ECLI:EU:C:2022:99

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

22 February 2022 (*)

(Reference for a preliminary ruling – Rule of law – Independence of the judiciary – Second subparagraph of Article 19(1) TEU – Article 47 of the Charter of Fundamental Rights of the European Union – Primacy of EU law – Lack of jurisdiction of a national court to examine the conformity with EU law of national legislation found to be constitutional by the constitutional court of the Member State concerned – Disciplinary proceedings)

In Case C-430/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Craiova (Court of Appeal, Craiova, Romania), made by decision of 7 July 2021, received at the Court on 14 July 2021, in the proceedings brought by

RS

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen (Rapporteur), Vice-President, A. Arabadjiev, C. Lycourgos, E. Regan, S. Rodin, I. Ziemele and J. Passer, Presidents of Chambers, F. Biltgen, P.G. Xuereb, N. Piçarra, L.S. Rossi, N. Wahl, D. Gratsias and M.L. Arastey Sahún, Judges,

Advocate General: A.M. Collins,

Registrar: C. Di Bella, Administrator,

having regard to the written procedure and further to the hearing on 23 November 2021,

after considering the observations submitted on behalf of:

– the Romanian Government, by E. Gane, L. Liţu and L.-E. Baţagoi, acting as Agents, and by M. Manolache,

– the Belgian Government, by L. Van den Broeck, M. Jacobs and C. Pochet, acting as Agents,

– the Netherlands Government, by M.K. Bulterman and J. Langer, acting as Agents,

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

after hearing the Opinion of the Advocate General at the sitting on 20 January 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2 and the second subparagraph of Article 19(1) TEU and of Article 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’).

2 The request has been made in the context of an action brought by RS seeking to challenge the duration of criminal proceedings instituted in response to a complaint lodged by his wife.

Legal context

The Romanian Constitution

3 Article 148(2) and (4) of the Constituția României (Romanian Constitution) provides:

‘(2) Following accession, the provisions of the Treaties establishing the European Union, and other binding Community rules shall prevail over conflicting provisions of national legislation, in accordance with the provisions of the Act of Accession.

…

(4) The Parliament, the President of Romania, the Government and the judiciary shall ensure that the obligations arising from the Act of Accession and from the provisions of paragraph 2 of the present article are fulfilled.'

The Code of Criminal Procedure

4 Article 488^1 of the codul de procedură penală (Code of Criminal Procedure) provides that, in the case of pending criminal proceedings, a complaint seeking to expedite the proceedings may be lodged at least one year after the criminal proceedings were commenced.

5 The judge having responsibility for matters relating to rights and freedoms or the court having jurisdiction to try the case must, in accordance with Article 488^5 of that code, assess the reasonableness of the duration of the criminal proceedings, taking into account a number of factors set out in that provision.

6 Article 488^6(1) of the Code of Criminal Procedure provides that where he or she considers the complaint well founded, the judge having responsibility for matters relating to rights and freedoms must determine the period within which the public prosecutor concerned must deal with the case.

Law No 303/2004

7 Article 99(ș) of the Legea nr. 303/2004 privind statutul judecătorilor și procurorilor (Law No 303/2004 on the rules governing judges and prosecutors) of 28 June 2004 (*Monitorul Oficial al României*, Part I, No 826 of 13 September 2005), in the version applicable to the case in the main proceedings ('Law No 303/2004'), states, inter alia, that failure to comply with the judgments of the Curtea Constituțională (Constitutional Court, Romania) constitutes a disciplinary offence.

The main proceedings and the questions referred for a preliminary ruling

8 RS was the subject of criminal proceedings, at the end of which he was convicted.

9 On 1 April 2020, RS's wife lodged a criminal complaint alleging, inter alia, offences of abuse of process and abuse of office committed in the course of the abovementioned criminal proceedings by a prosecutor and two judges.

10 Since that complaint concerns, inter alia, the judiciary, its examination falls within the competence of the Secția pentru Investigarea Infracțiunilor din Justiție (Section for the investigation of offences committed within the judicial system; 'the SIIJ'), established within the Parchetul de pe lângă Înalta Curte de Casaţie şi Justiţie (Public Prosecutor's Office at the High Court of Cassation and Justice, Romania). By order of 14 April 2020, a prosecutor of the SIIJ instituted criminal proceedings against the judges referred to in that complaint for alleged offences of abuse of process and abuse of office.

11 On 10 June 2021, RS brought an action before the referring court, under Article 488^1 et seq. of the Code of Criminal Procedure, seeking to challenge the excessive duration of the criminal proceedings instituted in response to the abovementioned complaint and also to have that court set a time limit within which the prosecutor dealing with that complaint must deal with the case.

