ECLI:EU:C:2024:388

Provisional text

JUDGMENT OF THE COURT (First Chamber)

8 May 2024 (*)

(Reference for a preliminary ruling – Rule of law – Judicial independence – Article 19(1) TEU – Cooperation and Verification Mechanism – Benchmarks subscribed to by Romania – Fight against corruption – Investigations of offences committed within the judicial system – Action challenging the nomination of prosecutors with competence to conduct those investigations – Standing of professional associations of judges to bring proceedings)

In Case C-53/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Piteşti (Court of Appeal, Piteşti, Romania), made by decision of 31 January 2023, received at the Court on 2 February 2023, in the proceedings

Asociația 'Forumul Judecătorilor din România',

Asociația 'Mișcarea pentru Apărarea Statutului Procurorilor'

v

Parchetul de pe lângă Înalta Curte de Casaţie şi Justiţie – Procurorul General al României,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, L. Bay Larsen (Rapporteur), Vice-President of the Court, T. von Danwitz, A. Kumin and I. Ziemele, Judges,

Advocate General: A.M. Collins,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Asociaţia ‘Forumul Judecătorilor din România’, by D. Călin and L. Zaharia,

– Parchetul de pe lângă Înalta Curte de Casaţie şi Justiţie – Procurorul General al României, by A.-F. Florenţa, acting as Agent,

– the Romanian Government, by L.-E. Baţagoi, E. Gane, and L. Ghiţă, acting as Agents,

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

after hearing the Opinion of the Advocate General at the sitting on 1 February 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2, Article 4(3) and Article 19(1) TEU, of Articles 12 and 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’), of Annex IX to the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the Treaties on which the European Union is founded (OJ 2005 L 157, p. 203), which entered into force on 1 January 2007, and of Commission Decision 2006/928/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (OJ 2006 L 354, p. 56).

2 The request has been made in proceedings brought by the Asociaţia ‘Forumul Judecătorilor din România’ and the Asociația ‘Mișcarea pentru Apărarea Statutului Procurorilor’ against the Parchetul de pe lângă Înalta Curte de Casaţie şi Justiţie – Procurorul General al României (Prosecutor General of the Public Prosecutor’s Office attached to the High Court of Cassation and Justice, Romania) (‘Prosecutor General’) concerning the legality of an order appointing several prosecutors to the Parchetul de pe lângă Înalta Curte de Casaţie şi Justiţie (Public Prosecutor’s Office attached to High Court of Cassation and Justice, Romania) (‘the PICCJ’).

Legal context

3 Article 8(1^1) of the Legea contenciosului administrativ nr. 554/2004 (Law on Administrative Proceedings No 554/2004) (*Monitorul Oficial al României*, Part I, No 1154 of 7 December 2004), provides:

‘Natural persons and legal persons governed by private law may bring an action to protect a legitimate public interest only by way of a subsidiary submission, where the infringement of the legitimate public interest logically stems from the infringement of a subjective right or of a legitimate private interest.’

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

4 On 5 August 2022, the applicants in the main proceedings, in their capacity as the professional associations for judges, brought before the Curtea de Apel Piteşti (Court of Appeal, Piteşti, Romania), which is the referring court, an action seeking the partial annulment of an order to appoint to the PICCJ prosecutors who will conduct the criminal prosecutions in cases of corruption falling within the competence of the Direcția Națională Anticorupție (National Anti-corruption Department, Romania) and concerning judges as well as prosecutors.

5 In support of their action, the applicants in the main proceedings submit, in essence, that the national legislation on which that order is based is contrary to various provisions of EU law, with the result that that legislation should have been rejected by the Prosecutor General. That legislation removed the Secția pentru investigarea infracțiunilor din justiție (Section for the investigation of offences committed within the judicial system) from the PICCJ and allocated the exclusive competence for conducting criminal prosecutions as regards offences committed by judges and prosecutors to prosecutors specifically appointed by the Prosecutor General, acting on a proposal of the general assembly of the Consiliul Superior al Magistraturii (Supreme Council of the Judiciary, Romania), for a period of four years.

6 The referring court states, in the first place, that, applying the Romanian procedural rules, as interpreted by the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania), it is required to declare the action for annulment in the main proceedings inadmissible.

