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ERA Young Lawyers' Summer Course on the Rule of Law

Case law of the CJEU on the Rule of Law

Selection of 50 cases (updated 30.05.23) by Nuria Díaz Abad

I. PRINCIPLE OF LEGALITY

1) 28.6.18, EUIPO v. Puma, C-564/16 P (EU:C:2018:509, p. 60- 61): take similar decisions into account

"(…) in accordance with the settled case-law of the Court of Justice, EUIPO is under a duty to exercise its powers in accordance with the general principles of EU law, including the principles of equal treatment and sound administration (judgment of 10 March 2011, Agencja Wydawnicza Technopol v OHIM, C-51/10 P, EU:C:2011:139, paragraph 73, and order of 11 April 2013, Asa v OHIM, C-354/12 P, not published, EU:C:2013:238, paragraph 41).

The Court of Justice has stipulated that, having regard to those principles, EUIPO must **take into account the decisions previously taken in respect of similar applications** and consider with especial care whether it should decide in the same way or not, since the way in which those principles are applied, as was recalled by the General Court in paragraph 20 of the judgment under appeal, must be consistent with respect for the principle of legality, which means that the examination of any trade mark application must be stringent and full, and must be undertaken in each individual case (see, to that effect, judgments of 10 March 2011, Agencja Wydawnicza Technopol v OHIM, C-51/10 P, EU:C:2011:139, paragraphs 74, 75 and 77, and of 17 July 2014, Reber Holding v OHIM, C-141/13 P, not published, EU:C:2014:2089, paragraph 45; and order of 14 April 2016, KS Sports v EUIPO, C-480/15 P, not published, EU:C:2016:266, paragraph 37)."

2) **17.1.19, Dzivev and others, C-310/16 (EU:C:2019:30, p.33-35): need to observe legal limits when imposing penalties**

"However, the obligation to ensure the effective collection of the European Union's resources does not dispense national courts from the necessary observance of the fundamental rights guaranteed by the Charter and of the general principles of EU law, given that the criminal proceedings instigated for VAT offences amount to an implementation of EU law, within the meaning of Article 51(1) of the Charter. In criminal law, those rights and those principles must be respected not only during the criminal proceedings, but also during the stage of the preliminary investigation, from the moment when the person concerned becomes an accused (see, to that effect, judgments of 5 December 2017, M.A.S. and M.B., C-42/17, EU:C:2017:936, paragraph 52; of 5 June 2018, Kolev and Others, C-612/15, EU:C:2018:392, paragraphs 68 and 71, and of 20 March 2018, Di Puma and Zecca, C-596/16 and C-597/16, EU:C:2018:192, paragraph 31 and the case-law cited).

Thus, **the obligation to ensure the effective collection of the European Union's resources does not dispense national courts from the necessary observance of the principle of legality and the rule of law** which is one of the primary values on which the European Union is founded, as is indicated in Article 2 TEU.

In that regard, it follows, in particular, from the requirements derived from the principle of legality and the rule of law that the exercise of the power to impose penalties cannot take place, as a matter of principle, outside the **legal limits** within which an administrative authority is authorised, in accordance with the law of the Member State by which it is governed, to act (see, by analogy, judgment of 1 October 2015, Weltimmo, C-230/14, EU:C:2015:639, paragraph 56).

3) **20.12.17 Vaditrans, C-102/16 (ECLI:EU:C:2017:1012, paragraphs 50-52): need for a clear definition of offences and penalties**

"(…) it should be borne in mind that, under the principle that offences and penalties must have a proper basis in **law (*nullum crimen, nulla poena sine lege*),** as enshrined in particular in the first sentence of Article 49(1) of the Charter, which constitutes a specific expression of the general principle of legal certainty, no one is to be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed.

That principle requires, according to the Court's case-law, EU legislation to give a clear definition of offences and the penalties which they attract. That requirement is satisfied where the individual concerned is in a position to ascertain from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it,

what acts and omissions will make him criminally liable (see, inter alia, judgments of 3 June 2008, Intertanko and Others, C-308/06, EU:C:2008:312, paragraph 71, and of 22 October 2015, AC-Treuhand v Commission, C-194/14 P, EU:C:2015:717, paragraph 40 and the case-law cited).

The principle that offences and penalties must have a proper basis in law cannot therefore be interpreted as precluding the gradual, case-by-case clarification of the rules on criminal liability by judicial interpretation, provided that the result was reasonably foreseeable at the time the offence was committed, especially in the light of the interpretation put on the provision in the case-law at the material time (judgment of 22 October 2015, AC-Treuhand v Commission, C-194/14 P, EU:C:2015:717, paragraph 41 and the case-law cited."

4) **30.5.18, C-390/17 P, Azoulay and Others v Parliament, (EU:C:2018:349, p. 39): a person may not rely to his benefit on an unlawful ac committed in favour of another**

"It must be noted that the appellants dispute the General Court's conclusion in paragraph 56 of the judgment under appeal, but do not challenge the case-law on which the General Court based its conclusion, set out as follows in paragraph 55 of the judgment under appeal:

'However, it is settled case-law that no official or member of the temporary staff may rely on an unlawful act in order to gain an advantage. Indeed, **the principle of equal treatment must be reconciled with the principle of legality**, according to which no person may rely, in support of his claim, on an unlawful act committed in favour of another (judgments of 4 July 1985, Williams v Court of Auditors, 134/84, EU:C:1985:297, paragraph 14; of 2 June 1994, de Compte v Parliament, C-326/91 P, EU:C:1994:218, paragraphs 51 and 52; and of 1 July 2010, Časta v Commission, F-40/09, EU:F:2010:74, paragraph 88).'"

5) **8.5.19, C-566/17, Związek Gmin Zagłębia Miedziowego (EU:C:2019:390, paragraphs 39-41): fiscal legality**

"(…)it is important to note that, as is apparent from the constitutional traditions common to the Member States, the **principle of fiscal legality** may be regarded as forming part of the EU legal order as a general principle of law. Although that principle requires, as observed by the Advocate General in point 110 of her Opinion, that any obligation to pay a tax, such as VAT, and all the essential elements defining the substantive features thereof must be provided for by law, that principle **does not require every technical aspect of taxation to be regulated exhaustively**, as long as the rules established by law enable a

taxable person to foresee and calculate the amount of tax due and determine the point at which it becomes payable.

