceedings, to the

extent that they were the source of the decision to remove her from the office of president of that company, pay the amount of the fees referred to in paragraph 16 of the present judgment, on pain of their employment contracts being terminated and ‘in exchange for the re-establishment of a climate of understanding and cooperation in the workplace’. Since NR’s demand was not met, she issued and signed decisions terminating those contracts.

19 GL, HS, JK, MT and PB then lodged two criminal complaints against NR, the first on 8 June 2015 and the second on 26 June 2015, before, respectively, the Inspectoratul de Poliție al Județului Olt (Police Inspectorate of the region of Olt, Romania) and the Direcția Națională Anticorupție – Serviciul teritorial Craiova (National Anti-Corruption Directorate – Craiova regional service, Romania) for the offences of extortion, abuse of office and passive corruption, pursuant, respectively, to Articles 207, 297 and 289 of the Criminal Code, read in conjunction with Article 308 of that code.

20 First, the complaint lodged with the Police Inspectorate of the region of Olt was registered with the Parchet de pe lângă Tribunalul Olt (Public Prosecutor’s Office at the Regional Court, Olt, Romania) on 5 February 2016, under the reference 47/P/2016.

21 Secondly, the complaint brought before the National Anti-Corruption Directorate – Craiova regional service was transferred to the Parchet de pe lângă Judecătoria Slatina (Public Prosecutor’s Office at the Court of First Instance, Slatina, Romania), on the ground that that complaint contained evidence of the offence of extortion which was within the material jurisdiction of that public prosecutor. That complaint was registered in the list of that public prosecutor on 11 February 2016, under the reference 673/P/2016.

The outcome of case 673/P/2016

22 By an order of 14 March 2016, the Parchet de pe lângă Judecătoria Slatina (Public Prosecutor’s Office at the Court of First Instance, Slatina) brought criminal proceedings *in rem* for the offence of extortion, pursuant to Article 207 of the Criminal Code.

23 After interviewing NR and the complainants in the main proceedings, the police force in charge of the investigation drew up a report proposing that case 673/P/2016 be discontinued. According to that police force, to the extent that the amount of fees referred to in paragraph 16 of this judgment had been sought by NR not for her own benefit but for that of her lawyer, it could not be considered that she had carried out any offence of extortion, pursuant to Article 207 of the Criminal Code.

24 By an order of 27 September 2016, the public prosecutor in charge of case 673/P/2016 adopted, on the basis of the report referred to in the preceding paragraph, an order that no further action be taken in the case (‘the order that no further action be taken in the case’).

25 The complainants in the main proceedings did not challenge that order.

26 By an order of 21 October 2016, the chief prosecutor of the Parchet de pe lângă Judecătoria Slatina (Public Prosecutor’s Office at the Court of First Instance, Slatina) set aside the order that no further action be taken in the case and ordered that the criminal proceedings against NR for the offence of extortion be reopened. According to that prosecutor, since the same situation was the object of a criminal investigation in case 47/P/2016 and that investigation was at an advanced stage, the proper administration of justice required that case 673/P/2016 be transferred to the Parchet de pe

lângă Tribunalul Olt (Public Prosecutor's Office at the Regional Court, Olt), with a view to its being joined with case 47/P/2016.

27 By an order of 21 November 2016, the pre-trial chamber of the Judecătoria Slatina (Court of First Instance, Slatina, Romania), hearing an application for confirmation of that reopening, rejected it on the ground that the reasoning relied on by the chief prosecutor did not meet the criteria, laid down in Article 335 of the Code of Criminal Procedure, for the reopening of criminal proceedings. According to the referring court, the order that no further action be taken in the case therefore became final.

The outcome of case 47/P/2016

28 By an order of 9 February 2016, the Parchet de pe lângă Tribunalul Olt (Public Prosecutor's Office at the Regional Court, Olt) commenced criminal proceedings against NR, which, by an indictment of 31 January 2017, it referred for trial before the Tribunalul Olt (Regional Court, Olt, Romania) for the offence of passive corruption, pursuant to Article 289 of the Criminal Code, read in conjunction with Article 308(1) of that code and Article 6 of Law No 78/2000.

