



Reports of Cases

OPINION OF ADVOCATE GENERAL COLLINS

delivered on 26 January 2023¹

Case C-817/21

R.I.

v

**Inspekția Judiciară,
N.L.**

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

(Reference for a preliminary ruling – Rule of law – Article 2 TEU – Article 19(1) TEU – Decision 2006/928/EC – Effective judicial protection – Judicial independence – Disciplinary investigation and proceedings – Inspekția Judiciară (Judicial Inspectorate) – Powers of a Chief Inspector – Treatment of disciplinary proceedings against a Chief Inspector – Role of a Deputy Chief Inspector)

I. Introduction

1. The Inspekția Judiciară (Judicial Inspectorate, Romania) is the judicial body responsible for the conduct of disciplinary investigations and the commencement of disciplinary proceedings against judges and prosecutors in Romania. Under the rules governing the Judicial Inspectorate, the Chief Inspector appoints the Deputy Chief Inspector at his or her sole discretion; the term of office of the Deputy Chief Inspector depends upon and coincides with that of the Chief Inspector; and all Judicial Inspectors are subordinate to the Chief Inspector upon whom the progress of their careers depends.

2. R.I. ('the applicant') made several complaints against judges and prosecutors engaged in criminal proceedings against her to the Judicial Inspectorate. The Judicial Inspectorate dismissed her complaints. The Chief Inspector confirmed the decisions of the Judicial Inspectorate. The applicant proceeded to challenge those decisions before the courts of Romania. In the context of those proceedings the Curtea de Apel București (Court of Appeal, Bucharest, Romania) seeks to ascertain whether a body, such as the Judicial Inspectorate, must offer the same guarantees of independence and impartiality as are required of courts under EU law.² In particular, it asks

¹ Original language: English.

² The guarantees of independence and impartiality required of a court under EU law presuppose rules, particularly as regards its composition and the appointment, length of service and grounds for abstention, rejection and dismissal of its members, 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 20 April 2021, *Repubblika* (C-896/19, EU:C:2021:311, paragraph 53).

whether, in the light of the rules described above, EU law precludes national legislation or regulations that make the Deputy Chief Inspector of the Judicial Inspectorate responsible for overseeing the investigation of complaints made against the Chief Inspector of the Judicial Inspectorate and any disciplinary investigations and proceedings that might arise therefrom.

II. Legal context

A. European Union law – Decision 2006/928/EC

3. 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 corruption³ has its origins in two perceived risks. The first was that of a serious breach of the functioning of the internal market as a consequence of Romania's failure to honour commitments it had undertaken in the context of its accession to the European Union. The second risk consisted in serious shortcomings by Romania with regard to its compliance with EU law in the area of freedom, security and justice. In order to resolve those deficiencies, the Annex to Decision 2006/928 prescribed benchmarks for the reform of the judicial system and the fight against corruption. Those benchmarks aim at ensuring Romania's compliance with the value of the rule of law, as set out in Article 2 TEU. Romania is required to take appropriate measures to meet those benchmarks, taking due account, by reference to the principle of sincere cooperation in Article 4(3) TEU, of reports drawn up by the European Commission on the basis of Decision 2006/928 and, in particular, the recommendations contained therein.⁴

4. Article 1 of Decision 2006/928 thus provides that, commencing in 2007, Romania shall, by 31 March of each year, report to the Commission on the progress made in addressing each of the benchmarks in the Annex thereto. The Commission may, at any time, provide technical assistance through different activities or gather and exchange information on the achievement of those benchmarks and may organise expert missions to Romania for that purpose. The Romanian authorities must afford the Commission any necessary support in that context. The Annex to Decision 2006/928 includes amongst the benchmarks to which Article 1 refers:

'1. Ensure a more transparent, and efficient judicial process notably by enhancing the capacity and accountability of the Consiliul Superior al Magistraturii [(“Supreme Council of the Judiciary”)]. Report and monitor the impact of the new civil and penal procedures codes.

...

3. Building on progress already made, continue to conduct professional, non-partisan investigations into allegations of high-level corruption.

³ OJ 2006 L 354, p. 56.

⁴ 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, paragraphs 158 and 178). See also, judgment of 21 December 2021, *Euro Box Promotion and Others* (C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraphs 155 to 175). In paragraph 223 of the latter judgment, the Court stated that it follows, inter alia, from the benchmarks in question that the existence of an impartial, independent and effective judicial system is of particular importance in the fight against corruption, in particular high-level corruption. The Court has ruled that the benchmarks have direct effect. 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 249).

4. Take further measures to prevent and fight against corruption, in particular within the local government.’

B. Romanian law

1. Law No 317/2004

5. Article 44 of Legea nr. 317/2004 privind Consiliul Superior al Magistraturii (Law No 317/2004 on the Supreme Council of the Judiciary) of 1 July 2004,⁵ as amended and completed (‘Law 317/2004’), provides:

‘(1) The Supreme Council of the Judiciary shall, through its sections, perform the role of adjudicating body with regard to the disciplinary liability of judges and prosecutors for the acts provided for in Law No 303/2004, republished, as amended and supplemented.

...

(3) Disciplinary proceedings in cases of offences by judges, prosecutors and assistant judges shall be initiated by the Judicial Inspectorate through Judicial Inspectors.

...

