Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

7 September 2023*

(Reference for a preliminary ruling – Decision 2006/928/EC – Mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption – Article 2 TEU – Second subparagraph of Article 19(1) TEU – Rule of law – Charter of Fundamental Rights of the European Union – Article 47 – Independence of judges – National legislation altering the scheme for the promotion of judges)

In Case C-216/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Ploiești (Court of Appeal, Ploiești, Romania), made by decision of 16 February 2021, received at the Court on 6 April 2021, in the proceedings

Asociația 'Forumul Judecătorilor din România',

YN

v

Consiliul Superior al Magistraturii,

THE COURT (First Chamber),

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

Advocate General: N. Emiliou,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Asociația 'Forumul Judecătorilor din România', by D. Călin and L. Zaharia, acting as Agents,

– the Consiliul Superior al Magistraturii, by M.B. Mateescu, acting as Agent,

* Language of the case: Romanian.

– the Polish Government, by B. Majczyna, acting as Agent,

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

after hearing the Opinion of the Advocate General at the sitting on 16 February 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2 TEU and the second subparagraph of Article 19(1) thereof, Article 267 TFEU, Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), and 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 proceedings between the Asociația 'Forumul Judecătorilor din România' ('Forum of Judges of Romania' Association) and YN, on the one hand, and the Consiliul Superior al Magistraturii (Superior Council of Magistracy, Romania) ('the SCM'), on the other, concerning the lawfulness of Decision No 1348 of 17 September 2019 of the Section for Judges of the SCM approving the Regulation on the organisation and conduct of competitions for the promotion of judges ('Decision No 1348').

Legal context

European Union law

The Treaty of Accession

3 Article 2 of the Treaty between the Member States of the European Union and the Republic of Bulgaria and Romania, concerning the accession of the Republic of Bulgaria and Romania to the European Union (OJ 2005 L 157, p. 11) ('the Treaty of Accession'), which was signed on 25 April 2005 and entered into force on 1 January 2007, provides, in paragraphs 2 and 3 thereof:

'2. The conditions of admission and the adjustments to the Treaties on which the Union is founded, entailed by [accession], which will apply from the date of accession until the date of entry into force of the Treaty establishing a Constitution for Europe, are set out in the Act annexed to this Treaty. The provisions of that Act shall form an integral part of this Treaty.

3. …

Acts adopted prior to the entry into force of the Protocol referred to in Article 1(3) on the basis of this Treaty or the Act referred to in paragraph 2 shall remain in force and their legal effects shall be preserved until those acts are amended or repealed.'

4 Article 3 of that treaty is worded as follows:

'The provisions concerning the rights and obligations of the Member States and the powers and jurisdiction of the institutions of the Union as set out in the Treaties to which the Republic of Bulgaria and Romania become Parties shall apply in respect of this Treaty.'

5 Article 4(2) and (3) of the Treaty of Accession provides:

'2. This Treaty shall enter into force on 1 January 2007 provided that all the instruments of ratification have been deposited before that date.

…

3. Notwithstanding paragraph 2, the institutions of the Union may adopt before accession the measures referred to in [Articles 37 and 38] of the Protocol referred to in Article 1(3). Such measures shall be adopted under the equivalent provisions in [Articles 37 and 38] of the Act referred to in Article 2(2), prior to the entry into force of the Treaty establishing a Constitution for Europe.

These measures shall enter into force only subject to and on the date of the entry into force of this Treaty.'

The Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the treaties on which the European Union is founded

6 Article 37 of the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the treaties on which the European Union is founded (OJ 2005 L 157, p. 203) provides:

'If … Romania has failed to implement commitments undertaken in the context of the accession negotiations, causing a serious breach of the functioning of the internal market, including any commitments in all sectoral policies which concern economic activities with cross-border effect, or an imminent risk of such breach the Commission may, until the end of a period of up to three years after accession, upon motivated request of a Member State or on its own initiative, take appropriate measures.

Measures shall be proportional and priority shall be given to measures which least disturb the functioning of the internal market and, where appropriate, to the application of the existing sectoral safeguard mechanisms. Such safeguard measures shall not be invoked as a means of arbitrary discrimination or a disguised restriction on trade between Member States. The safeguard clause may be invoked even before accession on the basis of the monitoring findings and the measures adopted shall enter into force as of the first day of accession unless they provide for a later date. The measures shall be maintained no longer than strictly necessary and, in any case, shall be lifted when the relevant commitment is implemented. They may however be applied beyond the period specified in the first paragraph as long as the relevant commitments have not been fulfilled. In response to progress made by the new Member State concerned in fulfilling its commitments, the Commission may adapt the measures as appropriate. The Commission shall inform the Council in good time before revoking the safeguard measures, and it shall take duly into account any observations of the Council in this respect.'

7 Article 38 of that act provides:

'If there are serious shortcomings or any imminent risks of such shortcomings in … Romania in the transposition, state of implementation, or the application of the framework decisions or any other relevant commitments, instruments of cooperation and decisions relating to mutual recognition in the area of criminal law under Title VI of the EU Treaty and Directives and Regulations relating to mutual recognition in civil matters under Title IV of the EC Treaty, the Commission may, until the end of a period of up to three years after accession, upon the motivated request of a Member State or on its own initiative and after consulting the Member States, take appropriate measures and specify the conditions and modalities under which these measures are put into effect.