Consequently, the lack of technical rules in the applicable tax legislation that are ancillary to an essential element of the tax does not inherently constitute a breach of the principle of fiscal legality as a general principle of EU law. Similarly, the fact that the applicable tax legislation leaves it to the taxable person to choose from among several possible courses of action in order to be able to qualify for a right cannot be considered inherently contrary to that principle.

When it comes to an essential element of a tax that has been harmonised by the EU legislature, such as VAT, the question of which elements must be specified by law must be examined in the light of the principle of fiscal legality as a general principle of EU law and not on the basis of an interpretation of that principle in national law."

6) 8.12.22 C-200/21, Orde van Vlaamse Balies and others: Formulation in open terms to allow adaptation to fdiffernt scenarios

As regards the requirement that **any limitation on the exercise of fundamental rights must be provided for by law,** this implies that the act which permits the interference with those rights must itself define the scope of the limitation on the exercise of the right concerned, bearing in mind, on the one hand, that that requirement does not preclude the limitation in question from being **formulated in terms which are sufficiently open to be able to adapt to different scenarios** and keep pace with changing circumstances. On the other hand, the Court may, where appropriate, specify, by means of interpretation, the actual scope of the limitation in the light of the very wording of the EU legislation in question as well as its general scheme and the objectives it pursues, as interpreted in view of the fundamental rights guaranteed by the Charter (judgment of 21 June 2022, Ligue des droits humains, C-817/19, EU:C:2022:491, paragraph 114 and the case-law cited and judgment 22 November 2022, C-37/20 and 601/20, WM , paragraph 47).

II. PRINCIPLE OF LEGAL CERTAINTY

7) 20.12.17, Erzeugerorganisation Tiefkühlgemüse, C-516/16, (EU:C:2017:1011, paragraphs 97-98): know precisely the extend of obligations

"(…) it cannot be regarded as contrary to EU law for national law, as far as the recovery of sums wrongly paid by public authorities are concerned, to take into account, in addition to the principle of legality, the principle of legal certainty, since the latter principle **forms**

part of the legal order of the European Union (judgments of 19 September 2002, Huber, C-336/00, EU:C:2002:509, paragraph 56 and the case-law cited, and of 21 June 2007, ROM-projecten, C-158/06, EU:C:2007:370, paragraph 24).

In particular, **the principle of legal certainty requires that EU rules enable those concerned to know precisely the extent of the obligations which are imposed on them.** Individuals must be able to ascertain unequivocally what their rights and obligations are and take steps accordingly (judgment of 21 June 2007, ROM-projecten, C-158/06, EU:C:2007:370, paragraph 25 and the case-law cited)."

8) **14.5.20, A.M.A., C-15/19 (EU:C:2020:371, paragraphs 56-57): clear rules on retroactivity**

"(…) it is true that it follows from settled case-law that, in order to ensure observance of the principles of legal certainty and the protection of legitimate expectations, the substantive rules of EU law must be interpreted as applying to situations existing before their entry into force only in so far as it clearly follows from their terms, objectives or general scheme that such effect must be given to them (judgment of 14 March 2019, Textilis, C-21/18, EU:C:2019:199, paragraph 30 and the case-law cited).

However, it must be borne in mind that **a new legal rule applies from the entry into force of the act introducing it,** and that, while it does not apply to legal situations that arose and became definitive before that act entered into force, it does apply immediately to the future effects of a situation which arose under the old law, as well as to new legal situations. It is otherwise, subject to the **principle of the non-retroactivity of legal acts**, only if the new rule is accompanied by special provisions which specifically lay down the conditions for its temporal application (see, to that effect, judgment of 26 March 2015, Commission v Moravia Gas Storage, C-596/13 P, EU:C:2015:203 paragraph 32 and the case-law cited)."

9) **23.4.20, Herst, C-401/18 (EU:C:2018:295, paragraphs 55-58): limits to retroactivity to interpretation given by CJEU**

"As regards the question of whether EU law precludes the application of a constitutional principle under national law pursuant to which where, in a dispute between the authorities and an individual, there is doubt as to the interpretation of a provision of national tax law which transposed a provision of EU law, the authorities are to adopt the interpretation that is most favourable to the taxable person, it should be pointed out that the application of that principle, as contemplated by the referring court, would in practice have the effect of limiting the temporal effects of the interpretation given by the Court of the EU law which has been transposed by the provisions of national law since, as a result of that application, such an interpretation would not be applicable in the main proceedings (see,

by analogy, judgments of 19 April 2016, DI, C-441/14, EU:C:2016:278, paragraph 39, and of 13 December 2018, Hein, C-385/17, EU:C:2018:1018, paragraph 61).

In that regard, it should be noted **that it is only quite exceptionally that the Court may, in application of the general principle of legal certainty inherent in the EU legal order, be moved to restrict, for any person concerned, the opportunity of relying on a provision which it has interpreted with a view to calling into question legal relationships established in good faith.** Two essential criteria must be fulfilled before such a limitation can be imposed, namely that those concerned acted in good faith and that there is a risk of serious difficulties (judgment of 13 December 2018, Hein, C-385/17, EU:C:2018:1018, paragraph 57 and the case-law cited).

The Court has already held that restricting the temporal effects of such an interpretation may be allowed only in the actual judgment ruling upon the interpretation requested. That principle guarantees the equal treatment of the Member States and of other persons subject to EU law, under that law, fulfilling, at the same time, the requirements arising from the principle of legal certainty (see, to that effect, judgments of 6 March 2007, Meilicke and Others, C-292/04, EU:C:2007:132, paragraph 37, and of 23 October 2012, Nelson and Others, C-581/10 and C-629/10, EU:C:2012:657, paragraph 91).

In that regard, the Court has already held, in paragraph 76 of the judgment of 19 December 2018, AREX CZ (C-414/17, EU:C:2018:1027), that although Directive 2008/118 lays down, inter alia, requirements applicable to the transport of goods under an excise duty suspension arrangement, it in no way affects the conditions for the transfer of the right to dispose of those goods as owner, which is provided for by the VAT Directive. In that judgment, the Court did not restrict the temporal effects of its interpretation of the VAT Directive."