(6) In order for disciplinary proceedings to be initiated, it is mandatory for the Judicial Inspectorate to conduct a disciplinary investigation.’

6. Article 45 of Law 317/2004 states:

‘(1) The Judicial Inspectorate may initiate a case of its own motion or a written and reasoned complaint may be lodged with it by any interested person, including the Supreme Council of the Judiciary, as regards disciplinary offences by judges and prosecutors.

...

(4) If preliminary enquiries show that there is no evidence of a disciplinary offence, no further action shall be taken as regards the complaint and the outcome shall be communicated directly to the person who lodged the complaint and to the person concerned by the complaint. The decision to discontinue the case shall be subject to confirmation by the Chief Inspector. The decision may be overruled once only by the Chief Inspector, who, by a written and reasoned decision, may order supplementary enquiries.

...’

7. By Article 45¹(1) of Law 317/2004:

‘The person who lodged the complaint may file an objection with the Chief Inspector against the decision to discontinue the case referred to in Article 45(4) within 15 days of notification of that

⁵ Republished in the *Monitorul Oficial al României*, Part I, No 628 of 1 September 2012.

decision. The objection shall be dealt with within 20 days of the date of its being registered with the Judicial Inspectorate’.

8. Article 47 of Law 317/2004 provides that:

‘(1) Upon completion of the disciplinary investigation, the Judicial Inspector may, by a written and reasoned decision, order:

- (a) that the complaint be upheld, by initiating disciplinary proceedings and referring the matter to the relevant section of the Supreme Council of the Judiciary;
- (b) that the complaint be rejected if the [Judicial Inspector] finds, following a disciplinary investigation, that the conditions for initiating the proceedings have not been met.

...

(3) The decision of the Judicial Inspector shall be subject to confirmation by the Chief Inspector. The Chief Inspector may order the Judicial Inspector to supplement the disciplinary investigation. The Judicial Inspector shall carry out that supplementary investigation within 30 days of its being ordered by the Chief Inspector.

(4) The decision of the Judicial Inspector may be overruled once only, in writing and with reasons, by the Chief Inspector, who may order, by a written and reasoned decision, a supplementary disciplinary investigation. After the disciplinary investigation has been completed, the Chief Inspector may order, in writing and with reasons, one of the courses of action provided for in paragraph 1(a) or (b).

...’

9. Article 65(2) to (4) of Law 317/2004 specifies that:

‘(2) The Judicial Inspectorate shall be led by a Chief Inspector-judge, appointed following a competition organised by the [Supreme Council of the Judiciary, Romania]; he or she shall be assisted by a deputy Chief Inspector-prosecutor, designated by the Chief Inspector.

(3) The Judicial Inspectorate shall act in accordance with the principle of operational independence as regards the Supreme Council of the Judiciary, the courts, the public prosecutors’ offices attached thereto and the other public authorities, exercising its powers of analysis, enquiry and oversight in specific areas of activity, pursuant to the law and in order to ensure compliance with it.

(4) The rules for carrying out the work of inspection shall be approved by the Chief Inspector by way of regulation.’

10. By Article 66(3) of Law 317/2004:

‘The organisation and operation of the Judicial Inspectorate and the organisational structure and functions of its departments shall be laid down by a regulation approved by an order of the Chief Inspector ...’

11. Under Article 69(1) and (4) of Law 317/2004:

‘(1) The Chief Inspector shall have the following main duties:

(a) he or she shall designate, from among the Judicial Inspectors, the management team – the deputy Chief Inspector, the heads of the directorates – on the basis of a procedure which shall include the assessment of management plans specific to each post, in such a way as to ensure managerial cohesion, professional competence and effective communication. Their term of office shall end at the same time as that of the Chief Inspector;

(a¹) he or she shall perform the duties of managing and organising the activity of the Judicial Inspectorate;

(a²) he or she shall take measures in order to coordinate the work of the other members of staff of the Judicial Inspectorate who are not Judicial Inspectors;

...

(g) he or she shall appoint, in accordance with the law, the Judicial Inspectors and the other categories of the staff of the Judicial Inspectorate, and order the modification, suspension and termination of their employment or service relations;

(h) he or she shall determine the individual duties and tasks of the staff placed under his or her authority by approving their job descriptions;

(i) he or she shall, in accordance with the law, conduct appraisals of the staff placed under his or her authority;

...

(4) The deputy Chief Inspector shall act as the replacement *ex officio* of the Chief Inspector; he or she shall assist that person in reviewing and issuing opinions on the acts and decisions adopted by the Judicial Inspectors and shall perform all the other duties determined by the Chief Inspector’.

12. Article 70 of Law 317/2004 states:

‘(1) The inspectors of the Judicial Inspectorate shall be appointed by the Chief Inspector following a competition organised by the Judicial Inspectorate ...

(2) That competition shall consist of a written test and an interview ... The regulation on the organisation and conduct of the competition shall be approved by order of the Chief Inspector and shall be published in the *Monitorul Oficial al României*, Part I.’

13. By virtue of Article 71(2) of Law 317/2004 :

‘The provisions on penalties, disciplinary offences and disciplinary proceedings shall apply *mutatis mutandis* to the Judicial Inspectors’

14. According to Article 72 of Law 317/2004 :

‘(1) Judicial Inspectors shall perform their work independently and impartially.

...

