Reports of Cases

OPINION OF ADVOCATE GENERAL
COLLINS
delivered on 1 February 2024[1]

Case C-53/23

Asociația 'Forumul Judecătorilor din România',
Asociația 'Mișcarea pentru Apărarea Statutului Procurorilor'
v
Parchetul de pe lângă Înalta Curte de Casație și Justiție – Procurorul General al României

(Request for a preliminary ruling from the Curtea de Apel Pitești (Court of Appeal, Pitești, Romania))

(Reference for a preliminary ruling – Rule of law – Judicial independence – Article 2 TEU – Second subparagraph of Article 19(1) TEU – Articles 12 and 47 of the Charter – Order appointing prosecutors who investigate criminal and corruption allegations and bring proceedings against judges and prosecutors – Action by associations of judges and prosecutors for partial annulment of order – *Locus standi* of associations to bring proceedings – Requirement under national law of a substantive right or legitimate private interest)

Introduction

1. The present request for a preliminary ruling raises a novel point of EU law. May associations of judges and prosecutors established with the object of promoting an independent, impartial and efficient judicial system[2] rely on Article 2 and Article 19(1) TEU, read in the light of Articles 12 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), to establish their *locus standi* to bring an action in furtherance of those aims before a national court?

Legal framework – national legislation

2. Article 8(1[1]) of Legea nr. 554/2004 a contenciosului administrativ (Law No 554/2004 on Administrative Proceedings) of 2 December 2004[3] provides:

'Natural persons and legal persons governed by private law may bring an action to protect a legitimate public interest only by way of an alternative submission, where the infringement of the

1 Original language: English.

2 The associations are the Asociația 'Forumul Judecătorilor din România' ('Romanian Judges' Forum' Association') and the Asociația 'Mișcarea pentru Apărarea Statutului Procurorilor' ('Movement for the Defence of the Status of Prosecutors' Association') ('the applicants').

3 *Monitorul Oficial al României*, Part I, No 1154 of 7 December 2004 ('Law No 554/2004').

legitimate public interest logically stems from the infringement of a subjective right or of a legitimate private interest.'

3. In March 2022, Legea nr. 49/2022 privind desființarea Secției pentru investigarea infracțiunilor din justiție, precum și pentru modificarea Legii nr. 135/2010 privind Codul de procedură penală (Law No 49/2022 on the abolition of the section for the investigation of offences committed within the judicial system and the amendment of Law No 135/2010 on the Code of Criminal Procedure) entered into force. [4] It abolished the Secția pentru investigarea infracțiunilor din justiție (Section for the investigation of offences committed within the judiciary; 'the SIIJ') within the Parchetul de pe lângă Înalta Curte de Casație și Justiție (Prosecution Office attached to High Court of Cassation and Justice, Romania; 'the PÎCCJ'). Law No 49/2022 also transferred responsibility for the investigation and the prosecution of all offences, including corruption, allegedly committed by judges and prosecutors to the criminal investigation section of the PÎCCJ or to the public prosecutors' offices attached to the Courts of Appeal, depending on the instance at which such judges and prosecutors serve.

4. Pursuant to Article 3(3) of Law No 49/2022, the Parchetul de pe lângă Înalta Curte de Casație și Justiție – Procurorul General al României (Prosecutor General of the Prosecution Office attached to the High Court of Cassation and Justice, Romania; 'the defendant'), acting on a proposal of the general assembly of the Consiliul Superior al Magistraturii (Supreme Council of the Judiciary, Romania; 'the SCJ'), appoints prosecutors to bring criminal proceedings in respect of these offences. The Minister for Justice is a member of the SCJ. The defendant adopted Order No 108/2022 of 3 June 2022 to appoint several prosecutors to bring criminal proceedings in accordance with Law No 49/2022 ('the contested order'). That order was adopted upon a proposal of the general assembly of the SCJ. [5]

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

5. The applicants are non-profit, non-governmental, apolitical legal persons governed by private law. Their statutes state that they are set up, inter alia, in order to ensure an independent, impartial and efficient justice system and to establish, support, coordinate and implement projects to improve, modernise and reform the justice system.

6. By application lodged at the Curtea de Apel Pitești (Court of Appeal, Pitești, Romania) on 5 August 2022, the applicants brought an action for judicial review seeking the partial annulment of the contested order. They contest the appointment to, inter alia, the PÎCCJ, of several prosecutors responsible for the investigation and prosecution of all criminal offences allegedly committed by judges and prosecutors. The applicants claim that Law No 49/2022, which furnishes the legal basis for the contested order, is contrary to Article 2, Article 4(3) and the

[4] *Monitorul Oficial al României*, Part I, No 244 of 11 March 2022 ('Law No 49/2022').

