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Provisional text

JUDGMENT OF THE COURT (First Chamber)

11 May 2023 (*)

(Reference for a preliminary ruling – Rule of law – Judicial independence – Second subparagraph of Article 19(1) TEU – Decision 2006/928/EC – Independence of the judiciary – Disciplinary proceedings – Judicial Inspectorate – Chief Inspector with powers of regulation, selection, assessment, appointment and disciplinary investigation)

In Case C-817/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel București (Court of Appeal, Bucharest, Romania), made by decision of 10 December 2021, received at the Court on 21 December 2021, in the proceedings

R.I.

v

Inspekția Judiciară,

N.L.,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, L. Bay Larsen (Rapporteur), Vice-President of the Court, P.G. Xuereb, T. von Danwitz 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:

- R.I., by I. Roșca, acting as Agent,
- Inspekția Judiciară, by L. Netejoru, acting as Agent,
- the European Commission, by K. Herrmann, I. Rogalski and P. Van Nuffel, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 January 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2 and the second subparagraph of Article 19(1) TEU as well as 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 between R.I., on the one hand, and the Inspekția Judiciară (Judicial Inspectorate, Romania) and N.L., on the other, concerning the decisions of the Judicial Inspectorate to take no further action on a complaint lodged by R.I. against N.L. and to reject the objection filed against the decision to take no further action.

Legal context

European Union law

3 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 [European] 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.’

Romanian law

4 Article 44(6) of Legea nr. 317/2004 privind Consiliul Superior al Magistraturii (Law No 317/2004 on the Supreme Council of the Judiciary) of 1 July 2004 (*Monitorul Oficial al României*, Part I, No 827 of 13 September 2005), as amended and supplemented (‘Law No 317/2004 as amended’), provides:

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

5 Article 45(4) of that law states:

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

6 Article 45¹(1) of Law No 317/2004 as amended is worded as follows:

‘The person who lodged the complaint may file an objection with the Chief Inspector against the decision to discontinue the case referred to in Article 45(4) within 15 days of notification of that decision. The objection shall be dealt with within 20 days of the date of its being registered with the Judicial Inspectorate.’

7 Article 47(7) of that law states:

‘Disciplinary action may be taken within 30 days of the completion of the disciplinary investigation, but no later than two years from the date on which the act was committed.’

8 Under Article 65(2) to (4) of Law No 317/2004 as amended:

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

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

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

9 Article 66(3) of that law provides:

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

10 Under Article 69(1) and (4) of that law:

1. The Chief Inspector shall have the following main duties:

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

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

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

...

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

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

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

...

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

11 Article 71(2) of that law states:

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

The main proceedings and the question referred

12 R.I. is a party in several criminal proceedings before the courts of Romania. She filed a number of disciplinary complaints with the Judicial Inspectorate against judges and prosecutors assigned to those courts.

13 Those complaints were the subject of various decisions of the Judicial Inspectorate to take no further action. One of those decisions, dated 2 July 2018, which had been confirmed by N.L. in his capacity as Chief Inspector, was challenged by R.I. before the Curtea de Apel Bucureşti (Court of Appeal, Bucharest, Romania).

14 In a judgment of 27 September 2019, that court rejected the decision in question. By judgment of 29 September 2020, the Înalta Curte de Casaţie şi Justiţie (High Court of Cassation and Justice, Romania) declared inadmissible the Judicial Inspectorate’s appeal against that judgment.

15 Following those judicial proceedings, on 11 March 2021 the Judicial Inspectorate adopted a new decision to take no further action in respect of the disciplinary complaint in question. On 31 May 2021, N.L. rejected R.I.’s objection against that decision. The latter brought an action for annulment of the decision thus adopted by N.L.

16 By a statement sent to the Ministerului Justiţiei (Ministry of Justice, Romania) on 29 November 2019, R.I. complained that her constitutional rights had been infringed and reported

the action of a ‘group’ of persons, including N.L., who allegedly contributed to that infringement and to the criminal investigations concerning her. In that statement, R.I. maintained, inter alia, that N.L. had sought to conceal the abuses and unlawful acts committed by certain members of the judiciary.

17 The Ministry of Justice did not consider itself competent to examine that complaint and, as a consequence, referred it to the Judicial Inspectorate. R.I. also formulated an additional grievance against N.L. by a complaint submitted to the Judicial Inspectorate on 16 February 2021.