7 It explains, in that regard that, while the Romanian legislation grants the right to challenge an administrative act to any person whose legitimate interest has been harmed, that legislation states that persons governed by private law may claim a public interest only if the harm caused to that interest is a logical consequence of the infringement of a subjective right or a legitimate private interest. As regards associations, the case-law of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) makes admissibility of an action, such as that in question in the main proceedings, subject to there being a direct link between the administrative act subject to judicial review and the purpose and objectives of the applicant association. On the basis of that case-law, the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) held, in several judgments, that professional associations of judges did not have an interest to support their bringing proceedings against decisions relating to the nomination of judges.

8 The referring court emphasises, however, that the applicants in the main proceedings seek to obtain effective judicial protection in an area covered by EU law. It considers, therefore, that it is necessary to determine whether the interpretation of the national procedural rules upheld by the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) is contrary to Article 2 and 19(1) TEU, read in conjunction with Articles 12 and 47 of the Charter.

9 In that regard it observes, inter alia, that the Court has found that associations for the protection of the environment had standing to bring proceedings and that it has ruled on requests for a preliminary ruling submitted in cases the main proceedings of which were brought by professional associations of judges.

10 In the second place, the referring court has doubts as to the compatibility of the new legislation adopted by Romania in respect of the conduct of criminal prosecutions as regards offences committed by judges and prosecutors with EU law, in particular Article 19(1) TEU, and also with the undertakings given by Romania regarding the fight against corruption.

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

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

(2) In the light of the answer to the first question, do Article 2, Article 4(3) and the second subparagraph of Article 19(1) TEU, Annex IX to the [Act concerning the conditions of accession to the European Union of the Republic of Bulgaria and Romania and the adjustments to the Treaties on which the European Union is founded] and [Decision 2006/928] preclude national legislation which limits the competence of the [national anti-corruption directorate] by conferring exclusive competence to investigate corruption offences (in a broad sense) committed by judges and prosecutors upon [prosecutors specifically] appointed for that purpose [by the Prosecutor General], acting on a proposal of the general assembly of the Supreme Council of [the] Judiciary, of the [PICCJ or prosecutors], in the public prosecutor’s office[s] attached to the Courts of Appeal, [those specifically appointed prosecutors] also being competent for the other categories of offences committed by judges and prosecutors?’

The jurisdiction of the Court and the admissibility of the request for a preliminary ruling

12 The Prosecutor General contests the jurisdiction of the Court and the admissibility of the request for a preliminary ruling. It submits, first of all, that the questions referred for a preliminary ruling are hypothetical and solely concern national law. Next, since the applicants in the main proceedings do not rely on any personal right protected by EU law, the situation in the main proceedings does not fall within the scope of application of EU law. It follows that the Court does not have jurisdiction to interpret the provisions of the Charter referred to in those questions. Finally, the request for a preliminary ruling invites the Court to rule on the legality of measures of national law, which also falls outside its jurisdiction.

13 The Romanian Government considers that the first question is inadmissible. It submits that the referring court does not clearly explain the factual situation at issue in the main proceedings and does not show how, or on what basis, the right of access to a court has been denied to the applicants in the main proceedings. In particular, it is clear from the order for reference that the action brought by the applicants in the main proceedings satisfies the conditions of admissibility established in Romanian law, which renders the first question devoid of purpose. Accordingly, the referring court is, at most, confronted with an issue of interpretation of national law.

14 In that regard, as regards the jurisdiction of the Court to reply to the questions referred for a preliminary ruling, it must be borne in mind, in the first place, that the system of cooperation established by Article 267 TFEU is based on a clear division of responsibilities between the national courts and the Court of Justice. In proceedings brought on the basis of that article, the interpretation of provisions of national law is a matter for the courts of the Member States, not for the Court of Justice, and the Court has no jurisdiction to rule on the compatibility of rules of national law with provisions of EU law. However, the Court does have jurisdiction to provide the

national court with all the guidance as to the interpretation of EU law necessary to enable that court to determine whether those national rules are compatible with EU law (judgment of 10 March 2022, *Commissioners for Her Majesty's Revenue and Customs (Comprehensive sickness insurance cover)*, C-247/20, EU:C:2022:177, paragraph 47 and the case-law cited).

15 In the present case, first, it is clear from the wording of the questions referred for a preliminary ruling that their direct subject matter is an interpretation of provisions of EU law. Accordingly, those questions cannot be regarded as relating to the interpretation of provisions of national law.

16 Secondly, while those questions seek the interpretation, by the Court, of EU law so as to enable the compatibility with that law of certain national laws to be assessed, it remains the case that they do not invite the Court itself to rule on that compatibility.