29 By an order of 10 April 2017, the pre-trial chamber of the Tribunalul Olt (Regional Court, Olt) declared the seising of that court to be lawful and ordered the commencement of criminal proceedings against NR. As regards NR's argument relating to an alleged infringement of the principle *ne bis in idem*, alleging that the same facts had already been the subject of criminal proceedings in case 673/P/2016 and that a final decision had been adopted in that case, that pre-trial chamber held, in essence, that the application of the principle *ne bis in idem* was outside the jurisdiction of pre-trial chambers and that, therefore, pleas alleging an infringement of the principle *ne bis in idem* could only be examined in the context of the examination of the merits of the case concerned.

30 By a judgment in a criminal matter of 19 November 2018, the Tribunalul Olt (Regional Court, Olt) rejected as unfounded NR's argument relating to an alleged infringement of the principle *ne bis in idem*, on the ground that the order that no further action be taken in the case could not be regarded as constituting a final decision to which that principle applied, since the adoption of that order had not been preceded by a detailed investigation of the merits of the case.

31 In addition, the Tribunalul Olt (Regional Court, Olt) considered that, in the context of case 673/P/2016, since the criminal proceedings had been brought *in rem*, on the ground that there was allegedly no proof that a person had committed the alleged offence of extortion, the criminal liability of NR had not been examined. Therefore, the commencement of criminal proceedings *in personam* against NR in case 47/P/2016 did not constitute a repeat of a criminal prosecution, with the result that the principle *ne bis in idem* did not apply.

32 In the light of those matters and finding that it was not unequivocally shown from the evidence adduced in the context of that latter case that NR had demanded that the complainants in the main proceedings pay the amount of the fees referred to in paragraph 16 of the present judgment, the Tribunalul Olt (Regional Court, Olt) sentenced her to a suspended term of imprisonment of one year and four months and a prohibition for the same period of time on holding a public office or the profession or business in the performance of which she had committed the acts complained of.

33 By the judgment in a criminal matter No 1207/2020, of 20 October 2020, the Curtea de Apel Craiova (Court of Appeal, Craiova) upheld the appeal brought by NR against the judgment referred

to in paragraph 30 of the present judgment. That court held that the principle *ne bis in idem* had been infringed, since the decision to bring criminal proceedings in case 47/P/2016 related to the same person and the same facts as those at issue in case 673/P/2016. Furthermore, the complaints which formed the basis of both cases were identical in content and the evidence collated was similar, case 673/P/2016 having been finally closed owing to the fact that the order that no further action be taken in the case had become final as a result of the dismissal, by the pre-trial chamber of the Judecătoria Slatina (Court of First Instance, Slatina), of the request for confirmation of the re-opening of criminal proceedings. The Curtea de Apel Craiova (Court of Appeal, Craiova) therefore set aside the abovementioned judgment, and ordered the closure of the criminal proceedings commenced in case 47/P/2016.

34 The Parchet de pe lângă Curtea de Apel Craiova (Public Prosecutor's Office at the Court of Appeal, Craiova) brought an appeal on a point of law against that judgment before the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania).

35 By a judgment in a criminal matter of 21 September 2021, that latter court upheld the appeal, set aside the judgment under appeal and referred the case back to the Curtea de Apel Craiova (Court of Appeal, Craiova) for reconsideration on the ground, in essence, that it had been wrong to conclude that the principle *ne bis in idem* was applicable and, therefore, to close the criminal proceedings in case 47/P/2016. The Înalta Curte de Casație și Justiție (High Court of Cassation and Justice), after finding that, by the order that no further action be taken in the case, the case whose subject matter was the complaint brought by the complainants in the main proceedings against NR for the offence of extortion had been discontinued, considered that, since that order had not been preceded by any assessment of the merits of case 673/P/2016 and had not been duly reasoned, it could not be considered to have barred any further public prosecution.

36 In the context of that reconsideration, the referring court raises a question of the interpretation to be given to the principle *ne bis in idem*, within the meaning of Article 50 of the Charter, in circumstances such as those at issue in the main proceedings. It states that, as in the case that gave rise to the judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others* (C83/19, C127/19, C195/19, C291/19, C355/19 and C397/19, EU:C:2021:393), in the present case, Article 50 of the Charter applies because the national law in question in the main proceedings seeks to achieve the benchmarks set out in the Annex to Decision 2006/928, more specifically, the first of those benchmarks.