18 In the proceedings before that body, R.I. clarified her grievances, submitting, inter alia, that there had been no proper disciplinary investigation, that the judgment of 27 September 2019 had not been executed and that the examination of her objections had been intentionally delayed in order to allow a limitation period to expire.

19 On 17 March 2021 it was decided to take no further action as regards the complaint against N.L., by decision of a judicial inspector appointed pursuant to general rules adopted by the Chief Inspector. R.I.’s objection against that decision was rejected on 11 May 2021 by decision of the Deputy Chief Inspector.

20 On 31 May 2021, R.I. brought an action before the referring court seeking, inter alia, annulment of the decisions of 17 March and 11 May 2021 and compensation for the damage allegedly caused to her by those decisions.

21 In support of that action, R.I. relied, inter alia, on several irregularities relating to the powers of the Chief Inspector as regards the selection of Judicial Inspectors, the appointment of the Deputy Chief Inspector, the enactment of the rules on the organisation of the Judicial Inspectorate and the absence of sufficient safeguards against the lack of impartiality of the persons responsible for investigating a complaint against the Chief Inspector. R.I. takes the view that EU law precludes that concentration of powers in the hands of the Chief Inspector, which prevents disciplinary proceedings being brought against members of the judiciary or against the Chief Inspector.

22 The referring court notes that, while R.I. invoked the judgment of 18 May 2021, *Asociația ‘Forumul Judecătorilor din România’ and Others* (C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393), that judgment concerns only the instrument of appointment of the Chief Inspector, which was analysed in the light of the risk that a disciplinary investigation might be opened against the judges. In the present case, R.I. complains, rather, that it is impossible to bring disciplinary proceedings on account of the manner in which the Judicial Inspectorate is organised and operates.

23 The referring court observes, in that regard, that the Judicial Inspectorate was reformed in 2012 in order to increase its operational independence from the Supreme Council of the Judiciary and thus to ensure compliance with Decision 2006/928. Various rules governing the organisation and operation of the Judicial Inspectorate, and relating, inter alia, to its structure, the tasks of its staff, the procedure for dealing with complaints, the appointment of Judicial Inspectors or persons in management positions, stem from rules adopted by the Chief Inspector pursuant to the regulatory powers granted to him or her by the Romanian legislature. On the basis of those factors, the referring court raises the question, in particular, of the soundness of the system of safeguards arising from the Romanian legislation for reviewing the actions of the Chief Inspector.

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

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

The request for application of the expedited preliminary ruling procedure

25 The referring court has requested that the present reference for a preliminary ruling be dealt with under an expedited preliminary ruling procedure pursuant to Article 105 of the Rules of Procedure of the Court of Justice.

26 In support of its request, that court notes, first, that R.I. complained about the excessive length of the disciplinary proceedings and that it is therefore important that the length of the preliminary ruling procedure does not appear to constitute a cause of uncertainty concerning the effectiveness of her action. That court points out, secondly, that the question referred concerns an important point of law, in so far as it relates to the organisation and operation of a Judicial Inspectorate body.

27 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 of Justice may, where the nature of the case requires that it be dealt with within a short time, after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure derogating from the provisions of those rules.

28 In the present case, the President of the Court decided, on 1 February 2022, after hearing the Judge-Rapporteur and the Advocate General, that there was no need to grant the request referred to in paragraph 25 of the present judgment.

29 As regards, first, the risk that the preliminary ruling procedure might excessively prolong the duration of the main proceedings, it is apparent from the Court’s case-law that the mere interest of litigants in determining as quickly as possible the scope of their rights under EU law, while legitimate, is not such as to establish the existence of an exceptional circumstance for the purposes of Article 105(1) of the Rules of Procedure (judgment of 11 November 2021, *Energieversorgungscenter Dresden-Wilschdorf*, C-938/19, EU:C:2021:908, paragraph 43 and the case-law cited).

30 Furthermore, even if the referring court considers that it must deal with the case in the main proceedings swiftly in the light of its subject matter, the fact that the referring court is required to do everything possible to ensure that the case in the main proceedings is resolved swiftly is not in itself sufficient to justify the use of an expedited procedure under Article 105(1) of the Rules of Procedure (judgment of 6 October 2021, *TOTO and Vianini Lavori*, C-581/20, EU:C:2021:808, paragraph 29 and the case-law cited).