15. Article 77 of Law 317/2004 provides that:

‘(1) The professional activity of the Judicial Inspectors shall be assessed each year by a commission composed of the Chief Inspector and of two other members elected by the general assembly of the Judicial Inspectors, by means of the evaluation: “very good”, “good”, “satisfactory” or “unsatisfactory”.

...

(5) A Judicial Inspector who receives an evaluation of “unsatisfactory” or two consecutive evaluations of “satisfactory” shall be dismissed from the position of Judicial Inspector.

(6) The criteria for assessing the professional activity of the Judicial Inspectors and the assessment procedure shall be laid down by the Regulation on the organisation and operation of the Judicial Inspectorate.’

2. Regulations adopted by the Chief Inspector of the Judicial Inspectorate

16. In 2018, the Chief Inspector of the Judicial Inspectorate adopted three regulations⁶ in the exercise of the power that Article 66(3) of Law 317/2004 conferred upon him.

17. Under Ordinul nr. 131/2018 al inspectorului-șef al Inspecției Judiciare privind aprobarea Regulamentului de organizare și desfășurare a concursului pentru numirea în funcție a inspectorilor judiciari (Order No 131/2018 of the Chief Inspector of the Judicial Inspectorate approving the regulations on organisation and conduct of competitions for the appointment of Judicial Inspectors),⁷ the Chief Inspector appoints the Judicial Inspectors following a competition in the form of a written test and an interview. The Chief Inspector presides over the interview board, of which he or she is a member, together with the directors of the Judicial Inspectorate’s directorates and a psychologist, appointed by the Chief Inspector, who carries out advisory functions.

18. By Ordinul nr. 134/2018 al inspectorului-șef al Inspecției Judiciare privind aprobarea Regulamentului de organizare și funcționare a Inspecției Judiciare (Order No 134/2018 of the Chief Inspector of the Judicial Inspectorate approving the regulations on the organisation and operation of the Judicial Inspectorate),⁸ the Chief Inspector appoints, from among the Judicial Inspectors, the Judicial Inspectorate’s management team. This consists of the Deputy Chief Inspector and the directors of the Judicial Inspectorate’s directorates. The appointment procedure for these posts consists of the Chief Inspector conducting interviews with the candidates by reference to a management project. A board consisting of the Chief Inspector and two Judicial Inspectors elected by the general assembly of Judicial Inspectors assesses the performance of the Judicial Inspectorate’s staff. The criteria for that assessment include an evaluation of the candidates’ conduct and their communications with the Chief Inspector.

⁶ Also collectively referred to as ‘the 2018 Regulations’.

⁷ *Monitorul Oficial al României*, Part I, No 1038 of 6 December 2018.

⁸ *Monitorul Oficial al României*, Part I, No 1049 of 11 December 2018.

19. Ordinul nr. 136/2018 al inspectorului-șef al Inspecției Judiciare de aprobare a Regulamentului privind normele de efectuare a lucrărilor de inspecție (Order No 136/2018 of the Chief Inspector of the Judicial Inspectorate approving regulations laying down rules for the conduct of inspection activities) of 11 December 2018⁹ sets out the methodology for the analysis, verification and supervision of disciplinary investigations of judges and prosecutors. It governs, inter alia, the procedure for dealing with complaints, the designation of inspectors, the establishment, calculation and extension of time limits and the service of certain procedural documents.

III. The dispute in the main proceedings, the question referred for a preliminary ruling and the procedure before the Court

20. The applicant is a party in several criminal proceedings before the courts of Romania. She filed a number of disciplinary complaints with the Judicial Inspectorate against certain of the judges and prosecutors engaged in those proceedings. The request for a preliminary ruling arose out of proceedings before the Judecătoria Bolintin-Vale (Court of First Instance, Bolintin-Vale, Romania) and the Tribunalul Giurgiu (Regional Court, Giurgiu, Romania). The Judicial Inspectorate adopted a number of decisions with respect to the applicant's complaints,¹⁰ of which the Chief Inspector confirmed a number.

21. The applicant brought an action against a decision of the Judicial Inspectorate of 2 July 2018 that the Chief Inspector had confirmed.¹¹ On 27 September 2019, the Curtea de Apel București (Court of Appeal, Bucharest) annulled the decision of 2 July 2018 on the basis that the Judicial Inspectorate had failed to examine the applicant's arguments properly. It sent the case file back to the Judicial Inspectorate for further assessment.¹² On 29 September 2020, the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania) declared inadmissible the Judicial Inspectorate's appeal against that judgment.

22. On 11 March 2021, the Judicial Inspectorate adopted a new decision by which it again dismissed the applicant's disciplinary complaint.¹³ On 31 May 2021, the Chief Inspector rejected the applicant's appeal against that decision. The applicant brought an action for the annulment of the Chief Inspector's decision, which is pending before the Curtea de Apel București (Court of Appeal, Bucharest).¹⁴

23. In her complaints to the Judicial Inspectorate and in the present case, the applicant submitted that the complaint relating to Case No 6172/2/2018 had been addressed in a dilatory fashion. As a consequence, the statutory time limit within which disciplinary proceedings could have been brought against the individual with respect to whom she had lodged her complaint had expired. She alleged that the Chief Inspector was responsible for that delay.