17 In the second place, as regards the argument made by the Prosecutor General that the situation at issue in the main proceedings does not fall within the scope of application of EU law, the Court has already held that national legislation establishing and governing the organisation of a section of the Romanian Public Prosecutor's Office for the investigation of offences committed within the judicial system, and which is competent to conduct criminal prosecutions against judges, falls within the scope of Decision 2006/928 and that it must, consequently, comply with the requirements arising from EU law and, in particular, from Article 2 and Article 19(1) TEU (see, to that effect, judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 57 and the case-law cited).

18 While it does not follow directly from that finding that Article 2 and Article 19(1) TEU confer individual rights on the applicants in the main proceedings, the Prosecutor General's position that that is not the case goes to aspects of the substance of the case, which, as the Advocate General observes in paragraph 21 of his Opinion, are not such as to affect the Court's jurisdiction to provide answers to the questions referred.

19 The first question seeks specifically to determine whether EU law, and in particular Article 2 and Article 19(1) TEU, requires national courts to uphold the admissibility of an action for annulment brought by a professional association of judges, by which that association challenges the compatibility with EU law of the appointment of judges to a section of the Public Prosecutor's Office competent to conduct criminal prosecutions against judges.

20 Therefore, it must be held, without it being necessary to assess whether all the provisions of EU law cited in the questions referred for a preliminary ruling are applicable in a situation such as that at issue in the main proceedings, that the jurisdiction of Court cannot be dismissed on the ground that the situation at issue in the main proceedings is outside the scope of application of EU law.

21 As regards the admissibility of the request for a preliminary ruling, it should be observed that it is clear from the Court's settled case-law that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only, inter alia, 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 object or where the problem is hypothetical (judgment of 9 November 2023, *Odbor azylové a migrační politiky MV (Scope of the Return Directive)*, C-257/22, EU:C:2023:852, paragraph 28 and the case-law cited).

22 Furthermore, in the context of cooperation between the Court and the national courts, the need to arrive at an interpretation or assessment of the validity of EU law which is of use to the national court requires that the latter comply scrupulously with the requirements concerning the content of a reference for a preliminary ruling and which are set out explicitly in Article 94 of the Rules of Procedure of the Court, of which the referring court is deemed to be aware. Those requirements are, moreover, set out in the Court's recommendations to the national courts concerning the bringing of proceedings for a preliminary ruling (OJ 2019 C 380, p. 1) (judgment of 13 July 2023, *Azienda Ospedale-Università di Padova*, C-765/21, EU:C:2023:566, paragraph 30 and the case-law cited).

23 Thus, the need to provide an interpretation of EU law which will be of use to the national court makes it necessary for that court to define the factual and legal context of the questions it is asking or, at the very least, to explain the factual circumstances on which those questions are based. The order for reference must also set out the precise reasons why the national court is unsure as to the interpretation of EU law and considers it necessary to refer a question to the Court for a preliminary ruling (judgment of 25 May 2023, *Dyrektor Izby Administracji Skarbowej w Warszawie (VAT – Fictitious acquisition)*, C-114/22, EU:C:2023:430, paragraph 22 and the case-law cited).

24 In the present case, the request for a preliminary ruling includes all of the necessary elements to enable the Court to reply to the questions referred.

25 As regards, in particular, the first question, it is clear from a reading of the whole of the request and the wording of that question itself that the referring court considers that, if there is a negative answer to that question, it will be driven to uphold the interpretation of the relevant national legislation given in the case-law of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) and consequently to reject the action in question in the main proceedings as being inadmissible.

26 It follows that, in the request for a preliminary ruling, that court has set out both the factual and legal framework of the first question and the reasons why it considers it necessary to refer that question to the Court. The reasons given also make it possible to establish that it is necessary to decide that question in order to resolve the dispute in the main proceedings.

27 In addition, it is clear from that request that, if there is a positive answer to that question, the referring court will be required, in order to assess the arguments submitted by the applicants in the main proceedings, to determine the compatibility with EU law of the national legislation to which the second question relates.

28 Therefore, the questions referred for a preliminary ruling cannot be regarded as being hypothetical.

29 Having regard to the foregoing considerations, it must be held that the Court has jurisdiction to reply to the request for a preliminary ruling and that the questions referred are admissible.

Consideration of the questions referred

The first question

30 By its first question, the referring court asks, in essence, whether Article 2 and Article 19(1) TEU, read in combination with Articles 12 and 47 of the Charter, must be interpreted as precluding national legislation which, by making the admissibility of an action for annulment challenging the

appointment of prosecutors competent to conduct criminal prosecutions against judges subject to the existence of a legitimate private interest, excludes, in practice, such an action from being brought by professional associations of judges seeking to defend the principle of the independence of the judiciary.