These measures may take the form of temporary suspension of the application of relevant provisions and decisions in the relations between … Romania and any other Member State or Member States, without prejudice to the continuation of close judicial cooperation. The safeguard clause may be invoked even before accession on the basis of the monitoring findings and the measures adopted shall enter into force as of the first day of accession unless they provide for a later date. The measures shall be maintained no longer than strictly necessary and, in any case, shall be lifted when the shortcomings are remedied. They may however be applied beyond the period specified in the first paragraph as long as these shortcomings persist. In response to progress made by the new Member State concerned in rectifying the identified shortcomings, the Commission may adapt the measures as appropriate after consulting the Member States. The Commission shall inform the Council in good time before revoking the safeguard measures, and it shall take duly into account any observations of the Council in this respect.'

Decision 2006/928

8 Under Article 1 of Decision 2006/928:

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

The Commission may, at any time, provide technical assistance through different activities or gather and exchange information on the benchmarks. In addition, the Commission may, at any time, organise expert missions to Romania for this purpose. The Romanian authorities shall give the necessary support in this context.'

9 Article 2 of that decision provides:

'The Commission will communicate to the European Parliament and the Council its own comments and findings on Romania's report for the first time in June 2007.

The Commission will report again thereafter as and when required and at least every six months.'

10 The annex to Decision 2006/928 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.

…'

Romanian law

Law No 303/2004

11 Article 43 of Legea nr. 303/2004 privind statutul judecătorilor și procurorilor (Law No 303/2004 on the rules governing judges and public prosecutors) of 28 June 2004 (*Monitorul Oficial al României*, Part I, No 826 of 13 September 2005), in the version prior to the entry into force, on 18 October 2018, of Legea nr. 242/2018 (Law No 242/2018) of 12 October 2018 (*Monitorul Oficial al României*, Part I, No 868 of 15 October 2018), provided, in paragraphs 1 and 2 thereof:

'(1) Promotion of judges and public prosecutors shall take place exclusively by means of a competitive procedure organised at national level, within the limits of posts currently vacant at the regional courts and the courts of appeal or, as the case may be, at the public prosecutors' offices.

(2) The competitive procedure for the promotion of judges and public prosecutors shall be organised, annually or whenever necessary, by the Superior Council of Magistracy, through the Institutul Național al Magistraturii [(National Institute of Magistracy)].'

12 Article 46 of that law provided:

'(1) The competitive procedure for promotion shall consist of written exams of a theoretical and practical nature.

(2) The exams shall concern:

(a) depending on the specialisation concerned, one of the following matters: civil law, criminal law, commercial law, administrative law, financial and fiscal law, labour law, family law, private international law;

(b) the case-law of the [Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania)] and the case-law of the [Curtea Constituțională (Constitutional Court, Romania)];

(c) the case-law of the European Court of Human Rights and the case-law of the Court of Justice of the [European Union];

(d) either civil procedure or criminal procedure, depending on the specialisation of the judge or public prosecutor concerned.

(3) The arrangements for conducting the competitive procedure, including the means of objecting to the results, shall be provided for in the Regulation on the organisation and conduct of competitions for the promotion of judges and public prosecutors.

…'

13 Law No 242/2018 amended, inter alia, Articles 43 to 46 of Law No 303/2004 and inserted Articles 46^1 to 46^3 into that law.

14 Article 43 of Law No 303/2004, as amended by Law No 242/2018 ('Law No 303/2004, as amended'), provides:

'The competitive procedure for the promotion of judges and public prosecutors shall be organised, annually or whenever necessary, by the appropriate sections of the Superior Council of Magistracy, through the National Institute of Magistracy.'

15 Article 44 of Law No 303/2004, as amended, provides, in paragraph 1 thereof:

'Judges and public prosecutors who have received the rating "very good" during their last assessment, have not been the subject of disciplinary action in the last three years, and who meet the … minimum requirements relating to length of service … may participate in the competitive procedure for on-the-spot promotion to the professional grade immediately above their current grade.'

16 Article 46 of that law states, in paragraphs 1 and 2 thereof:

'(1) The competitive procedure for on-the-spot promotion shall consist of a written exam.

(2) The arrangements for conducting the competitive procedure, including the means of objecting to the results, as well as the subjects covered by the written exam provided for in paragraph (1), depending on the specialisation of the judge or public prosecutor concerned, shall be provided for in the Regulation on the organisation and conduct of competitions for the promotion of judges and public prosecutors.

…'

17 Article 46^1 of Law No 303/2004, as amended, provides, in paragraph 1 thereof:

'Effective promotion of judges and public prosecutors shall take place exclusively by means of a competitive procedure organised at national level, within the limits of posts currently vacant at the regional courts and the courts of appeal or, as the case may be, at the public prosecutors' offices.'

18 Article 46^2 of that law provides, in paragraph 1 thereof:

'Judges and public prosecutors who have received the rating "very good" during their last assessment, have not been the subject of disciplinary action in the last three years, have acquired the appropriate professional grade for the court or public prosecutor's office to which they wish to be promoted, and have effectively performed the duties of a judge or public prosecutor for at least two years at the lower-ranking court or public prosecutor's office, in the case of promotions to the position of judge of a court of appeal, public prosecutor at the public prosecutor's office attached to a court of appeal, or public prosecutor at the Public Prosecutor's Office attached to the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)], may participate in the competitive procedure for effective promotion to the court or public prosecutor's office immediately above their own.'