12 The referring court considers that, in order to rule on that action, it must examine the national legislation which established the SIIJ.

13 It observes that the Court has already adjudicated upon questions concerning that national legislation in the judgment of 18 May 2021, *Asociaţia '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).

14 The referring court states that it follows, inter alia, from that judgment that EU law, in particular Article 2 and the second subparagraph of Article 19(1) TEU, must be interpreted as precluding national legislation providing for the creation of a specialised section of the Public Prosecutor's Office with exclusive competence to conduct investigations into offences committed by judges and prosecutors, where the creation of such a section is not justified by objective and verifiable requirements relating to the sound administration of justice, and is not accompanied by specific guarantees. Those guarantees must be such as, first, to prevent any risk of that section being used as an instrument of political control over the activity of those judges and prosecutors likely to undermine their independence and, secondly, to ensure that that exclusive competence may be exercised in respect of those judges and prosecutors in full compliance with the requirements arising from Articles 47 and 48 of the Charter.

15 The referring court notes, moreover, that, in point 7 of the operative part of the abovementioned judgment, the Court ruled that the principle of the primacy of EU law must be interpreted as precluding legislation of a Member State having constitutional status, as interpreted by the constitutional court of that Member State, according to which a lower court is not permitted to disapply of its own motion a national provision falling within the scope of 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), which it considers, in the light of a judgment of the Court, to be contrary to that decision or to the second subparagraph of Article 19(1) TEU.

16 The referring court refers more broadly to the settled case-law of the Court according to which any national court has the obligation to disapply, in the case before it, any provision of national law which is contrary to a provision of EU law having direct effect, and to the binding nature of preliminary rulings given by the Court.

17 In that regard, the referring court states that Article 148(2) and (4) of the Romanian Constitution provides for the primacy of the rules of EU law.

18 Nevertheless, that court notes that, by judgment No 390/2021 of 8 June 2021, the Curtea Constituțională (Constitutional Court) rejected as unfounded a plea of unconstitutionality raised in respect of several provisions of the legislation governing the SIIJ.

19 In that judgment, the Curtea Constituțională (Constitutional Court) stated, inter alia, first of all, that, in so far as the primacy accorded to EU law is limited in the Romanian legal order by the requirement of respect for national constitutional identity, it was incumbent upon it to ensure the supremacy of the Romanian Constitution on Romanian territory. Consequently, that court considers that although an ordinary court has jurisdiction to examine the conformity with EU law of a provision of national legislation, such an ordinary court has no jurisdiction to examine the conformity with EU law of a national provision which has been found to comply with Article 148 of the Romanian Constitution by the Curtea Constituțională (Constitutional Court).

20 In addition, according to the Curtea Constituțională (Constitutional Court), point 7 of the operative part of the judgment of 18 May 2021, *Asociaţia '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), is unfounded in the light of the Romanian Constitution. While Article 148 of that constitution

enshrines the primacy of EU law over conflicting provisions of national legislation, the reports drawn up pursuant to Decision 2006/928, by reason of their content and effects, do not constitute rules of EU law which a national court should apply as a matter of priority, by disapplying the conflicting national rule.

21 Lastly, the Curtea Constituțională (Constitutional Court) stated in that same judgment No 390/2021 of 8 June 2021 that if some courts were to disapply, of their own motion, national provisions which they considered to be contrary to EU law while others were to apply the same provisions, considering them to be consistent with EU law, legal certainty would be greatly undermined, which would lead to the principle of the rule of law being infringed.

22 In that context, the referring court considers that it must determine whether it has to comply with the case-law of the Curtea Constituțională (Constitutional Court), as provided for by Romanian law, or with that of the Court of Justice, in order to decide whether it has jurisdiction to examine the conformity with EU law of the legislation establishing the SIIJ.

23 In addition, the referring court notes that if it were to decide to comply with the case-law of the Court of Justice, by assessing the compatibility of that legislation with EU law, the judges concerned would be exposed to disciplinary proceedings and to possible suspension from office, since failure to comply with a decision of the Curtea Constituțională (Constitutional Court) constitutes a disciplinary offence under Romanian law. The referring court expresses doubts as to the compatibility with EU law, and in particular with the principle of judicial independence, of national legislation allowing disciplinary penalties to be imposed on a judge who, in accordance with the principle of the primacy of EU law, has examined the conformity with EU law of a national provision in breach of a decision of the constitutional court of the Member State concerned.