24. On 29 November 2019, the applicant made a complaint to the Ministerul Justiției (Minister for Justice, Romania) that her constitutional rights had been infringed. She referred to a 'group' of persons, including the Chief Inspector, 'with important functions which allegedly contributed to

⁹ Not published. See also, Article 65(4) of Law 317/2004. Order No 131/2018 and Order No 134/2018 were repealed and replaced in 2021. The referring court indicates that the initial orders apply to the present case *ratione temporis*.

¹⁰ Although it is not entirely clear from the request for a preliminary ruling, it appears that the Judicial Inspectorate dismissed the applicant's complaints.

¹¹ Decision No 3935/IJ/1000/DIP/2018.

¹² Case No 6172/2/2018.

¹³ Decision No 654.

¹⁴ Case No 4402/2/2021.

the criminal investigation carried out against her or to the infringement of her procedural rights.’ The applicant alleged, *inter alia*, that the Chief Inspector ‘is a judge ... who lives in the city of Giurgiu and who, throughout his career, performed his duties in a manner which had a significant impact on the exercise of justice in the Giurgiu region and at national level’. After listing those duties, the applicant claimed that, in her case, ‘the decisions [of the Judicial Inspectorate] led to the concealment of abuses and illegalities committed by the Public Prosecutor’s Office in Bolintin-Vale, Department of Giurgiu’. The applicant also claimed that ‘the [Chief Inspector of the Judicial Inspectorate] must be held responsible for severely undermining confidence in the justice system, since, in his capacity as head and supervisor of ... that body, which play a key role in the judicial system, he was required to ensure that the checks carried out by [that body] fully comply with the legal provisions.’

25. The Minister for Justice took the view that it had no jurisdiction to deal with disciplinary matters of that nature and transferred the applicant’s complaint to the Judicial Inspectorate.¹⁵

26. On 16 February 2021, the applicant filed a separate complaint with the Judicial Inspectorate which focused exclusively upon the alleged actions of the Chief Inspector. The applicant criticised, *inter alia*, the absence of any real investigation of her complaints, the late investigation of her complaint of 29 November 2019 against the Judicial Inspectorate and its Chief Inspector, the Chief Inspector’s failure to abstain from the investigation of that complaint despite him being the object thereof, and the Judicial Inspectorate’s failure to comply with the judgment of the Curtea de Apel București (Court of Appeal, Bucharest) of 27 September 2019. The Judicial Inspectorate dismissed that complaint on 17 March 2021.¹⁶ The Deputy Chief Inspector dismissed an appeal against that decision on 11 May 2021.¹⁷

27. On 31 May 2021, the applicant brought an action before the referring court seeking, *inter alia*, the annulment of the decisions of 17 March 2021 and 11 May 2021 and damages for the alleged harm thereby caused to her. She alleged that the Deputy Chief Inspector, P.M., had failed to comply with the judgment of 27 September 2019 of the Curtea de Apel București (Court of Appeal, Bucharest) since she had not carried out the investigation which that judgment had directed. The applicant also claims that the Judicial Inspectorate and its Chief Inspector, N.L., systematically failed to adequately address her complaints against certain judges. The applicant complains of at least three systemic irregularities in the Judicial Inspectorate’s organisation and operation that ensured that her complaints had not been addressed in an impartial manner. First, the Chief Inspector appointed, evaluated and could ultimately dismiss the Judicial Inspectors responsible for the conduct of disciplinary investigations into the Chief Inspector’s behaviour. Second, the Chief Inspector appoints the Deputy Chief Inspector, who confirmed the decision to dismiss the applicant’s complaint and who also holds a position that is linked to and dependent on the Chief Inspector’s term of office. Third, the Chief Inspector adopts the internal regulations governing the organisation and operation of the Judicial Inspectorate.

¹⁵ The Judicial Inspectorate registered the complaint on 29 January 2020.

¹⁶ Decision No 728/2021.

¹⁷ Decision No C21-723.

28. In the light of the concerns raised regarding the Judicial Inspectorate's organisation and operation and of its Chief Inspector's accountability in the context of disciplinary investigations and proceedings, the Curtea de Apel București (Court of Appeal, Bucharest) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 2 and the second subparagraph of Article 19(1) [TEU], [Decision 2006/928], and the guarantees of independence and impartiality imposed under EU law, be interpreted as precluding national legislation which allows the Chief Inspector of the Judicial Inspectorate to issue administrative acts of a normative nature (subordinate to the law) and/or an individual nature by which he or she decides autonomously on the organisation of the institutional framework of the Judicial Inspectorate for the selection of Judicial Inspectors and the assessment of their activity, the conduct of the inspection activities, and the appointment of the Deputy Chief Inspector, where, under organic law, those persons alone may carry out, approve or reject acts of disciplinary investigation in respect of the Chief Inspector?'

29. The referring court applied for the expeditious treatment of its request for a preliminary ruling pursuant to, *inter alia*, Article 23a of the Statute of the Court of Justice of the European Union. By decision of 1 February 2022, the President of the Court rejected that request.

30. The applicant, the Judicial Inspectorate¹⁸ and the Commission submitted written observations.

IV. Consideration of the question referred

A. Admissibility

31. The Judicial Inspectorate claims that the request for a preliminary ruling is inadmissible. First, it considers that the referring court seeks an interpretation of Law 317/2004 rather than a ruling on the interpretation of the Treaties or on the validity and/or interpretation of an act of an EU institution pursuant to Article 267 TFEU. Second, the Judicial Inspectorate considers that, absent a finding that a provision of national law is contrary to EU law, the claim that the Chief Inspector's powers infringe the independence of Judicial Inspectors is unfounded.