37 In those circumstances, the Curtea de Apel Craiova (Court of Appeal, Craiova) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is the *ne bis in idem* principle, as guaranteed by Article 50 of [the Charter], in conjunction with Romania's obligations to address the benchmarks set out in [the annex to Decision 2006/928], to be interpreted as meaning that a decision to take no further action, issued by the public prosecutor after obtaining essential evidence in the case, precludes another public prosecution from being brought against the same person, for the same acts, albeit with a different legal classification, since that decision is final – unless it is established that the circumstance on which the discontinuance was based does not exist, or new facts or circumstances have emerged which show that the circumstance on which the discontinuance was based no longer exists?'

The jurisdiction of the Court

38 The Romanian Government considers that the request for a preliminary ruling must be dismissed as being inadmissible as Article 50 of the Charter does not apply in the present case, which does not concern a situation in which EU law is being implemented, within the meaning of Article 51(1) of the Charter. According to that government, the referring court wrongly relied on the benchmarks set out in the annex to Decision 2006/928 and on paragraphs 158, 159 and 172 of the judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others* (C83/19, C127/19, C195/19, C291/19, C355/19 and C397/19, EU:C:2021:393), in support of the applicability of the Charter, whereas those benchmarks were defined due to the deficiencies 'identified' by the Commission before the accession of Romania to the European Union in respect, inter alia, of the field of justice and the fight against corruption. In those circumstances, it should be held, having regard, inter alia, to the case-law resulting from the judgment of 19 November 2019, *TSN and AKT* (C609/17 and C610/17, EU:C:2019:981, paragraph 53 and the case-law cited), that the aspect connected with the protection of the principle *ne bis in idem* falls outside the scope of the Charter, with the result that the situation at issue in the main proceedings cannot be assessed in the light of the provisions of the Charter, in particular Article 50 thereof.

39 As regards the Romanian Government's line of argument set out in the preceding paragraph, which, in actual fact, relates to the jurisdiction of the Court to give a ruling, it should be noted that it is clear from Article 19(3)(b) TEU and the first paragraph of Article 267 TFEU that the Court has jurisdiction to give preliminary rulings on the interpretation of EU law or the validity of acts of the EU institutions.

40 In that regard, it should also be noted that the scope of the Charter, in so far as the action of the Member States is concerned, is defined in Article 51(1) thereof, according to which the provisions of the Charter are addressed to the Member States only when they are implementing EU law. That provision confirms the Court's settled case-law, which states that the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by EU law, but not outside such situations. Where, on the other hand, a legal situation does not come within the scope of EU law, the Court does not have jurisdiction to rule on it and any provisions of the Charter relied upon cannot, of themselves, form the basis for such jurisdiction (judgment of 14 September 2023, *Volkswagen Group Italia and Volkswagen Aktiengesellschaft*, C27/22, EU:C:2023:663, paragraph 36 and the case-law cited).

41 In the present case it is clear from the indications given in the request for a preliminary ruling that the referring court is seised with the reconsideration of the appeals brought against the judgment of the Tribunalul Olt (Regional Court, Olt) of 19 November 2018, referred to paragraph 30 of the present judgment, which convicted NR of the offence of passive corruption, pursuant to Article 289 of the Criminal Code, read in conjunction with Article 308(1) of that code and Article 6 of Law No 78/2000. As the Romanian Government confirmed at the hearing, those national law provisions ensure the transposition of Framework Decision 2003/568 into the Romanian legal order, and more specifically Articles 2 and 4 thereof.

42 Accordingly, and without it being necessary to rule on the possible relevance of the benchmarks set out in the annex to Decision 2006/928, the condition of the implementation of EU law, within the meaning of Article 51(1) of the Charter, is satisfied in the present case. It follows that the Charter applies in the main proceedings.

43 Consequently, the Court has jurisdiction to answer the question referred.

Consideration of the question referred

44 As a preliminary point, it should be recalled that, according to the Court's settled case-law, in the procedure laid down in Article 267 TFEU, which provides for cooperation between national courts and the Court, it is for the latter to provide the referring court with an answer which will be of use to it and enable it to decide the case before it. With that in mind, the Court may have to reformulate the questions referred to it (see, to that effect, judgment of 21 September 2023, *Juan*, C164/22, EU:C:2023:684, paragraph 24 and the case-law cited).

45 Having regard to the reasons set out in the request for a preliminary ruling, in order to give a useful reply to the referring court, it must be considered that, by its question, that court asks, in essence, whether the principle *ne bis in idem* enshrined in Article 50 of the Charter must be interpreted as meaning that a person may be regarded as having been finally acquitted, within the meaning of that article, as a result of an order that no further action be taken adopted by a public prosecutor in the absence of an examination of the legal situation of that person as criminally liable for the acts constituting the offence prosecuted.