19 Article 46^3 of Law No 303/2004, as amended, states, in paragraphs 1 and 2 thereof:

'(1) The competitive procedure for effective promotion shall consist of candidates undergoing a test the purpose of which is to assess their activities and conduct over the last three years.

(2) The arrangements for organising and conducting the competitive procedure, including the selection boards and the composition thereof, the aspects that will be verified in the context of

the test provided for in paragraph (1), and the means of establishing and objecting to the results, shall be provided for in the Regulation provided for in Article 46(2).

…'

20 Under Article 106(f) of that law:

'The Superior Council of Magistracy shall approve, by means of a decision published in the *Monitorul Oficial al României*, Part I:

…

(f) the Regulation on the organisation and conduct of competitions for the promotion of judges and public prosecutors;

…'

The Regulation on the organisation and conduct of competitions for the promotion of judges

21 On 17 September 2019, the Section for Judges of the SCM adopted, on the basis of Article 46^{3}(2) and Article 106(f) of Law No 303/2004, as amended, Decision No 1348 approving the Regulation on the organisation and conduct of competitions for the promotion of judges ('the Regulation on competitions for the promotion of judges').

22 The Regulation on competitions for the promotion of judges provides for promotion in two stages: (i) 'on-the-spot' promotion, that is to say, promotion to the professional grade immediately above the judge's current grade, which is governed by Chapter II of that regulation; and (ii) 'effective' promotion, governed by Chapter III of that regulation, which enables successful candidates who have already been promoted 'on the spot' and who, because of this, have obtained the required professional grade, to be effectively assigned a position within a higher court.

23 Judges who have received the rating '*foarte bine*' ('very good') during their last assessment, have not been the subject of disciplinary action in the last three years, have acquired, at the end of the procedure for 'on-the-spot' promotion, the appropriate professional grade for the court to which they wish to be promoted, and have effectively performed the duties of a judge for at least two years at the lower-ranking court, in the case of promotions to the position of judge of a court of appeal, may participate in the competitive procedure for effective promotion.

24 While the procedure for 'on-the-spot' promotion includes a competitive procedure which is based on a written exam of a theoretical and practical nature, the procedure for 'effective' promotion is, for its part, based on a test consisting of an assessment of candidates' work and conduct during their last three years of service.

25 That assessment is to be carried out by a board composed of (i) the president of the court of appeal concerned and (ii) four members of that court who have the specialisations corresponding to the sections within which there are vacant posts to be filled by competitive selection procedure. Those members are to be appointed upon a proposal from the college of the court of appeal concerned.

26 The assessment of the work of the judge requesting promotion is to be based on three criteria: (i) the ability to analyse and to summarise, as well as the ability to express him- or herself coherently; (ii) clarity and logic in putting forward arguments and reasoned analysis of the parties' applications and statements in defence, as well as respect for the case-law of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) and the courts of appeal; and (iii) observance of reasonable deadlines for processing cases and drafting decisions. The maximum mark for the assessment of work is 60 points, that is, a maximum of 20 points for each of the three criteria.

27 Fulfilment of the first two criteria is to be established based on an analysis of the judicial decisions handed down by the judge requesting promotion during his or her last three years of service. That analysis is to cover a sample of ten decisions selected at random using an IT application and based on uniform criteria selected by the assessment board. The decisions selected for that purpose must be relevant to the candidate's professional activity, have different subject matter, and have been delivered – so far as this is possible – during different procedural stages.

28 In addition to the decisions so selected, account is also to be taken of the reasoned opinion of the section of the court above the court in which the candidate is currently a judge which corresponds to that candidate's specialisation. To that end, the president of the section is to consult the judges of that section, respecting the confidential nature of the opinions expressed, and is to record the result in a report which is to be sent to the assessment board. That opinion is of a purely advisory nature.

29 Regarding the third criterion, which relates to observance of deadlines, the assessment is to be based on a series of statistical data and other documents provided by the court in which the candidate is currently a judge and relating to the following aspects: (i) as concerns the candidate's work: the number of hearings and the number of cases in which he or she has participated, the number of cases resolved, the number of decisions delivered, the number of unreasoned decisions adopted in good time, the average number of days by which deadlines have been exceeded, and the average time taken by the candidate to settle cases, as well as the other activities carried out by the candidate in the performance of his or her duties; (ii) as concerns the activity of the court containing the section in which the judge has served: the average number of cases per judge, the average number of presences at hearings, the average time taken to settle a case by case type, the average number of decisions delivered by judges, and the average number of decisions not delivered in good time.

30 The conduct of the judge requesting promotion is to be assessed by the board on the basis of two criteria: (i) the appropriateness of the candidate's attitude to litigants, lawyers, experts and interpreters during hearings and other professional activities, the appropriateness of the tone used by the candidate, his or her level of courteousness, the lack of contempt or arrogance in his or her bearing, and his or her ability to deal with situations arising in the hearing room; (ii) the candidate's ability to collaborate with the other members of the panel hearing cases, as well as his or her conduct towards and communication with the other judges and members of staff of both the court where he or she serves and other courts, be they higher or lower. The maximum mark for the assessment of conduct is 40 points, that is, a maximum of 20 points for each of the two criteria.

31 The assessment of candidates' conduct, in the light of the two criteria set out above, is to be based on recordings of hearings where the candidate concerned chaired the panel hearing the case, on the opinion of the section and/or, where appropriate, the court where the candidate performed his or her duties during the period under examination, on the data contained in his or her professional file, and on any other verifiable information concerning him or her.

