Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

18 May 2021 *

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* Language of the case: Romanian.

(Reference for a preliminary ruling – Treaty of Accession of the Republic of Bulgaria and Romania to the European Union – Act concerning the conditions of accession to the European Union of the Republic of Bulgaria and Romania – Articles 37 and 38 – Appropriate measures – Mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption – Decision 2006/928/EC – Legal nature and effects of the cooperation and verification mechanism and of the reports established by the Commission on the basis of that mechanism – Rule of law – Judicial independence – Second subparagraph of Article 19(1) TEU – Article 47 of the Charter of Fundamental Rights of the European Union – Laws and government emergency ordinances adopted in Romania in the course of 2018 and 2019 concerning the organisation of the judicial system and the liability of judges – Interim appointment to management positions of the Judicial Inspectorate – Establishment of a section within the Public Prosecutor's Office for the investigation of offences committed within the judicial system – Financial liability of the State and personal liability of judges in the event of judicial error)

In Joined Cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19,

SIX REQUESTS for a preliminary ruling under Article 267 TFEU from, respectively, the Tribunalul Olt (Regional Court, Olt, Romania), made by decision of 5 February 2019, received at the Court on 5 February 2019 (C-83/19); the Curtea de Apel Pitești (Court of Appeal, Pitești, Romania), made by decision of 18 February 2019, received at the Court on 18 February 2019 (C-127/19); the Curtea de Apel București (Court of Appeal, Bucharest, Romania), made by decision of 28 February 2019, received at the Court on 28 February 2019 (C-195/19); the Curtea de Apel Brașov (Court of Appeal, Brașov, Romania), made by decision of 28 March 2019, received at the Court on 9 April 2019 (C-291/19); the Curtea de Apel Pitești (Court of Appeal, Pitești, Romania), made by decision of 29 March 2019, received at the Court on 6 May 2019 (C-355/19); and the Tribunalul București (Regional Court, Bucharest, Romania), made by decision of 22 May 2019, received at the Court on 22 May 2019 (C-397/19), in the proceedings

Asociația 'Forumul Judecătorilor din România'

v

Inspecția Judiciară (C-83/19),

Asociația 'Forumul Judecătorilor din România',

Asociația 'Mișcarea pentru Apărarea Statutului Procurorilor'

v

Consiliul Superior al Magistraturii (C-127/19),

PJ

v

QK (C-195/19),

SO

v

TP and Others,

GD,

HE,

IF,

JG (C-291/19),

Asociația 'Forumul Judecătorilor din România',

Asociația 'Mişcarea pentru Apărarea Statutului Procurorilor',

OL

v

Parchetul de pe lângă Înalta Curte de Casație și Justiție – Procurorul General al României (C-355/19),

and

AX

v

Statul Român – Ministerul Finanțelor Publice (C-397/19),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, A. Arabadjiev, A. Prechal, M. Vilaras, L. Bay Larsen, N. Piçarra and A. Kumin, Presidents of Chambers, T. von Danwitz (Rapporteur), M. Safjan, D. Šváby, K. Jürimäe, P.G. Xuereb, L.S. Rossi and I. Jarukaitis, Judges,

Advocate General: M. Bobek,

Registrars: R. Şereş, V. Giacobbo and R. Schiano, Administrators,

having regard to the written procedure and further to the hearing on 20 and 21 January 2020,

after considering the observations submitted on behalf of:

– the Asociația 'Forumul Judecătorilor din România', by D. Călin, A. Codreanu and L. Zaharia,

– the Asociația 'Mişcarea pentru Apărarea Statutului Procurorilor', by A. Diaconu, A.C. Lăncrănjan and A.C. Iordache,

– OL, by B.C. Pîrlog,

– the Inspecția Judiciară, by L. Netejoru, acting as Agent,

– the Consiliul Superior al Magistraturii, by L. Savonea, acting as Agent, and by R. Chiriță and Ș.-N. Alexandru, avocați,

– the Parchetul de pe lângă Înalta Curte de Casație și Justiție – Procurorul General al României, by B.D. Licu and R.H. Radu, acting as Agents,

– the Romanian Government, initially by C.-R. Canțăr, C.T. Băcanu, E. Gane and R.I. Hațieganu, and subsequently by C.T. Băcanu, E. Gane and R.I. Hațieganu, acting as Agents,

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

– the Danish Government, by L.B. Kirketerp Lund and J. Nymann-Lindegren, acting as Agents,

– the Netherlands Government, by M.K. Bulterman, M.L. Noort and C.S. Schillemans, acting as Agents,

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

– the Swedish Government, initially by H. Shev, H. Eklinder, C. Meyer-Seitz, J. Lundberg and A. Falk, and subsequently by H. Shev, H. Eklinder and C. Meyer-Seitz, acting as Agents,

– the European Commission, initially by H. Krämer, M. Wasmeier and I. Rogalski, and subsequently by M. Wasmeier and I. Rogalski, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 September 2020,

gives the following

Judgment

1 These requests for a preliminary ruling concern, in essence, the interpretation of Article 2, Article 4(3), Article 9 and the second subparagraph of Article 19(1) TEU, Article 67(1) and Article 267 TFEU, Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and Commission Decision 2006/928/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (OJ 2006 L 354, p. 56).

2 The requests have been made in proceedings between:

– the Asociația 'Forumul Judecătorilor din România' (the association 'Romanian Judges' Forum') ('the Romanian Judges' Forum') and the Inspecția Judiciară (Judicial Inspectorate, Romania) concerning the latter's refusal to provide information of public interest relating to its activity (case C-83/19);

– the Romanian Judges' Forum and the Asociația 'Mișcarea pentru Apărarea Statutului Procurorilor' (the association 'Movement for the Defence of the Status of Prosecutors') ('the Movement for the Defence of the Status of Prosecutors'), of the one part, and the Consiliul Superior al Magistraturii (Supreme Council of the Judiciary, Romania), of the other, concerning the legality of two decisions approving regulations on the appointment and removal of prosecutors performing managerial or executive roles in the Section within the Public Prosecutor's Office for the investigation of offences committed within the judicial system ('the SIIJ') (Case C-127/19);

– PJ and QK concerning a complaint made against a judge, alleging abuse of office (Case C-195/19);

– SO, of the one part, and TP Others, GD, HE, IF and JG, of the other, regarding complaints made against prosecutors and judges, alleging abuse of office and membership of a criminal organisation (Case C-291/19);

– the Romanian Judges' Forum, the Movement for the Defence of the Status of Prosecutors and OL, of the one part, and the Parchetul de pe lângă Înalta Curte de Casație și Justiție – Procurorul General al României (prosecutor's office attached to the High Court of Cassation and Justice – Prosecutor General of Romania), of the other, concerning the legality of an order of the Procurorul General al României (Prosecutor General of Romania) ('the Prosecutor General') relating to the organisation and operation of the SIIJ (Case C-355/19);

– AX and Statul Român – Ministerul Finanțelor Publice (Romanian State – Ministry of Public Finances) concerning a claim for compensation for material and non-material damage resulting from an alleged judicial error (Case C-397/19).

Legal context

EU law

The Treaty of Accession

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

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

3. …

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

4 Article 3 of that treaty reads as follows:

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

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

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

…

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

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

The Act of Accession

6 Article 2 of the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the Treaties on which the European Union is founded (OJ 2005 L 157, p. 203; 'the Act of Accession'), which entered into force on 1 January 2007, provides:

'From the date of accession, the provisions of the original Treaties and the acts adopted by the institutions and the European Central Bank before accession shall be binding on Bulgaria and Romania and shall apply in those States under the conditions laid down in those Treaties and in this Act.'

7 Article 37 of that act reads as follows:

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

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

by the new Member State concerned in fulfilling its commitments, the Commission may adapt the measures as appropriate. The Commission shall inform the Council in good time before revoking the safeguard measures, and it shall take duly into account any observations of the Council in this respect.'

8 Article 38 of that act provides:

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

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

9 Article 39(1) to (3) of the Act of Accession provides:

'1. If, on the basis of the Commission's continuous monitoring of commitments undertaken by Bulgaria and Romania in the context of the accession negotiations and in particular the Commission's monitoring reports, there is clear evidence that the state of preparations for adoption and implementation of the *acquis* in Bulgaria or Romania is such that there is a serious risk of either of those States being manifestly unprepared to meet the requirements of membership by the date of accession of 1 January 2007 in a number of important areas, the Council may, acting unanimously on the basis of a Commission recommendation, decide that the date of accession of that State is postponed by one year to 1 January 2008.

2. Notwithstanding paragraph 1, the Council may, acting by qualified majority on the basis of a Commission recommendation, take the decision mentioned in paragraph 1 with respect to Romania if serious shortcomings have been observed in the fulfilment by Romania of one or more of the commitments and requirements listed in Annex IX, point I.

3. Notwithstanding paragraph 1, and without prejudice to Article 37, the Council may, acting by qualified majority on the basis of a Commission recommendation and after a detailed assessment to be made in the autumn of 2005 of the progress made by Romania in the area of competition policy, take the decision mentioned in paragraph 1 with respect to Romania if serious shortcomings have been observed in the fulfilment by Romania of the obligations undertaken

under the Europe Agreement or of one or more of the commitments and requirements listed in Annex IX, point II.'

10 Annex IX to that act, entitled 'Specific commitments undertaken, and requirements accepted, by Romania at the conclusion of the accession negotiations on 14 December 2004 (referred to in Article 39 of the Act of Accession)', is worded as follows:

'I. In relation to Article 39(2)

…

(3) To develop and implement an updated and integrated Action Plan and Strategy for the Reform of the Judiciary including the main measures for implementing the Law on the [organisation of the judicial system], the Law on the [rules governing judges] and the Law on the [Supreme Council of the Judiciary] which entered into force on 30 September 2004. Both updated documents must be submitted to the Union no later than March 2005; adequate financial and human resources for the implementation of the Action Plan must be ensured and it must be implemented without further delay and according to the time schedule set. Romania must also demonstrate by March 2005 the full operationability of the new system for random distribution of cases.

(4) To considerably step up the fight against corruption and in particular against high-level corruption by ensuring a rigorous enforcement of the anti-corruption legislation and the effective independence of the National Anti-Corruption Prosecutors' Office (NAPO) and by submitting on a yearly basis as of November 2005 a convincing track-record of the activities of NAPO in the fight against high-level corruption. NAPO must be given the staff, financial and training resources, as well as equipment necessary for it to fulfil its vital function.

(5) To conduct an independent audit of the results and the impact the current National Anti-Corruption Strategy has generated; to reflect the conclusions and recommendations of this audit in the new multi-annual anti-corruption strategy which must be one comprehensive document, in place no later than March 2005, accompanied by an action plan with clearly defined benchmarks to be reached and results to be obtained, as well as adequate budgetary provisions; the implementation of the Strategy and Action Plan must be overseen by one existing, clearly defined, independent body; the strategy must include the commitment to revise the protracted criminal procedure by the end of 2005 to ensure that corruption cases are dealt with in a swift and transparent manner, in order to guarantee adequate sanctions that have a deterrent effect; finally, it must contain steps to considerably reduce the number of bodies which all have powers to prevent or investigate corruption by the end of 2005, so that overlapping responsibilities are avoided.'

Decision 2006/928

11 Decision 2006/928 was adopted, as is apparent from its preamble, on the basis of the Treaty of Accession 'and in particular [of] Article 4(3) thereof', and on the basis of the Act of Accession 'and in particular [of] Articles 37 and 38 thereof'.

12 Recitals 1 to 6 and 9 of that decision state:

'(1) The European Union is founded on the rule of law, a principle common to all Member States.

(2) The area of freedom, security and justice and the internal market, created by the Treaty on European Union and the Treaty establishing the European Community, are based on the mutual confidence that the administrative and judicial decisions and practices of all Member States fully respect the rule of law.

(3) This implies for all Member States the existence of an impartial, independent and effective judicial and administrative system properly equipped, inter alia, to fight corruption.

(4) On 1 January 2007, Romania will become a Member of the European Union. The Commission, whilst noting the considerable efforts to complete Romania's preparations for membership, has identified remaining issues in its Report of 26 September 2006, in particular in the accountability and efficiency of the judicial system and law enforcement bodies, where further progress is still necessary to ensure their capacity to implement and apply the measures adopted to establish the internal market and the area of freedom, security and justice.

(5) Article 37 of the Act of Accession empowers the Commission to take appropriate measures in case of imminent risk that Romania would cause a breach in the functioning of the internal market by a failure to implement the commitments it has undertaken. Article 38 of the Act of Accession empowers the Commission to take appropriate measures in case of imminent risk of serious shortcomings in Romania in the transposition, state of implementation, or application of acts adopted under Title VI of the EU Treaty and of acts adopted under Title IV of the EC Treaty.

(6) The remaining issues in the accountability and efficiency of the judicial system and law enforcement bodies warrant the establishment of a mechanism for cooperation and verification of the progress of Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption.

…

(9) The present Decision should be amended if the Commission's assessment points at a need to adjust the benchmarks. The present Decision should be repealed when all the benchmarks have been satisfactorily fulfilled'.

13 Article 1 of Decision 2006/928 provides:

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

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

14 Article 2 of that decision provides:

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

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

15 Article 3 of Decision 2006/928 provides:

'This Decision shall enter into force only subject to and on the date of the entry into force of the Treaty of Accession.'

16 In accordance with Article 4 of that decision:

'This Decision is addressed to all Member States.'

17 The Annex to Decision 2006/928 is worded as follows:

'Benchmarks to be addressed by Romania, referred to in Article 1:

1. Ensure a more transparent, and efficient judicial process notably by enhancing the capacity and accountability of the [Supreme Council of the Judiciary]. Report and monitor the impact of the new civil and penal procedures codes.

2. Establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken.

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

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

Romanian law

The Romanian Constitution

18 Article 115(4) of the Constituția României (Romanian Constitution) provides:

'The Government can adopt emergency ordinances only in exceptional cases, the regulation of which cannot be postponed, and has the obligation to give the reasons for their emergency status in those ordinances.'

19 Article 133(1) and (2) of the Romanian Constitution states

'(1) the Supreme Council of the Judiciary shall be the guarantor of judicial independence.

(2) The Supreme Council of the Judiciary shall comprise 19 members, including:

(a) 14 members who shall be elected in the general assemblies of the judiciary and ratified by the Senate; they shall be divided into two sections, one for judges and one for prosecutors; the first section shall comprise 9 judges, and the second 5 prosecutors;

(b) two representatives of civil society, specialists in law, of high professional and moral standing, elected by the Senate; they shall participate only in plenary sessions;

(c) the Minister for Justice, the President of the High Court of Cassation and Justice and the [Prosecutor General].'

20 Article 134 of the Romanian Constitution reads as follows:

'(1) The Supreme Council of the Judiciary shall propose to the President of Romania the appointment of judges and prosecutors to their respective posts, with the exception of trainee judges, in accordance with the conditions laid down by law.

(2) 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, in accordance with the procedure established by its organic law. In such cases, the Minister for Justice, the President of the High Court of Cassation and Justice and the [Prosecutor General] shall not be entitled to vote.

(3) Decisions of the Supreme Council of the Judiciary in disciplinary matters may be challenged before the High Court of Cassation and Justice.

(4) The Supreme Council of the Judiciary shall also perform other functions established by its organic law, in the performance of its role as guarantor of judicial independence.'

21 Article 148(2) to (4) of the Romanian Constitution provides:

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

(3) Paragraphs 1 and 2 shall also apply by analogy to the accession to the acts revising the Treaties establishing the European Union.

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

The Civil Code

22 In accordance with Article 1381(1) of the Codul civil (Civil Code), 'any loss or damage shall give rise to a right to compensation'.

The Code of Civil Procedure

23 Article 82(1) of the Codul de procedură civilă (Code of Civil Procedure) provides:

'Where the court finds that it has not been proven that the person who has acted on behalf of a party has powers of representation, the court will grant a short period to remedy the situation. If it is not remedied, the application shall be struck out. …'

24 Article 208 of that code states:

'(1) A defence is mandatory unless legislation expressly provides otherwise.

(2) Where no defence has been lodged within the time limit laid down by the legislation, the defendant will forfeit his or her right to submit evidence and pleas, with the exception of public order pleas, subject to any contrary provision of the legislation.'

25 Article 248(1) of the Code of Civil Procedure is worded as follows:

'The court will rule first of all on procedural objections and substantive pleas which render the hearing of evidence, or where relevant the examination of the substance of the case, redundant in whole or in part.'

The Code of Criminal Procedure

26 Article 539 of the Codul de procedură penală (Code of Criminal Procedure) provides:

'(1) Any person who, in the course of criminal proceedings, has been unlawfully deprived of his or her liberty also is entitled to compensation.

(2) The unlawful deprivation of liberty must be established, as the case may be, by an order of a prosecutor, by a final order of a judge responsible for matters relating to rights and freedoms or of a judge conducting the preliminary hearing, or by the final order or judgment of the court hearing the case.'

27 Article 541(1) and (2) of that code provides:

'(1) An action for damages may be brought by the person entitled to do so under Articles 538 and 539, and, after the death of that person, such an action may be pursued or brought by persons who were dependants of the deceased at the time of his or her death.

(2) The action may be brought within six months of the date on which the decision of the court, order of the prosecutor or order of the judicial authorities establishing the judicial error or the unlawful deprivation of liberty has become final.'