24 Furthermore, it is apparent from information which has appeared in the press and from information available from the Curtea de Apel Pitești (Court of Appeal, Pitești, Romania) that disciplinary proceedings have already been commenced against a judge who found, in proceedings comparable to those at issue in the main proceedings, that the Romanian legislation establishing the SIIJ is contrary to EU law. According to the referring court, the compatibility of such disciplinary proceedings with EU law is questionable.

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

‘(1) Does the principle of the independence of the judiciary, enshrined in the second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 TEU and Article 47 of the [Charter], preclude a provision of national law, such as … Article 148(2) of the Romanian Constitution, as interpreted by the Curtea Constituțională (Constitutional Court …) in Decision No 390/2021 [of 8 June 2021], according to which national courts have no jurisdiction to examine the conformity with EU law of a provision of national law that has been found to be constitutional by a decision of the Curtea Constituțională (Constitutional Court)?

(2) Does the principle of the independence of the judiciary, enshrined in the second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 TEU and Article 47 of the [Charter], preclude a provision of national law, such as … Article 99(ş) of [Law No 303/2004], which provides for the initiation of disciplinary proceedings and the application of disciplinary penalties in respect of a judge for failure to comply with a decision of the Curtea Constituțională (Constitutional Court), where that judge is called upon to [apply] the primacy of EU law over the

grounds of a decision of the Curtea Constituțională (Constitutional Court), that provision of national law depriving him or her of the possibility of applying a judgment of the Court of Justice … which he or she regards as taking precedence?

(3) Does the principle of the independence of the judiciary, enshrined in the second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 TEU and Article 47 of the [Charter], preclude a national judicial practice which precludes a judge, on pain of incurring disciplinary liability, from applying the case-law of the Court of Justice … in criminal proceedings in relation to a complaint regarding the reasonable duration of criminal proceedings [referred to] in Article 488[1] of the [Code of Criminal Procedure]?'

Procedure before the Court

26 The referring court asked the Court of Justice for the present reference for a preliminary ruling to be determined pursuant to the urgent preliminary-ruling procedure or, in the alternative, pursuant to the expedited or accelerated procedure, provided for in Article 23a of the Statute of the Court of Justice of the European Union.

27 In support of that request, the referring court stated that the case giving rise to the present reference for a preliminary ruling concerns a serious undermining of the independence of the Romanian courts and that the uncertainties associated with the national legislation at issue in the main proceedings are likely to have an impact on the functioning of the system of judicial cooperation constituted by the preliminary-ruling mechanism provided for in Article 267 TFEU.

28 As regards, first, the request for the urgent preliminary-ruling procedure to be applied, the First Chamber of the Court decided, on 30 July 2021, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, not to grant that request.

29 As regards, secondly, the request for the expedited or accelerated procedure to be applied, it must be borne in mind that Article 105(1) of the Rules of Procedure of the Court provides that at the request of the referring court or tribunal or, exceptionally, of his or her own motion, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, and after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure.

30 On 12 August 2021, after hearing the Judge-Rapporteur and the Advocate General, the President of the Court decided to grant the request that the present reference for a preliminary ruling be determined pursuant to the expedited procedure.

31 Indeed, where a case raises serious uncertainties which affect fundamental issues of national constitutional law and EU law, it may be necessary, having regard to the particular circumstances of such a case, to deal with it within a short time pursuant to Article 105(1) of the Rules of Procedure (order of the President of the Court of 19 October 2018, *Wightman and Others*, C-621/18, not published, EU:C:2018:851, paragraph 10 and the case-law cited).

32 In view of the fundamental importance for Romania and the EU legal order of the questions relating to the relationships between the ordinary courts and the constitutional court of that Member State, as well as to the principle of judicial independence and the primacy of EU law, raised by the present case, an answer from the Court within a short time is likely to remove the serious uncertainties facing the referring court, which justifies dealing with the present case under the conditions laid down in Article 105(1) of the Rules of Procedure.

Consideration of the questions referred

The first question

33 By its first question, the referring court asks, in essence, whether the second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 TEU and Article 47 of the Charter, must be interpreted as precluding national rules or a national practice under which the ordinary courts of a Member State have no jurisdiction to examine the compatibility with EU law of national legislation which the constitutional court of that Member State has found to be consistent with a national constitutional provision that requires compliance with the principle of the primacy of EU law.

34 As a preliminary point, in so far as the first question concerns the interpretation of Article 47 of the Charter, it must be pointed out that the recognition of the right to an effective remedy, in a given case, presupposes that the person invoking that right is relying on rights or freedoms guaranteed by EU law (see, to that effect, judgments of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraph 55, and of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, paragraph 41) or that that person is the subject of proceedings constituting an implementation of EU law, within the meaning of Article 51(1) of the Charter (see, to that effect, 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 204).