10) 5.9.19, TE, C-331/18 (EU:C:2019:665, paragraph 56): Limits to the obligation to interpret national law in conformity with EU law

"That obligation to interpret national law in conformity with EU law is limited by the general principles of law, particularly those of legal certainty, and that obligation cannot serve as the basis for an interpretation of national law contra legem (see, to that effect, judgment of 16 July 2009, Mono Car Styling, C-12/08, EU:C:2009:466, paragraph 61). However, although the obligation to interpret national law in a manner consistent with EU law **cannot serve as the basis for an interpretation of national law *contra legem*, national courts must change their established case-law, where necessary, if it is based on an interpretation of national law that is incompatible with the objectives of a directive** (judgment of 8 May 2019, Związek Gmin Zagłębia Miedziowego, C-566/17, EU:C:2019:390, paragraph 49 and the case-law cited)."

11) **19.12.19, C-386/18, Coöperatieve Producentenorganisatie en Beheersgroep Texel, (EU:C:2019:1122, paragragh 55): Limits to the discretion of MS in implementing EU law**

"(..) it is apparent from settled case-law that, when adopting **measures to implement EU legislation**, **national authorities must exercise their discretion in compliance with the general principles of law,** which include the principles of legal certainty and the protection of legitimate expectations (see, to that effect, judgment of 14 September 2006, Slob, C-496/04, EU:C:2006:570, paragraph 41). (…)"

12) **7.11.19, Flausch and others, C-280/18 (EU:C:2019:928, paragraphs 54-56): setting of time limits for bringing proceedings**

As to **time limits for bringing proceedings**, the Court has recognised that it is compatible with the principle of effectiveness to lay down reasonable time limits for bringing proceedings in the interests of legal certainty which protects both the individual and the authorities concerned, even if the expiry of those periods necessarily entails the dismissal, in whole or in part, of the action brought (see, to that effect, judgment of 20 December 2017, Caterpillar Financial Services, C-500/16, EU:C:2017:996, paragraph 42).

In particular, the Court does not regard as an excessive difficulty the imposition of periods for bringing proceedings which start to run only from the date on which the person concerned was aware or at least ought to have been aware of the announcement (see, to that effect, judgments of 27 February 2003, Santex, C-327/00, EU:C:2003:109, paragraphs 55 and 57; of 6 October 2009, Asturcom Telecomunicaciones, C-40/08, EU:C:2009:615, paragraph 45; and of 8 September 2011, Rosado Santana, C-177/10, EU:C:2011:557, paragraph 96).

It would, on the other hand, be incompatible with the principle of effectiveness to rely on a period against a person if the conduct of the national authorities in conjunction with the existence of the period had the effect of totally depriving him of the opportunity to enforce his rights before the national courts, that is to say, if the authorities, by their conduct, were responsible for the delay in the application (see, to that effect, judgment of 19 May 2011, Iaia and Others, C-452/09, EU:C:2011:323, paragraph 21).

13) **22.6.21 C-439/19, Latvijas Republikas Saeima (Points de pénalité) (EU :C :2021 :504). Primacy and legal certainty**

As is apparent from the order for reference, this question has been referred on account of the **large number of legal relationships affected by the national legislation at issue** in the main proceedings and of the fact that, under Article 32(3) of the Law on the Constitutional Court and the case-law relating thereto, the referring court, in performing

its task of ensuring a balance between the principle of legal certainty and the fundamental rights of the persons concerned, may limit the retroactive effect of its judgments in order to prevent them from seriously compromising the rights of others.

In that regard, it should be recalled that **the interpretation which, in the exercise of the jurisdiction conferred on it by Article 267 TFEU, the Court gives to rules of EU law clarifies and defines the meaning and scope of those rules as they must be or ought to have been understood and applied from the time of their entry into force.** It is only exceptionally that the Court may, in application of the general principle of legal certainty inherent in the EU legal order, be moved to restrict for any person concerned the opportunity of relying on a provision which it has interpreted with a view to calling into question legal relationships established in good faith. Two essential criteria must be fulfilled before such a limitation can be imposed, namely that those concerned should have acted in good faith and that there should be a risk of serious difficulties (judgments of 6 March 2007, Meilicke, C-292/04, EU:C:2007:132, paragraphs 34 and 35; of 22 January 2015, Balazs, C-401/13 and C-432/13, EU:C:2015:26, paragraphs 49 and 50; and of 29 September 2015, Gmina Wrocław, C-276/14, EU:C:2015:635, paragraphs 44 and 45).

As the Court has consistently held, such a restriction may be allowed only in the actual judgment ruling upon the interpretation sought. Indeed, there must necessarily be a single occasion when a decision is made on the temporal effects of the requested interpretation which the Court gives of a provision of EU law. The principle that a restriction may be allowed only in the actual judgment ruling upon that interpretation guarantees the equal treatment of the Member States and of other persons subject to EU law, under that law, and fulfils, at the same time, the requirements arising from the principle of legal certainty (judgment of 6 March 2007, Meilicke, C-292/04, EU:C:2007:132, paragraphs 36 and 37; see, to that effect, judgments of 23 October 2012, Nelson and Others, C-581/10 and C-629/10, EU:C:2012:657, paragraph 91, and of 7 November 2018, O'Brien, C-432/17, EU:C:2018:879, paragraph 34).

Consequently, the temporal effects of a preliminary ruling given by the Court cannot depend on the date of delivery of the judgment by which the referring court rules finally on the main action, or even on the referring court's assessment of the need to preserve the legal effects of the national legislation at issue.

By virtue of the principle of primacy of EU law, rules of national law, even of a constitutional order, cannot be allowed to undermine the unity and effectiveness of EU law (see, to that effect, judgments of 26 February 2013, Melloni, C-399/11, EU:C:2013:107, paragraph 59, and of 29 July 2019, Pelham and Others, C-476/17, EU:C:2019:624, paragraph 78). Even assuming that overriding considerations of legal certainty are capable of leading, by way of exception, to a provisional suspension of the ousting effect which a directly applicable rule of EU law has on national law that is contrary thereto, the conditions of such a suspension can be determined solely by the

Court (see, to that effect, judgment of 8 September 2010, Winner Wetten, C-409/06, EU:C:2010:503, paragraphs 61 and 67).