The Justice Laws

28 With the aim of improving the independence and effectiveness of the judicial system, Romania adopted, in the course of 2004, in the context of negotiations for its accession to the European Union, three laws, known as 'the Justice Laws': Legea nr. 303/2004 privind statutul judecătorilor și procurorilor (Law No 303/2004 on the rules governing judges and prosecutors) of 28 June 2004

(*Monitorul Oficial al României*, Part I, No 826 of 13 September 2005); Legea nr. 304/2004 privind organizarea judiciară (Law No 304/2004 on the organisation of the judicial system) of 28 June 2004 (*Monitorul Oficial al României*, Part I, No 827 of 13 September 2005); and Legea nr. 317/2004 privind Consiliul Superior al Magistraturii (Law No 317/2004 on the Supreme Council of the Judiciary) of 1 July 2004 (*Monitorul Oficial al României*, Part I, No 827 of 13 September 2005). Between 2017 and 2019, amendments were made to those laws by laws and government emergency ordinances adopted on the basis of Article 115(4) of the Romanian Constitution.

– *Law No 303/2004*

29 Law No 303/2004 was amended, inter alia, by:

– Legea nr. 242/2018 (Law No 242/2018) of 12 October 2018 (*Monitorul Oficial al României*, Part I, No 868 of 15 October 2018);

– Ordonanța de urgență a Guvernului nr. 7/2019 (Government Emergency Ordinance No 7/2019) of 19 February 2019 (*Monitorul Oficial al României*, Part I, No 137 of 20 February 2019; 'Emergency Ordinance No 7/2019').

30 Article 96 of Law No 303/2004 as thus amended ('Law No 303/2004 as amended'), is worded as follows:

'(1) The State shall make good using its own resources any damage resulting from judicial errors.

(2) The liability of the State shall be established in accordance with the law and shall not exclude the liability of judges and prosecutors who, even if they are no longer in office, have performed their duties in bad faith or with gross negligence for the purposes of Article 99[1].

(3) A judicial error exists where:

(a) in the course of legal proceedings, a procedural act has been performed in clear breach of provisions of substantive or procedural law, entailing a serious infringement of the rights, freedoms or legitimate interests of an individual and causing harm that it has not been possible to remedy by means of an ordinary or extraordinary appeal;

(b) a final judgment has been delivered that is manifestly contrary to the law or inconsistent with the factual situation established by the evidence taken in the course of the proceedings, entailing a serious infringement of the rights, freedoms or legitimate interests of an individual, and causing harm that it has not been possible to remedy by means of an ordinary or extraordinary appeal.

(4) Specific cases in which a judicial error exists may be covered by the Code of Civil Procedure, the Code of Criminal Procedure, or other special laws.

(5) In order to obtain compensation for the damage caused, the injured party may bring an action exclusively against the State, represented by the Ministry of Public Finances. Jurisdiction to hear the civil action shall lie with the Regional Court in whose area of jurisdiction the applicant is domiciled.

(6) The State shall pay any sums due by way of compensation within one year, at the latest, of the date of notification of the final judgment.

(7) Within two months of notification of the final judgment delivered in the action referred to in paragraph 6, the Ministry of Public Finances shall refer the matter to the Judicial Inspectorate, so that it may ascertain whether the judicial error was caused by a judge or prosecutor as a result of his or her performing his or her duties in bad faith or with gross negligence, in accordance with the procedure laid down in Article 74[1] of Law No 317/2004, republished, as amended.

(8) The State, represented by the Ministry of Public Finances, shall bring an action for indemnity against the relevant judge or prosecutor where, following the advisory report of the Judicial Inspectorate referred to in paragraph 7 and its own assessment, it considers that the judicial error was caused by the judge's or prosecutor's performance of his or her duties in bad faith or with gross negligence. The action for indemnity shall be brought within six months of the date of notification of the report of the Judicial Inspectorate.

(9) The Civil Division of the Curtea de Apel (Court of Appeal) of the judicial district where the defendant is domiciled shall have jurisdiction to hear and determine at first instance the action for indemnity. If the judge or prosecutor against whom that action for indemnity is brought carries out his or her duties in that Court of Appeal or in the prosecutor's office attached to that Court of Appeal, the action for indemnity shall be brought before a neighbouring Court of Appeal to be selected by the applicant.

(10) The decision delivered in the proceedings described in paragraph 9 may be appealed before the competent division of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice), Romania].

(11) The Supreme Council of the Judiciary shall establish, within six months of the date of entry into force of this law, the conditions, terms and procedures pertaining to the compulsory professional insurance of judges and prosecutors. The insurance shall be paid for entirely by the judge or prosecutor and its absence shall not delay, diminish or exclude the civil liability of a judge or prosecutor for any judicial error caused by the performance of his or her duties in bad faith or with gross negligence.'

31 Article 99[1] of Law No 303/2004 as amended provides:

'(1) A judge or prosecutor shall be deemed to have acted in bad faith if he or she knowingly infringes rules of substantive or procedural law and either has the intention of harming another person or accepts that the infringement will cause harm to another person.

(2) A judge or prosecutor commits gross negligence if he or she negligently disregards rules of substantive or procedural law in a manner that is serious, irrefutable and inexcusable.'

– Law No 304/2004

32 Law No 304/2004 was amended, inter alia, by:

– Legea nr. 207/2018 (Law No 207/2018) of 20 July 2018 (*Monitorul Oficial al României*, Part I, No 636 of 20 July 2018), which entered into force on 23 October 2018 in accordance with Article III thereof and which inserted into Chapter 2 of Title III, entitled 'Public Prosecutor's

Office', of Law No 304/2004, a Section 2^1, relating to the 'SIIJ' containing Articles 88^1 to 88^{11} of that law;

– Ordonanța de urgență a Guvernului nr. 90/2018 (Government Emergency Ordinance No 90/2018) of 10 October 2018 (*Monitorul Oficial al României*, Part I, No 862 of 10 October 2018; 'Government Emergency Ordinance No 90/2018'), which, inter alia, amended Article 88^2(3) of Law No 304/2004 and introduced a procedure derogating from Articles 88^3 to 88^5 of that law for the purposes of the provisional appointment of the chief prosecutor, the deputy chief prosecutor and at least one third of the prosecutors of the SIIJ;

– Ordonanța de urgență a Guvernului nr. 92/2018 (Emergency Government Ordinance No 92/2018) of 15 October 2018 (*Monitorul Oficial al României*, Part I, No 874 of 16 October 2018), which, inter alia, inserted new paragraph 5 into Article 88^2 of Law No 304/2004 and amended Article 88^5(5) of the same law;

– Emergency Ordinance No 7/2019, which, inter alia, inserted paragraph 6 into Article 88^1 of Law No 304/2004, paragraphs 11^1 and 11^2 into Article 88^5 of that law, a point (e) into Article 88^8(1) of that law, and amended point (d) of Article 88^8(1) of that same law;

– Ordonanța de urgență a Guvernului nr. 12/2019 pentru modificarea şi completarea unor acte normative în domeniul justiției (Government Emergency Ordinance No 12/2019, amending and supplementing certain legislative acts in the field of justice) of 5 March 2019 (*Monitorul Oficial al României*, Part I, No 185 of 7 March 2019), which, inter alia, inserted into Law No 304/2004 Articles 88^{10} and 88^{11}, relating, in particular, to the secondment of judicial police officers and officials within the SIIJ.

33 Under Article 88^1 of Law No 304/2004 as thus amended ('Law No 304/2004 as amended'):

'(1) The [SIIJ] shall be established within the [prosecutor's office attached to the High Court of Cassation and Justice]. [The SIIJ] shall have exclusive competence for criminal proceedings in respect of offences committed by judges and prosecutors, including military judges and prosecutors and those who are members of the Supreme Council of the Judiciary.

(2) The [SIIJ] shall retain competence for criminal proceedings where other persons are prosecuted in addition to those referred to in paragraph 1.

…

(4) The [SIIJ] shall be headed by a chief prosecutor of the [SIIJ], assisted by a deputy chief prosecutor, appointed to those roles by the general assembly of the Supreme Council of the Judiciary, under the conditions laid down in this Law.

(5) The [Prosecutor General] shall settle conflicts as regards competence between the [SIIJ] and the other structures or units of the Public Prosecutor's Office.

(6) When the Code of Criminal Procedure or any other special law refers to the "hierarchically superior prosecutor" in cases relating to offences within the competence of the [SIIJ], that expression is to be understood as referring to the chief prosecutor of the section, including decisions adopted before that section became operational.'

34 Article 88^2 of that law provides:

'(1) The [SIIJ] shall conduct its activities in accordance with the principles of legality, impartiality and hierarchical control.

(2) The delegation or secondment of prosecutors to the [SIIJ] shall be prohibited.

(3) The [SIIJ] shall conduct its activities with a maximum of 15 prosecutors.

(4) The number of positions in the [SIIJ] may be adjusted, depending on the volume of activity, by order of the [Prosecutor General], at the request of the chief prosecutor of the [SIIJ], with the assent of the general assembly of the Supreme Council of the Judiciary.

(5) During their term of office in the [SIIJ], prosecutors … shall enjoy the rights of seconded prosecutors under the conditions laid down by law.'

35 Article 88^3(1) of Law No 304/2004 as amended provides:

'The chief prosecutor of the [SIIJ] shall be appointed to his or her role by the general assembly of the Supreme Council of the Judiciary, following a competition consisting in the submission of a project relating to the performance of tasks specific to the management position in question, which is intended to evaluate the candidate's management skills, effective management of resources, ability to make decisions and take on responsibilities, communication skills and resilience to stress, as well as his or her integrity, activity as a prosecutor and relationship with values specific to that profession, such as judicial independence or respect for fundamental rights and freedoms.'

36 Article 88^4(1) of that law states:

'The deputy chief prosecutor of the [SIIJ] shall be appointed to his or her role by the general assembly of the Supreme Council of the Judiciary on the reasoned proposal of the chief prosecutor of the [SIIJ], from among the prosecutors already appointed to [the SIIJ].'

37 Article 88^5 of Law No 304/2004 as amended is worded as follows:

'(1) The [SIIJ] shall employ prosecutors appointed by the general assembly of the Supreme Council of the Judiciary, following a competition, up to the maximum number of positions provided for in the staffing schedule, approved in accordance with the law, for a three-year term, with the option of renewal for a total maximum term of nine years.

(2) The competition shall take place before the board responsible for organising the competition composed in accordance with Article 88^3(2), of which the chief prosecutor of the [SIIJ] is automatically a member.

…

(11) Appointment to the position of prosecutor in the [SIIJ] shall be by the general assembly of the Supreme Council of the Judiciary, up to the maximum number of positions vacant and in the order of the scores achieved.

(11[1]) Membership of the selection boards provided for in this Article shall not become incompatible and members shall vote at the general assembly of the Supreme Council of the Judiciary.

(11[2]) The selection boards provided for in Article 88[3] and Article 88[5] respectively shall lawfully carry on business in the presence of at least three members.

(12) The procedures for the appointment to, continued performance of and removal from the management and executive roles in the [SIIJ] shall be detailed in rules approved by the general assembly of the Supreme Council of the Judiciary.'

38 According to Article 88[7] of that law:

'(1) The prosecutors appointed to the [SIIJ] may be removed from office by the general assembly of the Supreme Council of the Judiciary, acting on a reasoned request from the chief prosecutor of the [SIIJ], in the case where the prosecutors have failed to perform the duties specific to the position appropriately, where disciplinary action has been taken.

(2) If removed from his or her position, the prosecutor shall return to the prosecution office from which he or she came and to his or her professional performance grade and receive the salary corresponding to that grade which he or she had previously occupied or which he or she acquired following a promotion, subject to the conditions laid down by law, during the performance of his or her duties in the [SIIJ].'

39 Article 88[8](1) of Law No 304/2004 as amended provides:

'The powers conferred on the [SIIJ] shall be as follows:

(a) the power to bring criminal proceedings, subject to the conditions laid down in [the Code of Criminal Procedure], in respect of offences falling within its competence;

(b) the power to refer matters to courts so that those courts may adopt the measures provided for in law and hear and decide cases relating to the offences provided for in point (a);

(c) the power to create and update the database on offences falling within its competence;

…

(e) other powers conferred on it by law.'

40 As set out in Article II of Emergency Ordinance No 90/2018:

'(1) By way of derogation from Articles 88[3] to 88[5] of Law No 304/2004 on the organisation of the judicial system, republished, as subsequently amended and supplemented, prior to completion of the competitions organised for the purpose of appointments to the position of chief prosecutor of the [SIIJ] and to the executive positions of prosecutor of [the SIIJ] and before the results of those competitions are validated, the functions of the chief prosecutor and at least one third of the executive functions of prosecutor shall be conducted provisionally by prosecutors who satisfy the conditions laid down by law to be appointed to those positions, selected by the board responsible

for organising the competition composed in accordance with Article 88^{3}(2) of Law No 304/2004, republished, as subsequently amended and supplemented.

(2) The candidates shall be selected by the board responsible for organising the competition provided for in paragraph 1, in accordance with a procedure which shall take place within five calendar days from the date on which it is triggered by the President of the Supreme Council of the Judiciary. The board responsible for organising the competition shall conduct its activities in the presence of at least three members.

…

(10) In order for the [SIIJ] to become operational within five calendar days from the entry into force of this emergency ordinance, the [Prosecutor General] shall supply the human and material resources needed for its operation, including the specialist support staff, officers and officials of the judicial police, specialists and other categories of personnel.

(11) With effect from the date on which the [SIIJ] becomes operational, [the SIIJ] shall take over the cases coming within its competence pending before the National Anti-corruption Directorate and other divisions of the prosecution office, as well as the files of the cases relating to the offences provided for in Article 88^{1}(1) of Law No 304/2004, republished, as subsequently amended and supplemented, which were closed prior to the date on which [the SIIJ] became operational.'

41 The introduction of that derogation procedure was justified, in accordance with the recitals of Emergency Ordinance No 90/2018, in the following terms:

'Having regard to the fact that, under Article III(1) of Law No 207/2018 amending and supplementing Law No 304/2004 on the organisation of the judicial system, "the [SIJJ] shall commence its activities within three months of the date on which this Law enters into force", namely 23 October 2018,

whereas, thus far, the Supreme Council of the Judiciary has not completed, within the statutory period laid down, the procedure intended to render the [SIIJ] operational,

having regard to the fact that the law expressly provides that [the SIIJ] has the power to bring criminal proceedings in respect of offences committed by judges and prosecutors, including military judges and prosecutors and those who are members of the Supreme Council of the Judiciary, as well as the fact that, with effect from 23 October 2018, the date laid down in law on which [the SIIJ] will become operational, the National Anti-corruption Directorate and the other prosecution offices will no longer have the power to bring criminal proceedings in respect of offences committed by such persons, which would seriously affect the judicial proceedings in the cases coming within the competence of [the SIIJ] and could give rise to an institutional deadlock,

in view of the fact that the law in force does not contain transitional rules on the specific procedures in accordance with which the [SIIJ] will become operational, in the event that the deadline laid down in Law No 207/2018 is exceeded, and that it is necessary to adopt urgent legislative measures laying down a simple procedure, by way of derogation from Articles 88^{3} to 88^{5} of Law No 304/2004, republished, as subsequently amended and supplemented, for the provisional appointment of the chief prosecutor, the deputy chief prosecutor and at least one third of the prosecutors of the [SIIJ], which will enable the [SIIJ] to become operational before the deadline laid down in law, that is 23 October 2018,

whereas the situation set out above is an extraordinary situation and the laying down of rules to govern that situation cannot be deferred'.

– ***Law No 317/2004***

42 Law No 317/2004 was amended, inter alia, by:

– Ordonanța de Urgență a Guvernului nr. 77/2018 (Government Emergency Ordinance No 77/2018) of 5 September 2018 (*Monitorul Oficial al României*, No 767, 5 September 2018; 'Emergency Ordinance No 77/2018'), which, pursuant to Article 1 of that ordinance, inserted paragraphs 7 and 8 of Article 67 of Law No 317/2004;

– Legea nr. 234/2018 (Law No 234/2018) of 4 October 2018 (*Monitorul Oficial al României*, Part I, No 850 of 8 October 2018), which, in particular, amended Articles 65 and 67 of Law No 317/2004 and inserted Article 74^1 of that law;

– Emergency Ordinance No 7/2019.

43 Article 65(1) to (3) of Law No 317/2004, in the version which preceded the entry into force of Law No 234/2018, provided:

'(1) The Judicial Inspectorate shall be established as a body having legal personality within the Supreme Council of the Judiciary, with its seat in Bucharest, through the reorganisation of the Judicial Inspectorate.

(2) The Judicial Inspectorate shall be headed by a chief inspector, assisted by a deputy chief inspector, both of whom shall be appointed following a competition organised by the Supreme Council of the Judiciary.

(3) The Judicial Inspectorate shall act in line with the principle of operational independence, performing, through judicial inspectors appointed under the conditions laid down by law, analysis, verification and control tasks in specific fields of activity.'

44 Article 67 of that law was worded as follows:

'(1) The chief inspector and deputy chief inspector shall be appointed by the general assembly of the Supreme Council of the Judiciary from among judicial inspectors in office, following a competition consisting in the submission of a project relating to the exercise of the powers specific to the management position in question, in a written test concerning management, communication, human resources, the candidate's decision-making ability and ability to take on responsibility, and his or her resilience to stress, and also in a psychological test.

(2) The competition shall be organised by the Supreme Council of the Judiciary, in accordance with the rules approved by decision of the general assembly of the Supreme Council of the Judiciary …

(3) The competitions for the positions of chief inspector and deputy chief inspector shall be announced at least three months before they are held.

(4) The term of office of the chief inspector and of the deputy chief inspector shall be for a period of three years and may be renewed once, in accordance with the provisions of Article 67(1).