31 As regards, secondly, the fact that the question referred concerns the organisation and operation of a Judicial Inspectorate body, it is important to note that the application of the expedited preliminary ruling procedure does not depend on the nature of the dispute in the main proceedings

as such, but on exceptional circumstances particular to the case in question, which must establish that a ruling on that question is a matter of exceptional urgency (judgment of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraph 27 and the case-law cited).

32 Specifically, the fact that the case concerns an important aspect of the organisation of the courts of the Member State concerned is not, as such, a reason that establishes the exceptional urgency necessary to justify an expedited procedure (see, to that effect, judgments of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, paragraph 22, and of 21 December 2021, *Randstad Italia*, C-497/20, EU:C:2021:1037, paragraph 39).

Consideration of the question referred

Admissibility

33 The Judicial Inspectorate claims that the request for a preliminary ruling is inadmissible.

34 It argues, first, that while the national courts alone have jurisdiction to assess the legality of the procedure for the adoption of administrative measures of an individual nature, that request does not concern the interpretation of provisions of EU law, but that of Law No 317/2004 as amended. Secondly, in its view, the Romanian provisions applicable to the dispute in the main proceedings are compatible with the rules of EU law and, therefore, the independence of the judges in that dispute is not undermined in any way.

35 In that regard, while it is true that the Court does not have jurisdiction in preliminary ruling proceedings to interpret the domestic law of a Member State (see, to that effect, judgment of 26 January 2021, *Hessischer Rundfunk*, C-422/19 and C-423/19, EU:C:2021:63, paragraph 31), it is, however, clear from the wording of the question referred that it relates not to the interpretation of Romanian law, but to the interpretation of provisions of EU law, namely that of Article 2 and of the second subparagraph of Article 19(1) TEU as well as of Decision 2006/928.

36 Furthermore, although the Judicial Inspectorate submits that legislation such as that at issue in the main proceedings is compatible with EU law, that objection relates to the actual scope of the provisions of EU law to which the question referred relates and, therefore, to the interpretation of those provisions. Such objection, which relates to the substance of the question referred, cannot therefore, by its very nature, lead to the inadmissibility of the question (see, to that effect, judgment of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, paragraph 33).

37 It follows that the question referred is admissible.

Substance

38 By its question, the referring court asks, in essence, whether Article 2 and the second subparagraph of Article 19(1) TEU as well as Decision 2006/928 must be interpreted as precluding national legislation conferring on the director of a body competent to conduct investigations and bring disciplinary proceedings against judges and prosecutors the power to adopt acts of a normative and individual nature relating, inter alia, to the organisation of that body, the selection of its staff members, their assessment, the conduct of their activities as well as the appointment of a deputy director, where those staff members and that deputy director alone are competent to conduct a disciplinary investigation against that director.

39 It must be recalled 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 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 37).

40 The very existence of effective judicial review designed to ensure compliance with EU law is of the essence of the rule of law. In that regard, as provided for in the second subparagraph of Article 19(1) TEU, it is for the Member States to establish a system of legal remedies and procedures ensuring for individuals compliance with their right to effective judicial protection in the fields covered by EU law. The principle of the effective judicial protection of individuals' rights under EU law, referred to in the second subparagraph of Article 19(1) TEU, is a general principle of EU law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and is now reaffirmed in Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') (judgment of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraph 219 and the case-law cited).

41 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 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 191, and of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 40).

42 As regards the applicability of the second subparagraph of Article 19(1) TEU, in a situation such as that of the dispute in the main proceedings, 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 (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 192 and the case-law cited).

43 In that regard, the Court has held that national legislation which falls within the scope of Decision 2006/928 must comply with the requirements arising from EU law, in particular from Article 2 and the second subparagraph of 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).

44 That is the case, in particular, of legislation governing the organisation and operation of a body which, like the Judicial Inspectorate, is competent to conduct investigations and bring disciplinary proceedings against all Romanian judges and, therefore, against the judges of the ordinary courts who are called upon to rule on questions relating to the application or interpretation of EU law (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, paragraphs 182, 185 and 193).

45 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).

46 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. That 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).

47 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).

48 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 (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).

49 Furthermore, 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 a 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 (see, to that effect, 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 199, and of 15 July 2021, *Commission v Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraph 82).