35 It is not apparent from the order for reference, however, that RS relies on a right conferred on him by a provision of EU law, nor that he is the subject of proceedings which constitute an implementation of EU law.

36 In those circumstances, Article 47 of the Charter is not, as such, applicable to the case in the main proceedings.

37 However, since the second subparagraph of Article 19(1) TEU requires all Member States to provide remedies sufficient to ensure effective judicial protection in the fields covered by EU law, within the meaning in particular of Article 47 of the Charter, that latter provision must be duly taken into consideration for the purposes of interpreting the second subparagraph of Article 19(1) TEU (judgment of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, paragraph 45 and the case-law cited).

38 As regards the relationships between the ordinary courts and the constitutional court of a Member State, which constitute the subject matter of the first question, it must be borne in mind that although the organisation of justice in the Member States, including the establishment, composition and functioning of a constitutional court, falls within the competence of those Member States, the fact remains that, when exercising that competence, the Member States are required to comply with their obligations deriving from EU law and, in particular, from Articles 2 and 19 TEU (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 52, 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 216).

39 As regards the obligations deriving from Article 19 TEU, it should be noted that 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 judicial protection of the rights of individuals under that law to national courts and tribunals and

to the Court of Justice (judgments of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531, paragraph 47, 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 217).

40 In accordance with settled case-law, in order for that 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 related 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, that of independence (see, to that effect, 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, paragraphs 220 and 221 and the case-law cited).

41 The requirement that courts be independent, which follows from the second subparagraph of Article 19(1) TEU, has two aspects to it. The first aspect, which is external in nature, 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, thus being protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions. 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 (see, to that effect, judgments of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531, paragraphs 72 and 73, 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 224).

42 In accordance with the principle of the separation of powers which characterises the operation of the rule of law, the independence of the courts must be ensured in relation to the legislature and the executive (judgments 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, paragraph 124, 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 228).

43 However, as has been pointed out in paragraph 38 above with regard to the organisation of justice, neither Article 2 TEU nor the second subparagraph of Article 19(1) TEU, nor any other provision of EU law, requires Member States to adopt a particular constitutional model governing the relationships and interaction between the various branches of the State, in particular as regards the definition and delimitation of their competences. Indeed, under Article 4(2) TEU, the European Union must respect the national identities of the Member States, inherent in their fundamental political and constitutional structures. However, 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 the abovementioned provisions of EU law (see, to that effect, 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 229 and the case-law cited).

44 In those circumstances, Article 2 TEU, the second subparagraph of Article 19(1) TEU and Decision 2006/928 do not preclude national rules or a national practice under which the decisions of the constitutional court are binding on the ordinary courts, provided that national law guarantees the

independence of that constitutional court from, in particular, the legislature and the executive, as is required by those provisions. However, if national law does not guarantee such independence, those provisions of EU law preclude such national rules or such a national practice, since such a constitutional court is not in a position to ensure the effective judicial protection required by the second subparagraph of Article 19(1) TEU (see, to that effect, 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 230).

45 It follows from the foregoing that, subject to the reservation expressed in the preceding paragraph, the second subparagraph of Article 19(1) TEU does not preclude national rules or a national practice under which the ordinary courts of a Member State, under national constitutional law, are bound by a decision of the constitutional court of that Member State finding that national legislation is consistent with that Member State's constitution.

46 Nevertheless, the same cannot be said where the application of such national rules or a national practice entails excluding any jurisdiction of those ordinary courts to assess the compatibility with EU law of national legislation which the constitutional court of that Member State has found to be consistent with a national constitutional provision providing for the primacy of EU law.

47 In its settled case-law on the EEC Treaty, the Court has held that, unlike standard international treaties, the Community Treaties established a new legal order, integrated into the legal systems of the Member States on the entry into force of the Treaties 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; of 15 July 1964, *Costa*, 6/64, EU:C:1964:66, pp. 593 and 594; 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 245).

48 Thus, in the judgment of 15 July 1964, *Costa* (6/64, EU:C:1964:66, pp. 593 to 594), the Court 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 Court emphasised that 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).

49 Those essential characteristics of the EU legal order and the importance of complying with that legal order, as required, were, moreover, confirmed by the ratification, without reservation, of the Treaties amending the EEC Treaty and, in particular, the Treaty of Lisbon. When that 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, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon (OJ 2012 C 326, p. 346), 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 [that] case law' (see, to that effect, 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 248).

50 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 (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 250 and the case-law cited).