(5) The chief inspector and the deputy chief inspector may be removed from office by the general assembly of the Supreme Council of the Judiciary, where they fail to perform their management duties or perform them inappropriately. The removal from office shall be decided on the basis of the annual audit report referred to in Article 68.

(6) A removal decision taken by the general assembly of the Supreme Council of the Judiciary may be appealed, within 15 days from service of the decision, to the Division for Administrative and Tax Matters of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)]. The appeal will suspend enforcement of the decision of the Supreme Council of the Judiciary. A decision taken on appeal shall be irrevocable.

(7) Where the position of chief inspector or deputy chief inspector, as applicable, of the Judicial Inspectorate becomes vacant as a result of expiry of the term of office, the chief inspector or deputy chief inspector, as applicable, whose term of office has expired will act as substitute until the date on which that position is filled on the terms laid down by the legislation.

(8) Where the term of office of the chief inspector ends for a reason other than expiry of the term of office, the deputy chief inspector will act as substitute until the date on which that position is filled on the terms laid down by the legislation. Where the term of office of the deputy chief inspector ends for a reason other than expiry of that term, a judicial inspector appointed by the chief inspector will act as substitute until the date on which that position is filled on the terms laid down by the legislation.'

45 Under Article 74[1] of Law No 317/2004, as inserted by Law No 234/2018:

'(1) Upon referral by the Ministry of Public Finance, in the cases and within the time limits provided for in Article 96 of Law No 303/2004, as republished, subsequently amended and supplemented, the Judicial Inspectorate shall investigate whether the judicial error caused by the judge or the prosecutor was due to the performance of his or her duties in bad faith or with gross negligence.

(2) The investigation provided for in paragraph 1 shall be completed within 30 days of the date of referral. The chief inspector may order up to 30 days' extension of time if justified by good reason. The maximum period for the investigation may not exceed 120 days.

(3) The investigation shall be carried out by a committee composed of three judges, as judicial inspectors, or three prosecutors, as judicial inspectors (depending on the position held by the person investigated). If a case concerns judges and prosecutors simultaneously, two committees shall be established to examine the facts differently according to the position occupied by the persons investigated.

(4) During the investigations, the judges and prosecutors under investigation shall be required to attend the hearing; any refusal on their part to participate or to make a statement shall be duly recorded in the minutes and shall in no way impede the carrying out of the investigations. The judge or prosecutor concerned shall have the right to know all the acts in the investigation procedure and to request exculpatory evidence. The inspectors may hear all the other persons involved in the case requiring such investigations.

(5) A report shall be drawn up on the investigations carried out and the evidence gathered, so that the Judicial Inspectorate may determine whether the judge or prosecutor has committed acts of bad faith or gross negligence resulting in a judicial error.

(6) The investigations provided for in paragraph 1 shall also be carried out if the judge or prosecutor is no longer in office.

(7) The report shall be sent to the Ministry of Public Finance and to the judge or prosecutor concerned.

(8) The report referred to in paragraph (5) is made subject to approval by the chief inspector. The chief inspector may issue a single order that further investigations be carried out, giving reasons for his or her decision. The committee must attend to those investigations within 30 days from the date on which they were ordered by the chief inspector.'

46 Article II of Emergency Ordinance No 77/2018 states as follows:

'The provisions of Article 67(7) of Law No 317/2004 on the Supreme Council of the Judiciary, republished, as subsequently amended and supplemented by this emergency ordinance, shall also apply to situations in which the position of chief inspector or of deputy chief inspector, as applicable, of the Judicial Inspectorate is vacant on the date on which this emergency ordinance comes into force.'

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

Factors common to the disputes in the main proceedings

47 The disputes in the main proceedings follow on from a wide-ranging reform in the field of justice and the fight against corruption in Romania, a reform which has been monitored at EU level since 2007 under the cooperation and verification mechanism established by Decision 2006/928 on the occasion of Romania's accession to the European Union ('the CVM').

48 Between 2017 and 2019 the Romanian legislature amended Laws Nos 303/2004, 304/2004 and 317/2004 on several occasions. The applicants in the main proceedings dispute the compatibility with EU law of some of those amendments, in particular the amendments concerning the organisation of the Judicial Inspectorate (Case C-83/19), the establishment of the SIIJ within the Public Prosecutor's Office (Cases C-127/19, C-195/19, C-291/19 and C-355/19) and the rules governing the personal liability of judges (Case C-397/19).

49 In support of their actions, the applicants in the main proceedings refer to the following documents: the reports from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, of 25 January 2017 (COM(2017) 44 final; 'the CVM Report of January 2017'), of 15 November 2017 (COM(2017) 751 final) and of 13 November 2018 (COM(2018) 851 final; 'the CVM Report of November 2018'); opinion No 924/2018 of the European Commission for Democracy through Law (Venice Commission) of 20 October 2018 on draft amendments to Law No 303/2004 on the statute of judges and prosecutors, Law No 304/2004 on judicial organisation and Law No 317/2004 on the Superior Council for Magistracy (CDL-AD(2018)017); the Group of States against Corruption (GRECO) report on Romania, adopted on 23 March 2018 (Greco-AdHocRep(2018)2); the

opinion of the Consultative Council of European Judges (CCJE) of 25 April 2019 (CCJE-BU(2019)4); and the opinion of the Consultative Council of European Prosecutors of 16 May 2019 (CCPE-BU(2019)3). According to the applicants, those reports and opinions contain criticisms of the provisions adopted by Romania in the years 2017 to 2019 in the light of the effectiveness of the fight against corruption and the guarantee of the independence of the judiciary, and set out recommendations for amending, suspending or withdrawing those provisions.

50 The referring courts are uncertain, in that regard, as to the legal nature and effects of the CVM and the scope of the reports drawn up by the Commission under it. They observe, in essence, that the CVM, established on the basis of Articles 37 and 38 of the Act of Accession, is intended to remedy the inadequacy of the reforms carried out in Romania with regard to the organisation of justice and the fight against corruption, in order to enable that State to fulfil the obligations arising from the status of a Member State. They add that the objective of the reports drawn up by the Commission under the CVM is, inter alia, to direct the efforts made by the Romanian authorities and that those reports formulate specific requirements and recommendations. According to those courts, the content, legal nature and duration of that mechanism should be regarded as falling within the scope of the Treaty of Accession, with the result that the requirements set out in those reports should be binding on Romania.

51 In that context, the referring courts mention several judgments of the Curtea Constituțională (Constitutional Court, Romania) that have addressed those issues, including judgment No 104 of 6 March 2018. According to that judgment, EU law would not take precedence over the Romanian constitutional order, and Decision 2006/928 could not constitute a reference provision in the context of a review of constitutionality under Article 148 of the Constitution, since that decision was adopted before Romania's accession to the European Union and has not been interpreted by the Court in terms of whether its content, legal nature and duration fall within the scope of the Treaty of Accession.

Case C-83/19

52 By application lodged on 27 August 2018, the Romanian Judges' Forum requested the Judicial Inspectorate to disclose statistical information in relation to (i) the latter's activity during the period 2014-2018, in particular the number of disciplinary proceedings instituted, the reasons for instituting those proceedings and the outcome of the proceedings and (ii) a cooperation agreement concluded between the Judicial Inspectorate and the Serviciul Român de Informații (Romanian Intelligence Service) and the involvement of that service in the investigations carried out.

53 Taking the view that, by responding only in part to that request, which concerned information of public interest, the Judicial Inspectorate had failed to comply with its legal obligations, the Romanian Judges' Forum brought an action before the Tribunalul Olt (Regional Court, Olt, Romania) on 24 September 2018, seeking an order that the Judicial Inspectorate disclose the information in question.

54 On 26 October 2018, the Judicial Inspectorate lodged a defence before that court, in which it stated that the individual rights which the Romanian Judges' Forum derived from Lege nr. 544/2001 privind liberul acces la informațiile de interes public (Law No 544/2001 on freedom of information) of 12 October 2001 (*Monitorul Oficial al României*, Part I, No 663 of

23 October 2001) had not been infringed and that the application should be dismissed. The defence was signed by Mr Lucian Netejoru, referred to as the chief inspector of the Judicial Inspectorate.

55 In its reply, the Romanian Judges' Forum raised an objection that it had not been proven that the signatory to the defence had powers of representation in respect of the Judicial Inspectorate. It explained that although Mr Netejoru had indeed been appointed chief inspector of the Judicial Inspectorate as from 1 September 2015, by a decision of the general assembly of the Supreme Council of the Judiciary of 30 June 2015, his three-year term of office had expired on 31 August 2018, that is to say before the defence was lodged.

56 Admittedly, according to the Romanian Judges' Forum, the provisions of Article 67(7) of Law No 317/2004 state that where that the position of chief inspector becomes vacant following the expiry of a term of office, the chief inspector whose term of office has expired will act as substitute until the date on which that position is filled on the terms laid down by the legislation. However, those provisions, stemming from Government Emergency Ordinance No 77/2018, are, in the view of the Romanian Judges' Forum, unconstitutional, since they undermine the powers of the Supreme Council of the Judiciary – arising from its role as guarantor of the independence of the judiciary enshrined in Article 133(1) of the Constitution – to appoint the chief inspector and deputy chief inspector of the Judicial Inspectorate and, where those positions become vacant, to designate persons to occupy those positions as a substitute. Indeed, that emergency ordinance was adopted in order to enable specific persons to be appointed, as is apparent from the explanatory memorandum to that ordinance.

57 The Romanian Judges' Forum added that, given the extensive powers of the chief inspector and deputy chief inspector of the Judicial Inspectorate, Emergency Ordinance No 77/2018 disregards the principle of the independence of the judiciary, the guarantee of which is, in accordance with the Court's case-law, integral to the judiciary's task and required under Article 19 TEU, which is confirmed by the CVM Report of November 2018. Indeed, the chief inspector and the deputy chief inspector have the power to oversee the selection of judicial inspectors, to appoint judicial inspectors with management functions, to monitor inspection activity and to bring disciplinary proceedings.

58 The Romanian Judges' Forum therefore concluded that, inasmuch as it was signed by a person appointed to the position of chief inspector of the Judicial Inspectorate on the basis of unconstitutional provisions contrary to EU law, the defence had to be removed from the file, in accordance with the relevant provisions of the Code of Civil Procedure.

59 The Judicial Inspectorate replied that Mr Netejoru was legally entitled to represent it pursuant to the decision of 30 June 2015 of the general assembly of the Supreme Council of the Judiciary and Article 67(7) of Law No 317/2004.

60 The Tribunalul Olt (Regional Court, Olt) notes that the arguments put forward by the Romanian Judges' Forum raise the question of whether the requirement of judicial independence obliges Member States to adopt the necessary measures to ensure effective judicial protection in the fields covered by EU law; it asks, in particular, whether Member States must guarantee an independent disciplinary procedure for judges, eliminating all risks of political influence over the conduct of that procedure, such as those likely to result from the direct Government appointment even on a provisional basis of the persons occupying management positions within the body responsible for conducting that procedure.

61 In that context, the legal status and effects of the reports drawn up by the Commission under the CVM must be clarified so that the referring court can adjudicate on the procedural objection that the signatory to the defence lacks standing to represent the defendant in the main proceedings and on the treatment to be given to that pleading and the evidence and pleas relied on by the defendant. If the Court were to hold that the CVM is binding and that EU primary law precludes the adoption of provisions such as those of Emergency Ordinance No 77/2018, the representation of the Judicial Inspectorate would have been without any legal basis at the time the defence was lodged, notwithstanding the subsequent adoption of a decision by the general assembly of the Supreme Council of the Judiciary appointing Mr Netejoru to the position of chief inspector of the Judicial Inspectorate.

62 In those circumstances the Tribunalul Olt (Regional Court, Olt, Romania) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must the [CVM], established by [Decision 2006/928], be considered to be an act of an institution of the European Union, within the meaning of Article 267 TFEU, and therefore amenable to interpretation by the [Court]?

(2) Do the terms, nature and duration of the [CVM], established by [Decision 2006/928], come within the scope of the [Treaty of Accession]? Are the requirements laid down in the reports prepared in the context of that mechanism binding on Romania?

(3) Must the second subparagraph of Article 19(1) [TEU] be interpreted as meaning that it obliges the Member States to take the measures necessary to ensure effective legal protection in the fields covered by EU law, that is to say, guarantees of an independent disciplinary procedure for Romanian judges, by eliminating all risks of political influence over the conduct of those procedures, such as direct Government appointment of the management of the [Judicial Inspectorate], even on a provisional basis?

(4) Must Article 2 [TEU] be interpreted as meaning that the Member States are obliged to comply with the rule of law criteria, also required in the reports prepared in the context of the [CVM], established by [Decision 2006/928], in the case of procedures whereby the Government directly appoints the management of the [Judicial Inspectorate], even on a provisional basis?'

63 By order of 8 February 2019, the Curtea de Apel Craiova (Court of Appeal, Craiova, Romania), at the request of the Judicial Inspectorate, remitted the case in the main proceedings to the Tribunalul Mehedinți (Regional Court, Mehedinți, Romania), while maintaining the procedural steps taken.

64 In those circumstances, by order of 12 February 2019, the Tribunalul Olt (Regional Court, Olt), decided to decline jurisdiction in the case in the main proceedings, to forward the file to the Tribunalul Mehedinți (Regional Court, Mehedinți) and to inform the Court of Justice of that fact, while stating that the latter remained seised of the request for a preliminary ruling.

Case C-127/19

65 On 13 December 2018, the Romanian Judges' Forum and the Movement for the Defence of the Status of Prosecutors brought an action before the Curtea de Apel Pitești (Court of Appeal, Pitești, Romania) for annulment of Decisions Nos 910 and 911 of the general assembly of the Supreme Council of the Judiciary of 19 September 2018; those decisions approved, respectively, the rules on the appointment and removal of prosecutors in management roles in the SIIJ and the rules on the appointment, continuation of functions and removal of prosecutors with executive roles in the SIIJ. In support of their actions, those associations submitted that those decisions infringe, inter alia, Article 148 of the Romanian Constitution, according to which Romania is required to comply with the obligations under the Treaties to which it is a party.

66 The referring court observes that the decisions at issue in the main proceedings constitute administrative acts of a normative nature and were adopted on the basis of Article 88^{5}(12) of Law No 304/2004 as amended, inserted by Law No 207/2018. As regards the creation of the SIIJ, the Curtea Constituțională (Constitutional Court), in its judgment No 33 of 23 January 2018, rejected the complaints seeking a declaration that the creation of the SIIJ was contrary to EU law and, therefore, contrary to the obligations arising under Article 148 of the Romanian Constitution, since no binding EU act could be properly relied on in support of those complaints.

67 The applicants in the main proceedings, which refer to the reports and opinions mentioned in paragraph 49 above, contend, however, that the creation as such of the SIIJ, like the rules governing its operation and the appointment and removal of prosecutors, is contrary to EU law, and in particular to the requirements stemming from the CVM.

68 The referring court notes that while the CVM and the reports drawn up by the Commission in the context of that mechanism give rise to an obligation on the part of the Romanian State, such an obligation also lies with the administrative authorities, such as the Supreme Council of the Judiciary when it adopts secondary legislation such as that referred to in paragraph 65 above, and with the national courts. However, having regard in particular to the development of the case-law of the Curtea Constituțională (Constitutional Court), referred to in paragraph 66 above, the legal nature and effects of the CVM and of the reports adopted on the basis of that mechanism must be clarified in order for the dispute in the main proceedings to be resolved.

69 In addition, the referring court is uncertain whether the principles of EU law, in particular the rule of law, sincere cooperation and judicial independence, preclude the national legislation on the SIIJ. The SIIJ could be misused with the aim of removing from specialist public prosecutors certain sensitive cases pending in the fight against corruption, thereby impairing the effectiveness of that fight.

70 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) Must the [CVM], established by [Decision 2006/928] be regarded as an act of an institution of the Union, within the meaning of Article 267 TFEU, and therefore amenable to interpretation by the [Court]?

(2) Do the terms, nature and duration of the [CVM], established by [Decision 2006/928], fall within the scope of the [Treaty of Accession]? Are the requirements laid down in the reports prepared in accordance with that mechanism binding on Romania?

(3) Must Article 2, in conjunction with Article 4(3) TEU be interpreted as meaning that the obligation on Romania to comply with the requirements laid down in the reports prepared in accordance with the [CVM], established by [Decision 2006/928], forms part of the Member State's obligation to comply with the principles of the rule of law?

(4) Does Article 2 TEU, and more specifically the obligation to comply with the values of the rule of law, preclude legislation which establishes and organises the [SIIJ], within the [prosecutor's office attached to the High Court of Cassation and Justice], because of the possibility of indirect pressure being exerted on members of the judiciary?

(5) Does the principle of judicial independence, enshrined in the second subparagraph of Article 19(1) TEU and in Article 47 of [the Charter], as interpreted by the case-law of [the Court] (judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117), preclude the establishment of the [SIIJ], within the [prosecutor's office attached to the High Court of Cassation and Justice], in the light of the rules governing the appointment/removal of prosecutors as members of [the SIIJ], the rules governing the exercise of functions within that section and the way in which competence is established, in connection with the limited number of positions in that section?'

71 By letter of 15 June 2020, received at the Court on 1 July 2020, the Curtea de Apel Pitești (Court of Appeal, Pitești) informed the Court that, by order of 10 June 2019, the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) had, at the request of the Supreme Council of the Judiciary, remitted the case in the main proceedings to the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia, Romania). The letter stated that the procedural steps taken by the Curtea de Apel Pitești were maintained.