In this instance, since a risk of serious difficulties resulting from the interpretation adopted by the Court in the present judgment has not been shown to exist and the criteria referred to in paragraph 132 above are cumulative, it is not appropriate to limit the judgment's temporal effects.

14) 11.11.21 , C-819/19, Equilib Netherlands (EU:C:2021:904). Limits to the application of EU competition rules by national courts

The exercise by national courts of their jurisdiction to apply Article 81 EC in disputes governed by private law may be limited, inter alia, by the principle of legal certainty, in particular by the **need to ensure that those courts and the entities responsible for the administrative implementation of EU competition rules do not adopt conflicting decisions**, as well as by the **need to preserve the decision-making or legislative powers of the EU institutions responsible for implementing those rules and to ensure that their acts have binding force.**

15) 18.11.21, C-413/20, Belgian State (Formation de pilotes), No obligation to reopen administrative decisions (EU:C:2021:938)

It should be borne in mind, without prejudice to the case-law cited in paragraph 53 above, that, in accordance with the principle of legal certainty, **EU law does not require that administrative bodies be placed under an obligation, in principle, to reopen an administrative decision which has become final upon expiry of reasonable periods for legal remedies or by the exhaustion of remedies.** Compliance with that principle prevents administrative acts which produce legal effects from being called into question indefinitely (see, to that effect, judgments of 13 January 2004, Kühne & Heitz, C-453/00, EU:C:2004:17, paragraphs 22 and 24, and of 14 May 2020, Országos Idegenrendézeti Főigazgatóság Dél-alföldi Regionális Igazgatóság, C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 186 and the case-law cited).

In those circumstances, there is nothing in the present case to give grounds for derogating from the principle that a ruling on interpretation produces its effects on the date on which the rule interpreted entered into force (paragraphs 53-58).

16) 16.12.21, C-575/20, Apollo Tyres (Hungary) (EU:C:2021:1024) Predictibility

Taking into account the maximum rated thermal input of the technical units which are part of an installation makes it possible to **ensure that the constraints on operators of installations subject to the EU ETS are predictable** and thus also contributes to the observance of the principle of legal certainty, according to which EU law must allow those concerned to know unequivocally what their rights and obligations are and take steps accordingly (see, to that effect, judgment of 25 November 2021, Aurubis, C-271/20, EU:C:2021:959, paragraph 69 and the case-law cited).(paragraph 36)

17) 20.1.22, C-432/20, Landeshauptmann von Wien (EU:C:2022:39) Loss of the status of long-term resident third-country national

It follows from recital 10 of Directive 2003/109 that the EU legislature intended to pursue the objective referred to in paragraph 36 of the present judgment by providing the persons concerned, in the context of the procedural rules governing the examination of the application for that status, with an adequate level of legal certainty. The importance thus attached to the principle of legal certainty as regards the acquisition of that status must necessarily also apply in respect of the loss of that status, since the loss invalidates that acquisition, as, moreover, is confirmed by the travaux préparatoires for Directive 2003/109, in which it was stated that 'long-term resident status must offer its holder maximum legal certainty' since 'the sole grounds on which it may be withdrawn [must be] listed' (see Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents (COM(2001) 127 final)).

In that regard, the principle of legal certainty, which is one of the general principles of EU law, requires, particularly, **that rules of law be clear, precise and predictable in their effects** (judgment of 13 February 2019, Human Operator, C-434/17, EU:C:2019:112, paragraph 34 and the case-law cited). (paragraphs 38 and 39)

18) 25.1.22, VYSOČINA WIND, C-181/20 (EU:C:2022:51) principle of the non-retroactivity of legal acts

The Court examines the validity of Article 13(1) of Directive 2012/19/EU, in so far as that provision applies to photovoltaic panels placed on the market after 13 August 2005, that is to say, on a date before the date on which the directive entered into force. In that regard, the Court notes first of all that, **whilst the principle of legal certainty precludes a new legal rule from applying to a situation established prior to its entry into force, it also follows from the Court's case-law that a new legal rule applies immediately to the future effects of a situation which arose under the old law, as well as to new legal situations**.

(…) In this respect, the Court explains that a new legal rule which applies to previously established situations cannot be regarded as complying with the principle of the non-retroactivity of legal acts where it alters, subsequently and unforeseeably, the allocation of costs the incurring of which can no longer be avoided. In the present instance, producers of photovoltaic panels were unable to foresee, when designing the panels, that they would subsequently be required to provide for the financing of the costs relating to the management of waste from those panels.

In the light of those considerations, the Court declares Article 13(1) of the WEEE Directive invalid in so far as it imposes on producers the obligation to finance the costs relating to the management of waste from photovoltaic panels placed on the market between 13 August 2005 and 13 August 2012.

19) 16.2.22 C-157/21 Poland/European Parliament and Council (EU:C:2022:98) Regulation 2020/2092 on a general regime of conditionality for the protection of the Union budget. Legal certainty: scope, requirement of clarity and foreseeability, recourse to notions defined in other provisions of the contested norm or in EU law

Next, in the examination of the pleas alleging failure to respect the national identity of Member States, on the one hand, and breach of the principle of legal certainty, on the other, the Court rules that there is no substantive basis for Poland's line of argument regarding the lack of precision vitiating the contested regulation, both as regards the conditions for initiating the procedure and the choice and scope of the measures to be adopted. In that regard, the Court observes at the outset that **the principles set out in the contested regulation, as constituent elements of the concept of the 'rule of law', have been developed extensively in its case-law, that those principles have their source in common values which are also recognised and applied by the Member States in their own legal systems and that they stem from a concept of the 'rule of law' which the Member States share and to which they adhere, as a value common to their constitutional traditions**. Consequently, the Court finds that the Member States are in a position to determine with sufficient precision the essential content and the requirements flowing from each of those principles.