51 It follows from that case-law that, 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 order, 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 17 December 1970, *Internationale Handelsgesellschaft*, 11/70, EU:C:1970:114, paragraph 3, 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 251).

52 Thus, given that it has exclusive jurisdiction to give the definitive interpretation of EU law (see, to that effect, judgment of 2 September 2021, *Republic of Moldova*, C-741/19, EU:C:2021:655, paragraph 45), it is for the Court, in the exercise of that jurisdiction, to clarify the scope of the principle of the primacy of EU law in the light of the relevant provisions of that law, with the result that that scope cannot turn on the interpretation of provisions of national law or on the interpretation of provisions of EU law by a national court which is at odds with that of the Court (see, to that effect, 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 254).

53 In that regard, it must, inter alia, be recalled that, in accordance with the principle of the primacy of EU law, the national court called upon within the exercise of its jurisdiction to apply provisions of EU law is under a duty, where it is unable to interpret national law in compliance with the requirements of EU law, to give full effect to the requirements of EU law in the dispute brought before it, by disapplying, as required, of its own motion, any national rule or practice, even if adopted subsequently, that is contrary to a provision of EU law with direct effect, without it having to request or await the prior setting aside of that national rule or practice by legislative or other constitutional means (see, to that effect, judgments of 9 March 1978, *Simmenthal*, 106/77, EU:C:1978:49, paragraph 24; of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraphs 61 and 62; 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).

54 As has been recalled in paragraph 39 above, 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.

55 Compliance with that obligation is also necessary in order to ensure respect for the equality of Member States before the Treaties, which precludes the possibility of relying on, as against the EU legal order, a unilateral measure, whatever its nature (see, to that effect, 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), and constitutes an expression of the principle of sincere cooperation set out in Article 4(3) TEU, which requires any provision of national law which may be

to the contrary to be disapplied, whether the latter is prior to or subsequent to the EU legal rule having direct effect (see, to that effect, judgments of 8 September 2010, *Winner Wetten*, C-409/06, EU:C:2010:503, paragraph 55, and of 21 January 2021, *Whiteland Import Export*, C-308/19, EU:C:2021:47, paragraph 31).

56 In the present case, in order to rule on the case in the main proceedings, the referring court considers that it must assess the compatibility of the national legislation establishing the SIIJ with the second subparagraph of Article 19(1) TEU and with the specific benchmarks in the areas of judicial reform and the fight against corruption set out in the annex to Decision 2006/928.

57 In those circumstances, it is important to bear in mind, first, that the Court has already held that such national legislation falls within the scope of Decision 2006/928 and that it must, therefore, comply with the requirements arising from EU law, and in particular from Article 2 and Article 19(1) TEU (see, to that effect, judgment of 18 May 2021, *Asociaţia '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, paragraphs 183 and 184).

58 Secondly, both the second subparagraph of Article 19(1) TEU and the benchmarks mentioned in paragraph 56 above are formulated in clear and precise terms and are not subject to any conditions, and they therefore have direct effect (see, to that effect, judgments of 18 May 2021, *Asociaţia '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, paragraphs 249 and 250, 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 253).

59 It follows that if it is not possible to interpret the national provisions in a manner consistent with the second subparagraph of Article 19(1) TEU or those benchmarks, the ordinary Romanian courts must disapply those national provisions of their own motion.

60 In that regard, it is indeed true that, under the relevant national legal framework as described by the referring court, those ordinary courts have as a rule jurisdiction to assess the compatibility of Romanian legislative provisions with those provisions of EU law, without having to make a request to that end to the national constitutional court.

61 However, it is apparent from the order for reference that those ordinary courts are deprived of that jurisdiction where the national constitutional court has held that the legislative provisions at issue are consistent with a national constitutional provision providing for the primacy of EU law, in that those courts are required to comply with that judgment of that constitutional court.

62 In that context, it must be borne in mind that the power to do everything necessary, when applying EU law, to disregard national rules or a national practice which might prevent directly effective EU rules from having full force and effect is an integral part of the role of a court of the European Union which falls to the national court responsible for applying, within its jurisdiction, those EU rules and, therefore, the exercise of that power constitutes a guarantee that is essential to judicial independence as provided for in the second subparagraph of Article 19(1) TEU (see, to that effect, 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 257).