Case C-195/19

72 PJ lodged a complaint with the prosecutor's office at the Curtea de Apel București (Court of Appeal, Bucharest, Romania) against QK for abuse of office. In support of that complaint, PJ contended that QK had, in the course of his duties as a judge, committed that criminal offence by dismissing as unfounded an application relating to a tax dispute with the public finance authority, without having fulfilled his legal obligation to give reasons for his decision within 30 days of its being handed down. PJ also contended that the failure to state reasons had prevented him from exercising legal remedies against that decision.

73 After initially deciding, by order of 28 September 2018, to bring criminal proceedings against QK, the prosecutor handling the complaint ultimately decided, by order of 1 October 2018, to take no further action on the case, on the ground that the alleged abuse of office had not been established.

74 On 18 October 2018, PJ lodged a complaint against that order.

75 On 24 October 2018, in accordance with the provisions of Article 88^1 of Law No 304/2004 as amended, in conjunction with Article III of Law No 207/2018, the prosecutor's office attached to the Curtea de Apel București (Court of Appeal, Bucharest) referred the complaint to the SIIJ, since it concerned a member of the judiciary.

76 As the deputy chief prosecutor of that section dismissed the complaint as unfounded, PJ brought an action before the Curtea de Apel București (Court of Appeal, Bucharest).

77 The referring court states that if it were to allow PJ's action, it would have to refer the case back to the SIIJ, with the result that the question arises as to whether the national legislation establishing that section is consistent with EU law. If that question were answered in the negative, all the acts drawn up by the SIIJ in the case in main proceedings would have to be declared void. The Court's interpretation should also be taken into account when determining the future unit of the prosecutor's office responsible for adjudicating on PJ's complaint.

78 In that context, it is important, in the light of the conclusions of the CVM Report of November 2018, to consider the legal effects of the CVM, since if that mechanism were binding on Romania, the provisions of national law relating to the creation of the SIIJ would have to be suspended. More generally, and irrespective of whether that mechanism is binding, the question arises of whether Article 67(1) TFEU, the first sentence of Article 2 and the first sentence of Article 9 TEU preclude the creation of a section, such as the SIIJ, with exclusive competence to investigate any type of offence committed by prosecutors or judges. In that regard, the referring court observes that it fully endorses the assessments set out in the opinion of the Venice Commission referred to in paragraph 49 above.

79 Lastly, the referring court notes that, in the light of the case-law of the Curtea Constituțională (Constitutional Court) referred to in paragraph 51 above, there is a serious risk that the Court's answers to those questions may be deprived of effect in domestic law.

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

'(1) Are the [CVM], established by [Decision 2006/928], and the requirements laid down in the reports prepared in the context of that mechanism binding on Romania?

(2) Do Article 67(1) TFEU and both the first sentence of Article 2 and the first sentence of Article 9 TEU preclude national legislation establishing a section of the prosecution office which has exclusive competence to investigate any type of offence committed by judges or prosecutors?

(3) Does the principle of the primacy of [EU] law, as enshrined in the judgment of 15 July 1964, *Costa* (6/64, EU:C:1964:66), and by subsequent settled case-law of the [Court], preclude national legislation which allows a politico-judicial institution, such as the Curtea Constituțională ([Constitutional Court]), to infringe the aforementioned principle by means of decisions which are not open to appeal?'

Case C-291/19

81 In December 2015 and February 2016, SO lodged a complaint against several prosecutors and judges, alleging abuse of office and membership of a criminal organisation. Those complaints were recorded by the Section for combating offences related to corruption offences of the Direcția Națională Anticorupție (DNA) (National Anti-Corruption Directorate, Romania), which is answerable to the prosecutor's office attached to the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice).

82 By order of 8 September 2017, the prosecutor concerned in that section ordered that no further action should be taken on those complaints. The complaint subsequently lodged against that order was dismissed by an order of 20 October 2017 of the chief prosecutor of that section.

83 SO brought an action against those orders before the Curtea de Apel Constanța (Court of Appeal, Constanța, Romania). After that court declined jurisdiction, the action was remitted to the Curtea de Apel Brașov (Court of Appeal, Brașov, Romania).

84 In the course of those proceedings, the Public Prosecutor's Office was initially represented by a public prosecutor from the Brașov regional department of the DNA. From 1 March 2019, as a result of the legislative amendments made in relation to competence for offences committed within the judicial system, the Public Prosecutor's Office was represented by a prosecutor from the prosecutor's office attached to the Curtea de Apel Brașov (Court of Appeal, Brașov).

85 That court states that the continuation of the main proceedings entails, both at the criminal prosecution stage and at the judicial stage, the participation of prosecutors from the SIIJ in so far as if it were to hold that the action brought by SO is well founded, it would have to remit the case to that section for the purposes of criminal prosecution. Thus, that court considers that it is necessary to examine whether the national provisions which established the SIIJ are compatible with the provisions of EU law.

86 In that regard, the referring court raises the question, first of all, of the legal scope of Decision 2006/928 and of the CVM established by it. It also observes that the CVM reports of January 2017 and November 2018, as well as the other reports and opinions referred to therein, were highly critical of the creation of the SIIJ. Thus, if the CVM were binding on Romania, the referring court would have to find that the national provisions establishing that section are or must be suspended.

87 Next, in any event, the referring court asks whether the creation of the SIIJ is consistent with the principles on which the European Union's legal order is founded, such as the principles of the rule of law, sincere cooperation and the independence of the judiciary. On that latter point, it states that since the bringing of criminal proceedings against a judge may lead to his or her suspension, the existence of the SIIJ could be perceived, having regard to its organisation and operation, as an instrument of pressure likely to affect judicial independence.

88 Furthermore, the rules governing the appointment of the chief prosecutor and of the 14 other SIIJ prosecutors do not provide sufficient guarantees with regard to the requirement of impartiality, which could have an impact on the performance of the SIIJ's activity. In that regard, the latest amendments made to Law No 304/2004 by Emergency Ordinance No 7/2019 have the practical effect of placing SIIJ outside the authority of the Prosecutor General.

89 The referring court adds that although the SIIJ is composed of only 15 prosecutors, it has exclusive competence for prosecutions brought not only against judges but also against any person in cases in which a judge is implicated, that is, a high number of cases requiring at least some investigation. Until the SIIJ was established, complaints that may have given rise to such prosecutions were examined by more than 150 prosecutors belonging to several branches of the prosecution service, such as the prosecutor's offices attached to the various courts of appeal, the prosecutor's office attached to the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice), the DNA and the Direcția de Investigare a Infracțiunilor de Criminalitate Organizată și Terrorism

(DIICOT) (Directorate of Investigations into Organised Crime and Terrorism, Romania). It is, therefore, necessary to consider whether the SIIJ has the capability to deal with the cases pending before it appropriately and within a reasonable time.

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

'(1) Must the [CVM], established by [Decision 2006/928], be regarded as an act of an institution of the Union, within the meaning of Article 267 TFEU, and therefore amenable to interpretation by [the Court]?

(2) Are the requirements set out in the reports drawn up under that mechanism binding on Romania, in particular (but not only) as regards the need to make legislative amendments which comply with the conclusions of the [CVM] and with the recommendations made by the Venice Commission and the [GRECO]?

(3) Must Article 2, in conjunction with Article 4(3) TEU, be interpreted as meaning that the obligation on Romania to comply with the requirements laid down in the reports prepared in accordance with the [CVM], established by [Decision 2006/928], forms part of the Member State's obligation to comply with the principles of the rule of law?

(4) Does the principle of judicial independence, enshrined in the second subparagraph of Article 19(1) TEU and in Article 47 of [the Charter], as interpreted by the case-law of the [Court] (judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117), preclude the establishment of [the SIIJ], within the prosecutor's office attached to the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice), in the light of the rules governing the appointment and removal of prosecutors as members of [the SIIJ], the rules governing the exercise of functions within that section and the way in which competence is established, in connection with the limited number of positions in [the SIIJ]?

(5) Does [the second paragraph of] Article 47 of the [Charter] relating to the right to a fair trial by means of a hearing within a reasonable time, preclude the establishment of the [SIIJ] within the prosecutor's office attached to the Curte de Casație și Justiție (High Court of Cassation and Justice), in the light of the rules governing the exercise of functions within [the SIIJ] and the way in which competence is established, in connection with the limited number of positions in [the SIIJ]?'

Case C-355/19

91 On 23 January 2019, the Romanian Judges' Forum, the Movement for the Defence of the Status of Prosecutors, and OL brought an action before Curtea de Apel Pitești (Court of Appeal, Pitești) seeking the annulment of an order of the Prosecutor General of 23 October 2018 on the organisation and operation of the SIIJ. That order, adopted with a view to implementing Law No 207/2018 and Emergency Ordinance No 90/2018, concerns the organisation and operation of that section.

92 In support of their action, the applicants in the main proceedings, who refer to the reports and opinions mentioned in paragraph 49 above, submit that the creation of the SIIJ, in so far as it is likely to hinder the fight against corruption and constitutes an instrument for the intimidation of judges, is contrary to the requirements arising from the CVM, concerning respect for the principles of the rule of law, sincere cooperation and judicial independence, and, more generally, to the requirements of Article 2 and the second subparagraph of Article 19(1) TEU.

93 After noting that the DNA had achieved significant results in the fight against corruption, the applicants in the main proceedings observe that the establishment of the SIIJ may call those results into question, since all cases of corruption implicating a judge are now transferred to that section, without the prosecutors of the SIIJ possessing specific expertise in that area. Furthermore, those transfers could create conflicts with the specialised sections in that field, namely the DNA and the DIICOT, as regards which section of prosecutors is competent to act. Lastly, limiting the number of prosecutors within the SIIJ to 15 does not enable it to deal with all complaints registered each year against judges. The Romanian legislature thus created a structure that is particularly ill-equipped in relation to the powers attributed to that structure and the significance of the cases it deals with, which undermines the structure's proper functioning and functional independence.

94 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) Must the [CVM] established by [Decision 2006/928] be regarded as an act of an institution of the Union, within the meaning of Article 267 TFEU, which is amenable to interpretation by the [Court]?

(2) Do the terms, nature and duration of the [CVM] established by [Decision 2006/928] fall within the scope of the [Treaty of Accession]? Are the requirements set out in the reports drawn up in the context of that mechanism binding on the Romanian State?

(3) Must Article 2 [TEU] be interpreted as meaning that the Member States are obliged to comply with the criteria of the rule of law, also requested in the reports drawn up in the context of the [CVM] established by [Decision 2006/928], in the event of the creation, as a matter of urgency, of a section of the prosecutor's office charged with the exclusive investigation of offences committed by members of the judiciary, which gives rise to particular concerns as regards the fight against corruption and may be used as an additional means of intimidating members of the judiciary and putting pressure on them?

(4) Must the second subparagraph of Article 19(1) [TEU] be interpreted as meaning that the Member States are obliged to adopt the necessary measures to ensure effective legal protection in the fields covered by EU law through the removal of any risk of political influence on criminal proceedings before certain judges, [in] the event of the creation, as a matter of urgency, of a section of the prosecutor's office charged with the exclusive investigation of offences committed by members of the judiciary, which gives rise to particular concerns as regards the fight against corruption and may be used as an additional means of intimidating members of the judiciary and putting pressure on them?'

Case C-397/19

95 On 3 January 2019, AX brought an action before the Tribunalul București (Regional Court, Bucharest, Romania), on the basis of Article 1381 of the Civil Code and Articles 9 and 539 of the Code of Criminal Procedure inter alia, seeking an order for damages from the Romanian State for the material and non-material damage he sustained as a result of a criminal conviction, unlawful detention measures and unlawful measures restricting his freedom.

96 In support of his action, AX stated that, by judgment of 13 June 2017, the Tribunalul București (Regional Court, Bucharest) had sentenced him to a suspended term of imprisonment of four years for the offence of continuous tax evasion, and to both an additional punishment and an ancillary punishment, had set the amount of damages to be paid to the civil party on a joint and several basis at 1 642 970 Romanian lei (RON) (approximately EUR 336 000) and had made all his present and future moveable and immovable property the subject of preventive attachment. In addition, from 21 January 2015 to 21 October 2015, AX had been placed in police custody, in pre-trial detention and then under house arrest. Subsequently, the Curtea de Apel București (Court of Appeal, Bucharest) held that he had not committed the offence for which he had been convicted and revoked the attachment order.

97 The referring court considers that the action raises questions concerning the legal status and effects of the reports drawn up by the Commission under the CVM and whether EU primary law precludes national legislation, such as that at issue in the main proceedings, which could compromise the independence of judges and prosecutors.

98 As regards the independence of national judges, the referring court notes that that independence must be guaranteed in accordance with the second subparagraph of Article 19(1) TEU. The rules on compensation for damage caused by judicial errors are, on account of the detailed rules governing the compensation procedure, liable to infringe the principle of *audi alteram partem* and the rights of defence of the judge in question, inasmuch as the existence of a judicial error could be established in a first set of proceedings, such as that at issue in the main proceedings, without that judge having been heard or having the right to challenge the existence of such an error in the proceedings in the subsequent action for indemnity brought against him or her. Furthermore, the question of whether that error was made by the judge in bad faith or as a result of gross negligence is left to the assessment of the State, since the judge has only a limited opportunity to object to the claims of the State or the Judicial Inspectorate, which is liable to compromise, in particular, the principle of the independence of the judiciary, which is a cornerstone of the rule of law.

99 In those circumstances the Tribunalul București (Regional Court, Bucharest) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is the [CVM], established by [Decision 2006/928], to be regarded as an act of an institution of the Union, within the meaning of Article 267 TFEU, and therefore amenable to interpretation by the [Court]?

(2) Does the [CVM], established by [Decision 2006/928], constitute an integral part of the [Treaty of Accession], and must it be interpreted and applied in the light of the provisions of that treaty? Are the requirements set out in the reports drawn up in the context of that mechanism binding on Romania and, if so, is a national court which is responsible for applying, within its sphere of jurisdiction, provisions of EU law required to ensure the

application of those rules, where necessary refusing, of its own motion, to apply provisions of national legislation that are contrary to the requirements set out in the reports drawn up pursuant to that mechanism?

(3) Is Article 2 [TEU], read in conjunction with Article 4(3) [TEU], to be interpreted as meaning that the obligation on Romania to comply with the requirements laid down in the reports drawn up pursuant to the [CVM], established by [Decision 2006/928], forms part of the Member State's obligation to observe the principles of the rule of law?

(4) Does Article 2 [TEU], read in conjunction with Article 4(3) [TEU], and in particular the obligation to observe the values of the rule of law, preclude a provision of national legislation, such as Article 96(3)(a) of [Law No 303/2004 as amended], which defines, succinctly and in the abstract, a "judicial error" as the performance of a procedural act in clear breach of provisions of substantive or procedural law, without specifying the nature of the provisions infringed, the scope of those provisions, *ratione materiae* and *ratione temporis*, in the proceedings, the methods, time limits and procedures for establishing infringement of legal provisions, or the authority competent to establish infringement of those legal provisions, and thus creates a risk of pressure being indirectly exerted on the judiciary?

(5) Does Article 2 [TEU], read in conjunction with Article 4(3) [TEU], and in particular the obligation to observe the values of the rule of law, preclude a provision of national legislation, such as Article 96(3)(b) of [Law No 303/2004 as amended], which defines a "judicial error" as the delivery of a final judgment that is manifestly contrary to the law or inconsistent with the factual situation established by the evidence taken in the course of the proceedings, without defining the procedure for establishing inconsistency and without defining in specific terms what is meant by that inconsistency of the judgment vis-à-vis the applicable legal provisions or the factual situation, and thus creates a risk that the interpretation of the law and the evidence by the judiciary (judges and prosecutors) will be hindered?

(6) Does Article 2 [TEU], read in conjunction with Article 4(3) [TEU], and in particular the obligation to observe the values of the rule of law, preclude a provision of national legislation, such as Article 96(3) of [Law No 303/2004 as amended], pursuant to which the civil liability of a member of the judiciary (a judge or prosecutor) vis-à-vis the State is established solely on the basis of the State's own assessment, and, where appropriate, the advisory report of the [Judicial Inspectorate], regarding the question of the intention or gross negligence of the judge or prosecutor in the commission of the material error, without that judge or prosecutor having the opportunity fully to exercise his or her rights of defence, and which thus creates the risk of the procedure for establishing the liability of the judge or prosecutor vis-à-vis the State being commenced and completed arbitrarily?

(7) Does Article 2 [TEU], and in particular the obligation to observe the values of the rule of law, preclude a provision of national legislation, such as the last sentence of Article 539(2) of the [Code of Criminal Procedure], read together with Article 541(2) and (3) thereof, whereby a defendant who has been acquitted on the merits, implicitly and *sine die* is provided with an extraordinary *sui generis* means of appeal against a final judgment on the lawfulness of pre-trial detention, an appeal which is to be heard solely by a civil court, in the event that the

unlawfulness of the pre-trial detention has not been established by a decision of a criminal court, in breach of the principle that legal provisions must be predictable and accessible, the principle of the specialisation of judges and the principle of legal certainty?'

Procedure before the Court

100 By decision of the President of the Court of 21 March 2019, Cases C-83/19, C-127/19 and C-195/19 were joined for the purposes of the written and oral procedure and of the judgment. By decision of the President of the Court of 27 November 2020, Cases C-291/19, C-355/19 and C-397/19 were joined to those cases for the purposes of the judgment.

101 The referring courts in Cases C-83/19, C-127/19, C-195/19, C-355/19 and C-397/19 requested the Court to determine the references for a preliminary ruling in those cases pursuant to an expedited procedure in accordance with Article 105 of the Rules of Procedure of the Court of Justice. In support of their requests, those courts argued that the requirements of the rule of law necessitated that the disputes in the main proceedings be determined within a short time.