[5] Hotărârea nr. 63/3 mai 2022 (Decision No 63 of 3 May 2022).

second subparagraph of Article 19(1) TEU, Annex IX to the Act concerning the conditions of accession,[6] and Commission Decision 2006/928/EC[7] as interpreted by the Court of Justice in its *Asociația 'Forumul Judecătorilor din România'* judgment.[8]

7. The applicants submit that, given their specific nature, allegations of corruption against judges and prosecutors should be investigated and prosecuted by specialist prosecutors, who are experts in fighting corruption and who have adequate resources to carry out that task correctly. The applicants object to the participation of the general assembly of the SCJ in the procedure leading to the appointment of the persons charged with carrying out that task. They further contend that the procedure does not ensure that prosecutors are appointed on merit or that they are independent. They finally submit that the Direcția Națională Anticorupție (National Anti-Corruption Directorate, Romania; 'the DNA') – which specialises in the fight against corruption in Romania and is structurally autonomous from the PÎCCJ[9] – ought to be charged with responsibility for the investigation and the prosecution of such offences.

8. The defendant objected to the admissibility of the application on the ground that the applicants lack *locus standi* to seek judicial review of the contested order. According to the defendant, that action relies on a legitimate public interest rather than on a subjective right or a legitimate private interest as national law requires. Since the contested order neither affects the applicants nor their aims, but rather the prosecutors appointed thereunder, the applicants do not have a subjective right or a legitimate private interest to challenge its validity and therefore cannot rely upon a legitimate public interest in order to do so.

9. The applicants assert their *locus standi* on the basis that their principal activity is to defend the status of judges and prosecutors, to promote the rights and values of those professions and to 'defend the independence of justice in a State governed by the rule of law'. The statutes of the 'Romanian Judges' Forum' Association envisage the initiation of certain legal proceedings in the pursuit of those objectives.

10. The referring court states that, in accordance with Article 1(1) of Law No 554/2004, any person may apply to a competent court to seek the annulment of an administrative act of a public authority that adversely affects their legitimate interests. Article 2 of Law No 554/2004 provides that a legitimate interest may be of a private or a public nature. Article 8(1^1) of Law No 554/2004 provides, in essence, that natural and legal persons governed by private law may rely upon a public interest to bring proceedings only if that interest is directly linked to a subjective right or to a legitimate private interest which they enjoy. It observes that, in 2016 and in 2017, Romanian

6 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, 'the Act concerning the conditions of accession').

7 Commission Decision 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; 'the CVM Decision'). Commission Decision (EU) 2023/1786 of 15 September 2023 repealing Decision 2006/928/EC 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 2023 L 229, p. 94) repealed the CVM Decision with effect from 8 October 2023. The CVM Decision applied *rationae temporis* to the dispute before the referring court.

8 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; 'the *Asociația "Forumul Judecătorilor din România"* judgment').

9 See Article 93(1) of Legea nr. 304/2022 privind organizarea judiciară (Law No 304/2022 on the Organisation of the Judicial System), published in *Monitorul Oficial al României*, Part I, No 1104 of 16 November 2022.

courts recognised that the applicants had an interest in bringing proceedings for the purpose of enhancing the independence of justice and preserving the status of the professions of judges or prosecutors. [10]

11. In Judgment No 8, the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania) [11] held:

'For the purposes of uniform interpretation and application of Article 1, Article 2(1)(a), (r) and (s) and Article 8(1^1) and (1^2) of Law No 554/2004, as subsequently amended and supplemented, decides:

With a view to reviewing the legality of administrative acts at the request of associations, as social bodies concerned, the legitimate public interest may be invoked only in the alternative to the legitimate private interest, the latter arising from the direct link between the administrative act subject to the legality review and the direct aim and objectives of the association, in accordance with its statutes.'

12. In the wake of that ruling, the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) held that associations of judges and/or prosecutors did not have *locus standi* to bring proceedings seeking to annul SCJ decisions concerning, inter alia, the appointment of judges, assistant judges and the Chief Inspector of the Inspecția Judiciară (Judicial Inspectorate, Romania). [12] It reached that conclusion on the ground that, in those proceedings, the applicants had sought to invoke a public, rather than a private, legitimate interest.