32. I propose that the Court dismiss the Judicial Inspectorate's first objection to the admissibility of the question asked by the referring court. It is clear from the text of the referring court's question that it seeks a ruling on the interpretation of EU, not Romanian, law. The Judicial Inspectorate's second objection to admissibility goes to the substance of the question referred. By its very nature, such an objection cannot justify a finding that the request for a preliminary ruling is inadmissible.¹⁹

¹⁸ The Judicial Inspectorate was represented by its Chief Inspector, N.L.

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

B. Substance

1. Preliminary observations

33. The request for a preliminary ruling focuses on the organisation and operation of the Judicial Inspectorate, the extensive powers vested in its Chief Inspector²⁰ and the latter's alleged lack of accountability in disciplinary investigations and in proceedings brought against him or her.²¹ The referring court observes that the internal regulations the Chief Inspector²² adopts govern the organisation and operation of the Judicial Inspectorate. Judicial Inspectors' decisions to accept or to dismiss disciplinary complaints and to open disciplinary investigations and proceedings are also subject to the Chief Inspector's confirmation.²³ The referring court queries whether complaints against the Chief Inspector can be treated in an objective and impartial manner since they are investigated by Judicial Inspectors who are appointed, evaluated and subject to dismissal by that individual.²⁴ The Deputy Chief Inspector, who is directly appointed by and assists the Chief Inspector and whose term of office ends at the same time as his or hers is, moreover, responsible for the review of decisions on complaints against the Chief Inspector.

34. The Judicial Inspectorate is an independent judicial body with separate legal personality within the Supreme Council of the Judiciary.²⁵ While the Supreme Council of the Judiciary acts as an 'adjudicator' in disciplinary cases,²⁶ the Judicial Inspectorate is responsible for the conduct of disciplinary investigations and the commencement of disciplinary proceedings against judges and prosecutors. The Judicial Inspectorate thus exercises wide investigative powers in the context of disciplinary proceedings against members of the judiciary.²⁷

35. Commission reports drawn up under Article 2 of Decision 2006/928 refer to the Judicial Inspectorate's institutional structure and activity.²⁸ The 2021 Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism,²⁹ observes that '[i]n recent years, judicial institutions, including the [Supreme Council of the Judiciary] itself, have highlighted concerns with the lack of accountability of the Judicial [Inspectorate], citing the high proportion of cases brought by the

²⁰ 'The [Chief Inspector] has key powers he appoints the inspectors with management functions; manages the inspection's activity and disciplinary procedures; organises the allocation of files; sets out the specific areas of activity in which review actions are exercised; is the principal issuer of instructions; and, has the capacity to initiate disciplinary proceedings himself.' Opinion of Advocate General Bobek in *Asociația 'Forumul Judecătorilor din România' and Others* (C-83/19, C-127/19, C-195/19, C-291/19 and C-355/19, EU:C:2020:746, point 267).

²¹ The present case does not invoke the possibility of bringing civil or criminal proceedings against either the Judicial Inspectorate or its Chief Inspector.

²² See, for example, Article 66(3) of Law 317/2004.

²³ See, for example, Article 45(4) and Article 47(3) of Law 317/2004.

²⁴ See Article 69(1)(g), Article 70 and Article 77 of Law 317/2004. Notwithstanding the plenary powers vested in the Chief Inspector of the Judicial Inspectorate, Article 72(1) of Law 317/2004 requires Judicial Inspectors to act in an independent and impartial manner.

²⁵ See Article 65(1) and (3) of Law 317/2004.

²⁶ In accordance with Article 133(1) of the Constituția României (Romanian Constitution), the Supreme Council of the Judiciary is the guarantor of judicial independence. Article 134(2) of the Romanian Constitution provides that the Supreme Council of the Judiciary performs 'the role of adjudicating body with regard to the disciplinary liability of judges and prosecutors.' See also Article 44(1) of Law 317/2004. Decisions of the Supreme Council of the Judiciary in disciplinary cases may be appealed to a five-judge formation of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice). The Annex to Decision 2006/928 refers expressly to the Supreme Council of the Judiciary's capacity and accountability in the context of ensuring a more transparent and efficient judicial process.

²⁷ See Article 44(6) of Law 317/2004. See also, 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 182).

²⁸ Notably those adopted in 2010, 2011, 2017 to 2019 and 2021.

²⁹ COM(2021) 370 final.

[Judicial Inspectorate] eventually rejected in court, the concentration of all decision-making with the Chief Inspector and the limits on the oversight powers of the [Supreme Council of the Judiciary].’ In that regard, ‘the Chief Inspector can only be subject to an external audit which is ordered by the [Judicial Inspectorate] itself, and then the audit report is examined only by a selected handful of members in the Council.’

36. Despite the Commission’s concerns, there is no indication in the file before the Court that that institution has initiated infringement proceedings against Romania with regard to the Judicial Inspectorate’s organisation and operation. Nor is there any indication that Romania has adopted measures to address the concerns the Commission raised in the aforementioned reports.