102 Article 105(1) of the Rules of Procedure provides that, at the request of the referring court or tribunal or, exceptionally, of his or her own motion, the President of the Court may decide, after hearing the Judge-Rapporteur and the Advocate General, that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure derogating from the provisions of those rules where the nature of the case requires that it be dealt with within a short time.

103 It must be borne in mind, in that regard, that such an expedited procedure is a procedural instrument intended to address matters of exceptional urgency. Furthermore, it is also apparent from the Court's case-law that the expedited procedure may not be applied where the sensitive and complex nature of the legal problems raised by a case does not lend itself easily to the application of such a procedure, in particular where it is not appropriate to shorten the written part of the procedure before the Court (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 48 and 49 and the case-law cited).

104 In the present case, by decisions of 21 March 2019 (Cases C-83/19, C-127/19 and C-195/19), 26 June 2019 (Case C-397/19) and 27 June 2019 (Case C-355/19), the President of the Court decided, after hearing the Judge-Rapporteur and the Advocate General, that the requests of the referring courts referred to in paragraph 101 above should be refused.

105 Indeed, while the questions raised, which relate to fundamental provisions of EU law, are a priori likely to be of the utmost importance for the proper working of the European Union's judicial system, to which the independence of national courts is essential (see, to that effect, order of the President of the Court of 11 December 2018, *Uniparts*, C-668/18, not published, EU:C:2018:1003, paragraph 12), the sensitive and complex nature of those questions, which arise in the context of a wide-ranging reform in the field of justice and the fight against corruption in Romania, did not lend itself easily to the application of the expedited procedure.

106 However, having regard to the nature of the questions referred, by decision of 18 September 2019 the President of the Court granted priority treatment to all the cases referred to in paragraph 100 above, pursuant to Article 53(3) of the Rules of Procedure.

Consideration of the questions referred

The jurisdiction of the Court

107 The Polish and Romanian Governments submit that the Court lacks jurisdiction to answer certain of the referring courts' questions.

108 The Polish Government, which confined itself to making observations on the third question referred in Case C-83/19, the fourth and fifth questions referred in Case C-127/19, the second question referred in Case C-195/19, the fourth and fifth questions referred in Case C-291/19, the fourth question referred in Case C-355/19 and the fourth to sixth questions referred in Case C-397/19, submits that the Court lacks jurisdiction to answer those questions. The questions raised by the referring courts concerning whether the Romanian legislation complies with EU law relate, first, to the organisation of justice, and more specifically the procedure for appointing members of the Judicial Inspectorate and the internal organisation of the Public Prosecutor's Office, and, secondly, to the rules governing State liability for damage caused by judges to individuals as a result of an infringement of national law. However, those two areas, it is argued, fall within the exclusive competence of the Member States and, accordingly, are outside the scope of EU law.

109 The Romanian Government, for its part, submits that the Court lacks jurisdiction to answer the fourth question referred in Case C-83/19, the fourth and fifth questions referred in Case C-127/19, the second question referred in Case C-195/19, the fourth and fifth questions referred in Case C-291/19, the third and fourth questions referred in Case C-355/19 and the third to sixth questions referred in Case C-397/19, in so far as those questions concern the interpretation of Article 2 and Article 4(3) TEU, Article 67 TFEU and Article 47 of the Charter. Whereas, in order to be applicable to the disputes in the main proceedings, those provisions would have required Romania to implement EU law, there is no EU act governing the measures at issue in the main proceedings. Only the second subparagraph of Article 19(1) TEU could, in the light of the case-law derived from the judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses* (C-64/16, EU:C:2018:117), be of relevance to the issues raised by the referring courts in those questions. In any event, the questions relate to the organisation of justice, which is not an EU competence.

110 In that regard, it must be found that the requests for a preliminary ruling concern the interpretation of EU law, whether that be provisions of primary law, in this instance Article 2, Article 4(3), Article 9 and the second subparagraph of Article 19(1) TEU, Article 67 TFEU and Article 47 of the Charter, or provisions of secondary law, namely Decision 2006/928.

111 Furthermore, the arguments of the Polish and Romanian Governments concerning the alleged lack of competence of the European Union in relation to the organisation of justice and State liability in the event of judicial error relate, in fact, to the actual scope and, therefore, to the interpretation of the provisions of EU primary law mentioned in the questions referred, that interpretation clearly falling within the jurisdiction of the Court under Article 267 TFEU. Indeed, the Court has held that although the organisation of justice in the Member States falls within the competence of those Member States, they are nonetheless required, when exercising that competence, to comply with their obligations deriving from EU law (see, to that effect, 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 68 and 69 and the case-law cited). That obligation also applies in the area of the financial liability of the Member States and the personal liability of judges in the event of judicial error, at issue in Case C-397/19.

112 In the light of the foregoing, the Court has jurisdiction to answer the questions referred in the present cases, including those mentioned in paragraphs 108 and 109 above.

Admissibility and whether there is any need to adjudicate

Case C-83/19

113 The Judicial Inspectorate and the Romanian Government submit that the request for a preliminary ruling in Case C-83/19 is inadmissible on the ground that there is no link between the questions referred and the dispute in the main proceedings. In particular, the interpretation of EU law sought in that case has no direct bearing on the outcome of that dispute, which must be decided on the basis of national law alone.

114 The Commission, for its part, submits in its written observations that the questions referred seem to have lost their relevance to the dispute in the main proceedings, since the general assembly of the Supreme Council of the Judiciary appointed Mr Netejoru on 15 May 2019, and therefore after the reference to the Court, to the office of chief inspector of the Judicial Inspectorate for a new three-year term on the basis of Law No 317/2004. Since that appointment put an end to the interference by the executive in the independence of the judiciary, resulting from Emergency Ordinance No 77/2018, Mr Netejoru is now in a position to establish his status as a representative of the Judicial Inspectorate, with the result that, in principle, the questions relating to the interpretation of EU law no longer arise and there is, therefore, no longer any need for the Court to rule on them. At the hearing, the Commission clarified that, in accordance with the rules of national law, procedural defects such as that relied on by the applicant in the main proceedings could be cured in the course of the proceedings, which would, however, be for the referring court to verify.

115 In accordance with the Court's settled case-law, in the context of the cooperation between the Court and the national courts, provided for in Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle required to give a ruling (judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 25 and the case-law cited).

116 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 26 and the case-law cited).

117 In particular, as is apparent from the actual wording of Article 267 TFEU, the question referred for a preliminary ruling must be 'necessary' to enable the referring court to 'give judgment' in the case before it. Thus, the preliminary ruling procedure is based on the premiss, inter alia, that a case is pending before the national courts, in which they are called upon to give a decision which is capable of taking account of the preliminary ruling (judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 27 and the case-law cited).

118 In the present case, it is clear from the order for reference that the national court considers that a preliminary ruling is necessary in order for it to be able to rule *in limine litis* on the procedural objection raised by the Romanian Judges' Forum that Mr Netejoru, who signed the defence, did not establish his status as a representative of the Judicial Inspectorate. The national court states that it is for that court, pursuant to Article 248(1) of the Code of Civil Procedure in particular, to rule first of all on that objection, since if it were upheld, the defence and the evidence and pleas relied on by the Judicial Inspectorate would have to be removed from the file.

119 It follows that the interpretation of EU law requested is objectively required for the decision to be taken by the referring court.

120 Furthermore, as the Advocate General observed, in essence, in point 95 of his Opinion in Joined Cases C-83/19, C-127/19, C-195/19, C-291/19 and C-355/19, that interpretation remains necessary notwithstanding the fact that Mr Netejoru had in the meantime been appointed to the position of chief inspector of the Judicial Inspectorate by the Supreme Council of the Judiciary. First, there is nothing in the file before the Court to indicate that either the procedural objection in the main proceedings, or the main proceedings themselves, have become devoid of purpose. Secondly, whereas the capacity of the person concerned legally to represent the Judicial Inspectorate must, under the applicable national law, as set out by the referring court, be assessed as at the date on which the defence was lodged, the appointment in question took place after that date. In those circumstances, the Commission's doubts as to whether the questions referred continued to be relevant on account of that subsequent appointment are not such as to call into question the presumption of relevance enjoyed by those questions or, therefore, lead to a finding that there is no need to adjudicate upon those questions.

121 It follows from the foregoing that the request for a preliminary ruling in Case C-83/19 is admissible and must be adjudicated upon.

Cases C-127/19 and C-355/19

122 The Supreme Council of the Judiciary submits that the request for a preliminary ruling in Case C-127/19 is inadmissible, in particular since Decision 2006/928 is not an EU legislative act which is binding on Romania and amenable to interpretation by the Court under Article 267 TFEU. In any event, the questions referred in that case do not concern the uniform application of a provision of EU law, but the applicability to the dispute in the main proceedings of the provisions of EU law referred to in those questions and cannot, thus worded, be the subject of a request for a preliminary ruling.

123 For its part, the Romanian Government submits that the first to third questions referred in Case C-127/19 and all the questions referred in Case C-355/19 are inadmissible, since the referring courts have failed to establish a link between those questions and the disputes in the main proceedings. The interpretation sought therefore bears no relation to the actual facts of those disputes or their purpose.

124 First, it must be found that the arguments of the Supreme Council of the Judiciary set out in paragraph 122 above, concerning the nature and effects of Decision 2006/928 and the applicability of that decision in the context of the main proceedings, in fact relate to the substantive examination of the questions referred in Case C-127/19, not to the examination of whether those questions are admissible.

125 As regards, secondly, the Romanian Government's objections, it is sufficient to note that the disputes in the main proceedings in Cases C-127/19 and C-355/19 concern the legality, respectively, of two decisions of the Supreme Council of the Judiciary and of an order of the Prosecutor General seeking to implement certain amendments arising from Law No 207/2018, the compatibility of which with EU law – and in particular with Decision 2006/928, Article 2, Article 4(3) and the second subparagraph of Article 19(1) TEU and Article 47 of the Charter – is challenged before the referring courts. Consequently, in the light of the particulars provided to that effect by those courts, it cannot be held that the questions referred in those cases manifestly bear no relation to the actual facts of the disputes in the main proceedings or their purpose.

126 In those circumstances, the requests for a preliminary ruling in Cases C-127/19 and C-355/19 are admissible.

Cases C-195/19 and Case C-291/19

127 The Romanian Government submits that the questions referred in Cases C-195/19 and C-291/19 are inadmissible, arguing that the referring courts have not established the existence of a link between the questions referred and the main proceedings. As regards, in particular, the reference to the first sentence of Article 9 TEU and to Article 67(1) TFEU in the second question referred in Case C-195/19, the Romanian Government observes that there is nothing in the request for a preliminary ruling which explains how those provisions might bear any relation to the actual facts of the dispute in the main proceedings. As regards the third question referred in that same case, it adds that that question, in particular the references to the case-law of the Curtea Constituțională (Constitutional Court) and its effects, are worded in too general a manner and bear no relation to the actual facts of that dispute.

128 In that regard, it should be noted that the proceedings in question in the main proceedings in Cases C-195/19 and C-291/19, putting in issue the criminal liability of judges and prosecutors, involve the participation of SIIJ prosecutors. In the light of the reports and opinions referred to in paragraph 49 above, the referring courts are uncertain as to whether the legislation on the creation of the SIIJ is compatible with the provisions of EU law mentioned in the questions referred for a preliminary ruling. In addition, it is apparent from the information provided by those courts that they must determine that issue on a preliminary basis before being able to decide on the outcome of the actions before them.

129 It cannot, therefore, be held that the questions referred, in so far as they concern Decision 2006/928, Article 2, Article 4(3) and the second subparagraph of Article 19(1) TEU and Article 47 of the Charter, bear no relation to the actual facts of the disputes in the main proceedings or their purpose or that they concern a hypothetical problem.

130 As regards, on the other hand, the reference to the first sentence of Article 9 TEU and to Article 67(1) TFEU, in the second question referred in Case C-195/19, there is nothing in the request for a preliminary ruling to explain how the interpretation of those provisions might be of

use to the referring court in resolving the dispute in the main proceedings. In those circumstances, the second question is inadmissible in so far as it concerns the first sentence of Article 9 TEU and Article 67(1) TFEU.

131 As regards the admissibility of the third question in Case C-195/19, it must be borne in mind that, in the context of the cooperation between national courts and the Court laid down by Article 267 TFEU, it is for the Court to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it (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 179 and the case-law cited). Thus, the fact that the question at issue is, formally speaking, worded in general terms does not preclude the Court from providing to the national court all the elements of interpretation which may be of use in adjudicating on the case pending before it, whether or not that court has referred to them in its questions. It is for the Court to extract from all the information provided by the national court, in particular from the grounds of the order for reference, the points of EU law which require interpretation, having regard to the subject matter of the dispute (see, to that effect, judgment of 16 July 2020, *Caixabank and Banco Bilbao Vizcaya Argentaria*, C-224/19 and C-259/19, EU:C:2020:578, paragraph 47 and the case-law cited).

132 In the present case, it is sufficient to note that, as a result of the details of the request for a preliminary ruling in Case C-195/19, it is possible to understand the scope of the third question, by which the referring court seeks, in essence, to ascertain whether the principle of the primacy of EU law precludes a national provision having constitutional status, as interpreted by the Curtea Constituțională (Constitutional Court), pursuant to which the referring court does not have the power to apply the guidance provided in the Court's judgment in the present case and, if necessary, to disapply the national legislation at issue in the main proceedings which is contrary to EU law.

133 It must be borne in mind that, according to settled case-law, Article 267 TFEU gives national courts the widest discretion in referring matters to the Court if they consider that a case pending before them raises questions involving the interpretation of provisions of EU law which are necessary for the resolution of the case before them (judgment of 24 October 2018, *XC and Others*, C-234/17, EU:C:2018:853, paragraph 42). Thus, in particular, a court which is not ruling at final instance must be free, if it considers that the legal ruling of a higher court, and even that of a constitutional court, could lead it to give a judgment contrary to EU law, to refer to the Court questions which are of concern to it (see, to that effect, judgment of 5 March 2019, *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 52 and the case-law cited).

134 In those circumstances, as regards Case C-195/19, the first question, the second question in so far as it relates to Article 2 TEU, and the third question are admissible. As regards Case C-291/19, all the questions referred are admissible.

Case C-397/19

135 The Romanian Government submits that the first three questions referred in Case C-397/19 are inadmissible, on the ground that they bear no relation to the actual facts of the dispute in the main proceedings or its purpose and the facts of the dispute do not fall within the scope of EU law. It submits in that connection that the link between that dispute and the CVM is only indirect, with the result that an answer to those questions would have no bearing on the outcome

of that dispute. As regards the fourth to sixth questions, the Romanian Government submits that the provisions of EU law referred to in those questions also have no connection with the dispute in the main proceedings. As regards, in particular, the sixth question, it submits that the legal problem which that question raises goes beyond the subject matter of that dispute, since the referring court is seised of an action for damages against the Romanian State, not an action for indemnity against a judge. The Romanian Government submits that the seventh question referred is inadmissible, since the contentions set out therein are unfounded and also raise a hypothetical problem of interpretation.

136 The Commission, for its part, is uncertain whether the first to sixth questions are admissible. Although the amendments made to the rules governing the personal liability of judges and prosecutors by Law No 242/2018 have been considered to be problematic as regards their compliance with EU law, by the CVM Report of November 2018 and other reports and opinions referred to in paragraph 49 above, the dispute in the main proceedings concerns the incurrence of liability on the part of the State as a result of an alleged judicial error, not the putting in issue, in an action for indemnity, of the personal liability of the judge who made that error. However, at the hearing, the Commission clarified, in that regard, that the first to sixth questions could be held admissible provided that they were reformulated as seeking an examination of the rules governing liability for judicial error as a whole having regard to the procedural links between the two sets of proceedings concerned and, in particular, the fact that the first set of proceedings may influence the outcome of the second set even though the judge concerned is heard only at the stage of those latter proceedings.

137 By contrast, the Commission submits that the seventh question referred is inadmissible. It states that it is, in principle, for the Member States to determine the conditions for bringing an action to challenge the legality of a measure of pre-trial detention in the context of criminal proceedings, for the purposes of obtaining compensation for the damage sustained, since that aspect is not governed by EU law. In addition, the referring court does not provide the slightest explanation to call into question the fact that the provisions of Articles 539 and 541 of the Code of Criminal Procedure referred to in the seventh question are consistent with EU law.

138 In that connection, as regards, first of all, the admissibility of the first to third questions, relating to the nature and scope of the CVM established by Decision 2006/928, it is sufficient to note, as the Commission has pointed out, that the rules governing the personal liability of judges form part of the laws governing the organisation of justice in Romania and have been the subject of monitoring at EU level on the basis of the CVM. It is not, therefore, obvious that the interpretation of EU law sought by those questions bears no relation to the actual facts of the dispute in the main proceedings or its purpose.

139 As regards, next, the admissibility of the fourth to sixth questions, it should be borne in mind that, according to the case-law cited in paragraph 131 above, it is for the Court, if necessary, to extract from all the information provided by the national court, in particular from the grounds of the order for reference, the points of EU law which require interpretation, having regard to the subject matter of the dispute.

140 It is apparent from the wording of those questions and the grounds set out therein that the referring court is uncertain whether the national rules governing the State's financial liability for damage caused by judicial errors and the personal liability of the judges whose performance of their duties gave rise to those errors are compatible with EU law – and specifically with value of

the rule of law and the principle of judicial independence, enshrined in Article 2 and the second subparagraph of Article 19(1) TEU – in particular because of the general and abstract nature of the definition of the concept of 'judicial error' and certain procedural rules laid down.