As regards, specifically, the conditions for initiating the procedure and the choice and scope of the measures to be adopted, the Court clarifies that the contested regulation requires, for the adoption of the protective measures which it lays down, that a genuine link be established between a breach of a principle of the rule of law and an effect or serious risk of effect on the sound financial management of the Union or the financial interests of the Union and that such a breach must concern a situation or conduct that is attributable to an authority of a Member States and relevant to the proper implementation

of the Union budget. In addition, the Court notes that the concept of 'serious risk' is clarified in the EU financial legislation and states that the protective measures which may be adopted must be strictly proportionate to the impact of the breach found on the Union budget. In particular, those measures may target actions and programmes other than those affected by such a breach only where that is strictly necessary to achieve the objective of protecting the Union budget as a whole. Lastly, the Court finds that the Commission must comply, subject to review by the EU judicature, with strict procedural requirements involving, inter alia, several consultations with the Member State concerned, and concludes that the contested regulation meets the requirements arising from respect for the national identity of Member States and the principle of legal certainty.

20) 22.2.22, C-160/20, Stichting Rookpreventie Jeugd and others (EU:C:2022:101) link with principle of transparency. Use of technical standards in EU legislation. Need to be published in the OJ

In the light of the principle of legal certainty, the Court states that the EU legislature, in the light of the broad discretion that it has in the exercise of the powers conferred on it where its action involves political, economic and social choices and where it is called on to undertake complex assessments and evaluations, may refer, in the acts that it adopts, to **technical standards determined by a standards body**, such as the International Organisation for Standardisation (ISO).

However, the Court points out that **the principle of legal certainty requires that the reference to such standards be clear and precise and predictable in its effect**, so that interested parties can ascertain their position in situations and legal relationships governed by EU law. In the present instance, the Court holds that, since the reference made by Article 4(1) of Directive 2014/40 to the ISO standards complies with that requirement and the directive was published in the Official Journal, the mere fact that that provision refers to ISO standards that have not, at this juncture, been so published is not capable of calling the validity of that provision into question.

Nevertheless, as regards the ability of ISO standards to bind individuals, the Court states that, in accordance with the principle of legal certainty, such standards made mandatory by a legislative act of the European Union are binding on the public generally only if they themselves have been published in the Official Journal. In the absence of publication in the Official Journal of the standards to which Article 4(1) of Directive 2014/40 refers, the public is thus unable to ascertain the methods of measuring the emission levels prescribed by that directive for cigarettes. On the other hand, regarding the ability of ISO standards to bind undertakings, the Court states that, in so far as undertakings have access to the official and authentic version of the standards referred to in Article 4(1) of Directive 2014/40 through the national standards bodies, those standards are binding on them.

21) 1.3.22, C-275/20 COM/Council (Agreement with the Republic of Korea), Maintenance of the effects of the contested decision (EU:C.2022:142)

As provided in the second paragraph of Article 264 TFEU, the Court may, if it considers this necessary, state which of the effects of an act which it has declared void are to be considered definitive. In that regard, it is apparent from the case-law of the Court that, on grounds of legal certainty, **the effects of such an act may be maintained, in particular where the immediate effects of its annulment would give rise to serious negative consequences for the parties concerned** (see, by analogy, judgment of 2 September 2021, Commission v Council (Agreement with Armenia), C-180/20, EU:C:2021:658, paragraph 62 and the case-law cited).

22) 8.3.22, C-205/20, Bezirkshauptmannschaft Hartberg-Fürstenfeld, principle of legality and proportionality of criminal offences and penalties (EU:C:2022:168)

The principle of legal certainty requires, in particular, that rules should be clear and precise, so that individuals may ascertain unequivocally what their rights and obligations are and may take steps accordingly (judgment of 28 March 2017, Rosneft, C-72/15, EU:C:2017:236, paragraph 161 and the case-law cited).

The principle of legality and proportionality of criminal offences and penalties, enshrined in Article 49(1) of the Charter and which, according to the Court's case-law, **constitutes a specific expression of the general principle of legal certainty**, implies, inter alia, that legislation must clearly define offences and the penalties which they attract (see, to that effect, judgment of 28 March 2017, Rosneft, C-72/15, EU:C:2017:236, paragraph 162 and the case-law cited).

Moreover, while the principle of non-retroactivity of the criminal law, which is inherent in the principle of legality and proportionality of criminal offences and penalties, means in particular that a court cannot, in the course of criminal proceedings, aggravate the rules on criminal liability of those against whom such proceedings are brought (see, to that effect, judgment of 5 December 2017, M.A.S. and M.B., C-42/17, EU:C:2017:936, paragraph 57 and the case-law cited), it does not, however, preclude the imposition of lighter penalties on them (paragraphs 46-48).

23) 10.3.22, C-177/20, Grossmania. Review of administrative decisions that have become final (EU:C:2022:175)

As regards compliance with the principle of effectiveness, it should be noted that, in accordance with the case-law, every case in which the question arises as to whether a national procedural provision makes the application of EU law impossible or excessively

difficult must be analysed by reference to the role of that provision in the procedure, its operation and its particular features, viewed as a whole, before the various national bodies. In that context, it is necessary to take into consideration, where relevant, the principles which lie at the basis of the national legal system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the proceedings (judgment of 20 May 2021, X (LPG road tankers), C-120/19, EU:C:2021:398, paragraph 72).

The Court has already recognised that the finality of an administrative decision, which is acquired upon expiry of reasonable time limits for legal remedies, contributes to legal certainty, with the consequence that **EU law does not require that administrative bodies be placed under an obligation, in principle, to reopen an administrative decision which has become final in that way** (judgment of 12 February 2008, Kempter, C-2/06, EU:C:2008:78, paragraph 37). Compliance with the principle of legal certainty prevents administrative acts which produce legal effects from being called into question indefinitely (judgment of 19 September 2006, i-21 Germany and Arcor, C-392/04 and C-422/04, EU:C:2006:586, paragraph 51).

However, the Court has held, in essence, that **particular circumstances may be capable**, by virtue of the principles of effectiveness and sincere cooperation arising from Article 4(3) TEU, **of requiring a national administrative body to review an administrative decision that has become final**. In that context, it is necessary to take account of the particular features of the situations and interests at issue in order to strike a balance between the requirement for legal certainty and the requirement for legality under EU law (see, to that effect, judgment of 20 December 2017, Incyte, C-492/16, EU:C:2017:995, paragraph 48 and the case-law cited) (paragraphs 51-54).