63 Thus, any national rules or practice which might impair 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 a national provision or practice

which might prevent directly effective EU rules from having full force and effect would be incompatible with the requirements which are the very essence of EU law (see, to that effect, judgment of 9 March 1978, *Simmenthal*, 106/77, EU:C:1978:49, paragraph 22, 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 258). This would be the case in the event of a conflict between a provision of EU law and a national law, if the solution of the conflict were to be reserved for an authority with a discretion of its own, other than the court called upon to apply EU law (see, to that effect, judgments of 9 March 1978, *Simmenthal*, 106/77, EU:C:1978:49, paragraph 23, and of 22 June 2010, *Melki and Abdeli*, C-188/10 and C-189/10, EU:C:2010:363, paragraph 44).

64 In addition, it should be borne in mind that, in accordance with settled case-law, the preliminary-ruling mechanism established by Article 267 TFEU aims to ensure that, in all circumstances, EU law has the same effect in all Member States and thus to avoid divergences in its interpretation which the national courts and tribunals have to apply, and tends to ensure that application. To that end, that article makes available to national judges a means of eliminating difficulties which may be occasioned by the requirement of giving EU law its full effect within the framework of the judicial systems of the Member States. Thus, national courts and tribunals have the broadest power, or even the obligation, to refer a matter to the Court of Justice if they consider that a case pending before them raises questions involving interpretation of the provisions of EU law or consideration of their validity, necessitating a decision on their part (judgment of 16 December 2021, *AB and Others (Revocation of an amnesty)*, C-203/20, EU:C:2021:1016, paragraph 49 and the case-law cited).

65 Consequently, the effectiveness of the cooperation between the Court of Justice and the national courts established by the preliminary-ruling mechanism and, therefore, of EU law would be in jeopardy if the outcome of a plea of unconstitutionality before the constitutional court of a Member State could have the effect of deterring a national court hearing a case governed by EU law from exercising the discretion or, as the case may be, satisfying the obligation, under Article 267 TFEU, to refer to the Court of Justice questions concerning the interpretation or validity of acts of EU law in order to enable it to decide whether or not a provision of national law is compatible with that EU law (see, to that effect, judgments of 22 June 2010, *Melki and Abdeli*, C-188/10 and C-189/10, EU:C:2010:363, paragraph 45; of 5 July 2016, *Ognyanov*, C-614/14, EU:C:2016:514, paragraph 25; and of 23 November 2021, *IS (Illegality of the order for reference)*, C-564/19, EU:C:2021:949, paragraph 73).

66 If the constitutional court of a Member State has held that legislative provisions are consistent with a national constitutional provision providing for the primacy of EU law, a national rule or practice such as that described in paragraph 61 above would preclude the full effectiveness of the rules of EU law at issue, in so far as it would prevent the ordinary court called upon to ensure the application of EU law from itself assessing whether those legislative provisions are compatible with EU law.

67 The application of such a national rule or practice would also undermine the effectiveness of the cooperation between the Court of Justice and the national courts established by the preliminary-ruling mechanism, by deterring the ordinary court called upon to rule on the dispute from submitting a request for a preliminary ruling to the Court of Justice, in order to comply with the decisions of the constitutional court of the Member State concerned.

68 The findings set out in the preceding paragraphs are all the more relevant in a situation such as that referred to by the referring court, in which a judgment of the constitutional court of the Member State concerned refuses to give effect to a preliminary ruling given by the Court, on the

basis, inter alia, of the constitutional identity of the Member State concerned and of the contention that the Court has exceeded its jurisdiction.

69 In that regard, it is indeed true that the Court may, under Article 4(2) TEU, be called upon to determine that an obligation of EU law does not undermine the national identity of a Member State (see, to that effect, judgments of 17 July 2014, *Torresi*, C-58/13 and C-59/13, EU:C:2014:2088, paragraph 58, and of 5 June 2018, *Coman and Others*, C-673/16, EU:C:2018:385, paragraph 46).

70 By contrast, that provision has neither the object nor the effect of authorising a constitutional court of a Member State, in disregard of the obligations under, in particular, 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 the Member State concerned as defined by the national constitutional court.

71 If a constitutional 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 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, judgments of 22 October 1987, *Foto-Frost*, 314/85, EU:C:1987:452, paragraph 20, and of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 96).

72 In addition, since, as has been pointed out in paragraph 52 above, the Court has exclusive jurisdiction to provide the definitive interpretation of EU law, the constitutional court of a Member State cannot, on the basis of its own interpretation of provisions of EU law, including Article 267 TFEU, validly hold that the Court has delivered a judgment exceeding its jurisdiction and, therefore, refuse to give effect to a preliminary ruling from the Court.