32 In order to do this, the assessment board is to apply to the courts in which the candidate served during the period under consideration, to the human resources directorate of the SCM and to the Inspecția Judiciară (Judicial Inspectorate) for the information necessary to assess the candidate's conduct. The board is to select a sample of hearings chaired by the candidate and request access to the corresponding recordings. In addition, in order to obtain the opinion of the section, or, if there is no section, the court within which the candidate performed his or her duties, the board is to consult the staff of that section or court, respecting the confidential nature of the opinions expressed, and the result of those consultations is to be recorded in a signed and dated report containing verifiable information.

33 At the end of the procedure, the assessment board is to draw up a draft reasoned report indicating the marks awarded for the five criteria concerned (namely the three work assessment criteria and the two conduct assessment criteria), as well as the overall mark obtained by the candidate, out of a maximum possible total of 100 points. The draft report is to be sent to the candidate, who will then undergo an interview with the assessment board regarding the points recorded in that draft report. If the candidate has any objections as regards the draft report, he or she must present them both at that interview and in writing. At the end of the interview, the assessment board is to examine any objections raised and other points arising from the interview, and is to draw up the final reasoned assessment report, indicating the marks obtained for each of the assessment criteria and the overall mark. That report is to be sent to the candidate and to the SCM.

34 The candidate will then have 48 hours from the publication of the results to bring an appeal contesting the mark obtained during the assessment before the Section for Judges of the SCM. That section is to examine the appeal in the light of the objections raised and the documents on which the assessment is based. If it considers that the appeal must be upheld, it is to carry out a fresh assessment of the candidate on the basis of the same criteria and the same markscheme as those set for the assessment procedure. If, by contrast, it considers that the appeal must be dismissed, no fresh assessment of the candidate is to be carried out.

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

35 On 12 November 2019, the applicants in the main proceedings brought an action before the referring court, the Curtea de Apel Ploiești (Court of Appeal, Ploieşti, Romania), for partial annulment of Decision No 1348 inasmuch as that decision altered the procedure for the effective promotion of judges to the regional courts and the courts of appeal by replacing the old written exams with an assessment of candidates' work and conduct during their last three years of service.

36 According to the applicants in the main proceedings, the new procedure departs from the principle of promotion based on merit, relying on discretionary and subjective assessments. In addition, by conferring greater power on the presidents of the courts of appeal, that new procedure has the effect of encouraging attitudes of hierarchical subordination towards the members of the higher courts who are called upon to assess the work of judges who are candidates for promotion.

37 According to the applicants in the main proceedings, such a change to the procedure for the promotion of judges is likely to impair the independence of judges. In particular, they argue that the new procedure is contrary to EU law and to the obligations incumbent on Romania under, inter alia, the Cooperation and Verification Mechanism ('the CVM') introduced by Decision 2006/928 and the reports drawn up in connection with that mechanism.

38 In that regard, the referring court wishes to ascertain whether the CVM and those reports constitute acts which are amenable to interpretation by the Court of Justice.

39 That court also has doubts as to the compatibility of a promotion scheme such as that introduced by the legislation at issue in the main proceedings with the principle of the independence of judges.

40 In those circumstances, the referring court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must [the CVM], established by [Decision 2006/928], be regarded as an act of an institution of the Union, within the meaning of Article 267 TFEU, and therefore amenable to interpretation by [the Court of Justice]? Do the terms, nature and duration of the CVM established by [Decision 2006/928] fall within the scope of [the Treaty of Accession]? Are the requirements laid down in the reports prepared in accordance with the CVM binding on the Romanian State?

(2) Can the principle of judicial independence, enshrined in the second subparagraph of Article 19(1) TEU and Article 47 of [the Charter], as well as in the case-law of [the Court of Justice], with reference to Article 2 TEU, be interpreted as also applying to procedures for the promotion of judges in office?

(3) Is that principle infringed by the introduction of a system for promotion to a higher court which is based solely on a brief assessment of activities and conduct that is carried out by a board composed of the president of the court responsible for judicial review and of the judges of that court which, in addition to the periodic assessment of judges, separately carries out both assessments of judges for promotion purposes and the judicial review of judgments delivered by those judges?

(4) Is the principle of judicial independence, enshrined in the second subparagraph of Article 19(1) [TEU] and Article 47 of [the Charter], as well as in the case-law of [the Court of Justice], with reference to Article 2 TEU, infringed if the Romanian State undermines the foreseeability and legal certainty of EU law by accepting the CVM and reports prepared in accordance with that mechanism and adhering to them for more than 10 years and then, with no forewarning, changing the procedure for the promotion of judges to executive positions, contrary to CVM recommendations?'

Consideration of the questions referred

Jurisdiction of the Court

41 The SCM contends that, by the questions referred for a preliminary ruling, the referring court is asking the Court of Justice to give a ruling on the lawfulness of the new scheme for the promotion of judges at issue in the main proceedings, and not to interpret EU law. Accordingly, it argues that the Court does not have jurisdiction to rule on those questions.

42 For its part, the Polish Government argues that those questions fall within the sphere of the organisation of justice, a sphere in which the Union has no competence.

43 In that regard, it should be noted that the present request for a preliminary ruling clearly concerns the interpretation of EU law, whether provisions of primary law (Article 2 TEU, the second subparagraph of Article 19(1) TEU, Article 267 TFEU and Article 47 of the Charter) or provisions of secondary law (Decision 2006/928).