13. On a broad interpretation of the concept of legitimate private interest as defined in Judgment No 8, the referring court considers that, since the applicants claim that the contested order implements legislation that undermines the fight against corruption, and thereby infringes Romania's commitments to the European Union, there may be a sufficient link between the applicants' aims, as set out in their statutes, and the contested order so as to afford them the legitimate private interest required to maintain their action. On a restrictive interpretation of Judgment No 8, however, the applicants would have only a legitimate public interest and therefore would not have *locus standi* to maintain those proceedings.

14. Since the applicants assert that there has been a breach of EU law, the referring court considers that they seek effective judicial protection in a field covered by EU law. It seeks to ascertain whether a strict interpretation of the concept of legitimate private interest that would limit the range of actions that associations, such as the applicants, could maintain, infringes

[10] See, for example, Civil Judgments No 1475, of 29 April 2016; No 2949 of 14 July 2017; and No 3192 of 24 October 2016, of the Curtea de Apel București – Secția a VIII-a de contencios administrativ și fiscal (Court of Appeal, Bucharest, Romania – Eighth Division for Administrative and Tax Matters) ('Judgments No 1475, No 2949 and No 3192'). In its judgment in *Societatea Civilă Profesională de Avocați AB & CD* (C-252/22, EU:C:2024:13, paragraphs 44 to 48), the Court examined Articles 1, 2 and 8 of Law No 554/2004, in a context where a law firm asserted *locus standi* to maintain an action to annul a decision to approve a zoning plan and a planning permit for a landfill. Unlike the present case, which concerns the rule of law and judicial independence, that judgment engages primarily the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed at Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1; 'the Aarhus Convention').

[11] Judgment No 8 of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) of 2 March 2020, published in *Monitorul Oficial al României* Part I, No 580 of 2 July 2020 ('Judgment No 8'). The referring court indicated that Judgment No 8 was delivered following an appeal in the interest of the law pursuant to Article 517 of the Codul de procedură civilă (Code of Civil Procedure). Subject to verification by the referring court, it appears that Judgment No 8 binds both the lower courts and the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice).

[12] See, for example, Judgments No 4524 of 7 October 2021 and No 4462 of 6 October 2021 of the Administrative and Fiscal Chamber of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) ('Judgments No 4524 and No 4462').

Article 2 and the second subparagraph of Article 19(1) TEU, read in conjunction with Articles 12 and 47 of the Charter. The referring court also wishes to clarify if, following the abolition of the SIIJ, the failure to reassign responsibility for the investigation and the prosecution of allegations of corruption by judges and prosecutors to the DNA infringes Article 2, Article 4(3) and the second subparagraph of Article 19(1) TEU, Annex IX to the Act concerning the conditions of accession, and the CVM Decision.

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

'(1) Do Article 2 and the second subparagraph of Article 19(1) TEU, read in conjunction with Articles 12 and 47 [of the] [Charter], preclude the placing of limits on the bringing of certain legal proceedings by the professional associations of judges – aiming to promote and to protect the independence of the judiciary and the rule of law, and to safeguard the status of the profession – by introducing the condition that there must be a legitimate private interest which has been excessively restricted, on the basis of a binding decision of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice), followed by a national practice in cases such as that in which the present question has been raised, which requires a direct link between the administrative act subject to judicial review by the courts and the direct purpose and objectives of the professional associations of judges, laid down in their articles of association, in cases where such associations seek to obtain effective judicial protection in matters governed by EU law, in accordance with the general purpose and objectives of the articles of association?

(2) In the light of the answer to the first question, do Article 2, Article 4(3) and the second subparagraph of Article 19(1) TEU, Annex IX to the [Act concerning the conditions of accession] and the [CVM Decision] preclude national legislation which limits the competence of the [DNA] by conferring exclusive competence to investigate corruption offences (in a broad sense) committed by judges and prosecutors upon certain prosecutors appointed for that purpose (by the Prosecutor General of Romania, acting on a proposal of the general assembly of the [SCJ]) in the public prosecutor's office attached to the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) and, respectively, in the public prosecutor's offices attached to the Curțile de Apel (Courts of Appeal), the latter also being competent for the other categories of offences committed by judges and prosecutors?'

The procedure before the Court

16. The 'Romanian Judges' Forum' Association, the defendant, Romania and the European Commission submitted written observations.

17. I shall address the objections taken to the jurisdiction of the Court and the admissibility of the questions referred before advising the Court, on foot of its request, as to how it should reply to the first question.