31 To the extent that the Romanian Government submits, in support of the reply that it proposes for the first question, that, contrary to the indications given by the referring court, the application of the national legislation in question in the main proceedings would not necessarily lead to the inadmissibility of the action in question in the main proceedings, it is appropriate to recall that the Court must take into account, under the division of jurisdiction between the Courts of the European Union and national courts, the factual and legal context, as set out in the order for reference, of the questions referred for a preliminary ruling. Accordingly, a reference for a preliminary ruling cannot be examined in the light of the interpretation of national law relied on by the government of a Member State (judgment of 15 April 2021, *État belge (Circumstances subsequent to a transfer decision)*, C-194/19, EU:C:2021:270, paragraph 26 and the case-law cited).

32 The referring court stated that the interpretation of the relevant Romanian legislation by the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) necessarily leads to the dismissal, as inadmissible, of an action such as that at issue in the main proceedings, since a professional association of judges lacks a legitimate private interest upon which it may rely, which is capable of substantiating its standing to bring proceedings for the purposes of such an action, which is why the first question relates to that interpretation of that legislation.

33 The interpretation of the procedural rules of Romanian law put forward by the Romanian Government cannot, therefore, be accepted by the Court for the purposes of the present preliminary ruling proceedings.

34 Having made those clarifications, it should be pointed out that, in accordance with the Court's settled case-law, 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 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 188, and of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 39).

35 The very existence of effective judicial review designed to ensure compliance with EU law is of the essence of the rule of law. In that regard, as provided for in the second subparagraph of Article 19(1) TEU, it is for the Member States to establish a system of legal remedies and procedures ensuring for individuals compliance with their right to effective judicial protection in the fields covered by EU law. The principle of the effective judicial protection of individuals' rights under EU law, referred to in the second subparagraph of Article 19(1) TEU, is a general principle of EU law stemming from the constitutional traditions common to the Member States, 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 to which Article 47 of the Charter corresponds (see, to that effect, judgment of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraph 219 and the case-law cited).

36 In that context, in principle, it is for the Member States, in particular, to determine the standing and interest of a party to bring legal proceedings, without however undermining the right

to effective judicial protection (see, to that effect, judgment of 13 March 2007, *Unibet*, C-432/05, EU:C:2007:163, paragraph 42 and the case-law cited).

37 In that regard, detailed procedural rules governing actions for safeguarding an individual's rights under EU law must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not make it in practice impossible or excessively difficult to exercise rights conferred by EU law (principle of effectiveness) (see, to that effect, judgments of 13 March 2007, *Unibet*, C-432/05, EU:C:2007:163, paragraph 43 and the case-law cited, and of 24 October 2018, *XC and Others*, C-234/17,EU:C:2018:853, paragraph 22).

38 As regards the principle of equivalence, according to the indications given in the request for a preliminary ruling, the national legislation at issue in the main proceedings appears to apply in the same way both to actions provided for in respect of the protection of rights derived from EU law and to similar domestic actions. In particular, it does not appear, subject to verification by the referring court, that standing to bring proceedings by persons governed by private law and, in particular, associations, would be examined differently depending on whether they seek to rely on a public interest based on EU law, such as the principle of judicial independence, or a public interest derived from national law.

39 As regards the principle of effectiveness, it is clear from that request that, as stated in paragraph 7 of the present judgment, the national legislation permits any person who demonstrates a legitimate private interest to challenge an administrative act, such as the order at issue in the main proceedings, including by invoking harm to a public interest resulting from that act. In those circumstances, effective judicial protection appears to be guaranteed by the right of the parties concerned, including judges and prosecutors affected by a national measure that concerns them, to invoke the issue of compliance with the requirements under Article 19(1) TEU, which it is for the referring court to ascertain.

40 It is true that, as the referring court notes, the Court has already held that the Member States are required, in certain cases, to permit representative associations to bring proceedings in order to protect the environment or combat discrimination (see, to that effect, judgments of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation*, C-664/15, EU:C:2017:987, paragraph 58, and of 23 April 2020, *Associazione Avvocatura per i diritti LGBTI*, C-507/18, EU:C:2020:289, paragraph 60).