44 Furthermore, the arguments of the Polish Government concerning the alleged lack of competence of the Union in the field of the organisation of justice relate, in fact, to the actual scope and, therefore, to the interpretation of the provisions of EU primary law mentioned in the questions referred; an interpretation which clearly falls within the jurisdiction of the Court under Article 267 TFEU.

45 Indeed, the Court has previously held that, although the organisation of justice in the Member States falls within the competence of those Member States, they are nonetheless required, when exercising that competence, to comply with their obligations deriving from EU law (judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 111 and the case-law cited).

46 In the light of the foregoing, the Court has jurisdiction to answer the questions referred.

Admissibility of the questions referred

47 The SCM contests the admissibility of the first and second questions on the ground that the answers to those questions are clear from the case-law of the Court of Justice.

48 In addition, the SCM argues that the third and fourth questions are inadmissible because the interpretation of EU law that is sought by the referring court bears no relation to the actual facts of the main action. In its view, the third question is based on an incorrect description of the procedure for the promotion of judges at issue in the main proceedings and, as regards the fourth question, the procedure for the effective promotion of judges is in no way at odds with the recommendations made by the Commission in the reports drawn up by it under the CVM.

49 In that connection, first, as regards the fact that the correct interpretation of EU law is so clear in the present case that it leaves no room for any reasonable doubt, it is sufficient to state that, although such a circumstance, if it is proven, may prompt the Court to rule by means of an order pursuant to Article 99 of the Rules of Procedure, that same circumstance nevertheless cannot prevent a national court from referring a question for a preliminary ruling; nor can it have the

effect of rendering the question thus referred inadmissible (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 138 and the case-law cited).

50 Consequently, the first and second questions are admissible.

51 Second, according to the settled case-law of the Court, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to 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 139 and the case-law cited).

52 In the present case, it is apparent from the request for a preliminary ruling that the referring court is hearing a dispute relating to the lawfulness of a piece of national legislation concerning the scheme for the promotion of judges. It is precisely because that court is experiencing doubts as to the compatibility of that scheme with (i) the requirement for independence stemming from the second subparagraph of Article 19(1) TEU and from Article 47 of the Charter and (ii) Decision 2006/928 that it has been prompted to question the Court of Justice as to the interpretation of those provisions of EU law. Therefore, the third and fourth questions are related to the actual facts of the main action. As for the arguments put forward by the SCM to contest the admissibility of those questions, they concern the substantive response to be given thereto.

53 Accordingly, the third and fourth questions are also admissible.

The first question

54 By its first question, the referring court asks, in essence, whether Decision 2006/928 constitutes an act of an institution of the Union which is amenable to interpretation by the Court of Justice under Article 267 TFEU, whether that decision, as regards its legal nature, content and temporal effects, falls within the scope of the Treaty of Accession, and, lastly, whether the requirements set out in the reports drawn up by the Commission in connection with the CVM are binding on Romania.

55 As has been correctly stated by the 'Forum of Judges of Romania' Association, the SCM and the Commission, the answer to the first question is clear from the case-law of the Court, in particular from points 1 and 2 of the operative part of the judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others* (C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393).

56 Thus, the answer to the first question is that Decision 2006/928 constitutes an act of an institution of the Union which is amenable to interpretation by the Court of Justice under Article 267 TFEU. As regards its legal nature, content and temporal effects, that decision falls within the scope of the Treaty of Accession. The benchmarks set out in the annex to that decision are intended to ensure that Romania complies with the value of the rule of law, set out in Article 2 TEU, and are binding on that Member State, in the sense that it is required to take the appropriate measures for the

purpose of meeting those benchmarks, taking due account, under the principle of sincere cooperation laid down in Article 4(3) TEU, of the reports drawn up by the Commission on the basis of that decision, and in particular the recommendations made in those reports.

The second question

57 By its second 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, is to be interpreted as meaning that a piece of national legislation relating to the scheme for the promotion of judges is required to ensure compliance with the principle of the independence of judges.

58 As has been recalled in paragraph 45 of the present judgment, although the organisation of justice in the Member States falls within the competence of those Member States, they are nonetheless required, when exercising that competence, to comply with their obligations deriving from EU law. Furthermore, it has been held that Article 19 TEU, 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 the judicial protection that individuals derive from EU law to national courts and tribunals and to the Court of Justice (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 217).

59 The very existence of effective judicial review designed to ensure compliance with EU law is of the essence of the rule of law. In that regard, as provided for in the second subparagraph of Article 19(1) TEU, it is for the Member States to establish a system of legal remedies and procedures ensuring for individuals compliance with their right to effective judicial protection in the fields covered by EU law. The principle of the effective judicial protection of individuals' rights under EU law, referred to in the second subparagraph of Article 19(1) TEU, is a general principle of EU law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and is now reaffirmed in Article 47 of the Charter (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 219 and the case-law cited).

60 It follows that, pursuant to the second subparagraph of Article 19(1) TEU, every Member State must 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 which thus come within its judicial system in the fields covered by EU law, meet the requirements of effective judicial protection, it being clarified that that provision refers to the 'fields covered by Union law', irrespective of the circumstances in which the Member States are implementing Union law within the meaning of Article 51(1) of the Charter (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 220 and the case-law cited).