Assessment

The jurisdiction of the Court and the admissibility of the first question

Submissions

18. The defendant claims that since the applicants do not rely on any right protected by EU law, the Court of Justice has no jurisdiction to rule on the request for a preliminary ruling. The proceedings before the referring court and the questions that it asks the Court both relate exclusively to the interpretation of national law and are of a hypothetical nature.[13] The action before the referring court is a 'pilot case' or 'vehicle' designed to obtain a request for a preliminary ruling pursuant to Article 267 TFEU.

19. Romania submits that the first question is inadmissible as the referring court failed to explain clearly the facts in the case before it and, in particular, to indicate how and on what basis the applicants' right of access to a court is restricted. It is unclear whether that potential restriction finds its source in Law No 554/2004, Judgment No 8 or in a restrictive interpretation of that judgment. Since the referring court itself considers that there is a direct link between the contested order and the applicants' aims, it appears to follow that the applicants' action is admissible as a matter of national law, such that an answer to the first question would serve no useful purpose.[14]

Analysis

20. It is clear from the summary of the applicants' arguments in the request for a preliminary ruling that, contrary to what the defendant claims, the action before the referring court relies upon EU law. The applicants invoke, and seek an interpretation of, Article 2 and Article 19(1) TEU, read in the light of Articles 12 and 47 of the Charter, Annex IX to the Act concerning the conditions of accession, and the CVM Decision. The reasons that led the referring court to make its request for a preliminary ruling and the questions that it asked the Court of Justice reflect the relevance of EU law to the resolution of the dispute before it. Nor is there anything in the file before the Court that would suggest the dispute in the main proceedings is in any way contrived or hypothetical.[15]

21. The defendant's claim that the applicants do not rely on any right protected by EU law goes to the substance of the referring court's first question on *locus standi*. The nature of that objection renders it incapable of justifying a finding that the first question is inadmissible.[16] Contrary to Romania's claim, I consider that the referring court has outlined in detail the facts in the dispute before it that led it to make a request for a preliminary ruling, thereby complying in full with the requirements of Article 94(a) of the Rules of Procedure of the Court of Justice of the European Union.

[13] Judgment of 11 March 1980, *Foglia* (104/79, EU:C:1980:73, paragraph 11).

[14] Romania refers to paragraphs 47 and 51 of the request for a preliminary ruling, in which the referring court appears to find that the requirement of a direct link between the contested order and the applicants' aims as outlined in their statutes is met.

[15] See, for example, judgment of 11 March 1980, *Foglia* (104/79, EU:C:1980:73).

[16] Judgment of 20 April 2021, *Repubblika* (C-896/19, EU:C:2021:311, paragraph 33 and the case-law cited).

22. As for Romania's assertion that an answer to the first question serves no useful purpose, it is true that the referring court considers that the applicants have *locus standi* in the present case and observes that other Romanian courts have recognised their standing to bring cases with the aim of reinforcing judicial independence. [17] The referring court emphasised, however, that there are also instances where Judgment No 8 has been interpreted so restrictively as to deprive the applicants of standing to maintain such claims. [18] It suffices to note that the defendant relied on Judgment No 8 before the referring court in support of its argument that the applicants lack *locus standi*.

23. I therefore propose that the Court dismiss the various objections taken to its jurisdiction and to the admissibility of the first question.

Substance

24. The first question concerns the relationship between the right to effective judicial protection before national courts under EU law and national rules on *locus standi*. The referring court asks, in essence, whether Article 2 and Article 19(1) TEU, read in the light of Articles 12 and 47 of the Charter, preclude national rules on *locus standi* that require associations of judges to demonstrate that they have a legitimate private interest [19] in actions seeking to annul acts that they allege are incompatible with judicial independence and the rule of law. [20]

25. Neither the request for a preliminary ruling nor the parties' observations make it clear if, and if so, under what conditions, the applicants have *locus standi* at domestic law to maintain their judicial review proceedings before the courts of Romania. The 'Romanian Judges' Forum' Association and Romania submit that, as a matter of Romanian law, the applicants have *locus standi* to maintain the proceedings before the referring court. In accordance with Judgment No 8, the applicants have a legitimate private interest in the present action for judicial review of the contested order, as there is a link between that action and the applicants' aims as laid down in their statutes. The defendant claims that Romanian case-law imposes the additional condition that associations must demonstrate that the act under review affects their existence as legal persons, their property, their operating conditions or the achievement of their aims.

26. The applicants have brought a number of actions before the Romanian courts with the aim of upholding the rule of law, some of which have been the subject of references for a preliminary ruling. [21] It is unclear why the defendant challenges the applicants' *locus standi* at national law in the present case when the applicants have been held to have *locus standi* before the Romanian courts to pursue such actions. The 'Romanian Judges' Forum' Association further observes that the Court of Justice did not object to the admissibility of the reference for a preliminary ruling that gave rise to the *Asociația 'Forumul Judecătorilor din România'* judgment.