141 In that regard, it is apparent from the request for a preliminary ruling that the existence of a judicial error is definitively established in the course of proceedings brought against the State, such as those at issue in the main proceedings, in which the judge whose performance of his or her duties gave rise to the alleged judicial error does not participate. Where it is found, at the end of those proceedings, that there has been a judicial error, the competent ministry may decide, according to the particulars provided by the referring court, on the sole basis of that ministry's own assessment, whether or not to bring an action for indemnity against the judge concerned, the latter then having a limited opportunity to oppose the claims made by the State.

142 Given the significant and inherent links between the substantive and procedural rules governing the State's financial liability and the personal liability of judges, the referring court asks, in essence, by the fourth to sixth questions whether those rules, considered as a whole, are liable to undermine the principles of EU law even at the stage of the proceedings brought against the State; for a finding of a judicial error in those proceedings is binding in the subsequent proceedings for indemnity brought against the judge in question even though he or she did not participate in the first set of proceedings.

143 In those circumstances, it is not obvious that the interpretation of EU law sought by the fourth to sixth questions bears no relation to the actual facts of the dispute in the main proceedings or its purpose or that the problem raised by those questions is hypothetical.

144 Lastly, as regards the admissibility of the seventh question, it should be noted that it is not possible from the request for a preliminary ruling to understand either the precise scope of that question or the reasons for which the referring court is uncertain whether the national provisions referred to in that question are compatible with Article 2 TEU. Since the Court does not, therefore, have the material necessary to give a useful answer to the seventh question, that question must be declared inadmissible.

145 It follows that the request for a preliminary ruling in Case C-397/19 is admissible, with the exception of the seventh question.

Substance

146 The requests for a preliminary ruling, in so far as they are admissible, relate to:

– whether Decision 2006/928 and the reports drawn up by the Commission on the basis of that decision constitute acts of an EU institution, which are amenable to interpretation by the Court under Article 267 TFEU (first question in Cases C-83/19, C-127/19, C-291/19, C-355/19 and C-397/19);

– whether Decision 2006/928 falls within the scope of the Treaty of Accession and, if so, the legal consequences thereof for Romania (first question in Case C-195/19, second question in Cases C-83/19, C-127/19, C-291/19, C-355/19 and C-397/19, and the third question in Cases C-127/19, C-291/19 and C-397/19);

– whether the legislation governing the organisation of justice in Romania falls within the scope of Decision 2006/928 (fourth question in Case C-83/19 and third question in Case C-355/19);

– whether the Romanian legislation on the interim appointment to the management positions of the Judicial Inspectorate is consistent with EU law (third question in Case C-83/19);

– whether the Romanian legislation on the creation of the SIIJ is consistent with EU law (fourth and fifth questions in Case C-127/19, second question in Case C-195/19, fourth and fifth questions in Case C-291/19 and the third and fourth questions in Case C-355/19);

– whether the Romanian regime for the State's financial liability and for the personal liability of judges in the event of judicial error is consistent with EU law (fourth to sixth questions in Case C-397/19);

– the principle of the primacy of EU law (third question in Case C-195/19).

The first question referred in Cases C-83/19, C-127/19, C-291/19, C-355/19 and C-397/19

147 By their first question referred in Cases C-83/19, C-127/19, C-291/19, C-355/19 and C-397/19, which it is appropriate to examine together, the referring courts seek, in essence, to ascertain whether Decision 2006/928 and the reports drawn up by the Commission on the basis thereof constitute acts of an EU institution, which are amenable to interpretation by the Court under Article 267 TFEU.

148 In that regard, it should be borne in mind that, in accordance with settled case-law, Article 267 TFEU confers on the Court jurisdiction to give a preliminary ruling on the validity and interpretation of all acts of the EU institutions without exception (see, to that effect, judgments of 13 June 2017, *Florescu and Others*, C-258/14, EU:C:2017:448, paragraph 30, and of 20 February 2018, *Belgium* v *Commission*, C-16/16 P, EU:C:2018:79, paragraph 44 and the case-law cited).

149 Decision 2006/928 is an act adopted by an EU institution, namely the Commission, on the basis of the Act of Accession which falls within the scope of EU primary law, and specifically constitutes a decision within the meaning of the fourth paragraph of Article 288 TFEU. As regards the Commission reports to the European Parliament and to the Council, drawn up under the CVM established by that decision, they must also be regarded as acts adopted by an EU institution, having as their legal basis EU law, namely Article 2 of that decision.

150 It follows that Decision 2006/928 and the Commission reports drawn up on the basis thereof are amenable to interpretation by the Court under Article 267 TFEU, it being immaterial for that purpose whether or not those acts have binding effects.

151 The answer to the first question referred in Cases C-83/19, C-127/19, C-291/19, C-355/19 and C-397/19 is, therefore, that Decision 2006/928 and the reports drawn up by the Commission on the basis of that decision constitute acts of an EU institution, which are amenable to interpretation by the Court under Article 267 TFEU.

The first question referred in Case C-195/19, the second question referred in Cases C-83/19, C-127/19, C-291/19, C-355/19 and C-397/19 and the third question referred in Cases C-127/19, C-291/19 and C-397/19

152 By the first question referred in Case C-195/19, the second question referred in Cases C-83/19, C-127/19, C-291/19, C-355/19 and C-397/19 and the third question referred in Cases C-127/19, C-291/19 and C-397/19, which it is appropriate to examine together, the referring courts ask, in essence, whether Articles 2, 37 and 38 of the Act of Accession, read in conjunction with Articles 2 and 49 TEU, must be interpreted as meaning that, as regards its legal nature, content and temporal effects, Decision 2006/928 falls within the scope of the Treaty of Accession and, if so, what legal consequences flow from this for Romania. In particular, the referring courts are uncertain whether and, if so to what extent, the requirements and recommendations formulated in the Commission reports adopted on the basis of Decision 2006/928 are binding on Romania.

– ***The legal nature, content and temporal effects of Decision 2006/928***

153 As is apparent from recitals 4 and 5 of Decision 2006/928, that decision was adopted in the context of Romania's accession to the European Union, which took place on 1 January 2007, and on the basis of Articles 37 and 38 of the Act of Accession.

154 Under Article 2(2) of the Treaty of Accession, the Act of Accession, which sets out the conditions of Romania's accession to the European Union and prescribes the adjustments to the Treaties entailed by that accession, forms an integral part of that treaty.

155 Accordingly, Decision 2006/928, as a measure adopted on the basis of the Act of Accession, falls within the scope of the Treaty of Accession. The fact that that decision was adopted prior to Romania's accession to the European Union does not invalidate that conclusion, since Article 4(3) of the Treaty of Accession, which was signed on 25 April 2005, expressly empowered the EU institutions to adopt before that accession the measures listed in Article 4(3), which include those referred to in Articles 37 and 38 of the Act of Accession.

156 Articles 37 and 38 of the Act of Accession empower the Commission to take appropriate measures in the event of, respectively, imminent risk of serious breach of the functioning of the internal market linked to Romania's failure to honour commitments undertaken in the context of the accession negotiations and imminent risk of serious shortcomings by Romania as regards compliance with EU law relating to the area of freedom, security and justice.

157 As the Advocate General observed in points 134 and 135 of his Opinion in Cases C-83/19, C-127/19, C-195/19, C-291/19 and C-355/19, Decision 2006/928 was adopted because of the existence of imminent risks of the kind referred to in Articles 37 and 38 of the Act of Accession.

158 As is apparent from the Commission's monitoring report of 26 September 2006 on the state of preparedness for EU membership of Bulgaria and Romania (COM(2006) 549 final), referred to in recital 4 of Decision 2006/928, the Commission noted the persistence of deficiencies in Romania, in particular in the areas of justice and the fight against corruption, and proposed that the Council should make that Member State's accession to the European Union subject to the establishment of a mechanism for cooperation and verification in order to deal with those deficiencies. As is apparent in particular from recitals 4 and 6 of Decision 2006/928, and as the Commission pointed out, that decision established the CVM and laid down the benchmarks, referred to in Article 1 of, and the Annex to, that decision, in the areas of reform of the judicial system and the fight against

corruption; this was specifically in order to resolve those deficiencies and to ensure the capacity of the judicial system and law enforcement bodies to implement and apply the measures adopted to contribute to the functioning of the internal market and the area of freedom, security and justice.

159 In that regard, as stated in recitals 2 and 3 of Decision 2006/928, the internal market and the area of freedom, security and justice are based on the mutual confidence between Member States that their administrative and judicial decisions and practices fully respect the rule of law, which requires the existence in all Member States of an impartial, independent and effective judicial and administrative system properly equipped, inter alia, to fight corruption.

160 Article 49 TEU, which provides for the possibility for any European State to apply to become a member of the European Union, states that the European Union is composed of States which have freely and voluntarily committed themselves to the common values now referred to in Article 2 TEU, which respect those values and which undertake to promote them. In particular, it follows from Article 2 TEU that the European Union is founded on values, such as the rule of law, which are common to the Member States in a society in which, inter alia, justice prevails. In that regard, it should be noted that mutual trust between the Member States and, in particular, their courts and tribunals is based on the fundamental premiss that Member States share a set of common values on which the European Union is founded, as stated in that article (judgment of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, paragraphs 61 and 62 and the case-law cited).

161 Thus, as the Commission and the Belgian, Danish and Swedish Governments have noted, compliance with the values referred to in Article 2 TEU constitutes a precondition for the accession to the European Union of any European State applying to become an EU member. It is in that context that the CVM was established by Decision 2006/928 in order to ensure that the value of the rule of law is complied with in Romania.

162 In addition, compliance by a Member State with the values enshrined in Article 2 TEU is a condition for the enjoyment of all of the rights deriving from the application of the Treaties to that Member State. A Member State cannot, therefore, amend its legislation in such a way as to bring about a reduction in the protection of the value of the rule of law, a value which is given concrete expression by, inter alia, Article 19 TEU. The Member States are thus required to ensure that, in the light of that value, any regression of their laws on the organisation of justice is prevented, by refraining from adopting rules which would undermine the independence of the judiciary (judgment of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, paragraphs 63 and 64 and the case-law cited).

163 In that context, it is important to note that, under Article 2 of the Act of Accession, the acts adopted by the EU institutions before accession, which include Decision 2006/928, are to be binding on Romania from the date of its accession to the European Union and, in accordance with Article 2(3) of the Treaty of Accession, are to remain in force until they are repealed.

164 As regards, more specifically, the measures adopted on the basis of Articles 37 and 38 of the Act of Accession, while the first paragraph of both articles authorised the Commission to adopt the measures to which those articles refer 'until the end of a period of up to three years after accession', the second paragraph of those articles nonetheless expressly provided that the measures thus adopted could be applied beyond that period as long as the relevant commitments had not been fulfilled or the shortcomings found persisted, and that the measures would be lifted

only when the relevant commitment was implemented or the shortcoming at issue remedied. Indeed, Decision 2006/928 itself states, in recital 9 thereof, that it 'should be repealed when all the benchmarks have been satisfactorily fulfilled'.

165 Consequently, as regards its legal nature, content and temporal effects, Decision 2006/928 falls within the scope of the Treaty of Accession and continues to produce its effects as long as it has not been repealed.

– The legal effects of Decision 2006/928 and of the Commission's reports drawn up on the basis of that decision

166 It must be borne in mind that, like the fourth paragraph of Article 249 EC, the fourth paragraph of Article 288 TFEU provides that a decision 'shall be binding in its entirety' upon those to whom it is addressed.

167 In accordance with Article 4 thereof, Decision 2006/928 is addressed to all Member States, which includes Romania as from its accession. That decision is, therefore, binding in its entirety on that Member State as from its accession to the European Union.

168 Thus, Decision 2006/928 imposes on Romania the obligation to address the benchmarks set out in its Annex and to report each year to the Commission, pursuant to the first paragraph of Article 1 thereof, on the progress made in that regard.

169 As regards, in particular, those benchmarks, it should be added that they were defined, as is apparent from paragraphs 158 to 162 above, on the basis of the deficiencies established by the Commission before Romania's accession to the European Union in the areas of, inter alia, judicial reforms and the fight against corruption, and that they seek to ensure that that Member State complies with the value of the rule of law set out in Article 2 TEU, which is condition for the enjoyment of all of the rights deriving from the application of the Treaties to that Member State.

170 In addition, as the Advocate General observed in point 152 of his Opinion in Cases C-83/19, C-127/19, C-195/19, C-291/19 and C-355/19 and as the Commission and the Belgian Government have noted, those benchmarks give concrete expression to the specific commitments undertaken by Romania and the requirements accepted by it at the conclusion of the accession negotiations on 14 December 2004, set out in Annex IX to the Act of Accession, concerning, in particular, the areas of justice and the fight against corruption.

171 Thus, as the Commission noted in particular, and as is apparent from recitals 4 and 6 of Decision 2006/928, the purpose of establishing the CVM and setting the benchmarks was to complete Romania's accession to the European Union, in order to remedy the deficiencies identified by the Commission in those areas prior to that accession.

172 It follows that the benchmarks are binding on Romania, with the result that it is subject to the specific obligation to address those benchmarks and to take appropriate measures to meet them as soon as possible. Similarly, Romania is required to refrain from implementing any measure which could jeopardise those benchmarks being met.

173 As regards the reports drawn up by the Commission on the basis of Decision 2006/928, it should be borne in mind that, in order to determine whether an EU act produces binding legal effects, it is necessary to examine its substance and to assess its effects on the basis of objective criteria, such as

the content of that act, taking into account, as appropriate, the context in which it was adopted and the powers of the institution which adopted the act (see, to that effect, judgment of 20 February 2018, *Belgium* v *Commission*, C-16/16 P, EU:C:2018:79, paragraph 32).

174 In the present case, it is true that the reports drawn up on the basis of Decision 2006/928 are, in accordance with the first paragraph of Article 2 of that decision, not addressed to Romania but to the Parliament and the Council. Furthermore, although those reports include an analysis of the situation in Romania and formulate requirements with regard to that Member State, the conclusions set out therein address 'recommendations' to Romania on the basis of those requirements.

175 Nonetheless, as is apparent from a combined reading of Articles 1 and 2 of Decision 2006/928, the reports are intended to analyse and evaluate Romania's progress in the light of the benchmarks which Romania must address. As regards, in particular, the recommendations in those reports, they are, as the Commission also observed, formulated with a view to those benchmarks being met and in order to guide that Member State's reforms in that connection.

176 In that regard, it should be borne in mind that, according to settled case-law of the Court, it follows from the principle of sincere cooperation, laid down in Article 4(3) TEU, that the Member States are obliged to take all the measures necessary to guarantee the application and effectiveness of EU law and to eliminate the unlawful consequences of a breach of that law, and that such an obligation is owed, within the sphere of its competence, by every organ of the Member State concerned (see, to that effect, judgment of 17 December 2020, *Commission* v *Slovenia (ECB archives)*, C-316/19, EU:C:2020:1030, paragraphs 119 and 124 and the case-law cited).

177 In those circumstances, in order to comply with the benchmarks set out in the Annex to Decision 2006/928, Romania must take due account of the requirements and recommendations formulated in the reports drawn up by the Commission under that decision. In particular, Romania cannot adopt or maintain measures in the areas covered by the benchmarks which could jeopardise the result prescribed by those requirements and recommendations. Where the Commission expresses doubts, in such a report, as to whether a national measure is compatible with one of the benchmarks, it is for Romania to cooperate in good faith with the Commission with a view to overcoming the difficulties encountered with regard to meeting the benchmarks, while at the same time fully complying with those benchmarks and the provisions of the Treaties.

178 In the light of the foregoing considerations, the answer to the first question referred in Case C-195/19, the second question referred in Cases C-83/19, C-127/19, C-291/19, C-355/19 and C-397/19 and the third question referred in Cases C-127/19, C-291/19 and C-397/19 is that Articles 2, 37 and 38 of the Act of Accession, read in conjunction with Articles 2 and 49 TEU, must be interpreted as meaning that as regards its legal nature, content and temporal effects, Decision 2006/928 falls within the scope of the Treaty of Accession. That decision is binding in its entirety on Romania, as long as it has not been repealed. The benchmarks in the Annex to Decision 2006/928 are intended to ensure that Romania complies with the value of the rule of law, set out in Article 2 TEU, and are binding on it, in the sense that Romania is required to take the appropriate measures for the purposes of meeting those benchmarks, taking due account, under the principle of sincere cooperation laid down in Article 4(3) TEU, of the reports drawn up by the Commission on the basis of that decision, and in particular the recommendations made in those reports.

The fourth question referred in Case C-83/19 and the third question referred in Case C-355/19

179 By the fourth question referred in Case C-83/19 and the third question referred in Case C-355/19, which it is appropriate to examine together, the referring courts ask, in essence, whether the legislation governing the organisation of justice in Romania, such as that relating to the interim appointment to the management positions of the Judicial Inspectorate and that relating to the establishment of the SIIJ, falls within the scope of Decision 2006/928 and whether it must comply with the requirements derived from the value of the rule of law, set out in Article 2 TEU.

180 In that regard, as is apparent from recital 6 of Decision 2006/928 and from the particularly broad wording of the first, third and fourth benchmarks set out in the Annex to that decision – and as confirmed by the Commission report referred to in paragraph 158 above – Decision 2006/928 encompasses the judicial system in Romania as a whole and the fight against corruption in that Member State. In that regard, in point 3.1 of its report to the European Parliament and the Council of 27 June 2007, referred to in Article 2 of that decision, on Romania's progress on accompanying measures following accession (COM(2007) 378 final), the Commission found that since each benchmark was a building block in the construction of an independent and impartial judicial and administrative system, those benchmarks should not be taken in isolation but seen together as part of any reform of the judicial system sought and of the fight against corruption as long as those benchmarks have not been met.