46 Article 50 of the Charter provides that 'no one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law'. Therefore, the principle *ne bis in idem* prohibits a duplication both of proceedings and of penalties of a criminal nature, for the purposes of that article, for the same acts and against the same person (judgment of 22 March 2022, *bpost*, C117/20, EU:C:2022:202, paragraph 24 and the case-law cited).

47 The application of that principle is subject to a twofold condition, namely, first, that there must be a prior final decision (the '*bis*' condition) and, secondly, that the prior decision and the subsequent proceedings or decisions must concern the same facts (the '*idem*' condition) (judgment of 22 March 2022, *bpost*, C117/20, EU:C:2022:202, paragraph 28).

The 'bis' condition

48 As regards the '*bis*' condition, for a person to be regarded as someone who has been 'finally acquitted or convicted' in relation to the acts which he or she is alleged to have committed, within the meaning of Article 50 of the Charter, it is necessary, in the first place, that further prosecution has been definitively barred, in accordance with national law. A decision which does not definitively bar further prosecution at national level cannot, in principle, constitute a procedural obstacle to the opening or continuation of criminal proceedings, in respect of the same acts, against that person (see, to that effect and by analogy, judgment of 29 June 2016, *Kossowski*, C486/14, EU:C:2016:483, paragraphs 34 and 35 and the case-law cited).

49 It should be recalled, in addition, that the Court has already held that the fact that a decision has been adopted by a public prosecutor is not decisive in the assessment of whether that decision definitively bars further prosecution. First, Article 50 of the Charter is also applicable where an authority responsible for administering criminal justice in the national legal system concerned, such as the public prosecutor, issues decisions definitively discontinuing criminal proceedings, although such decisions are adopted without the involvement of a court and do not take the form of a judicial decision (see, to that effect and by analogy, judgment of 29 June 2016, *Kossowski*, C486/14, EU:C:2016:483, paragraphs 38 and 39 and the case-law cited).

50 In the present case, as is clear from paragraphs 25 and 27 of the present judgment, first, the complainants in the main proceedings do not rely on legal remedies available in Romanian law in order to challenge the order that no further action be taken in the case, and, secondly, the order of the pre-trial chamber of the Judecătoria Slatina (Court of First Instance, Slatina) of 21 November

2016 rejected the request for confirmation of the re-opening of criminal proceedings against NR for the offence of extortion ordered by the chief prosecutor of the Parchet de pe lângă Judecătoria Slatina (Public Prosecutor's Office at the Court of First Instance, Slatina).

51 Therefore, it appears that further public prosecution was definitively barred and that the order that no further action be taken in the case has become final, subject to the verifications that it is for the referring court to make.

52 In the second place, the referring court must, in order to determine whether NR may be considered to have been finally acquitted by the order that no further action be taken in the case, satisfy itself that that order was adopted following an assessment of the merits of the case and not merely on procedural grounds. As the Advocate General observed, in essence, in point 100 of his Opinion, the condition relating to the assessment of the merits of case 673/P/2016 can be considered as being satisfied by that order only to the extent that it contains an evaluation of the material elements of the offence alleged, such as, inter alia, an analysis of the criminal liability of NR as the suspected offender.

53 In that regard it should be recalled that, according to the Court's settled case-law, in order for a person to be regarded as having been 'finally acquitted or convicted', within the meaning of Article 50 of the Charter, in relation to the acts which he or she is alleged to have committed, it is necessary to be satisfied that that decision was taken after a determination as to the merits of the case in question (see, to that effect, judgment of 14 September 2023, *Bezirkshauptmannschaft Feldkirch*, C55/22, EU:C:2023:670, paragraph 49 and the case-law cited).

54 That interpretation is confirmed, first, by the wording of Article 50, since the terms 'convicted' and 'acquitted' referred to in that provision necessarily imply that the accused person's criminal liability has been examined and that a determination in that regard has been made (judgment of 16 December 2021, *AB and Others (Revocation of an amnesty)*, C203/20, EU:C:2021:1016, paragraph 57).

55 Secondly, that interpretation is in line with the legitimate objective of preventing impunity for persons who have committed an offence, an objective which falls within the context of the area of freedom, security and justice without internal frontiers in which the free movement of persons is ensured, as provided for in Article 3(2) TEU (judgment of 16 December 2021, *AB and Others (Revocation of an amnesty)*, C203/20, EU:C:2021:1016, paragraph 58 and the case-law cited).