61 To guarantee that such a court or tribunal is in a position to ensure the effective judicial protection thus required under the second subparagraph of Article 19(1) TEU, maintaining its independence and impartiality is essential, as is confirmed by the second paragraph of Article 47

of the Charter, which refers to access to an 'independent' tribunal as one of the requirements linked to the fundamental right to an effective remedy (judgment of 29 March 2022, *Getin Noble Bank*, C-132/20, EU:C:2022:235, paragraph 93 and the case-law cited).

62 As the Court has emphasised on several occasions, that requirement that courts and tribunals be independent and impartial, which is inherent in the task of adjudication, forms part of the essence of the right to effective judicial protection and the fundamental right to a fair trial, which is of cardinal importance as a guarantee that all the rights which individuals derive from EU law will be protected and that the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law, will be safeguarded (judgment of 29 March 2022, *Getin Noble Bank*, C-132/20, EU:C:2022:235, paragraph 94 and the case-law cited).

63 The guarantees of independence and impartiality required under EU law presuppose rules, particularly as regards the composition of the body and the appointment, length of service and grounds for abstention, rejection and dismissal of its members, that are such as to dispel any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it (judgment of 29 March 2022, *Getin Noble Bank*, C-132/20, EU:C:2022:235, paragraph 95 and the case-law cited).

64 In that regard, it is necessary that judges be protected from external intervention or pressure liable to jeopardise their independence and impartiality. The rules applicable to the status of judges and the performance of their judicial duties must, in particular, be such as to preclude not only any direct influence, in the form of instructions, but also types of influence which are more indirect and which are liable to have an effect on the decisions of the judges concerned, and thus preclude a lack of appearance of independence or impartiality on their part likely to prejudice the trust which justice in a democratic society governed by the rule of law must inspire in individuals (judgment of 29 March 2022, *Getin Noble Bank*, C-132/20, EU:C:2022:235, paragraph 96 and the case-law cited).

65 In particular, the independence of judges must be guaranteed and safeguarded not only at the stage of their appointment but also, as the Advocate General noted in point 46 of his Opinion, throughout their career, including in the context of promotion procedures, since procedures for the promotion of judges form part of the rules applicable to the status of judges.

66 It is therefore necessary that the substantive conditions and procedural rules governing the adoption of decisions to promote judges are such that they cannot give rise to reasonable doubts, in the minds of individuals, as to the imperviousness of the judges concerned to external factors and as to their neutrality with respect to the interests before them, once they have been promoted (see, by analogy, judgment of 29 March 2022, *Getin Noble Bank*, C-132/20, EU:C:2022:235, paragraph 97 and the case-law cited).

67 Consequently, the answer to the second question is that 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 meaning that a piece of national legislation relating to the scheme for the promotion of judges is required to ensure compliance with the principle of the independence of judges.

The third question

68 By its third 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, is to be interpreted as precluding a piece of national legislation pursuant to which the scheme for the promotion of judges to a higher court is based on an assessment, carried out by a board composed of (i) the president of that higher court and (ii) members of that court, of the work and conduct of the persons concerned.

69 As a preliminary point, it should be borne in mind that, according to the case-law of the Court, a Member State cannot amend its legislation in such a way as to bring about a reduction in the protection of the value of the rule of law, a value which is given concrete expression by, inter alia, Article 19 TEU. The Member States are thus required to ensure that, in the light of that value, any regression of their laws on the organisation of justice is prevented, by refraining from adopting rules which would undermine the independence of judges (judgments of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, paragraphs 63 and 64, and of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraph 162 and the case-law cited).

70 As has been recalled in paragraph 64 of the present judgment, judges must be protected from external intervention or pressure liable to jeopardise their independence and impartiality. In particular, the rules relating to the scheme for the promotion of judges must be such as to preclude not only any direct influence, in the form of instructions, but also types of influence which are more indirect and which are liable to have an effect on the decisions of the judges concerned, and thus preclude a lack of appearance of independence or impartiality on their part likely to prejudice the trust which justice in a democratic society governed by the rule of law must inspire in individuals.

71 Accordingly, where a Member State is introducing a new scheme for the promotion of judges, it is necessary to ensure that the substantive conditions and procedural rules governing the adoption, in the context of that scheme, of decisions to promote judges are such that they cannot give rise to reasonable doubts, in the minds of individuals, as to the imperviousness of the judges concerned to external factors and as to their neutrality with respect to the interests before them, once they have been promoted.

72 In the present case, it will be for the referring court to rule on that matter, having made the relevant findings in that regard. Indeed, it must be borne in mind that Article 267 TFEU does not empower the Court to apply rules of EU law to a particular case, but only to rule on the interpretation of the Treaties and of acts of the institutions of the Union. According to settled case-law, the Court may, however, in the framework of the judicial cooperation provided for by that article and on the basis of the material presented to it, provide the national court with an interpretation of EU law which may be useful to it in assessing the effects of one or other of its provisions (judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 201 and the case-law cited).

73 Before examining the substantive conditions and procedural rules governing the adoption of decisions to promote judges, as laid down by the legislation at issue in the main proceedings, it should be borne in mind that, according to the indications given by the referring court, the procedure for the promotion of judges at issue in the main proceedings consists of two stages.

The first stage, classified as 'on-the-spot promotion', is based on passing written exams which are designed to test both candidates' theoretical knowledge and their practical skills. The second stage, classified as 'effective promotion', which enables candidates who have been promoted on the spot to be effectively assigned to a higher court, is based on the assessment of the work and conduct of those candidates during their last three years of service.

