



EU law precludes a national rule under which national courts have no jurisdiction to examine the conformity with EU law of national legislation which has been held to be constitutional by a judgment of the constitutional court of the Member State

The application of such a rule would undermine the principle of the primacy of EU law and the effectiveness of the preliminary-ruling mechanism

The Court of Justice is called upon to rule on the principle of judicial independence, enshrined in the second subparagraph of Article 19(1) TEU, read in conjunction in particular with the principle of the primacy of EU law, in a context in which an ordinary court of a Member State has no jurisdiction, under national law, to examine the conformity with EU law of national legislation that has been held to be constitutional by the constitutional court of that Member State, and the national judges adjudicating are exposed to disciplinary proceedings and penalties if they decide to carry out such an examination.

In the present case, RS was convicted on foot of criminal proceedings in Romania. His wife then lodged a complaint concerning, inter alia, several judges in respect of offences allegedly committed during those criminal proceedings. Subsequently, RS brought an action before the Curtea de Apel Craiova (Court of Appeal, Craiova, Romania) seeking to challenge the excessive duration of the criminal proceedings instituted in response to that complaint.

In order to rule on that action, the Court of Appeal, Craiova, considers that it must assess the compatibility with EU law ¹ of the national legislation establishing a specialised section of the Public Prosecutor's Office responsible for investigations of offences committed within the judicial system, such as that commenced in the present case. However, in the light of the judgment of the Curtea Constituțională (Constitutional Court, Romania), ² delivered after the Court's judgment in *Asociația 'Forumul Judecătorilor din România' and Others*, ³ the Court of Appeal, Craiova, would not have jurisdiction, under national law, to carry out such an examination of compatibility. By its judgment, the Romanian Constitutional Court rejected as unfounded the plea of unconstitutionality raised in respect of several provisions of the abovementioned legislation, while emphasising that, when that court declares national legislation consistent with the provision of the Constitution that requires compliance with the principle of the primacy of EU law, ⁴ an ordinary court has no jurisdiction to examine the conformity of that national legislation with EU law.

In that context, the Court of Appeal, Craiova, decided to refer the matter to the Court of Justice in order to clarify, in essence, whether EU law precludes a national judge of the ordinary courts from

¹ Specifically, the compatibility with the second subparagraph of Article 19(1) TFEU and the annex to 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 Judgment No 390/2021 of 8 June 2021.

³ Judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor Din România' and Others* in Joined Cases [C-83/19](#), [C-127/19](#), [C-195/19](#), [C-291/19](#), [C-355/19](#) and [C-397/19](#) (see also [Press Release No 82/21](#)), in which the Court held, inter alia, that the legislation at issue is contrary to EU law where the creation of such a specialised section is not justified by objective and verifiable requirements relating to the sound administration of justice and is not accompanied by specific guarantees identified by the Court (see point 5 of the operative part of that judgment).

⁴ In its judgment No 390/2021, the Romanian Constitutional Court held that the legislation at issue complied with Article 148 of the Constituția României (Romanian Constitution).

having no jurisdiction to examine whether legislation is consistent with EU law, in circumstances such as those of the present case, and disciplinary penalties from being imposed on that judge on the ground that he or she has decided to carry out such an examination.

The Court, sitting as the Grand Chamber, finds such national rules or practices to be contrary to EU law.⁵

Findings of the Court

First of all, the Court finds that the second subparagraph of Article 19(1) TEU does not preclude national rules or a national practice under which the ordinary courts of a Member State, under national constitutional law, are bound by a decision of the constitutional court of that Member State finding that national legislation is consistent with that Member State's constitution, provided that national law guarantees the independence of that constitutional court from, in particular, the legislature and the executive. However, the same cannot be said where the application of such national rules or a national practice entails excluding any jurisdiction of those ordinary courts to assess the compatibility with EU law of national legislation which such a constitutional court has found to be consistent with a national constitutional provision providing for the primacy of EU law.

Next, the Court points out that compliance with the obligation of national courts to apply in full any provision of EU law having direct effect is necessary, in particular, in order to ensure respect for the equality of Member States before the Treaties — which precludes the possibility of relying on, as against the EU legal order, a unilateral measure, whatever its nature — and constitutes an expression of the principle of sincere cooperation set out in Article 4(3) TEU, which requires any provision of national law which may be to the contrary to be disapplied, whether the latter is prior to or subsequent to the EU legal rule having direct effect.