73 In that regard, it must be stated that the preliminary-ruling procedure provided for in Article 267 TFEU, which is the keystone of the judicial system established by the Treaties, sets up a dialogue between one court and another, specifically between the Court of Justice and the courts of the Member States, having the object of securing 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, Opinion 2/13 *(Accession of the European Union to the ECHR)* of 18 December 2014, EU:C:2014:2454, paragraph 176, and judgment of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi*, C-561/19, EU:C:2021:79, paragraph 27).

74 A judgment delivered in the context of that procedure is binding on the national court as regards the interpretation of EU law for the purposes of resolving the dispute before it (see, to that effect, judgments of 3 February 1977, *Benedetti*, 52/76, EU:C:1977:16, paragraph 26, and of 11 December 2018, *Weiss and Others*, C-493/17, EU:C:2018:1000, paragraph 19).

75 The national court, having exercised the discretion conferred on it by the second paragraph of Article 267 TFEU, must therefore, if necessary, disregard the rulings of a higher national court if it considers, having regard to the interpretation provided by the Court, that they are not consistent with EU law, if necessary refusing to apply the national rule requiring it to comply with the decisions of that higher court (see, to that effect, judgment of 5 October 2010, *Elchinov*, C-173/09, EU:C:2010:581, paragraphs 30 and 31).

76 It follows from the Court's case-law that that solution also applies where an ordinary court is bound, under a national procedural rule, by a decision of a national constitutional court which it considers to be contrary to EU law (see, to that effect, judgment of 15 January 2013, *Križan and Others*, C-416/10, EU:C:2013:8, paragraph 71).

77 In addition, since the interpretation which, in the exercise of the jurisdiction conferred upon it by Article 267 TFEU, the Court gives to a rule of EU law clarifies and defines where necessary the meaning and scope of that rule as it must be, or ought to have been, understood and applied from the time at which it entered into force (see, to that effect, judgments of 27 March 1980, *Denkavit italiana*, 61/79, EU:C:1980:100, paragraph 16, and of 18 November 2021, *État belge (Pilot training)*, C-413/20, EU:C:2021:938, paragraph 53), it must be found that an ordinary court is required, in order to ensure the full effectiveness of the rules of EU law, to disregard, in a dispute before it, the rulings of a national constitutional court which refuses to give effect to a judgment given by way of a preliminary ruling by the Court of Justice, even where that judgment does not arise from a request for a preliminary ruling made, in connection with that dispute, by that ordinary court.

78 In the light of the foregoing, the answer to the first question is that the second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 and Article 4(2) and (3) TEU, with Article 267 TFEU and with the principle of the primacy of EU law, must be interpreted as precluding national rules or a national practice under which the ordinary courts of a Member State have no jurisdiction to examine the compatibility with EU law of national legislation which the constitutional court of that Member State has found to be consistent with a national constitutional provision that requires compliance with the principle of the primacy of EU law.

The second and third questions

79 By its second and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether the second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 TEU and Article 47 of the Charter, must be interpreted as precluding national rules or a national practice under which a national judge may incur disciplinary liability on the ground that he or she has applied EU law, as interpreted by the Court, thereby departing from case-law of the constitutional court of the Member State concerned that is incompatible with the principle of the primacy of EU law.

80 As a preliminary point, it should be recalled that Article 47 of the Charter is not, as such, applicable to the case in the main proceedings, as noted in paragraph 36 above.

81 As has been recalled in paragraph 41 above, the second subparagraph of Article 19(1) TEU requires that the independence and impartiality of the bodies which may be called upon to rule on questions concerning the application or interpretation of EU law must be preserved.

82 Those 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, as to the imperviousness of the body in question to external factors and its neutrality with respect to the interests before it (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 225 and the case-law cited).

83 As regards more specifically the disciplinary liability that the judges of the ordinary courts may incur, under the national legislation at issue, in the event of failure to comply with the decisions of the national constitutional court, it is true that the safeguarding of the independence of

the courts cannot, in particular, have the effect of totally excluding the possibility that the disciplinary liability of a judge may, in certain entirely exceptional cases, be triggered as a result of judicial decisions adopted by him or her. Such a requirement of independence is clearly not intended to support any serious and totally inexcusable forms of conduct on the part of judges, which would consist, for example, in infringing deliberately and in bad faith, or as a result of particularly serious and gross negligence, the national and EU law with which they are supposed to ensure compliance, or in acting arbitrarily or denying justice when they are called upon, as guardians of the duty of adjudicating, to rule in disputes which are brought before them by individuals (judgments of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraph 137, 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 238).

84 However, it appears essential, in order to preserve the independence of the courts and to prevent the disciplinary regime from being diverted from its legitimate purposes and being used to exert political control over judicial decisions or pressure on judges, that the fact that a judicial decision contains a possible error in the interpretation and application of national and EU law, or in the assessment of the facts and the appraisal of the evidence, cannot in itself trigger the disciplinary liability of the judge concerned (judgments of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraph 138, 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 239).