24) 7.4.22, IFAP, joined cases C-447/20 and C-448/20. Protection of legitimate expectations (EU:C:2022:265)

The fact remains that **the principle of legal certainty, the corollary of which is the principle of protection of legitimate expectations**, requires, first, that rules of law must be clear and precise and, second, that their application must be foreseeable by those subject to them (judgments of 15 February 1996, Duff and Others, C-63/93, EU:C:1996:51, paragraph 20, and of 11 September 2019, Călin, C-676/17, EU:C:2019:700, paragraph 50). (paragraph 60).

III. PREVENTION OF ABUSE (MISUSE) OF POWERS

25) **19.12.19, Deutsche Umwelthilfe C-752/18 (EU:C:2019:1114, paragraph 46). Clarity, predictability, accessibility,**

As regards the requirements that the legal basis for a limitation on the right to liberty must satisfy, the Court has already stated, in the light of the judgment of the European Court of Human Rights of 21 October 2013, Del Río Prada v. Spain (CE:ECHR:2013:1021JUD004275009), that a law empowering a court to deprive a person of his or her liberty must, so as to meet the requirements of Article 52(1) of the Charter, **be sufficiently accessible, precise and foreseeable in its application in order to avoid all risk of arbitrariness** (judgment of 15 March 2017, Al Chodor, C-528/15, EU:C:2017:213, paragraphs 38 and 40).

26) **12.2.19, TC, C-492/18 PPU, (EU:C:2019:108, paragraphs 59-60). Protection of individuals against arbitrariness**

"According to the case-law of the Court of Justice in that regard, it must be noted that the objective of the safeguards relating to liberty, such as those enshrined in both Article 6 of the Charter and Article 5 ECHR, consists in particular in the **protection of the individual against arbitrariness**. Thus, if the execution of a measure depriving a person of liberty is to be in keeping with the objective of protecting the individual from arbitrariness, this means, in particular, that there can be no element of bad faith or deception on the part of the authorities (judgment of 15 March 2017, Al Chodor, C-528/15, EU:C:2017:213, paragraph 39 and the case-law cited).

It follows from the foregoing that, since keeping a requested person in detention for more than 90 days represents a serious interference with that person's right to liberty, it is subject to compliance with strict safeguards, namely the existence of a legal basis which justifies that continued detention and which must meet the **requirements of clarity, predictability and accessibility** in order to avoid any risk of arbitrariness, as paragraph 58 of the present judgment makes clear (see, to that effect, judgment of 15 March 2017, Al Chodor, C-528/15, EU:C:2017:213, paragraph 40 and the case-law cited)."

27) **2.5.19, Lavorgna, C-309/18 (EU:C:2019:350, paragraph 19-20). Principle linked to transparency**

It is settled case-law of the Court that, first, the principle of equal treatment requires tenderers to be afforded equality of opportunity when formulating their tenders, which therefore implies that the tenders of all tenderers must be subject to the same conditions the **obligation of transparency, which is its corollary**, **is intended to preclude any risk of favouritism or arbitrariness** on the part of the contracting authority. That obligation implies that all the conditions and detailed rules of the award procedure must be drawn up in a clear, precise and unequivocal manner in the contract notice or specifications so

that, first, all reasonably informed tenderers exercising ordinary care can understand their exact significance and interpret them in the same way and, secondly, the contracting authority is able to ascertain whether the tenders submitted satisfy the criteria applying to the contract in question (judgment of 2 June 2016, Pizzo, C-27/15, EU:C:2016:404, paragraph 36 and the case-law cited).

In the light of those considerations, the Court has held that the principle of equal treatment and the obligation of transparency must be interpreted as precluding an economic operator from being excluded from a procedure for the award of a public contract as a result of that economic operator's non-compliance with an obligation which does not expressly arise from the documents relating to that procedure or out of the national law in force, but from an interpretation of that law and those documents and from the incorporation of provisions into those documents by the national authorities or administrative courts (judgment of 2 June 2016, Pizzo, C-27/15, EU:C:2016:404, paragraph 51; see, to that effect, order of 10 November 2016, Spinosa Costruzioni Generali and Melfi, C-162/16, not published, EU:C:2016:870, paragraph 32)."

28) 29.7.19, Torubarov, C-556/17 (EU:C:2019:626, paragraphs 38-41): legal certainty and equality

Pursuant to the first sentence of the first paragraph of Article 52 of Directive 2013/32, Member States are to apply the laws, regulations and administrative provisions referred to in Article 51(1) to applications for international protection lodged 'after 20 July 2015 or an earlier date'.

It is clear from the travaux préparatoires of Directive 2013/32 that, by adding the words 'or at an earlier date' to the first sentence of the first paragraph of Article 52, the EU legislature intended to enable Member States to apply their provisions implementing that directive with immediate effect to applications for international protection lodged before 20 July 2015 (see, to that effect, judgments of 25 July 2018, Alheto, C-585/16, EU:C:2018:584, paragraphs 71 and 72, and of 19 March 2019, Ibrahim and Others, C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraphs 63 and 64).

Since the first paragraph of Article 52 of Directive 2013/32 offers various possibilities as regards temporal applicability, it is important, in order for the **principles of legal certainty and equality before the law to be observed in the implementation of EU law and for applicants for international protection to be protected from arbitrariness**, that each Member State bound by that directive examines applications for international protection lodged within the same period on its territory in a predictable and uniform manner (see, to that effect, judgments of 25 July 2018, Alheto, C-585/16, EU:C:2018:584, paragraph 73, and of 19 March 2019, Ibrahim and Others, C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraph 66).

29) 5.5.22, C-718/20 P, Zhejiang Jiuli Hi-Tech Metals. Broad discretion of EU institutions in complex situations (EU:C:2022:362)

In the sphere of the common commercial policy and, most particularly, in the realm of measures to protect trade, **the institutions of the European Union enjoy a broad discretion by reason of the complexity of the economic, political and legal situations which they have to examine.** The judicial review of such an appraisal must therefore be limited to verifying whether the procedural rules have been complied with, whether the facts on which the contested choice is based have been accurately stated, and whether there has been a manifest error in the appraisal of those facts or a misuse of powers (judgment of 16 February 2012, Council and Commission v Interpipe Niko Tube and Interpipe NTRP, C-191/09 P and C-200/09 P, EU:C:2012:78, paragraph 63 and the case-law cited).