181 In the present case, as the Advocate General observed, in essence, in points 178 and 250 of his Opinion in Cases C-83/19, C-127/19, C-195/19, C-291/19 and C-355/19, the national legislation at issue in the main proceedings, resulting from reforms in 2018 and 2019, made amendments to the various justice laws which had been adopted within the framework of negotiations for Romania's accession to the European Union with the purpose of improving the independence and effectiveness of the judiciary and which form the legislative framework governing the organisation of the judicial system in Romania.

182 As regards specifically the national legislation at issue in Case C-83/19, that legislation concerns the interim appointment to the management positions of the Judicial Inspectorate, which is a body with legal personality within the Supreme Council of the Judiciary whose accountability is expressly covered by the first benchmark set out in the Annex to Decision 2006/928, which seeks to ensure a judicial process which is both more transparent and efficient. That body has essential powers in disciplinary proceedings within the judiciary and in proceedings relating to the personal liability of judges. Its institutional structure and activity, like the legislation at issue in Case C-83/19, were, moreover, the subject of Commission reports drawn up under Article 2 of Decision 2006/928, in particular in 2010, 2011 and 2017 to 2019.

183 As regards the national legislation at issue in Cases C-127/19, C-195/19, C-291/19 and C-355/19, that legislation concerns the creation of the SIIJ and the rules governing the designation of prosecutors to perform their duties there. As the Advocate General observed in points 180 and 181 of his Opinion in those cases, the creation of such a section falls within the first, third and fourth benchmarks set out in the Annex to Decision 2006/928, relating to the organisation of the judicial system and the fight against corruption, and was, moreover, the subject of the Commission reports drawn up in 2018 and 2019 under Article 2 of that decision.

184 It follows that those pieces of legislation fall within the scope of Decision 2006/928 and that, as is apparent from paragraph 178 above, they must comply with the requirements arising from EU law and, in particular, from the value of the rule of law, set out in Article 2 TEU.

185 The answer to the fourth question referred in Case C-83/19 and the third question referred in Case C-355/19 is, therefore, that the legislation governing the organisation of justice in Romania, such as that relating to the interim appointment to the management positions of the Judicial Inspectorate and that relating to the establishment of a section of the Public Prosecutor's Office for the investigation of offences committed within the judicial system, falls within the scope of Decision 2006/928, with the result that it must comply with the requirements arising from EU law and, in particular, from the value of the rule of law, set out in Article 2 TEU.

The third question referred in Case C-83/19

186 By its third question referred in Case C-83/19, the referring court asks, in essence, whether Article 2 and the second subparagraph of Article 19(1) TEU and Decision 2006/928 must be interpreted as precluding national legislation, adopted by the government of a Member State, which allows the latter to make interim appointments to the management positions of the judicial body responsible for conducting disciplinary investigations and bringing disciplinary proceedings against judges and prosecutors, without following the ordinary appointment procedure laid down for such positions by national law.

187 As is apparent from the request for a preliminary ruling, the referring court raises that question because the tasks entrusted to a judicial body such as the body referred to in the national legislation at issue in the main proceedings and, in particular, the extent of the powers enjoyed, in the context of those tasks, by the persons occupying management positions within that body, are such as to raise questions with regard to the requirement of judicial independence.

188 In that regard, it should be pointed out that Article 19 TEU, which gives concrete expression to the value of the rule of law affirmed in Article 2 TEU, entrusts the responsibility for ensuring the full application of EU law in all Member States and the judicial protection that individuals derive from EU law to national courts and tribunals and to the Court of Justice (judgments of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 50; of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531, paragraph 47; and of 5 November 2019, *Commission* v *Poland (Independence of ordinary courts)*, C-192/18, EU:C:2019:924, paragraph 98).

189 The very existence of effective judicial review designed to ensure compliance with EU law is of the essence of the rule of law (judgments 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraph 36, and of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 51).

190 In that regard, as provided for by the second subparagraph of Article 19(1) TEU, it is for the Member States to establish a system of legal remedies and procedures ensuring for individuals compliance with their right to effective judicial protection in the fields covered by EU law. The principle of the effective judicial protection of individuals' rights under EU law, referred to in the second subparagraph of Article 19(1) TEU, is a general principle of EU law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms,

signed in Rome on 4 November 1950, and which is now reaffirmed by Article 47 of the Charter (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 109 and 110 and the case-law cited).

191 It follows that every Member State must ensure that the bodies which, as 'courts or tribunals' within the meaning of EU law, come within its judicial system in the fields covered by EU law meet the requirements of effective judicial protection (judgments of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraph 37, and of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 52).

192 As regards the material scope of the second subparagraph of Article 19(1) TEU, that provision refers to the 'fields covered by Union law', irrespective of whether the Member States are implementing Union law within the meaning of Article 51(1) of the Charter (judgment of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 111 and the case-law cited).

193 National legislation, such as that at issue in the main proceedings, applies to the judiciary as a whole and, therefore, to the ordinary courts which are called upon, in that capacity, 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, therefore come within the Romanian judicial system in the 'fields covered by EU law', within the meaning of the second subparagraph of Article 19(1) TEU, they must meet the requirements of effective judicial protection.

194 It should be recalled that, to ensure that bodies which may be called upon to rule on questions concerning the application or interpretation of EU law are in a position to ensure the effective judicial protection required under that provision, maintaining their independence is essential, as confirmed by the second paragraph of Article 47 of the Charter, which refers to access to an 'independent' tribunal as one of the requirements linked to the fundamental right to an effective remedy (see, to that effect, judgment of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 115 and the case-law cited).

195 That requirement that courts be independent, which is inherent in the task of adjudication, forms part of the essence of the right to effective judicial protection and the fundamental right to a fair trial, which is of cardinal importance as a guarantee that all the rights which individuals derive from EU law will be protected and that the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law, will be safeguarded. In accordance with the principle of the separation of powers which characterises the operation of the rule of law, the independence of the judiciary must in particular be ensured in relation to the legislature and the executive (see, to that effect, 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 116 and 118 and the case-law cited).

196 It is settled case-law of the Court that the guarantees of independence and impartiality required under EU law presuppose rules that are such as to dispel any reasonable doubt, in the minds of individuals, as to the imperviousness of the body in question to external factors and its neutrality with respect to the interests before it (see, to that effect, judgments of 19 September 2006, *Wilson*, C-506/04, EU:C:2006:587, paragraph 53 and the case-law cited; of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 117; and of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, paragraph 53).

197 In that regard, it is necessary that judges are protected from external intervention or pressure liable to jeopardise their independence. The rules applicable to the status of judges and the performance of their duties as judges must, in particular, be such as to preclude not only any direct influence, in the form of instructions, but also types of influence which are more indirect and which are liable to have an effect on the decisions of the judges concerned, and thus preclude a lack of appearance of independence or impartiality on their part likely to prejudice the trust which justice in a democratic society governed by the rule of law must inspire in individuals (see, to that effect, 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 119 and 139 and the case-law cited).

198 As regards specifically the rules governing the disciplinary regime, the requirement of independence means that, in accordance with settled case-law, that regime must provide the necessary guarantees in order to prevent any risk of its being used as a system of political control of the content of judicial decisions. Rules which define, in particular, both conduct amounting to disciplinary offences and the penalties actually applicable, provide for the involvement of an independent body in accordance with a procedure which fully safeguards the rights enshrined in Articles 47 and 48 of the Charter, in particular the rights of the defence, and lay down the possibility of bringing legal proceedings challenging the disciplinary bodies' decisions constitute a set of guarantees that are essential for safeguarding the independence of the judiciary (judgments of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586 paragraph 67; of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531, paragraph 77; and of 5 November 2019, *Commission* v *Poland (Independence of ordinary courts)*, C-192/18, EU:C:2019:924, paragraph 114).

199 Furthermore, as the Advocate General in essence observed, in point 268 of his Opinion in Cases C-83/19, C-127/19, C-195/19, C-291/19 and C-355/19, since the prospect of opening a disciplinary investigation is, as such, liable to exert pressure on those who have the task of adjudicating in a dispute, it is essential that the body competent to conduct investigations and bring disciplinary proceedings should act objectively and impartially in the performance of its duties and, to that end, be free from any external influence.

200 Consequently, since those occupying management positions within such a body are likely to exert a decisive influence on its activity, the rules governing the procedure for appointment to those positions must be designed – as the Advocate General noted, in essence, in point 269 of his Opinion in Cases C-83/19, C-127/19, C-195/19, C-291/19 and C-355/19 – in such a way that there can be no reasonable doubt that the powers and functions of that body will not be used as an instrument to exert pressure on, or political control over, judicial activity.

201 It is ultimately for the referring court to rule on that matter having made the relevant findings in that regard. Indeed, it must be borne in mind that Article 267 TFEU does not empower the Court to apply rules of EU law to a particular case, but only to rule on the interpretation of the Treaties and of acts of EU institutions. According to settled case-law, the Court may, however, in the framework of the judicial cooperation provided for by Article 267 TFEU and on the basis of the material presented to it, provide the national court with an interpretation of EU law which may be useful to it in assessing the effects of one or other of its provisions (judgments of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 132, and of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 96).

202 In that regard, it should be noted that the mere fact that the senior officers of the body entrusted with conducting disciplinary investigations and bringing disciplinary proceedings in respect of judges and prosecutors are appointed by the government of a Member State is not such as to give rise to doubts such as those referred to in paragraph 200 above.

203 The same is true of national provisions which state that where a management position in such a body falls vacant as a result of the expiry of the term of office in question, the senior officer whose term has expired will act as substitute until the date on which that position is filled on the terms laid down by the legislation.

204 Nonetheless, the substantive conditions and detailed procedural rules governing the adoption of decisions to appoint those senior officers must still be designed in such a way as to meet the requirements referred to in paragraph 199 above.

205 In particular, national legislation is likely to give rise to doubts such as those referred to in paragraph 200 above where, even temporarily, it has the effect of allowing the government of the Member State concerned to make appointments to the management positions of the body responsible for conducting disciplinary investigations and bringing disciplinary proceedings against judges and prosecutors, by disregarding the ordinary appointment procedure laid down by national law.

206 It is for the referring court to ascertain, taking into account all the relevant factors of the national legal and factual context, whether the national legislation at issue in the main proceedings has had the effect of conferring on the national government a direct power of appointment to those positions and given rise to reasonable doubts that the powers and functions of the Judicial Inspectorate might be used as an instrument to exert pressure on, or political control over, the activity of judges and prosecutors.

207 In the light of the foregoing considerations, the answer to the third question referred in Case C-83/19 is that Article 2 and the second subparagraph of Article 19(1) TEU and Decision 2006/928 must be interpreted as precluding national legislation adopted by the government of a Member State, which allows that government to make interim appointments to the management positions of the judicial body responsible for conducting disciplinary investigations and bringing disciplinary proceedings against judges and prosecutors, without following the ordinary appointment procedure laid down by national law, where that legislation is such as to give rise to reasonable doubts that the powers and functions of that body may be used as an instrument to exert pressure on, or political control over, the activity of those judges and prosecutors.

The fourth and fifth questions referred in Case C-127/19, the second question referred in Case C-195/19, the fourth and fifth questions referred in Case C-291/19 and the third and fourth questions referred in Case C-355/19

208 By the fourth and fifth questions referred in Case C-127/19, the second question referred in Case C-195/19, the fourth and fifth questions referred in Case C-291/19 and the third and fourth questions referred in Case C-355/19, which it is appropriate to examine together, the referring courts ask, in essence, whether Article 2 and the second subparagraph of Article 19(1) TEU and Decision 2006/928 must be interpreted as precluding national legislation providing for the creation of a specialised section of the Public Prosecutor's Office with exclusive competence to investigate offences committed by judges and prosecutors.

209 The referring courts consider that the creation in Romania of such a section, namely the SIIJ, on which that exclusive competence is conferred, is likely to exert pressure on judges, incompatible with the guarantees provided for in Article 2 and the second subparagraph of Article 19(1) TEU and Article 47 of the Charter. In addition, the rules governing the powers and organisation of the SIIJ, and the detailed rules for its operation and the appointment and removal of prosecutors assigned to it reinforce that fear and are, moreover, likely to hinder the fight against corruption offences. Lastly, in the light of the limited number of prosecutor posts within the SIIJ, that section is not in a position to deal with the cases pending before it within a reasonable time.

210 In that regard, it must be borne in mind that, as is apparent from the settled case-law of the Court referred to in paragraph 111 above, the organisation of justice, including the organisation of the Public Prosecutor's Office, in the Member States falls within the competence of those Member States which must comply with EU law.

211 It therefore remains essential, as stated in paragraphs 191, 194 and 195 above, that that organisation is designed in such a way as to ensure compliance with the requirements arising from EU law, in particular the independence of the courts called upon to rule on questions concerning the application or interpretation of EU law, in order to ensure the effective judicial protection of individuals' rights derived from that law.

212 In accordance with the case-law referred to in paragraphs 196 and 197 above, the principle of judicial independence requires rules to be drawn up to dispel any reasonable doubt, in the minds of individuals, as to the imperviousness of the judges to external factors, in particular to any direct or indirect influence of the legislature or executive liable to have an effect on their decisions, and thus preclude a lack of appearance of independence or impartiality on the judges' part likely to prejudice the trust which justice in a democratic society governed by the rule of law must inspire in individuals.

213 Where a Member State lays down specific rules governing criminal proceedings against judges and prosecutors, such as the rules relating to the establishment of a special section of the Public Prosecutors' Office with exclusive competence to conduct investigations into offences committed by judges and prosecutors, those rules must – in accordance with the requirement of independence, and in order to dispel any reasonable doubt in the minds of individuals such as that referred to in the preceding paragraph – be justified by objective and verifiable requirements relating to the sound administration of justice and must, like the rules on the disciplinary liability of judges and prosecutors, provide the necessary guarantees ensuring that those criminal proceedings cannot be used as a system of political control over the activity of those judges and prosecutors and fully safeguard the rights enshrined in Articles 47 and 48 of the Charter.

214 Such specific rules cannot, in particular, have the effect of exposing judges or prosecutors dealing with corruption cases to the external factors referred to in paragraph 212 above, failing which not only will the requirements arising from the second subparagraph of Article 19(1) TEU be infringed but also, in the present case, Romania's specific obligations under Decision 2006/928 in relation to the fight against corruption. Furthermore, those specific rules cannot result in the duration of investigations into corruption offences being extended or the fight against corruption being in any way weakened.

215 In the present case, first, although the Supreme Council of the Judiciary argued before the Court that the creation of the SIIJ was justified by the need to protect judges and prosecutors from arbitrary criminal complaints, it is clear from the file that the explanatory memorandum to the

law in question does not reveal any justification in terms of requirements relating to the sound administration of justice, which it is, however, for the referring courts to ascertain taking into account all the relevant factors.

216 Secondly, an autonomous structure within the Public Prosecutor's Office, such as the SIIJ, which is 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 individuals, in so far as that 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.

217 In that regard, it is apparent from the file that the fact that a criminal complaint has been lodged with the SIIJ against a judge or prosecutor is sufficient for the SIIJ to institute proceedings, including where the complaint is lodged in the context of an ongoing criminal investigation concerning a person other than a judge or prosecutor, with that investigation then being transferred to the SIIJ irrespective of the nature of the offence of which the judge or prosecutor is accused and the evidence relied on against him or her. Even if the ongoing investigation relates to an offence falling within the competence of another specialised section of the Public Prosecutor's Office, such as the DNA, the case is also transferred to the SIIJ when a judge or prosecutor is implicated. Lastly, the SIIJ may appeal against decisions adopted before it was created or withdraw an appeal brought by the DNA, the DIICOT or the Prosecutor General before the higher courts.

218 According to the information provided by the referring courts, the system thus established allows complaints to be lodged unreasonably, inter alia for the purposes of interfering in ongoing sensitive cases, in particular complex and high-profile cases linked to high-level corruption or organised crime, since if such a complaint were lodged, the matter would automatically fall within the competence of the SIIJ.

219 It is apparent from the evidence submitted to the Court and from the Report from the Commission to the European Parliament and the Council of 22 October 2019 on Progress in Romania under the Cooperation and Verification Mechanism (COM(2019) 499 final, p. 5) that practical examples taken from the activities of the SIIJ confirm that the risk referred to in paragraph 216 above – namely, that that section is akin to an instrument of political pressure and exercises its powers to alter the course of certain criminal investigations or judicial proceedings concerning, inter alia, acts of high-level corruption in a manner which raises doubts as to its objectivity – has materialised, which it is for the referring courts to assess, in accordance with the case-law referred to in paragraph 201 above.

220 In that context, it is also for those courts to ascertain that the rules on the organisation and operation of the SIIJ and the rules on the appointment and withdrawal of prosecutors assigned to it are not such as to make the SIIJ open to external influences, having regard in particular to the amendments made to those rules by emergency ordinances derogating from the ordinary procedure provided for by national law.

221 Thirdly, as regards the rights enshrined in Articles 47 and 48 of the Charter, it is important, in particular, that the rules governing the organisation and operation of a specialised section of the Public Prosecutor's Office, such as the SIIJ, should be designed so as not to prevent the case of the judges and prosecutors concerned from being heard within a reasonable time.