85 The fact that national judges are not exposed to disciplinary proceedings or measures for having exercised the discretion to make a reference for a preliminary ruling to the Court under Article 267 TFEU, which is exclusively within their jurisdiction, also constitutes a guarantee that is essential to their independence (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 227 and the case-law cited).

86 Consequently, it is important that the triggering of the disciplinary liability of a judge as a result of a judicial decision should be limited to entirely exceptional cases such as those referred to in paragraph 83 above and be governed, in that regard, by objective and verifiable criteria, arising from requirements relating to the sound administration of justice, and also by guarantees designed to avoid any risk of external pressure on the content of judicial decisions and thus helping to dispel, in the minds of individuals, any reasonable doubts as to the imperviousness of the judges concerned and their neutrality with respect to the interests before them (judgments of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraph 139, 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 240).

87 It follows that Article 2 and the second subparagraph of Article 19(1) TEU must be interpreted as precluding national rules or a national practice under which any failure to comply with the decisions of the national constitutional court by a national judge can trigger his or her disciplinary liability (see, to that effect, 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 242).

88 In the light of the answer given to the first question, the undermining of the independence of national judges entailed by such national rules or a national practice would also be incompatible with the principle of equality between the Member States and the principle of sincere cooperation between the European Union and the Member States, recognised by Article 4(2) and (3) TEU, with Article 267 TFEU and with the principle of the primacy of EU law, where the disciplinary liability

of a national judge is incurred on the ground that he or she has refused to apply a decision of the constitutional court of the Member State concerned by which that court refused to give effect to a preliminary ruling from the Court.

89 That interpretation is all the more necessary, since such triggering of the disciplinary liability of a national judge is likely to reinforce the fact that the requirements of EU law have not been met by national rules under which the ordinary courts of a Member State have no jurisdiction to examine the compatibility with EU law of national legislation which the constitutional court of that Member State has, by refusing to give effect to a preliminary ruling by the Court of Justice, found to be consistent with a national constitutional provision providing for the primacy of EU law (see, by analogy, 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 259).

90 Furthermore, although the Romanian Government stated at the hearing that no penalty had been imposed pursuant to the national legislative provision to which the second and third questions relate, it must be borne in mind that the mere prospect of opening a disciplinary investigation is, as such, liable to exert pressure on those who have the task of adjudicating in a dispute (see, to that effect, judgment of 18 May 2021, *Asociaţia '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 199).

91 However, there is nothing in the information contained in the request for a preliminary ruling to indicate that the liability of the national judges of the ordinary courts as a result of non-compliance with the decisions of the Curtea Constituțională (Constitutional Court), as provided for in Article 99(ș) of Law No 303/2004, is subject to conditions which ensure that that liability is limited to the entirely exceptional cases referred to in paragraph 83 above, as is required, as noted in paragraphs 84 and 86 above, by the second subparagraph of Article 19(1) TEU.

92 It must also be noted that, in paragraph 241 of the 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), the Court had already held that it was not apparent from the requests for a preliminary ruling in the cases giving rise to that judgment, that that liability was limited to such cases.

93 In the light of all the foregoing considerations, the answer to the second and third questions is that the second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 and Article 4(2) and (3) TEU, with Article 267 TFEU and with the principle of the primacy of EU law, must be interpreted as precluding national rules or a national practice under which a national judge may incur disciplinary liability on the ground that he or she has applied EU law, as interpreted by the Court, thereby departing from case-law of the constitutional court of the Member State concerned that is incompatible with the principle of the primacy of EU law.

Costs

94 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 (Grand Chamber) hereby rules:

1. **The second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 and Article 4(2) and (3) TEU, with Article 267 TFEU and with the principle of the primacy of EU law, must be interpreted as precluding national rules or a national practice under which the**

ordinary courts of a Member State have no jurisdiction to examine the compatibility with EU law of national legislation which the constitutional court of that Member State has found to be consistent with a national constitutional provision that requires compliance with the principle of the primacy of EU law.

2. **The second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 and Article 4(2) and (3) TEU, with Article 267 TFEU and with the principle of the primacy of EU law, must be interpreted as precluding national rules or a national practice under which a national judge may incur disciplinary liability on the ground that he or she has applied EU law, as interpreted by the Court, thereby departing from case-law of the constitutional court of the Member State concerned that is incompatible with the principle of the primacy of EU law.**

[Signatures]

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* Language of the case: Romanian.