Furthermore, in performing their duty to provide information, the EU institutions must act with all due diligence by seeking to provide the undertakings concerned, as far as is compatible with the obligation not to disclose business secrets, with information relevant to the defence of their interests, choosing, if necessary, on their own initiative, the appropriate means of providing such information. In any event, the undertakings concerned must have been placed in a position during the administrative procedure in which they can effectively make known their views on the correctness and relevance of the facts and circumstances alleged and on the evidence presented by the Commission in support of its allegation concerning the existence of dumping and the resultant injury (judgment of 3 October 2000, Industrie des poudres sphériques v Council, C-458/98 P, EU:C:2000:531, paragraph 99 and the case-law cited).

IV. EQUALITY BEFORE THE LAW AND NON-DISCRIMINATION

30) 7.11.19, CCOO, C-55/18 (EU:C:2019:402, paragraphs 68-70). Uniform interpretation of the law consistent with EU law

Finally, it must be recalled that, according to settled case-law, the Member States' obligation arising from a directive to achieve the result envisaged by that directive and their duty, under Article 4(3) TEU, to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation are binding on all the authorities of the Member States, including, for matters within their jurisdiction, the courts (see, inter alia, judgments of 19 April 2016, DI, C-441/14, EU:C:2016:278, paragraph 30, and of 13 December 2018, Hein, C-385/17, EU:C:2018:1018, paragraph 49).

It follows that, **in applying national law, national courts called upon to interpret that law** are required to consider the whole body of rules of national law and to apply methods of interpretation that are recognised by those rules in order to **interpret it, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by the directive** and, consequently, to comply with the third paragraph of Article 288 TFEU (judgment of 19 April 2016, DI, C-441/14, EU:C:2016:278, paragraph 31 and the case-law cited).

The requirement to **interpret national law in a manner that is consistent with EU law** includes the obligation for national courts to change their established case-law, where necessary, if it is based on an interpretation of national law that is incompatible with the objectives of a directive (judgments of 19 April 2016, DI, C-441/14, EU:C:2016:278, paragraph 33; of 17 April 2018, Egenberger, C-414/16, EU:C:2018:257, paragraph 72; and of 11 September 2018, IR, C-68/17, EU:C:2018:696, paragraph 64).

31) 4.4.19, Allianz Vorsorgekasse, C-699/17 (EU:C:2019:290, paragraphs 42-43 and 62). Transparency as its corollary

It is apparent from the case-law that where, in regulating situations outside the scope of the EU measure concerned, national legislation seeks to adopt the same solutions as those adopted in that measure, it is clearly in the interest of the European Union that, in order to forestall future differences of interpretation, provisions taken from that measure should be interpreted uniformly (judgment of 5 April 2017, Borta, C-298/15, EU:C:2017:266, paragraph 33 and the case-law cited).

Thus, an interpretation by the Court of provisions of EU law in situations outside its scope is justified where those provisions have been made applicable to such situations by national law in a direct and unconditional way in order **to ensure that internal situations and situations governed by EU law are treated in the same way** (judgment of 5 April 2017, Borta, C-298/15, EU:C:2017:266, paragraph 34 and the case-law cited).

(…) **The obligation of transparency, which is a corollary of the principle of equality**, is designed essentially to ensure that any interested operator may take the decision to tender, in a public procurement procedure, on the basis of all relevant information and to ensure the elimination of any risk of favouritism or arbitrariness on the part of the contracting authority. It implies that all the conditions and detailed rules governing the award procedure must be drawn up in a clear, precise and unequivocal manner so that, first, all reasonably informed tenderers exercising ordinary care can understand their exact significance and interpret them in the same way and, second, the contracting authority is able to ascertain whether the bids submitted satisfy the criteria applying to the contract in question (see, to that effect, judgments of 4 February 2016, Ince, C-336/14, EU:C:2016:72, paragraph 87, and of 22 June 2017, Unibet International, C-49/16, EU:C:2017:491, paragraph 46).

32) **3.12.19, Czech Republic/Parliament and Council, C-482/17 (EU:C:2019:1035, paragraph 164): comparable situations must not be treated in the same way, unless such treatment is objectively justified**

According to settled case-law, observance of the principle of equality requires that **comparable situations must not be treated differently and that different situations must not be treated in the same way** unless such treatment is objectively justified (judgment of 29 March 2012, Commission v Poland, C-504/09 P, EU:C:2012:178, paragraph 62 and the case-law cited).

33) **8.5.19, Leitner, C-396/17 (EU:C:2019:375, paragraph 62 and 68-72): obligation of national courts to set aside discriminatory provisions without having request or wait its prior removal by the legislature**

Compliance with the principle of equality requires, so far as concerns persons who have been the subject of discrimination on grounds of age, that **effective judicial protection** of their right to equal treatment be guaranteed.

(…) it should be noted that, according to the Court's settled case-law, it is for the national courts, taking into account the whole body of rules of national law and applying methods of interpretation recognised by that law, to decide whether and to what extent a national provision can be interpreted in conformity with Directive 2000/78, without having recourse to an interpretation *contra legem* of the national provision (judgment of 22 January 2019, Cresco Investigation, C-193/17, EU:C:2019:43, paragraph 74).

If it is not possible to construe and apply the national legislation in conformity with the requirements of Directive 2000/78, it should also be borne in mind that, by reason of the **principle of the primacy of EU law, which extends also to the principle of non-discrimination on grounds of age**, conflicting national legislation which falls within the scope of EU law must be disapplied (judgment of 19 June 2014, Specht and Others, C-501/12 to C-506/12, C-540/12 and C-541/12, EU:C:2014:2005, paragraph 89).

It is also the Court's settled case-law that, where discrimination contrary to EU law has been established, as long as measures reinstating equal treatment have not been adopted, observance of the principle of equality can be ensured only by granting to persons within the disadvantaged category the same advantages as those enjoyed by persons within the favoured category. Disadvantaged persons must therefore be placed in the same position as persons enjoying the advantage concerned (see, to that effect, judgment of 22 January 2019, Cresco Investigation, C-193/17, EU:C:2019:43, paragraph 79 and the case-law cited).