41 However, first, those findings by the Court flow from procedural rights specifically conferred on representative associations by the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1), or by acts of secondary legislation such as Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

42 Secondly, it is clear from the case-law of the Court that, even in the fields referred to in paragraph 40 of the present judgment, Member States remain free, where that convention or those acts do not specifically require standing to bring proceedings to be recognised for representative associations, to confer, or not to confer, that standing on such associations. In addition, in the event that the Member States intend, in that context, to recognise representative associations as having standing, they must define both the scope of the proceedings that are open to them and the conditions subject to which those actions may be brought, in compliance with the right to an effective action (see, to that effect, judgments of 10 July 2008, *Feryn*, C-54/07, EU:C:2008:397,

paragraph 27; of 23 April 2020, *Associazione Avvocatura per i diritti LGBTI*, C-507/18, EU:C:2020:289, paragraphs 62 to 64; and of 8 November 2022, *Deutsche Umwelthilfe (Approval of motor vehicles)*, C-873/19, EU:C:2022:857, paragraphs 63 and 65 and the case-law cited).

43 As the Advocate General observed in paragraph 38 of his Opinion, there is no provision of EU law that requires the Member States to grant procedural rights to professional associations of judges enabling them to challenge any purported incompatibility with EU law of a national provision or measure connected with the status of judges.

44 Therefore, it cannot be concluded on the basis of the obligation, referred to in paragraph 35 of the present judgment, to establish a system of legal remedies and procedures which ensures respect for the right to effective judicial protection for individuals in the fields covered by EU law that the Member States are required generally to guarantee for those associations the right to bring proceedings based on such an incompatibility with EU law.

45 The fact that the Court responded to requests for a preliminary ruling which had been sent to it in cases brought before the referring court by professional associations of judges is not such as to call that assessment into question, since it is not for the Court to rule, in the context of an action for a preliminary ruling, on the admissibility of the action in the main proceedings (see, to that effect, judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 26 and the case-law cited).

46 Taking account of Article 12 of the Charter, which is cited by the referring court, does not justify a different outcome, since that article merely enshrines the freedom of association, without however requiring that associations necessarily be granted standing to bring judicial proceedings to defend a general interest objective.

47 The same applies as regards the case-law of the Court relating to the principle of the independence of the judiciary. In that respect, as regards, more specifically, the possibility of bringing an action against decisions relating to the appointment of prosecutors competent to conduct criminal prosecutions against judges, it should be recalled that, in order to comply with Article 19(1) TEU, 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 18 May 2021, *Asociaţia 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 191, and of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 40).

48 To ensure that bodies that 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 (judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 194 and the case-law cited).

49 The requirement that courts be independent, which follows from the second subparagraph of Article 19(1) TEU, has two aspects to it. The first aspect, which is external in nature, requires that the court concerned exercise its functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, thus being protected against external interventions or pressure liable to

impair the independent judgment of its members and to influence their decisions. The second aspect, which is internal in nature, is linked to impartiality and seeks to ensure that an equal distance is maintained from the parties to the proceedings and their respective interests with regard to the subject matter of those proceedings. The latter aspect requires objectivity and the absence of any interest in the outcome of the proceedings apart from the strict application of the rule of law (see, to that effect, judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 41 and the case-law cited).

50 It should be observed that rules excluding the possibility, for professional associations of judges, to bring an action against decisions relating to the appointment of prosecutors competent to conduct criminal prosecutions against judges do not appear to be of such a nature as to directly prejudice those requirements, since those rules are not capable, in themselves, of undermining the capacity of judges to perform their duties autonomously and impartially.

51 However, 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 (judgments of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 196, and of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 82).

52 In that regard, it is clear from the case-law of the Court that, in certain circumstances, the Member States are required, in order to ensure that the requirement for the independence of the judiciary is observed, to provide for certain legal remedies permitting the lawfulness of national measures that have consequences for the careers of judges or the composition of national courts and tribunals to be reviewed.

53 Thus, first of all, that requirement of independence means that, in accordance with that case-law, the disciplinary 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. In that respect, rules that provide for the involvement of an independent body in accordance with a procedure that fully safeguards the rights enshrined in Articles 47 and 48 of the Charter, notably the rights of the defence, and enshrine the possibility to challenge disciplinary bodies' decisions by way of legal proceedings, form part of a set of guarantees essential to safeguarding the independence of the judiciary (see, to that effect, judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 198 and the case-law cited).

54 Similarly, transfer measures without consent, adopted outside of a disciplinary regime, must be open to legal challenge, in accordance with a procedure which fully safeguards the rights enshrined in Articles 47 and 48 of the Charter (see, to that effect, judgment of 6 October 2021, *W.Ż.* (*Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment*), C-487/19, EU:C:2021:798, paragraph 118).