[17] See, for example, Judgments No 1475, No 2949 and No 3192.

[18] See, for example, Judgments No 4524 and No 4462.

[19] A legitimate public interest may also be invoked if it is directly linked to a subjective right or to a legitimate private interest.

[20] The first question records that the requirement of a legitimate private interest 'has been excessively restricted'.

[21] See, for example, the cases giving rise to the *Asociația 'Forumul Judecătorilor din România'* judgment and the judgment of 7 September 2023, *Asociația "Forumul Judecătorilor din România"* (C-216/21, EU:C:2023:628).

27. Suffice to state that it is not, in principle, for the Court of Justice to object to the admissibility of a request for a preliminary ruling once that request is deemed to comply with Article 94 of its Rules of Procedure. Questions on the interpretation of EU law referred by a national court enjoy a presumption of relevance. It is for the referring court to define the factual and legislative context, including the admissibility of the action before it, as a matter of domestic law. [22]

The effective judicial protection of individuals' rights under EU law and the procedural autonomy of the Member States

28. Respect for the rule of law is one of the common values enshrined in Article 2 TEU. The second subparagraph of Article 19(1) TEU, which requires Member States to provide remedies sufficient to ensure effective judicial protection in the fields covered by EU law, is a concrete manifestation of that value. The effective judicial protection of individuals' rights under EU law is a general principle which stems from the constitutional traditions common to the Member States, as enshrined in Articles 6 and 13 ECHR and reaffirmed by Article 47 of the Charter. That latter provision must therefore be taken into consideration when interpreting the second subparagraph of Article 19(1) TEU. [23] Under Article 47 of the Charter, everyone whose rights guaranteed by EU law are violated is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. [24]

29. It is for the Member States to establish a system of legal remedies and procedures to ensure effective judicial protection in the fields covered by EU law. Member States have the task of designating the courts and/or institutions they empower to review the validity of national provisions, of prescribing legal remedies and procedures to contest the validity of those provisions and, where an action is well founded, of striking them down and determining the effects of those orders. [25]

30. While Member States must ensure effective judicial protection in the fields covered by EU law, in the absence of EU rules on the matter, EU law does not require Member States to adopt a specific system of remedies or procedural rules governing actions to safeguard rights that individuals derive from EU law, [26] provided that the remedies and procedures available for that purpose comply with the principles of equivalence and effectiveness. Detailed procedural rules governing actions for safeguarding an individual's rights under EU law must therefore be no less favourable than those governing similar domestic actions (principle of equivalence) and must not

[22] See, by analogy, judgment of 6 October 2015, *Târșia* (C-69/14, EU:C:2015:662, paragraphs 12 and 13 and the case-law cited).

[23] Judgments of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)* (C-487/19, EU:C:2021:798, paragraph 102 and the case-law cited), and of 29 March 2022, *Getin Noble Bank* (C-132/20, EU:C:2022:235, paragraph 89).

[24] Judgment of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)* (C-487/19, EU:C:2021:798, paragraph 122). While Article 47 of the Charter helps to ensure respect for the right to effective judicial protection of any individual relying, in a given case, on a right which he or she derives from EU law, the second subparagraph of Article 19(1) TEU seeks to ensure that the system of legal remedies in each Member State guarantees effective judicial protection in the fields covered by EU law irrespective of whether a Member State is implementing EU law within the meaning of Article 51(1) of the Charter: judgment of 20 April 2021, *Repubblika* (C-896/19, EU:C:2021:311, paragraphs 36, 45 and 52). Both the second subparagraph of Article 19(1) TEU and Article 47 of the Charter have direct effect and confer rights on individuals that they may rely on before national courts: judgment of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)* (C-824/18, EU:C:2021:153, paragraphs 145 and 146; 'the *A.B.* judgment').

[25] See, to that effect, judgment of 4 December 2018, *Minister for Justice and Equality and Commissioner of An Garda Síochána* (C-378/17, EU:C:2018:979, paragraph 34).