50 Consequently, since those occupying management positions within such a body are likely to have a decisive influence on its activity, the rules governing the procedure for appointment to those

positions must be designed in such a way that there can be no reasonable doubt, in the minds of individuals, 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 (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 200).

51 Such a requirement applies not only to the rules governing the procedure for appointment to management positions within a body competent to conduct investigations and bring disciplinary proceedings, but also, more broadly, to all the rules governing the organisation and operation of that body.

52 The latter rules may, generally speaking, affect that body's practice directly and thus prevent or, on the contrary, encourage disciplinary action the object or effect of which is to exert pressure on those who have the task of adjudicating in a dispute or of ensuring political control over their activity.

53 In that regard, the concentration, in the hands of the director of such a body, of powers enabling him or her to regulate the organisation and operation of that body and to take individual decisions concerning the career of its staff members and the cases which they handle, is such as to ensure that that director has effective control over all the actions of that body, in so far as that director will be able to influence not only the choice of staff members of that body, including senior members, but also their career progression as well as the direction and content of the decisions actually taken by those staff members in disciplinary proceedings concerning judges.

54 The existence of that kind of control cannot, however, be regarded as being, as such, incompatible with the second subparagraph of Article 19(1) TEU.

55 If effective control by the director of a body competent to conduct investigations and bring disciplinary proceedings over all of the actions of that body may be such as to promote the effectiveness and uniformity of the practices of that body, such a concentration of powers in the hands of the director alone cannot, as such, undermine the requirements of independence and impartiality, in so far as the staff members of a body such as that at issue in the main proceedings are called upon not to settle disputes as judges, but to conduct investigations and initiate disciplinary proceedings, with the result that they do not necessarily have to satisfy all the requirements of independence and impartiality applicable to judges.

56 Nonetheless, the concentration of substantial powers in the hands of the director of a body competent to conduct investigations and bring disciplinary proceedings, in so far as it gives him or her, in practice, a broad discretion in whether to bring disciplinary proceedings against judges, is liable to facilitate the use, by that director, of the disciplinary regime for judges to influence their activity.

57 Therefore, legislation granting the director of such a body powers such as those conferred on the Chief Inspector by the legislation at issue in the main proceedings could give rise to reasonable doubt, in the minds of individuals, as to the use of the powers and functions of that body as an instrument to exert pressure on, or political control over, judicial activity.

58 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 (see, by analogy, judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 201 and the case-law cited).

59 In that regard, the referring court will have to assess the legislation at issue in the main proceedings as such and in its national legal and factual context. Several elements which fall within that context and which are apparent from the order for reference and from the documents before the Court may be of some relevance for the purposes of the examination to be carried out by the referring court.

60 As regards, in the first place, the legislation at issue in the main proceedings, the safeguards which it may provide, in order to prevent the occurrence or persistence of misuse of powers by the director of a body competent to conduct investigations and bring disciplinary proceedings, or the possible absence of such safeguards, are of particular importance.

61 The referring court states that, under that legislation, disciplinary action intended to punish abuses by the Chief Inspector can be initiated only by an inspector whose career depends, to a large extent, on the decisions of the Chief Inspector and who will necessarily have to act within the framework of the organisation defined by the latter.

62 Furthermore, it is clear from the order for reference that the decisions relating to the Chief Inspector can be reviewed by the Deputy Chief Inspector, who has been appointed by the Chief Inspector and whose term of office will end at the same time as that of the Chief Inspector.

63 Such a disciplinary regime appears, subject to verification to be carried out by the referring court, capable of preventing, in practice, disciplinary proceedings from being brought effectively against the Chief Inspector, even if that inspector were to be the subject of properly substantiated complaints.

64 It is true, as the procedure at issue in the main proceedings shows, that the decision to take no further action with regard to a complaint against the Chief Inspector may be subject to review which could lead, where appropriate, to the annulment of the decision to take no further action and to the issuing of instructions as to how the Judicial Inspectorate is to handle that complaint.

65 It is, however, for the referring court to assess the extent to which the powers available to the Romanian courts in that regard are capable of allowing disciplinary proceedings to be brought effectively against the Chief Inspector and complaints directed against the latter to be handled efficiently and impartially. For the purposes of that assessment, the referring court will, in particular, have to take account of the dependence on the Chief Inspector, who will again be seised of the case following the annulment of a decision to take no further action, and of the risk that limitation periods may expire, precluding disciplinary proceedings from being brought.