In that context, the Court recalls that it has already held, first, that the legislation at issue falls within the scope of Decision 2006/928⁶ and that it must, therefore, comply with the requirements arising from EU law, in particular from Article 2 and Article 19(1) TEU.⁷ Secondly, both the second subparagraph of Article 19(1) TEU and the specific benchmarks in the areas of judicial reform and the fight against corruption set out in the annex to Decision 2006/928 are formulated in clear and precise terms and are not subject to any conditions, and they therefore have direct effect.⁸ It follows that if it is not possible to interpret the national provisions in a manner consistent with the second subparagraph of Article 19(1) TEU or those benchmarks, the ordinary Romanian courts must disapply those national provisions of their own motion.

In that regard, the Court points out that the ordinary Romanian courts have as a rule jurisdiction to assess the compatibility of Romanian legislative provisions with those provisions of EU law, without having to make a request to that end to the Romanian Constitutional Court. However, they are deprived of that jurisdiction where the Romanian Constitutional Court has held that those national legislative provisions are consistent with a national constitutional provision providing for the primacy of EU law, in that those ordinary courts are required to comply with that judgment of that constitutional court. However, such a national rule or practice would preclude the full effectiveness of the rules of EU law at issue, in so far as it would prevent the ordinary court called upon to ensure the application of EU law from itself assessing whether those national legislative provisions are compatible with EU law.

In addition, the application of such a national rule or practice would undermine the effectiveness of the cooperation between the Court of Justice and the national courts established by the preliminary-ruling mechanism, by deterring the ordinary court called upon to rule on the dispute

⁵ In the light of the second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 and Article 4(2) and (3) TEU, with Article 267 TFEU and with the principle of the primacy of EU law.

⁶ See footnote 1 for the full reference to Decision 2006/928.

⁷ Judgment in *Asociația 'Forumul Judecătorilor din România' and Others*, paragraphs 183 and 184.

⁸ Judgment in *Asociația 'Forumul Judecătorilor din România' and Others*, paragraphs 249 and 250, and 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](#) (see also [Press Release No 230/21](#)), paragraph 253.

from submitting a request for a preliminary ruling to the Court of Justice, in order to comply with the decisions of the constitutional court of the Member State concerned.

The Court emphasises that those findings are all the more relevant in a situation in which a judgment of the constitutional court of the Member State concerned refuses to give effect to a preliminary ruling given by the Court, on the basis, *inter alia*, of the constitutional identity of that Member State and of the contention that the Court has exceeded its jurisdiction. The Court points out that it may, under Article 4(2) TEU, be called upon to determine that an obligation of EU law does not undermine the national identity of a Member State. By contrast, that provision has neither the object nor the effect of authorising a constitutional court of a Member State, in disregard of its obligations under EU law, to disapply a rule of EU law, on the ground that that rule undermines the national identity of the Member State concerned as defined by the national constitutional court. Thus, if the constitutional court of a Member State considers that a provision of secondary EU law, as interpreted by the Court, infringes the obligation to respect the national identity of that Member State, it must make a reference to the Court for a preliminary ruling, in order to assess the validity of that provision in the light of Article 4(2) TEU, the Court alone having jurisdiction to declare an EU act invalid.

In addition, the Court emphasises that since the Court alone has exclusive jurisdiction to provide the definitive interpretation of EU law, the constitutional court of a Member State cannot, on the basis of its own interpretation of provisions of EU law, validly hold that the Court has delivered a judgment exceeding its jurisdiction and, therefore, refuse to give effect to a preliminary ruling from the Court.

Furthermore, on the basis of its earlier case-law,⁹ the Court makes clear that Article 2 and the second subparagraph of Article 19(1) TEU preclude national rules or a national practice under which a national judge may incur disciplinary liability for any failure to comply with the decisions of the national constitutional court and, in particular, for having refrained from applying a decision by which that court refused to give effect to a preliminary ruling delivered by the Court.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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⁹ Judgment in *Euro Box Promotion and Others*.