37. The referring court makes passing reference to the serious allegations the applicant has made against the Judicial Inspectorate, its Chief Inspector and certain judges and prosecutors which, if upheld, would cast doubt on their compliance with the second subparagraph of Article 19(1) TEU and Decision 2006/928.³⁰ It instead raises concerns of a systemic nature about the Judicial Inspectorate’s institutional structure and its lack of accountability. In particular, it has concerns as to the Chief Inspector’s unfettered power to adopt all decisions concerning the organisation and operation of the Judicial Inspectorate, the selection, evaluation and dismissal of Judicial Inspectors, including the Deputy Chief Inspector, and to approve and veto all individual decisions the Judicial Inspectorate adopts.

2. Analysis

38. While the organisation of justice, including the rules governing disciplinary proceedings against judges, falls within the competence of the Member States, the exercise of that power must comply with EU law. The requirement of an independent judiciary pursuant to EU law means that the disciplinary regime applicable to judges must provide the necessary guarantees in order to prevent any risk of it being used as a system of political control over their activities. Rules that define the conduct which constitutes a disciplinary offence and the penalties applicable thereto; provide for the involvement of an independent body in accordance with a procedure that fully safeguards the rights enshrined in Articles 47 and 48 of the Charter of Fundamental Rights of the European Union, in particular those of the defence; and which lay down the possibility to challenge disciplinary bodies’ decisions are an essential safeguard of judicial independence.³¹

39. The Court has also held that since the prospect of opening a disciplinary investigation is liable to exert pressure on persons charged with adjudicating upon disputes, it is essential that a body competent to conduct investigations and to bring disciplinary proceedings should act objectively and impartially in the performance of its duties. To that end it must be free from any direct or indirect external influence.³² A disciplinary regime must not be diverted from its legitimate purpose.³³

40. In order to ensure judicial independence, the Court’s case-law emphasises the guarantees afforded to judges subject to disciplinary investigations and proceedings. The same guarantees of objectivity and impartiality apply irrespective as to whether a judge is subject to disciplinary

³⁰ See, for example, point 24 of the present Opinion.

³¹ 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 198).

³² 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 199).

³³ Judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)* (C-430/21, EU:C:2022:99, paragraph 84).

proceedings or, as in the case before the referring court, complaints against judges or prosecutors are dismissed and disciplinary investigations and proceedings not initiated. In that regard, it must be emphasised that those guarantees ensure that the public maintain the perception, vital in a democratic society, that the judiciary is independent and impartial. The undermining of public trust and confidence due to the conduct of disciplinary investigations and proceedings in an unprofessional or a biased manner, as per the applicant's allegations, can result in a de facto denial of effective legal protection in the fields covered by EU law pursuant to the second subparagraph of Article 19(1) TEU.³⁴

41. In the judgment in *Asociația 'Forumul Judecătorilor din România' and Others*, the Court held that Romanian legislation on the interim appointment to the management positions of the Judicial Inspectorate falls within the scope of Decision 2006/928 and must comply with EU law requirements, in particular, the rule of law.³⁵ Given the extent of the Judicial Inspectorate's powers to conduct disciplinary investigations and to bring disciplinary proceedings against judges and prosecutors, those requirements equally apply to the interim appointment of its Chief Inspector and to the organisation and operation of the Judicial Inspectorate. Since, moreover, the law confers extensive powers and prerogatives on the Chief Inspector,³⁶ he or she is also obliged to meet those same requirements.

42. It is clear from the file before the Court that the Judicial Inspectorate's decisions to dismiss a complaint against a judge or prosecutor may be appealed to the Curtea de Apel București (Court of Appeal, Bucharest) and in turn to the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice).³⁷ The availability of such proceedings is essential³⁸ in order to safeguard public trust and confidence in the disciplinary regime. Legal proceedings by complainants to challenge the decisions of a disciplinary body may nevertheless be insufficient to address systemic concerns raised in the context of the operation of that disciplinary regime. The applicant claimed before the referring court that, due to the expiration of the time limits within which effective disciplinary action could have been taken, the delays and the deficiencies in the treatment of her complaints had prevented her from obtaining any benefit from the disciplinary regime and from availing of any legal remedies thereunder. The referring court emphasises that it is not required to rule on this issue at this stage of the proceedings before it. It simply points to the causal link between the applicant's claims and interpretation of EU law that it seeks from the Court.³⁹

³⁴ See, by analogy, 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, paragraphs 196, 197 and 216). The Court held in paragraph 216 of that judgment that the section within the Public Prosecutor's Office responsible for investigating offences committed by judges and prosecutors is capable of prejudicing the trust which justice in a democratic society governed by the rule of law must inspire in individuals, in so far as its autonomous structure could, depending on the rules governing the powers, composition and operation of such a structure, and the relevant national context, be perceived as seeking to establish an instrument of pressure and intimidation with regard to those judges, and thus lead to an appearance of a lack of independence or impartiality on their part. See also, 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 226).

³⁵ 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, paragraphs 182 and 184). The national legal provisions at issue in the present case apply to the Romanian judiciary as a whole and, therefore, to the ordinary courts called upon to rule on questions relating to the application or interpretation of EU law. Since the latter, as 'courts or tribunals' within the meaning of EU law, act within the Romanian judicial system in the 'fields covered by EU law', pursuant to the second subparagraph of Article 19(1) TEU, they must meet the requirements of effective judicial protection.