[26] Judgment of 6 May 2010, *Club Hotel Loutraki and Others* (C-145/08 and C-149/08, EU:C:2010:247, paragraph 74 and the case-law cited).

make it in practice impossible or excessively difficult to exercise rights conferred by EU law (principle of effectiveness). These requirements are also based on the principle of sincere cooperation enshrined in Article 4(3) TEU. [27]

31. Subject to verification by the referring court, since Law No 554/2004 and Judgment No 8 apply equally to actions based on national law and those based on EU law before the Romanian courts, it appears that only the principle of effectiveness arises for consideration in the present case. Pursuant to the second subparagraph of Article 19(1) TEU and Article 47 of the Charter, it is well established that Member States must effectively protect the right to effective judicial protection of the rights that individuals derive from EU law. [28] That requirement reflects and reconciles the principles of subsidiarity and proportionality laid down in Article 5 TEU, the procedural autonomy of the Member States [29] and the right to effective judicial protection. [30]

The right to effective judicial protection must be linked to a right conferred by EU law

32. In the *Inuit* judgment, [31] the Court emphasised that neither the TFEU nor Article 19 TEU require the creation of remedies other than those already laid down by national law in order to ensure the observance of EU law before national courts. The position is otherwise only if the structure of a national legal system does not provide for any remedy that makes it possible, even indirectly, to ensure respect for the rights that individuals derive from EU law. [32] In such cases, national courts must assert jurisdiction to determine an action brought by a person concerned for the purpose of defending rights that EU law guarantees to him or her. [33]

33. In its judgment in *Internationale Fruchtimport Gesellschaft Weichert* v *Commission*, [34] the Court held that the 'right to a court' is not absolute and is subject to, for instance, rules establishing time limits within which an action must be commenced. Those rules must, however,

[27] Save where it provides otherwise, EU law imposes no particular judicial model on the Member States: judgment of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)* (C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 130).

[28] See judgment of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)* (C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 115 and the case-law cited). See also judgment of 22 October 1998, *ICO. N. GE.'90 and Others* (C-10/97 to C-22/97, EU:C:1998:498, paragraph 14). Notwithstanding a considerable overlap in the practical application of the principle of effectiveness and the right to an effective remedy pursuant to Article 47 of the Charter, they are distinct matters with which the Member States must secure full compliance. See Opinion of Advocate General Bobek in *An tAire Talmhaíochta Bia agus Mara, Éire agus an tArd-Aighne* (C-64/20, EU:C:2021:14, point 42). See also judgments of 15 April 2008, *Impact* (C-268/06, EU:C:2008:223, paragraphs 46 to 48); of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council* (C-583/11 P, EU:C:2013:625, paragraphs 103 and 104; 'the *Inuit* judgment'); and of 13 December 2017, *El Hassani* (C-403/16, EU:C:2017:960, paragraphs 26 to 30).

[29] Judgment of 2 March 2021, *Prokuratuur (Conditions of access to data relating to electronic communications)* (C-746/18, EU:C:2021:152, paragraph 42).

[30] The judgment of 15 May 1986, *Johnston* (222/84, EU:C:1986:206, paragraphs 13 to 21), is an early example of vindicating the right to effective judicial protection notwithstanding the existence of national procedural rules that impeded such protection.

[31] Paragraphs 103 and 104.

[32] Judgment of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság* (C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 143 and the case-law cited). See also judgment of 2 June 2022, *Skeyes* (C-353/20, EU:C:2022:423, paragraph 54 and the case-law cited).

[33] The defendant considers that the Romanian rules on *locus standi* in the present case, as interpreted by national case-law, are akin to the rules of standing pursuant to Article 263 TFEU. In my view, that comparison is of no particular relevance to the instant case. The rules of *locus standi* and the requirements, inter alia, of direct and individual concern in Article 263 TFEU are specific to actions for the annulment of acts of the EU institutions before the General Court. Actions in fields covered by EU law before national courts are, in principle, subject to the principle of procedural autonomy. In that context, I refer to Cases T-530/22, T-531/22, T-532/22 and T-533/22 pending before the General Court.

[34] Order of 16 November 2010, *Internationale Fruchtimport Gesellschaft Weichert* v *Commission* (C-73/10 P, EU:C:2010:684, paragraph 53). See also judgment of 28 February 2013, *Review of Arango Jaramillo and Others* v *EIB* (C-334/12 RX-II, EU:C:2013:134, paragraph 43), and judgment of the European Court of Human Rights ('ECtHR') of 23 June 2016, *Baka v. Hungary* (CE:ECHR:2016:0623JUD002026112, § 120).

not restrict a litigant's access in such a way, or to such an extent as to impair the very essence of the right that he or she seeks to assert. Such rules must pursue a legitimate aim and the relationship between the means they employ and the aim they pursue must be reasonable and proportionate.[35] On *locus standi* before national courts, the Court has stated that 'whilst it is, in principle, for national law to determine an individual's standing and legal interest in bringing proceedings, EU law nevertheless requires, in addition to observance of the principles of equivalence and effectiveness, that the national legislation should not undermine the right to effective judicial protection …'.[36]