56 According to the case-law of the European Court of Human Rights, the finding that there has been a determination as to the merits of a case, in particular as to the guilt or innocence of the person concerned, may be supported by the progress of the proceedings in that case. Accordingly, where a criminal investigation has been initiated after an accusation has been brought against the person in question, the victim has been interviewed, the evidence has been gathered and examined by the competent authority, and a reasoned decision has been given on the basis of that evidence, such factors are likely to lead to a finding that there has been a determination as to the merits of the case (see, to that effect, ECtHR, 8 July 2019, *Mihalache v. Romania*, CE:ECHR:2019:0708JUD005401210, § 98).

57 In order for it to be possible to regard such an assessment as having been carried out by the authority making the decision, that authority must have studied or evaluated the evidence in the case file and assessed the person in question's involvement in one or all of the events prompting the intervention of the investigative bodies, for the purposes of determining whether 'criminal' liability

of that person has been established (see, to that effect, ECtHR, 8 July 2019, *Mihalache v. Romania*, CE:ECHR:2019:0708JUD005401210, § 97 and the case-law cited).

58 It is clear from that case-law of the European Court of Human Rights that, where a penalty has been ordered by the competent authority as a result of the behaviour attributed to the person concerned, it can reasonably be considered that the competent authority had conducted a prior assessment of the circumstances of the case and whether or not the behaviour of the person concerned was lawful (see, to that effect, judgment of 23 March 2023, *Dual Prod*, C412/21, EU:C:2023:234, paragraph 57 and the case-law cited).

59 Furthermore, it is clear from the case-law of the Court of Justice that a decision of the judicial authorities of a Member State, by which an accused person is finally acquitted because of the inadequacy of evidence, must be considered to be based on a determination as to the merits of the case in question (see, to that effect, judgment of 28 September 2006, *Van Straaten*, C150/05, EU:C:2006:614, paragraphs 60 and 61).

60 The Court has also held that an order of no ground to refer the case to a trial court because of insufficient evidence, pronounced at the end of an investigation during which various items of evidence have been collected and examined, must be considered to have been the subject of a determination as to the merits of the case in question, in so far as it is a definitive decision on the inadequacy of that evidence and excludes any possibility that the case might be reopened on the basis of the same body of evidence (see, to that effect, judgment of 5 June 2014, *M*, C486/12, EU:C:2014:1057, paragraphs 17 and 30 and the case-law cited).

61 In that regard, it should be recalled that, as the Advocate General observed, in essence, in point 64 of his Opinion, the Court has stated that, when a decision is based on lacking or insufficient evidence, it is also necessary, in order to be able to find that that decision is based on a determination as to the merits of the case in question, for the adoption of that decision to have been preceded by a detailed investigation.

62 In the absence of a detailed investigation, in the context of which the various items of evidence that exist are collected and examined, a decision terminating criminal proceedings cannot be regarded as having been preceded by a determination as to the merits of the case in question. The Court has found, inter alia, that the failure to interview either the victim or a potential witness is an indication that no such detailed investigation took place (see, to that effect, judgment of 29 June 2016, *Kossowski*, C486/14, EU:C:2016:483, paragraph 48, 53 and 54).

63 In the present case, it is clear from the indications given in the request for a preliminary ruling that, in order to adopt the order that no further action be taken in the case, the public prosecutor relied on a report annexed to that order drawn up by the police force which had interviewed NR and the complainants in the main proceedings, and received, inter alia, a CD containing an audio recording of the general meeting of the cooperative company BX held on 30 April 2015. Those elements tend to indicate that various items of evidence were collected and examined during the investigation, on the basis of which an assessment was made as to the merits of the case. Nevertheless, the failure to interview AX, BD, CH, FX and LM, who also participated in that meeting, could constitute an indication of a lack of an examination of the legal situation of NR as criminally liable for the acts constituting the offence prosecuted.

64 In those circumstances, it is for the referring court to satisfy itself that the order that no further action be taken in the case was preceded by an assessment as to the merits of case 673/P/2016 and that it was not adopted on the basis of merely procedural grounds.