74 In the context of that second stage, the assessment is to be carried out by an assessment board whose members are to be appointed by the Section for Judges of the SCM. That assessment board is to be composed, at the level of each court of appeal, of (i) the president of that court and (ii) four of its members, whose specialisation must correspond to the specialisation of the vacant posts. The Section for Judges of the SCM is to select those four members upon a proposal from the college of the court of appeal, which includes the president of that court.

75 While the involvement, in the procedure for the effective promotion of judges, of a body such as that assessment board may, in principle, be such as to contribute to rendering that procedure more objective, it is also necessary that that body itself provide guarantees of independence, meaning that it is necessary to examine specifically the conditions under which its members are appointed and the way in which it actually performs its role (see, by analogy, judgment of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, paragraphs 66 to 68).

76 In the present case, regarding the conditions under which the members of the assessment board are appointed, it should be emphasised that that board is composed exclusively of judges, appointed upon a proposal from the college of the competent court of appeal, which is itself composed of judges.

77 In addition, as the Advocate General noted in points 62, 65 and 66 of his Opinion, the fact that certain judges exercise control over the professional activity of their peers is not, as such, indicative of a potential problem regarding the independence of judges. In so far as, in their capacity as judges, the members of the assessment board are themselves required to provide guarantees of independence, they meet, in principle, the requirement recalled in paragraph 75 of the present judgment and appear, in view of their duties, to be the appropriate persons to appraise the professional merits of their peers.

78 Furthermore, the referring court notes that the new procedure is likely to lead to power being concentrated in the hands of certain members of that assessment board, and, in particular, the presidents of the courts of appeal, which is likely to give those members decisive influence over the outcome of the procedure for effective promotion. This could be the case if, inter alia, those members are shown to be combining several duties likely to affect the professional life and career of candidates for promotion, for example by being responsible for both the periodic assessment of their work and the review, on appeal, of the judgments delivered by them.

79 While it cannot be excluded that such a situation may affect the way in which that assessment board actually performs its role for the purposes of paragraph 75 of the present judgment, such a concentration of power, assuming it to be established, nevertheless cannot be regarded as being, as such, incompatible with the second subparagraph of Article 19(1) TEU (see, by analogy, judgment of 11 May 2023, *Inspecția Judiciară*, C-817/21, EU:C:2023:391, paragraph 54).

80 Indeed, it would also be necessary to establish that that concentration of power, taken in isolation or combined with other factors, is liable to offer, in practice, the persons on whom it is conferred the ability to influence the decisions of the judges concerned, and thus create a lack of independence or an appearance of partiality on their part likely to prejudice the trust which justice in a democratic society governed by the rule of law must inspire in individuals.

81 However, the file before the Court does not contain any material capable of establishing that such a potential concentration of power could, in itself, confer, in practice, such an ability to influence; nor does it point to any other factor which could, combined with that concentration of power, produce effects which would be such as to give rise to doubts, in the minds of individuals, as to the independence of the judges who have been promoted.

82 It is, accordingly, for the referring court, which alone has all the relevant information, to carry out an assessment in that regard.

83 Regarding the substantive conditions governing the adoption of decisions relating to effective promotion and, in particular, the assessment criteria implemented by the assessment board, it should be noted, first, that admission to the procedure for effective promotion presupposes that the candidate has passed written exams – both theoretical and practical – in the context of the procedure for 'on-the-spot' promotion, the relevance of which does not appear to be called in question by the applicants in the main proceedings. Second, as the Advocate General noted in point 72 of his Opinion, the legislation at issue in the main proceedings clearly sets out criteria which appear to be relevant for the purpose of assessing the professional merits of candidates.

84 Thus, regarding the assessment of candidates' work, that assessment is to be based on criteria relating to candidates' ability to analyse and summarise, to the clarity and logic of their arguments, to respect for the case-law of higher courts, and to their ability to give rulings while observing a reasonable deadline. For its part, the assessment of candidates' conduct is to be based on criteria relating, in essence, to the way in which candidates behave when performing their duties, both towards their colleagues and towards litigants, as well as their ability to ensure that hearings are properly conducted.

85 In addition, those criteria seem to be the subject of objective assessments based on verifiable information. Regarding the assessment of candidates' work, the assessment board is to rely, essentially, on a sample of ten judicial decisions handed down by the candidate, selected at random and on the basis of uniform criteria. As for the assessment of candidates' conduct, that conduct is to be assessed having regard to, inter alia, the candidate's professional file, as well as recordings of hearings, which also lends an air of verifiability to the information taken into account during that assessment.

86 Accordingly, it appears that the information taken into consideration for the purposes of those assessments is sufficiently varied and verifiable, which limits the risk of the procedure for effective promotion being discriminatory. The fact that the assessment board may potentially take into consideration reasoned opinions issued by the section in which the candidate concerned is sitting at the time that procedure is conducted, and by the section of the higher-ranking court corresponding to that candidate's specialisation, does not appear to be such as to call that analysis in question, so long as those reasoned opinions are such as to enlighten the assessment board regarding the professional merits of that candidate from the perspective of his or her work or conduct.

87 As for the procedural rules governing the adoption of decisions relating to effective promotion, it should be noted that, once the procedure is completed, the assessment board is to draw up a reasoned report indicating the marks awarded for each of the criteria concerned, as well as the overall mark obtained by the candidate. In addition, if the candidate has objections to raise with regard to that report, he or she may present them at an interview with the assessment board and in writing. Lastly, the candidate will have 48 hours from the publication of the results to bring an appeal contesting the mark obtained before the Section for Judges of the SCM. That section is to examine whether a fresh assessment is necessary and, where appropriate, is to carry out that assessment itself.