34. The right to effective judicial protection pursuant to Article 47 of the Charter does not exist in a vacuum and must be linked to a right that EU law confers or to a freedom that it guarantees. Any person may rely on Article 47 of the Charter to challenge before a national court an act a Member State has adopted in its implementation of EU law that adversely affects that individual.[37] It is in that context that Member States enjoy a significant degree of discretion to determine what constitutes an impairment of a right or freedom, the conditions for the admissibility of actions and the bodies before which such actions may be brought.[38]

35. In their action before the referring court, the applicants advance three arguments in order to establish their *locus standi* pursuant to EU law. First, they rely, by analogy, on the right that EU secondary legislation affords to environmental or other associations to bring proceedings. Second, they claim that the Court's case-law provides that an action must be available at national law in order to protect the rule of law and judicial independence. Third, the applicants assert that they enjoy a right of action based upon Article 12 of the Charter.

36. In certain instances, EU secondary legislation specifically affords associations *locus standi* to bring actions before national courts in order to advance the objectives that legislation pursues. In environmental matters, Article 9(2) of the Aarhus Convention grants environmental organisations access to a procedure to review certain specified acts or omissions.[39] In such instances, those organisations are deemed to have a sufficient interest or to have rights capable of being impaired so as to allow them to maintain those actions. Article 9(3) of the Aarhus Convention contemplates Member States adopting laws that afford a broader, or even unrestricted, standing to maintain certain kinds of environmental actions: it nevertheless imposes no obligation to adopt such rules.[40]

37. Pursuant to Article 9(2) of Directive 2000/78/EC,[41] Member States must ensure that associations, which have, in accordance with the criteria that national law lays down, a legitimate interest to ensure compliance with the provisions of that directive, may engage, on behalf or in support of a complainant and with his or her approval, in any judicial and/or administrative procedure available to further the enforcement of obligations under that directive. That

35 See ECtHR, 28 October 1998, *Pérez de Rada Cavanilles v. Spain* (CE:ECHR:1998:1028JUD002809095, § 44).

36 Judgment of 19 March 2015, *E.ON Földgáz Trade* (C-510/13, EU:C:2015:189, paragraph 50). See also judgments of 13 January 2005, *Streekgewes*t (C-174/02, EU:C:2005:10, paragraphs 18 to 21); of 13 March 2007, *Unibet* (C-432/05, EU:C:2007:163, paragraphs 36 et seq.); and of 6 May 2010, *Club Hotel Loutraki and Others* (C-145/08 and C-149/08, EU:C:2010:247, paragraphs 74 to 80).

37 Judgment of 11 November 2021, *Gavanozov II* (C-852/19, EU:C:2021:902, paragraphs 45 and 46 and the case-law cited).

38 See, by analogy, judgments of 12 May 2011, *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289, paragraph 55), and of 23 April 2020, *Associazione Avvocatura per i diritti LGBTI* (C-507/18, EU:C:2020:289, paragraphs 60 to 65).

39 Provided that they fulfil the requirements set out in Article 2(5) of the Aarhus Convention and are part of 'the public concerned' that that provision refers to: judgment of 8 November 2016, *Lesoochranárske zoskupenie VLK* (C-243/15, EU:C:2016:838, paragraph 55).

40 Judgment of 8 November 2022, *Deutsche Umwelthilfe (Approval of motor vehicles)* (C-873/19, EU:C:2022:857, paragraph 49).

41 Council Directive of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

provision does not require Member States to grant associations standing to bring judicial proceedings to enforce obligations where an injured party cannot be identified. Member States may, nevertheless, introduce or maintain provisions that are more favourable to the protection of the principle of equal treatment than those in Directive 2000/78. A Member State may therefore grant associations the right to bring proceedings to enforce obligations under Directive 2000/78 in the absence of an identifiable complainant. [42]

38. No EU secondary legislation affords *locus standi* to associations of judges and prosecutors in actions that they may take before national courts for the purpose of upholding the rule of law in the public interest. EU law neither requires nor prohibits Member States from introducing *locus standi* rules to permit such associations to maintain public interest actions or to introduce an *actio popularis* in the interest of the rule of law and/or judicial independence. [43] In the absence of EU legislation, [44] such associations must rely, in principle, on national rules on *locus standi* and any right to bring such actions that they might afford.