The ‘idem’ condition

65 As regards the ‘*idem*’ condition, it follows from the very wording of Article 50 of the Charter that that provision prohibits the same person from being tried or punished in criminal proceedings more than once for the same offence (judgment of 23 March 2023, *Generalstaatsanwaltschaft Bamberg (Reservation in relation to the principle ne bis in idem)*, C365/21, EU:C:2023:236, paragraph 34 and the case-law cited).

66 The delivery of a decision by which a person has been ‘finally acquitted or convicted’, within the meaning of Article 50 of the Charter thus implies that criminal proceedings had previously been instituted against the person concerned. In that regard, the Court has already stated that the principle *ne bis in idem* applies only to persons who have been finally judged in a Member State (see, to that effect, by analogy, judgment of 25 July 2018, *AY (Arrest warrant – Witness)*, C268/17, EU:C:2018:602, paragraphs 43 and 44 and the case-law cited).

67 In addition, it must be noted that, according to the Court’s settled case-law, the relevant criterion for the purposes of assessing the existence of the same offence, within the meaning of Article 50 of the Charter, is identity of the material facts, understood as the existence of a set of concrete circumstances which are inextricably linked together and which have resulted in the final acquittal or conviction of the person concerned. Therefore, that article prohibits the imposition, with respect to identical facts, of several criminal penalties as a result of different proceedings brought for those purposes (judgment of 12 October 2023, *INTER Consulting*, C726/21, EU:C:2023:764, paragraph 72 and the case-law cited).

68 It is also apparent from the case-law of the Court that the legal classification under national law of the facts and the legal interest protected are not relevant for the purposes of establishing the existence of the same offence, in so far as the scope of the protection conferred by Article 50 of the Charter cannot vary from one Member State to another (judgment of 12 October 2023, *INTER Consulting*, C726/21, EU:C:2023:764, paragraph 73 and the case-law cited).

69 In the present case, it is clear from the explanations provided by the referring court that while, in case 47/P/2016, criminal proceedings were brought against NR *in personam* for the offence of passive corruption, in case 673/P/2016, the criminal proceedings were brought *in rem* for the offence of extortion.

70 It should be stated first of all, in the light of the case-law recalled in paragraph 68 of the present judgment, and to the extent that it is established that both of those cases concern identical facts, the fact that the criminal proceedings were brought in those cases relate to different offences is irrelevant for the purpose of assessing the existence of the same ‘offence’, within the meaning of Article 50 of the Charter.

71 By contrast, the fact that the criminal proceedings in case 673/P/2016, which gave rise to the adoption of the order that no further action be taken in the case, had been brought *in rem* cannot be regarded as irrelevant for the purpose of that assessment, since it is clear from the explanations provided at the hearing by the Romanian Government that NR had not formally acquired the status of a suspect in the context of case 673/P/2016, and was heard only as a witness.

72 That government thus appears to refer to the condition relating to the identity of the person who, according to the indications given in the request for a preliminary ruling, was not put at issue either by the referring court or by the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice).

73 In that regard, as the Advocate General observed, in essence, in points 94 and 95 of his Opinion, and as is clear from the case-law cited in paragraphs 54, 56 and 57 of the present judgment, a person cannot be regarded as having been ‘finally acquitted or convicted’ unless it is clear from the decision adopted that, during the investigation that preceded that decision, irrespective of whether that investigation was brought *in rem* or *in personam* on the basis of national law, his or her legal situation as criminally liable for the acts constituting the offence being prosecuted has been examined and, in the case of an order by a public prosecutor that no further action be taken, rejected.

74 If that were not the case, which it is for the referring court to ascertain, the order that no further action be taken in the case could not have the effect of constituting an obstacle to new criminal proceedings being brought against NR, for the same acts.

75 Having regard to the foregoing considerations, the answer to the question referred is that the principle *ne bis in idem* enshrined in Article 50 of the Charter must be interpreted as meaning that a person may not be regarded as having been finally acquitted, within the meaning of Article 50, as a result of an order that no further action be taken adopted by a public prosecutor in the absence of an examination of the legal situation of that person as criminally liable for the acts constituting the offence prosecuted.

Costs

76 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (First Chamber) hereby rules:

The principle *ne bis in idem* enshrined in Article 50 of the Charter of Fundamental Rights of the European Union

must be interpreted as meaning that a person may not be regarded as having been finally acquitted, within the meaning of Article 50, as a result of an order that no further action be taken adopted by a public prosecutor in the absence of an examination of the legal situation of that person as criminally liable for the acts constituting the offence prosecuted.

[Signatures]

* Language of the case: Romanian.