³⁶ The Judicial Inspectorate does not deny that the Chief Inspector enjoys such extensive powers. Rather, the Judicial Inspectorate emphasises that Law 317/2004 specifically confers those powers upon him and that their exercise is circumscribed in a precise manner. The Judicial Inspectorate claims that the applicant in fact challenges the institutional strengthening of the Judicial Inspectorate by Law 317/2004 and its increased independence vis-à-vis the Supreme Council of the Judiciary.

³⁷ These courts may either uphold or annul decisions of the Judicial Inspectorate to dismiss complaints.

³⁸ And required under EU law. See point 38 of the present Opinion.

³⁹ As set out in point 22 of the request for a preliminary ruling.

43. The applicant and the Commission consider that the Romanian Government's extension of the Chief Inspector's appointment on an interim basis in 2018,⁴⁰ in disregard of the ordinary appointment procedure, gave rise to concerns that the powers and functions of the Judicial Inspectorate may be used to exert pressure on, or political control over, the activity of judges and prosecutors.⁴¹ The present proceedings thus ought to take that extension into consideration.

44. The General Assembly of the Supreme Council of the Judiciary appointed the Chief Inspector of the Judicial Inspectorate, N.L., from 1 September 2015. Notwithstanding the expiry, on 31 August 2018, of his three-year term of office, the Romanian Government extended that appointment on an interim basis from 1 September 2018 to 14 May 2019. At the time the request for a preliminary ruling was made, on 10 December 2021, the Chief Inspector remained in office following his reappointment by the Supreme Council of the Judiciary for a second term.⁴² More importantly, on 7 December 2021, in a final judgment, the Curtea de Apel Craiova (Court of Appeal, Craiova, Romania)⁴³ held that the interim extension of the Chief Inspector's appointment did not give rise to doubts that political pressure would be exerted on judges and on prosecutors.⁴⁴ The relevance to the present proceedings of the manner whereby the Chief Inspector's appointment was extended on an interim basis from 1 September 2018 to 14 May 2019 is thus not readily apparent.

45. The applicant claims that the 2018 Regulations are invalid as a matter of EU law as the Chief Inspector, N.L., adopted them at a time when his appointment on an interim basis had been extended unlawfully. The Judicial Inspectorate submits that the Court's judgment in *Asociația 'Forumul Judecătorilor din România' and Others*⁴⁵ did not rule on the validity of those regulations. It furthermore claims that, in order to ensure legal certainty, the 2018 Regulations must be deemed to be valid.

46. Given the tenor of judgment No 3014/2021 of Curtea de Apel Craiova (Court of Appeal, Craiova), to which point 44 of the present Opinion refers, the claim that the 2018 Regulations are invalid since the Chief Inspector, N.L., had adopted them during the period of his interim appointment cannot prosper.

47. It must furthermore be emphasised that Article 66(3) of Law 317/2004 clearly provides for the Chief Inspector of the Judicial Inspectorate to adopt regulations governing the organisation and operation of that body. Article 45 and 45¹(1)(a) of Law 317/2004 also grant the Chief Inspector of the Judicial Inspectorate extensive powers to approve and to veto that body's individual decisions taken in respect of disciplinary investigations and proceedings.⁴⁶

⁴⁰ The legal basis for that interim extension was Ordonanța de Urgență a Guvernului nr. 77/2018 (Government Emergency Ordinance No 77/2018) of 5 September 2018 (*Monitorul Oficial al României*, Part I, No 767 of 5 September 2018) ('Ordinance No 77/2018').

⁴¹ In 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, paragraphs 206 and 207), the Court emphasised that this was ultimately a matter for the referring court to ascertain.

⁴² It would appear, subject to verification by the referring court, that the Chief Inspector, N.L., has retired and that he and the Deputy Chief Inspector, P.M., have been replaced since this request for a preliminary ruling was lodged at the Court Registry.

⁴³ That court had jurisdiction to rule in the main proceedings the subject of the preliminary reference in Case C-83/19. See judgment No 3014/2021 (available at <http://rolii.ro/hotarari/61d2683fe4900928170001a5>).

⁴⁴ The precise tenor of that judgment, which postdates the present request for a preliminary ruling, is not before the Court and it is thus a matter for the referring court to verify.

⁴⁵ 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).

⁴⁶ See Article 69 of Law 317/2004.

48. The fact that the Chief Inspector plays a decisive role in the management and organisation of the Judicial Inspectorate, may adopt internal regulations and approve and veto all of the Judicial Inspectorate's individual decisions does not, in the absence of other factors, necessarily give rise to reasonable doubts that the Judicial Inspectorate's powers and functions are in fact used as an instrument to exert pressure on, or political control over, judicial activity, or to undermine, even indirectly, public trust and confidence in the judiciary.⁴⁷

49. Given the Chief Inspector's extensive powers, his or her decisive role within the Judicial Inspectorate and the absence of any internal mechanism⁴⁸ to restrain an inappropriate use of those powers, the Judicial Inspectorate⁴⁹ must treat disciplinary complaints against him or her with the utmost professionalism and impartiality in order to ensure public confidence in that body and in the entire judiciary.