39. The applicants consider that, in accordance with the *A.B.* judgment, they have *locus standi* to uphold the rule of law and judicial independence by taking the proceedings that they commenced before the referring court. In that judgment, the Court held, inter alia, that the second subparagraph of Article 19(1) TEU precludes amendments to national law which deprive national courts of jurisdiction to rule on actions lodged by unsuccessful candidates for judicial positions where those amendments are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of the judges appointed. [45]

40. Unlike the circumstances that gave rise to the *A.B.* judgment, the proceedings pending before the referring court concern the appointment of prosecutors charged with the investigation and the prosecution of judges rather than the appointment of judges. The guarantees of independence and impartiality that EU law demands of judges preclude national rules that may directly influence or indirectly affect judges' decisions, thereby giving rise to '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'. [46] Decisions authorising the initiation of criminal proceedings against judges must thus be adopted or reviewed by a body which itself satisfies the guarantees inherent in effective judicial protection, including that of independence. The mere prospect that an authorisation to prosecute judges might be sought and obtained from a body whose independence is not guaranteed is in and of itself liable to affect judicial independence. [47]

[42] Judgment of 23 April 2020, *Associazione Avvocatura per i diritti LGBTI* (C-507/18, EU:C:2020:289, paragraphs 61 to 63). This could be described as permitting Member States to introduce a form of *actio popularis* into their national legal orders. See also Article 9(3) of the Aarhus Convention.

[43] See, by analogy, judgment of 20 April 2021, *Repubblika* (C-896/19, EU:C:2021:311). Repubblika, an association registered as a legal person in Malta to promote the protection of justice and the rule of law, brought an *actio popularis* against the Prime Minister of Malta concerning, inter alia, the conformity with EU law of the provisions of the Constitution of Malta governing the appointment of members of the judiciary. See, by analogy, judgment of 6 October 2015, *Orizzonte Salute* (C-61/14, EU:C:2015:655, paragraphs 29 to 41). The Court confirmed that in an Article 267 TFEU reference it is for the referring court or tribunal to determine the parties, including any interveners, to the proceedings before it by reference to national rules of procedure.

[44] Neither the Act concerning the conditions of accession nor the CVM Decision envisage the grant of such *locus standi*. See, in particular, Article 39 of that act and Annex IX thereto.

[45] Paragraph 150.

[46] The *Asociația 'Forumul Judecătorilor din România'* judgment, paragraph 197.

[47] Judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21, EU:C:2023:442, paragraphs 100 and 101).

41. There is no indication in the file before the Court that unsuccessful candidates for the position of prosecutor in, inter alia, the criminal investigation section of the PÎCCJ, do not have a legitimate private interest and thus *locus standi* under national law to challenge the contested order and Law No 49/2022, on which that order is based. Of perhaps greater importance is that, whilst the *A.B.* judgment confirms that in certain, limited, instances, unsuccessful candidates for judicial positions whose interests have been adversely affected may have a right under EU law to bring an action before national courts to uphold the rule of law and judicial independence, it does not grant that right to associations of judges or prosecutors such as the applicants.

42. As for Article 12 of the Charter and the freedom of association, the Court held, in *Commission* v *Hungary (Transparency of associations)*,[48] that associations must be able to pursue their activities and operate without unjustified State interference. The file before the Court does not disclose that the applicants or any other association are subject to different or stricter rules on *locus standi* than other physical or legal persons. As point 33 of the present Opinion indicates, the right to a court is not absolute. Subject to verification by the referring court, there appears to be no evidence that the rules on *locus standi* in Romania impair the essence of the applicants' right to a court, that the aim pursued by the national legislation is illegitimate, or that the means used to pursue that aim are disproportionate. The fact that the statutes of the 'Romanian Judges' Forum' Association envisage the initiation of certain legal proceedings in the pursuit of its objectives does not alter this assessment. The activities of an association are, in principle, to be pursued in accordance with the law, including the rules on *locus standi*.

Conclusion

43. In the light of the foregoing considerations, I propose that the Court answer the first question referred by the Curtea de Apel Pitești (Court of Appeal, Pitești, Romania) as follows:

Article 2 and Article 19(1) TEU, read in the light of Articles 12 and 47 of the Charter of Fundamental Rights of the European Union, Annex IX to 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 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 do not preclude national rules on *locus standi* that require associations of judges and prosecutors to demonstrate a legitimate private interest as defined by national law in an action for annulment of acts allegedly incompatible with judicial independence and the rule of law.

[48] Judgment of 18 June 2020 (C-78/18, EU:C:2020:476, paragraphs 112 and 113).