66 If that court were to conclude that the Chief Inspector's actions cannot, in the context of the legislation at issue in the main proceedings, be the subject of genuine and effective control, the view would have to be taken that that legislation is not designed in such a way that there can be no reasonable doubt, in the minds of individuals, that the powers and functions of the Judicial Inspectorate will not be used as an instrument to exert pressure on, or political control over, judicial activity (see, by analogy, 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 142; of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Action)*, C-824/18, EU:C:2021:153, paragraph 129, and 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 205).

67 As regards, in the second place, the national legal and factual context to be taken into account, three factors which are apparent from the order for reference and from the documents before the Court may be of some relevance for the purposes of the examination to be carried out by the referring court.

68 First of all, it appears, subject to verification to be carried out by that court, that the powers of the Chief Inspector have been strengthened in the wider context of reforms concerning the organisation of the Romanian judiciary the purpose or effect of which is to reduce the guarantees of independence and impartiality of Romanian judges (see, by analogy, judgments of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Action)*, C-824/18, EU:C:2021:153, paragraphs 133 to 135, and of 15 July 2021, *Commission v Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraphs 106 and 108).

69 Next, the specific rules for appointing the Chief Inspector may be of some importance, if they indicate that the Chief Inspector is closely linked to the executive or the legislature, which, *prima facie*, appears to be the case here.

70 Finally, account must also be taken of the Chief Inspector’s actual practice in the exercise of his or her powers (see, by analogy, 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 144, and 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 219).

71 In the present case, the Commission refers to examples which may show that those powers have been used, on several occasions, for the purpose of political control over judicial activity, some of which are also listed in the reports from the Commission to the European Parliament and the Council of 22 October 2019 and 8 June 2021 on progress in Romania under the Cooperation and Verification Mechanism (COM(2019) 499 final, pp. 7 and 8, and COM(2021) 370, p. 18), which the Romanian authorities must take into due account, under the principle of sincere cooperation laid down in Article 4(3) TEU, for the purpose of achieving the objectives pursued by Decision 2006/928 (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 178).

72 Subject to verification to be carried out by the referring court, it therefore appears that those elements of the national legal and factual context brought to the attention of the Court tend to corroborate, rather than invalidate, a possible finding that the legislation at issue in the main proceedings is not designed in such a way that there can be no reasonable doubt, in the minds of individuals, that the powers and functions of the Judicial Inspectorate will not be used as an instrument to exert pressure on, or political control over, judicial activity.

73 In the light of the foregoing considerations, the answer to the question referred is that Article 2 TEU and the second subparagraph of Article 19(1) TEU, read in conjunction with Decision 2006/928, must be interpreted as precluding national legislation:

- which confers on the director of a body competent to conduct investigations and bring disciplinary proceedings against judges and prosecutors the power to adopt acts of a normative and individual nature relating, inter alia, to the organisation of that body, the selection of its staff members, their assessment, the conduct of their activities and the appointment of a deputy director,
- where, first of all, those members of staff and the deputy director alone are competent to conduct a disciplinary investigation against that director, next, their careers depend, to a large extent, on the decisions of that director and, finally, the term of office of the deputy director will end at the same time as that of the director,

when that legislation is not designed in such a way that there can be no reasonable doubt, in the minds of individuals, that the powers and functions of that body will not be used as an instrument to exert pressure on, or political control over, the activity of those judges and prosecutors.

Costs

74 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 TEU and the second subparagraph of Article 19(1) TEU, read in conjunction with Commission Decision 2006/928/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption,

must be interpreted as precluding national legislation:

- **which confers on the director of a body competent to conduct investigations and bring disciplinary proceedings against judges and prosecutors the power to adopt acts of a normative and individual nature relating, inter alia, to the organisation of that body, the selection of its staff members, their assessment, the conduct of their activities and the appointment of a deputy director,**
- **where, first of all, those members of staff and the deputy director alone are competent to conduct a disciplinary investigation against that director, next, their careers depend, to a large extent, on the decisions of that director and, finally, the term of office of the deputy director will end at the same time as that of the director,**

when that legislation is not designed in such a way that there can be no reasonable doubt, in the minds of individuals, that the powers and functions of that body will not be used as an instrument to exert pressure on, or political control over, the activity of those judges and prosecutors.

[Signatures]

* Language of the case: Romanian.