88 In those circumstances and having regard to, inter alia, the obligation to state reasons which is incumbent on the assessment board, as well as the possibility to bring an appeal contesting its findings, the procedural rules governing the adoption of decisions relating to effective promotion do not appear to be such as to jeopardise the independence of the judges promoted at the end of that procedure. It is however ultimately for the referring court, which alone has jurisdiction to rule on the facts and alone has direct knowledge of those procedural rules, to verify whether this is in fact the case.

89 Consequently, the answer to the third question is that 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 not precluding a piece of national legislation pursuant to which the scheme for the promotion of judges to a higher court is based on an assessment, carried out by a board composed of (i) the president of that higher court and (ii) members of that court, of the work and conduct of the persons concerned, provided that the substantive conditions and procedural rules governing the adoption of decisions relating to effective promotion are such that they cannot give rise to reasonable doubts, in the minds of individuals, as to the imperviousness of the judges concerned to external factors and as to their neutrality with respect to the interests before them, once they have been promoted.

The fourth question

90 By its fourth question, the referring court asks, in essence, whether Decision 2006/928 is to be interpreted as precluding a piece of national legislation altering the scheme for the promotion of judges when, in the reports drawn up under that decision, the Commission has not made any recommendation relating to such an alteration.

91 It should be borne in mind that, under Article 1 of Decision 2006/928, Romania is to report each year to the Commission on the progress made in addressing each of the benchmarks provided for in the annex to that decision, and that the first of those benchmarks is intended, inter alia, to 'ensure a more transparent, and efficient judicial process'.

92 In that context, it is apparent from the case-law referred to in paragraph 56 of the present judgment that the benchmarks set out in that annex are intended to ensure that Romania complies with the value of the rule of law, set out in Article 2 TEU, and are binding on that Member State, in the sense that it is required to take the appropriate measures for the purpose of meeting those benchmarks, taking due account, under the principle of sincere cooperation laid down in Article 4(3) TEU, of the reports drawn up by the Commission on the basis of that decision, and in particular the recommendations made in those reports.

93 That said, as the Advocate General noted in point 83 of his Opinion, neither Decision 2006/928 nor the recommendations set out in the reports drawn up on the basis of that decision are intended to impose on the Member State concerned a specific model for the organisation of its judicial system. Indeed, as is apparent from the settled case-law of the Court as cited in paragraph 45 of the present judgment, the organisation of justice in the Member States falls within the competence of those Member States, subject to their compliance with EU law when exercising that competence.

94 In the present case, as is apparent from the Commission's observations and as the Advocate General noted in point 81 of his Opinion, the Commission did not, in the reports drawn up by it on the basis of Decision 2006/928, identify any specific problem concerning the scheme for the promotion of judges at issue in the main proceedings; nor did it make any recommendations in that regard.

95 In a context such as that at issue in the main proceedings, while the Member State concerned must take account, in accordance with the principle of sincere cooperation, of the reports drawn up by the Commission under Decision 2006/928 and, in particular, the recommendations made in those reports, the fact that no recommendation has been made cannot under any circumstances be regarded as an obstacle to the exercise, by the Member State concerned, of its competence in the field of the organisation of justice.

96 In view of the foregoing considerations, the answer to the fourth question is that Decision 2006/928 must be interpreted as not precluding a piece of national legislation altering the scheme for the promotion of judges when, in the reports drawn up under that decision, the Commission has not made any recommendation relating to such an alteration.

Costs

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

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

1. **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 constitutes an act of an institution of the Union which is amenable to interpretation by the Court of Justice under Article 267 TFEU. As regards its legal nature, content and temporal effects, that decision falls within the scope of the Treaty between the Member States of the European Union and the Republic of Bulgaria and Romania, concerning the accession of the Republic of Bulgaria and Romania to the European Union. The benchmarks set out in the annex to that decision are intended to ensure that Romania complies with the value of the rule of law, set out in Article 2 TEU, and are binding on that Member State, in the sense that it is required to take the appropriate measures for the purpose of meeting those benchmarks, taking due account, under the principle of sincere cooperation laid down in Article 4(3) TEU, of the reports drawn up by the European Commission on the basis of that decision, and in particular the recommendations made in those reports.**

2. **The second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 TEU and Article 47 of the Charter of Fundamental Rights of the European Union,**

   must be interpreted as meaning that a piece of national legislation relating to the scheme for the promotion of judges is required to ensure compliance with the principle of the independence of judges.

3. **The second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 TEU and Article 47 of the Charter of Fundamental Rights,**

   must be interpreted as not precluding a piece of national legislation pursuant to which the scheme for the promotion of judges to a higher court is based on an assessment, carried out by a board composed of (i) the president of that higher court and (ii) members of that court, of the work and conduct of the persons concerned, provided that the substantive conditions and procedural rules governing the adoption of decisions relating to effective promotion are such that they cannot give rise to reasonable doubts, in the minds of individuals, as to the imperviousness of the judges concerned to external factors and as to their neutrality with respect to the interests before them, once they have been promoted.

4. **Decision 2006/928**

   must be interpreted as not precluding a piece of national legislation altering the scheme for the promotion of judges when, in the reports drawn up under that decision, the European Commission has not made any recommendation relating to such an alteration.

[Signatures]