



C/2024/2000

18.3.2024

Order of the Court (Ninth Chamber) of 9 January 2024 (request for a preliminary ruling from the Curtea de Apel Braşov — Romania) — Criminal proceedings against M.A.sr, S.A.C.S., S.A.S.

(Case C-75/23, ⁽¹⁾ Parchetul de pe lângă Tribunalul Braşov)

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Acte éclairé — Identical questions — Protection of the financial interests of the European Union — Article 325 (1) TFEU — PFI Convention — Article 2(1) — Obligation to counter fraud affecting the financial interests of the European Union by taking effective deterrent measures — Obligation to provide for criminal penalties — Value added tax (VAT) — Directive 2006/112/EC — Serious VAT fraud — Limitation period for criminal liability — Judgment of a constitutional court which had invalidated a national provision governing the reasons for interrupting that period — Systemic risk of impunity — Protection of fundamental rights — Article 49(1) of the Charter of Fundamental Rights of the European Union — Principle that offences and penalties must be defined by law — Requirements of foreseeability and precision of criminal law — Principle of the retroactive application of the more lenient criminal law (lex mitior) — Principle of legal certainty — National standard of protection of fundamental rights — Duty on the courts of a Member State to disapply judgments of the constitutional court and/or the supreme court of that Member State in the event that they are incompatible with EU law — Disciplinary liability of judges in the event of non-compliance with those judgments — Principle of the primacy of EU law)

(C/2024/2000)

Language of the case: Romanian

Referring court

Curtea de Apel Braşov

Criminal proceedings against

M.A.sr, S.A.C.S., S.A.S.

Third party: Parchetul de pe lângă Tribunalul Braşov, Statul român

Operative part of the order

1. Article 325(1) TFEU and Article 2(1) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, signed in Brussels on 26 July 1995,

must be interpreted as meaning that:

the courts of a Member State are not required to disapply judgments of the constitutional court of that Member State invalidating the provision of national legislation that governs the reasons for interrupting that limitation period in criminal matters as a result of a breach the principle that offences and penalties must be defined by law, as protected under national law, as to its requirements relating to the foreseeability and precision of criminal law, even if, as a consequence of those judgments, a considerable number of criminal cases, including cases relating to offences of serious fraud affecting the financial interests of the European Union, will be discontinued because of the expiry of the limitation period for criminal liability.

In contrast, those provisions of EU law must be interpreted as meaning that:

the courts of that Member State are required to disapply a national standard of protection relating to the principle of the retroactive application of the more lenient criminal law (lex mitior) which makes it possible to call into question the interruption of the limitation period for criminal liability in such cases by procedural acts which took place before such a finding of invalidity.

⁽¹⁾ OJ C 205, 12.6.2023.

2. The principle of the primacy of EU law

must be interpreted as meaning that:

it precludes national legislation or a national practice under which the ordinary national courts of a Member State are bound by the decisions of the constitutional court and by those of the supreme court of that Member State and cannot, for that reason and at the risk of incurring the disciplinary liability of the judges concerned, disapply of their own motion the case-law resulting from those decisions, even if they consider, in the light of a judgment of the Court, that that case-law is contrary to provisions of EU law having direct effect.