50. As the Judicial Inspectorate claims, it may be unnecessary to establish a separate body to deal with disciplinary complaints against the Chief Inspector of the Judicial Inspectorate.⁵⁰ That observation is subject to the proviso that there are effective and transparent procedures to handle all such complaints in an impartial manner.⁵¹ In that context, the fact that the Chief Inspector of the Judicial Inspectorate appoints the Deputy Chief Inspector of the Judicial Inspectorate at his or her sole discretion⁵² may be of concern since the Deputy Chief Inspector is charged with deciding whether to investigate complaints and to bring disciplinary proceedings against the Chief Inspector.

51. Prior to the adoption of Legea nr. 234/2018 (Law No 234/2018) of 4 October 2018⁵³ ('Law 234/2018'), the Supreme Council of the Judiciary appointed both the Chief Inspector and the Deputy Chief Inspector following a similar procedure and the Deputy Chief Inspector's term of office was independent of that of the Chief Inspector. Subject to verification by the referring court, it appears that, since the adoption of Law 234/2018, the Deputy Chief Inspector of the Judicial Inspectorate is appointed at the sole discretion of the Chief Inspector and that his or her term of office depends upon, and coincides with, that of the Chief Inspector.⁵⁴ The laws and the regulations governing the Judicial Inspectorate do not provide any internal mechanism to review allegations of an inappropriate use of the Chief Inspector's extensive powers, other than by way of disciplinary procedures. Taking all of these circumstances into account, I consider that Law 234/2018 may undermine considerably the public perception that the Deputy Chief Inspector

⁴⁷ The Judicial Inspectorate claims that the 2018 Regulations are necessary to ensure its independence and its operation in a consistent fashion. It further observes that Chapter VII of Law 317/2004 contains detailed rules on the Judicial Inspectorate's operation, the appointment of the Chief Inspector and his or her term of office, and the appointment of personnel occupying management positions in the Judicial Inspectorate.

⁴⁸ It appears, subject to verification by the referring court that, pursuant to Article 67(5) of Law 317/2004, the General Assembly of the Supreme Council of the Judiciary may remove the Chief Inspector from office where he or she fails to perform his or her management duties or performs them in an inappropriate manner.

⁴⁹ The Minister for Justice appears to be of the view that the Judicial Inspectorate is competent to deal with disciplinary complaints against its Chief Inspector: point 25 of the present Opinion refers.

⁵⁰ The absence of such a separate body may reinforce the independence of the Chief Inspector of the Judicial Inspectorate.

⁵¹ The referring court considers that a legislative framework 'at the level of the organic law' should be adopted 'which provides objective guarantees as to the independence and impartiality of the Judicial Inspectors in relation to the Chief Inspector, where the latter is the subject of the disciplinary complaint.' In the light of the principle of subsidiarity in Article 5 TEU, I consider that a Member State may determine the nature of the measures to adopt with respect to disciplinary investigations and proceedings against judges and prosecutors, including Judicial Inspectors, so as to comply with the requirements of the second subparagraph of Article 19(1) TEU and of Decision 2006/928, provided that such measures respect the principles of equivalence and effectiveness.

⁵² See Ordinul nr. 134/2018.

⁵³ *Monitorul Oficial al României*, Part I, No 850 of 8 October 2018.

⁵⁴ See Article 69(1)(a) of Law 317/2004. In accordance with that provision, the Chief Inspector also appoints the Directors of the Judicial Inspectorate for terms of office dependent upon that of the Chief Inspector.

can oversee disciplinary investigations and proceedings regarding complaints against the Chief Inspector in an objective and impartial manner. The adoption of Law 234/2018 thus appears to amount to a regression in the protection of the rule of law in Romania.

52. Law 234/2018 entwines the careers of the Chief Inspector and the Deputy Chief Inspector of the Judicial Inspectorate. Despite the duty on the Deputy Chief Inspector to act in an independent and impartial manner, he or she may be perceived as having a personal interest in the outcome of any disciplinary investigations and/or proceedings against the Chief Inspector. It is, moreover, evident that all Judicial Inspectors within the Judicial Inspectorate are subordinate to the Chief Inspector and that their career progression depends upon who holds that office.⁵⁵ This may also undermine the public perception that Judicial Inspectors investigate complaints against the Chief Inspector in a professional and impartial manner.

V. Conclusion

53. In the light of the above considerations, I propose that the Court answer the question referred for a preliminary ruling by the Curtea de Apel București (Court of Appeal, Bucharest, Romania) as follows:

Article 2 TEU, the second subparagraph of Article 19(1) TEU 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

must be interpreted as precluding national legislation or regulations that provide for the oversight of disciplinary investigations and proceedings against the Chief Inspector of the Inspekția Judiciară (Judicial Inspectorate, Romania) by its Deputy Chief Inspector and the investigation of such complaints by Judicial Inspectors of that body in circumstances where that Deputy Chief Inspector is appointed at the Chief Inspector's sole discretion; the term of office of the Deputy Chief Inspector depends upon and coincides with that of the Chief Inspector; and all Judicial Inspectors are subordinate to the Chief Inspector upon whom the progress of their careers depends.

⁵⁵ The Chief Inspector is involved in the appointment, evaluation and dismissal of Judicial Inspectors. See, inter alia, Order No 131/2018. There appears to be no mechanism to prevent the Chief Inspector from opening an investigation and disciplinary proceedings against Judicial Inspectors who are conducting, or who have conducted, disciplinary investigations against him or her.