222 Subject to verification by the referring courts, it appears from the information provided by them that that might not be the case with the SIIJ, in particular due to the combined effect of (i) the apparently significantly reduced number of prosecutors assigned to that section, who, moreover, have neither the necessary means nor expertise to conduct investigations into complex corruption cases and (ii) the excessive workload for those prosecutors resulting from the transfer of such cases from the sections competent to deal with them.

223 In the light of the foregoing considerations, the answer to the fourth and fifth questions referred in Case C-127/19, the second question referred in Case C-195/19, the fourth and fifth questions referred in Case C-291/19 and the third and fourth questions referred in Case C-355/19 is that Article 2 and the second subparagraph of Article 19(1) TEU and Decision 2006/928 must be interpreted as precluding national legislation providing for the creation of a specialised section of the Public Prosecutor's Office with exclusive competence to conduct investigations into offences committed by judges and prosecutors, where the creation of such a section

– is not justified by objective and verifiable requirements relating to the sound administration of justice, and

– is not accompanied by specific guarantees such as, first, to prevent any risk of that section being used as an instrument of political control over the activity of those judges and prosecutors likely to undermine their independence and, secondly, to ensure that that exclusive competence may be exercised in respect of those judges and prosecutors in full compliance with the requirements arising from Articles 47 and 48 of the Charter.

The fourth to sixth questions referred in Case C-397/19

224 By the fourth to sixth questions referred in Case C-397/19, which it is appropriate to examine together, the referring court asks, in essence, whether Article 2 and the second subparagraph of Article 19(1) TEU must be interpreted as precluding national legislation governing the financial liability of the State and the personal liability of judges in respect of the damage caused by a judicial error, where that legislation,

– first, defines the concept of 'judicial error' in abstract and general terms,

– secondly, provides that a finding that there has been a judicial error, made in the context of the proceedings seeking to establish the financial liability of the State, without the judge concerned having been heard, is binding in the context of the proceedings seeking to establish the personal liability of that judge,

– thirdly, confers on a ministry the power to open the investigation to determine whether it is appropriate to bring an action for indemnity against the judge, and the power, on the basis of the ministry's own assessment, to bring that action.

225 In that regard, it should be noted at the outset that, according to the national legislation at issue in the main proceedings, the existence of a judicial error is one of the preconditions both for the financial liability of the State and the personal liability of the judge in question. In the light of the requirements arising from the principles of the rule of law and, in particular, the guarantee of judicial independence, it is appropriate to examine separately the rules enabling individuals to

render the State liable for damage they have sustained as a result of a judicial error and the rules governing the personal liability of judges on account of such a judicial error in the context of an action for indemnity.

226 As regards, first, the liability of the State for judicial decisions contrary to EU law, the Court has held that the possibility that under certain conditions the State may be rendered liable for such decisions does not appear to entail any particular risk that the independence of a court adjudicating at last instance will be called in question (judgment of 30 September 2003, *Köbler*, C-224/01, EU:C:2003:513, paragraph 42).

227 That assessment may be transposed, *mutatis mutandis*, to the possibility that the State may be rendered liable for judicial decisions which, under national law, are vitiated by a judicial error.

228 The fact, mentioned by the referring court, that the substantive conditions for incurring State liability, in particular as regards the definition of the concept of 'judicial error', are worded in abstract and general terms in the national legislation at issue is also not such, on its own, as to jeopardise judicial independence, since legislation governing State liability must by its very nature lay down abstract and general criteria, for the purposes of the definition of 'judicial error', which are bound to be clarified by national case-law.

229 As regards, secondly, the personal liability of judges for the damage resulting from a judicial error made by them, it should be pointed out that that system of liability falls within the organisation of justice and, therefore, within the Member States' competence. In particular, the possibility that a Member State's authorities may put in issue that liability, through an action for indemnity, can, depending on the Member States' choice, be a factor which contributes to the accountability and effectiveness of the judicial system. However, in exercising that competence, Member States must comply with EU law.

230 Consequently, as noted in paragraphs 191, 194 and 195 above, it remains essential that the system for the personal liability of judges is designed in such a way as to ensure compliance with the requirements of EU law, in particular the independence of the courts called upon to rule on questions concerning the application or interpretation of EU law, in order to ensure the effective judicial protection of individuals required under the second subparagraph of Article 19(1) TEU.

231 Thus, according to the case-law referred to in paragraphs 196 and 197 above, the principle of judicial independence requires there to be guarantees such as to dispel any reasonable doubt, in the minds of individuals, as to the imperviousness of judges to external factors, in particular to direct or indirect influences of the legislature and executive liable to have an effect on their decisions, and thus preclude a lack of appearance of independence or impartiality on the part of those judges likely to prejudice the trust which justice in a democratic society governed by the rule of law must inspire in individuals.

232 In that regard, to recognise a principle of personal liability of judges for judicial errors made by them entails a risk that judicial independence will be interfered with in that such recognition may influence the decision-making of those having the task of adjudicating.

233 Consequently, it is important that the putting in issue, in an action for indemnity, of a judge's personal liability for a judicial error should be limited to exceptional cases and be governed by objective and verifiable criteria, arising from requirements relating to the sound administration of

justice, and also by guarantees designed to avoid any risk of external pressure on the content of judicial decisions and thus to dispel, in the minds of individuals, any reasonable doubt such as that referred to in paragraph 231 above.

234 To that end, it is essential that rules should be laid down which define clearly and precisely, in particular, the conduct which may give rise to the personal liability of judges, in order to guarantee the independence inherent in their task and to avoid exposing them to the risk that their personal liability may be incurred solely because of their decision. Although, as the Advocate General observed in essence in points 95 and 100 of his Opinion in Case C-397/19, the guarantee of independence does not require judges to be given absolute immunity from acts performed in the exercise of their judicial duties, their personal liability can nonetheless be incurred for damage caused in the performance of their duties only in exceptional cases, in which serious individual culpability on their part has been established. In that regard, the fact that a decision contains a judicial error cannot, in itself, suffice to render the judge concerned personally liable.

235 As regards the detailed rules for putting in issue the personal liability of judges in an action for indemnity, the national legislation must provide clearly and precisely the necessary guarantees ensuring that neither the investigation to determine whether the conditions and circumstances which may give rise to such liability are satisfied nor the action for indemnity appears capable of being converted into an instrument of pressure on judicial activity.

236 In order to ensure that such detailed rules cannot have a chilling effect on judges in the performance of their duty to adjudicate with complete independence, in particular in sensitive areas such as the fight against corruption, it is fundamental, as the Commission in essence noted, that the authorities empowered to initiate and conduct the investigation to determine whether the conditions and circumstances which may give rise to the personal liability of a judge are satisfied and to bring an action for indemnity are themselves authorities which act objectively and impartially in the performance of their duties and that the substantive conditions and detailed procedural rules governing the exercise of those powers are such as not to give rise to reasonable doubts concerning the impartiality of those authorities.

237 Similarly, it is important that the rights enshrined in Article 47 of the Charter, in particular the rights of defence of a judge, should be fully respected and that the body with jurisdiction to rule on the personal liability of a judge should be a court.

238 In the present case, it is for the referring court to ascertain whether the requirements referred to in paragraphs 233 to 237 above are met, taking into account all the relevant factors.

239 Among those factors, particular importance attaches to the fact that, in the present case, as is apparent from the file, the existence of a judicial error is definitively established in the proceedings brought against the State for financial liability and that that finding of error is binding in the action for indemnity seeking to establish personal liability of the judge concerned, even though that judge was not heard in the first set of proceedings. Such a rule is not only likely to create a risk of external pressure on the activity of judges, but is also liable to infringe their rights of defence, which it is for the referring court to ascertain.

240 As regards, moreover, the authorities empowered to initiate and conduct the investigation procedure to determine whether the conditions and circumstances which may give rise to the personal liability of the judge concerned are satisfied, and to bring an action for indemnity

against him or her, it is apparent from the documents before the Court that, under the national legislation at issue in the main proceedings, the report to that end drawn up by the Judicial Inspectorate is not binding and that it is ultimately for the Ministry of Public Finance alone to decide, on the basis of its own assessment, whether those conditions and circumstances are satisfied for the purposes of bringing the action for indemnity. It is for the referring court to ascertain, taking into account all relevant factors of the national legal and factual context, whether such factors, having regard in particular to that power to assess, are such as to allow the action for indemnity to be used as an instrument of pressure on judicial activity.

241 In the light of the foregoing considerations, the answer to the fourth to sixth questions referred in Case C-397/19 is that Article 2 and the second subparagraph of Article 19(1) TEU must be interpreted as not precluding national legislation governing the financial liability of the State and the personal liability of judges for the damage caused by a judicial error, which defines the concept of 'judicial error' in general and abstract terms. By contrast, those same provisions must be interpreted as precluding such legislation where it provides that a finding of judicial error, made in proceedings to establish the State's financial liability and without the judge concerned having been heard, is binding in the subsequent proceedings relating to an action for indemnity to establish the personal liability of that judge, and where that legislation does not, in general, provide the necessary guarantees to prevent such an action for indemnity being used as an instrument of pressure on judicial activity and to ensure that the rights of defence of the judge concerned are respected, so as to dispel any reasonable doubt, in the minds of individuals, as to the imperviousness of the judges to external factors liable to have an effect on their decisions and so as to preclude a lack of appearance of independence or impartiality on the part of those judges likely to prejudice the trust which justice in a democratic society governed by the rule of law must inspire in those individuals.

The third question referred in Case C-195/19

242 By its third question in Case C-195/19, the referring court asks, in essence, whether the principle of the primacy of EU law must be interpreted as precluding legislation of a Member State having constitutional status, as interpreted by the constitutional court of that Member State, according to which a lower court is not permitted to disapply of its own motion a national provision falling within the scope of Decision 2006/928, which it considers, in the light of a judgment of the Court, to be contrary to that decision or to the second subparagraph of Article 19(1) TEU.

243 The referring court states that that question is linked to recent case-law of the Curtea Constituțională (Constitutional Court), according to which EU law, in particular Decision 2006/928, cannot take precedence over national constitutional law. According to the referring court, there is a risk that the constitutional law thus interpreted by the Curtea Constituțională (Constitutional Court) might prevent the guidance to be provided in the Court's judgment in Case C-195/19 from being applied.

244 In accordance with the Court's settled case-law, the principle of the primacy of EU law establishes the pre-eminence of EU law over the law of the Member States. That principle therefore requires all Member State bodies to give full effect to the various EU provisions, and the law of the Member States may not undermine the effect accorded to those various provisions in the territory of those States (judgment of 6 October 2020, *La Quadrature du Net and Others*, C-511/18, C-512/18 and C-520/18, EU:C:2020:791, paragraph 214 and the case-law cited).

245 By virtue of the principle of the primacy of EU law, a Member State's reliance on rules of national law, even of a constitutional order, cannot be allowed to undermine the unity and effectiveness of EU law. In accordance with settled case-law, the effects of the principle of the primacy of EU law are binding on all the bodies of a Member State, without, inter alia, provisions of domestic law relating to the attribution of jurisdiction, including constitutional provisions, being able to prevent that (see, to that effect, judgments of 26 February 2013, *Melloni*, C-399/11, EU:C:2013:107, paragraph 59, and of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 148 and the case-law cited).

246 In that regard, it should be pointed out, inter alia, that the principle that national law must be interpreted in conformity with EU law, by virtue of which the national court is required, to the greatest extent possible, to interpret national law in conformity with the requirements of EU law, is inherent in the system of the Treaties, since it permits the national court, within the limits of its jurisdiction, to ensure the full effectiveness of EU law when it determines the dispute before it (judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraph 55 and the case-law cited).

247 It is also in the light of the primacy principle that, where it is unable to interpret national law in compliance with the requirements of EU law, the national court which is called upon within the exercise of its jurisdiction to apply provisions of EU law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for that court to request or await the prior setting aside of such provision by legislative or other constitutional means (see judgment of 6 October 2020, *La Quadrature du Net and Others*, C-511/18, C-512/18 and C-520/18, EU:C:2020:791, paragraph 215 and the case-law cited).

248 In that regard, any national court, hearing a case within its jurisdiction, has, as a body of a Member State, more specifically the obligation to disapply any provision of national law which is contrary to a provision of EU law with direct effect in the case pending before it (judgments of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraph 61, and 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 161).

249 In the present case, as regards Decision 2006/928, which is more specifically referred to in the findings of the Curtea Constituțională (Constitutional Court) to which the referring court made reference, that decision requires Romania, as noted in paragraph 172 above, to address as soon as possible the benchmarks it sets out. Since those benchmarks are formulated in clear and precise terms and are not subject to any conditions, they have direct effect.

250 In addition, given that the second subparagraph of Article 19(1) TEU imposes on the Member States a clear and precise obligation as to the result to be achieved and that that obligation is not subject to any condition as regards the independence which must characterise the courts called upon to interpret and apply EU law (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 146), the referring court will also be required, within the limits of its jurisdiction, and in the light of the considerations set out in paragraphs 208 to 223 above, to ensure the full effectiveness of that provision by disapplying, if necessary, any provision of national law conflicting with it.

251 Consequently, where it is proved that the second subparagraph of Article 19(1) TEU or Decision 2006/928 has been infringed, the principle of the primacy of EU law will require the referring court to disapply the provisions at issue, whether they are of a legislative or constitutional origin (see, to that effect, judgment of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 150 and the case-law cited).

252 In the light of the foregoing considerations, the answer to the third question referred in Case C-195/19 is that the principle of the primacy of EU law must be interpreted as precluding legislation of a Member State having constitutional status, as interpreted by the constitutional court of that Member State, according to which a lower court is not permitted to disapply of its own motion a national provision falling within the scope of Decision 2006/928, which it considers, in the light of a judgment of the Court, to be contrary to that decision or to the second subparagraph of Article 19(1) TEU.

Costs

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

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

1. **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, and the reports drawn up by the Commission on the basis of that decision, constitute acts of an EU institution, which are amenable to interpretation by the Court under Article 267 TFEU.**

2. **Articles 2, 37 and 38 of the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the Treaties on which the European Union is founded, read in conjunction with Articles 2 and 49 TEU, must be interpreted as meaning that as regards its legal nature, content and temporal effects, Decision 2006/928 falls within the scope of the Treaty between the Member States of the European Union and the Republic of Bulgaria and Romania, concerning the accession of the Republic of Bulgaria and Romania to the European Union. That decision is binding in its entirety on Romania, as long as it has not been repealed. The benchmarks in the Annex to Decision 2006/928 are intended to ensure that Romania complies with the value of the rule of law, set out in Article 2 TEU, and are binding on it, in the sense that Romania is required to take the appropriate measures for the purposes of meeting those benchmarks, taking due account, under the principle of sincere cooperation laid down in Article 4(3) TEU, of the reports drawn up by the Commission on the basis of that decision, and in particular the recommendations made in those reports.**

3. **The legislation governing the organisation of justice in Romania, such as that relating to the interim appointment to the management positions of the Judicial Inspectorate and that relating to the establishment of a section of the Public Prosecutor's Office for the investigation of offences committed within the judicial system, falls within the scope of Decision 2006/928, with the result that it must comply with the requirements arising from EU law and, in particular, from the value of the rule of law, set out in Article 2 TEU.**

4. **Article 2 and the second subparagraph of Article 19(1) TEU and Decision 2006/928 must be interpreted as precluding national legislation adopted by the government of a Member State, which allows that government to make interim appointments to the management positions of the judicial body responsible for conducting disciplinary investigations and bringing disciplinary proceedings against judges and prosecutors, without following the ordinary appointment procedure laid down by national law, where that legislation is such as to give rise to reasonable doubts that the powers and functions of that body may be used as an instrument to exert pressure on, or political control over, the activity of those judges and prosecutors.**

5. **Article 2 and the second subparagraph of Article 19(1) TEU and Decision 2006/928 must be interpreted as precluding national legislation providing for the creation of a specialised section of the Public Prosecutor's Office with exclusive competence to conduct investigations into offences committed by judges and prosecutors, where the creation of such a section**

   – **is not justified by objective and verifiable requirements relating to the sound administration of justice, and**

– **is not accompanied by specific guarantees such as, first, to prevent any risk of that section being used as an instrument of political control over the activity of those judges and prosecutors likely to undermine their independence and, secondly, to ensure that that exclusive competence may be exercised in respect of those judges and prosecutors in full compliance with the requirements arising from Articles 47 and 48 of the Charter of Fundamental Rights of the European Union.**

6. **Article 2 and the second subparagraph of Article 19(1) TEU must be interpreted as not precluding national legislation governing the financial liability of the State and the personal liability of judges for the damage caused by a judicial error, which defines the concept of 'judicial error' in general and abstract terms. By contrast, those same provisions must be interpreted as precluding such legislation where it provides that a finding of judicial error, made in proceedings to establish the State's financial liability and without the judge concerned having been heard, is binding in the subsequent proceedings relating to an action for indemnity to establish the personal liability of that judge, and where that legislation does not, in general, provide the necessary guarantees to prevent such an action for indemnity being used as an instrument of pressure on judicial activity and to ensure that the rights of defence of the judge concerned are respected, so as to dispel any reasonable doubt, in the minds of individuals, as to the imperviousness of the judges to external factors liable to have an effect on their decisions and so as preclude a lack of appearance of independence or impartiality on the part of those judges likely to prejudice the trust which justice in a democratic society governed by the rule of law must inspire in those individuals.**

7. **The principle of the primacy of EU law must be interpreted as precluding legislation of a Member State having constitutional status, as interpreted by the constitutional court of that Member State, according to which a lower court is not permitted to disapply of its own motion a national provision falling within the scope of Decision 2006/928, which it considers, in the light of a judgment of the Court, to be contrary to that decision or to the second subparagraph of Article 19(1) TEU.**

[Signatures]