55 Next, the Court has held that the fundamental right to a fair trial and, in particular, the guarantees of access to an independent and impartial tribunal previously established by law which characterise that fundamental right, mean in particular that every court is obliged to check whether, as composed, it constitutes such a tribunal where a serious doubt arises on that point, such a check being necessary for the confidence which the courts in a democratic society must inspire in those

subject to their jurisdiction (judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)*, C-204/21, EU:C:2023:442, paragraph 129).

56 Finally, in a context characterised by general reforms of the judicial system restricting the independence of the judiciary, the absence of sufficient guarantees by a body responsible for the appointment of judges could make it necessary for there to be a judicial remedy available to unsuccessful candidates, albeit restricted, in order to help safeguard the process of appointing the judges concerned from direct or indirect influence and, ultimately, to prevent legitimate doubts from arising, in the minds of individuals, as to the independence of the judges appointed at the end of that process (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 136).

57 In that context, it should be borne in mind, as regards the appointment of prosecutors competent to conduct criminal prosecutions against judges, that Member States are required, in order notably to avoid such doubts arising, to provide an overarching guarantee that the action of those prosecutors is taken within a framework of effective rules which fully comply with the requirement of the independence of the judiciary. Rules adopted for that purpose must, inter alia, like those on the disciplinary liability of judges, provide the guarantees necessary to ensure that such proceedings cannot be used as a system of political control over the activity of those judges and fully safeguard the rights enshrined in Articles 47 and 48 of the Charter (see, to that effect, judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 213).

58 Given that, first, the Member States are required to adopt and apply such rules, secondly, professional associations of judges are not, as a rule, directly concerned by the appointment of prosecutors, including where the latter are competent to conduct criminal prosecutions against judges, and, thirdly, it follows from the considerations set out in paragraphs 43 to 46 of the present judgment that EU law does not require, in general, that specific procedural rights be granted to such associations, it cannot be held that the sole fact that national legislation does not permit professional associations of judges to bring an action for annulment to challenge decisions relating to the appointment of prosecutors competent to conduct criminal prosecutions against judges suffices to create, in the minds of individuals, legitimate doubts as to the independence of judges.

59 It follows from those factors that the requirement of the independence of the judiciary cannot be interpreted, in a general manner, as obliging the Member States to permit professional associations of judges to bring such actions.

60 Furthermore, a right for professional associations of judges to initiate legal proceedings against measures such as those at issue in the main proceedings also cannot be derived from Article 47 of the Charter.

61 The recognition of the right to an effective remedy, in a given case, presupposes that the person invoking that right is relying on rights or freedoms guaranteed by EU law or that that person is the subject of proceedings constituting an implementation of EU law, within the meaning of Article 51(1) of the Charter (judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 34).

62 It is not apparent from the order for reference that the applicants in the main proceedings rely on a right conferred on them by a provision of EU law, nor that they are the subject of proceedings which constitute an implementation of EU law.

63 In so far as the applicants seek to base their action on Article 19(1) TEU, it must be recalled that the Court has held that an association that submits, before a national court, that national legislation relating to the appointment of judges is incompatible with that provision cannot be regarded, on that basis alone, as invoking the breach of a right conferred on it by a provision of EU law (see, to that effect, judgment of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, paragraphs 43 and 44).

64 Having regard to all the foregoing considerations, the answer to the first question is that Article 2 and Article 19(1) TEU, read in combination with Articles 12 and 47 of the Charter, must be interpreted as not precluding national legislation which, by making the admissibility of an action for annulment challenging the appointment of prosecutors competent to conduct criminal prosecutions against judges subject to the existence of a legitimate private interest, excludes, in practice, such an action from being brought by professional associations of judges seeking to defend the principle of the independence of the judiciary.

The second question

65 Having regard to the answer given to the first question, there is no need to answer the second question.

Costs

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

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

Article 2 and Article 19(1) TEU, read in combination with Articles 12 and 47 of the Charter of Fundamental Rights of the European Union,

must be interpreted as not precluding national legislation which, by making the admissibility of an action for annulment challenging the appointment of prosecutors competent to conduct criminal prosecutions against judges subject to the existence of a legitimate private interest, excludes, in practice, such an action from being brought by professional associations of judges seeking to defend the principle of the independence of the judiciary.

[Signatures]

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* Language of the case: Romanian.