In such a situation, **a national court must set aside any discriminatory provision of national law, without having to request or await its prior removal by the legislature**, and must apply to members of the disadvantaged group the same arrangements as those enjoyed by the persons in the other category. That obligation persists regardless of whether or not the national court has been granted competence under national law to do so (judgment of 22 January 2019, Cresco Investigation, C-193/17, EU:C:2019:43, paragraph 80 and the case-law cited).

Nevertheless, such an approach is intended to apply only if there is a valid point of reference (judgment of 22 January 2019, Cresco Investigation, C-193/17, EU:C:2019:43, paragraph 81 and the case-law cited).

34) 21.10.21, TC, C-824/19, (EU:C:2021:862). Protection of this right in the Charter

Although the referring court did not make reference in the wording of its questions to the provisions of the Charter, that court raises questions, as is apparent from the reference for a preliminary ruling, regarding the compatibility of excluding a blind person, such as VA, from performing duties as a juror in criminal proceedings, with regard to the provisions of the Directive 2000/78, the UN Convention and the Charter.

It should be remembered that that directive is a specific expression, within the field that it covers, of the **general principle of non-discrimination now enshrined in Article 21 of the Charter** (judgment of 26 January 2021, Szpital Kliniczny im. dra J. Babińskiego Samodzielny Publiczny Zakład Opieki Zdrowotnej w Krakowie, C-16/19, EU:C:2021:64, paragraph 33 and the case-law cited).

Moreover, Article 26 of the Charter provides that the European Union is to recognise and respect the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community (paragraphs 31-33).

35) 13.1.22, C-282/19, YT and others (EUC:2022:3). Discrimination on grounds of religion

Directive 2000/78 is intended to establish a general framework for combating discrimination on the grounds, inter alia, of religion as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment, by providing everyone with effective protection against discrimination based, in particular, on that ground (see, to that effect, judgment of 26 January 2021, Szpital Kliniczny im. dra J. Babińskiego Samodzielny Publiczny Zakład Opieki Zdrowotnej w Krakowie, C-16/19, EU:C:2021:64, paragraph 32).

That directive is thus a specific expression, within the field that it covers, of the general principle of non-discrimination now enshrined in Article 21 of the Charter (judgment of 26 January 2021, Szpital Kliniczny im. dra J. Babińskiego Samodzielny Publiczny Zakład Opieki Zdrowotnej w Krakowie, C-16/19, EU:C:2021:64, paragraph 33).

It follows that, when it is ruling on a request for a preliminary ruling concerning the **interpretation of the general principle of non-discrimination on grounds of religion**, as enshrined in Article 21 of the Charter, and the provisions of Directive 2000/78 – which implement that article and contribute to the achievement of its objectives – in proceedings involving an individual and a public administrative body, the Court examines the question in the light of that directive (see, to that effect, judgment of 13 November 2014, Vital Pérez, C-416/13, EU:C:2014:2371, paragraph 25 and the case-law cited).

According to the Court's case-law inasmuch as the ECtHR, in its judgment of 15 May 2012, Fernández Martínez v. Spain (CE:ECHR:2012:0515JUD005603007), and, subsequently, **the Charter use the term 'religion' in a broad sense**, in that they include in it the freedom of persons to manifest their religion, the EU legislature must be considered to have intended to take the same approach when adopting Directive 2000/78, and therefore the concept of 'religion' in Article 1 of that directive should be interpreted as covering both the forum internum, that is the fact of having a belief, and the forum externum, that is the manifestation of religious faith in public (judgment of 14 March 2017, G4S Secure Solutions, C-157/15, EU:C:2017:203, paragraph 28)

36) 2.6.22, C-587/20 Ligebehandlingsnævnet, (EU:C:2022:419) Prohibition of discrimination on grounds of age

Directive 2000/78 was adopted on the basis of Article 13 EC, now, following amendment, **Article 19(1) TFEU, which confers on the Union the power to take appropriate action to combat discrimination based, inter alia, on age**. That directive is thus a specific expression, within the field that it covers, of the general prohibition of non-discrimination laid down in Article 21 of the Charter of Fundamental Rights of the European Union ('the Charter') (judgment of 23 April 2020, Associazione Avvocatura per i diritti LGBTI, C-507/18, EU:C:2020:289, paragraphs 35 and 38 and the case-law cited).

37) 10.2.22, C-522/20, OE (EU:C:2022:87). The comparability of different situations must be assessed having regard to all the elements which characterise them.

According to the settled case-law of the Court, if the principles of non-discrimination and equal treatment are to be observed, comparable situations must not be treated differently and different situations must not be treated in the same way unless such treatment is

objectively justified (see, inter alia, judgments of 17 December 2020, Centraal Israëlitisch Consistorie van België and Others, C-336/19, EU:C:2020:1031, paragraph 85, and of 25 March 2021, Alvarez y Bejarano and Others v Commission, C-517/19 P and C-518/19 P, EU:C:2021:240, paragraphs 52 and 64).

The comparability of different situations must be assessed having regard to all the elements which characterise them. Those elements must, in particular, be determined and assessed in the light of the subject matter and purpose of the EU act which makes the distinction in question. The principles and objectives of the field to which the act relates must also be taken into account (see, inter alia, judgments of 6 June 2019, P.M. and Others, C-264/18, EU:C:2019:472, paragraph 29 and the case-law cited, and of 19 December 2019, HK v Commission, C-460/18 P, EU:C:2019:1119, paragraph 67).

Moreover, the Court has also held, as regards judicial review of whether the EU legislature has observed the principle of equal treatment, that that **legislature has, in the exercise of the powers conferred on it, a broad discretion where it intervenes in a field involving political, economic and social choices and where it is called on to undertake complex assessments and evaluations**. Thus, only if a measure adopted in this field is manifestly inappropriate in relation to the objectives which the competent institutions are seeking to pursue can the lawfulness of such a measure be affected (see, inter alia, judgment of 6 June 2019, P.M. and Others, C-264/18, EU:C:2019:472, paragraph 26).

However, according to that case-law, even where it has such a discretion, the EU legislature is obliged to base its choice on objective criteria appropriate to the aim pursued by the legislation in question (judgment of 6 June 2019, P.M. and Others, C-264/18, EU:C:2019:472, paragraph 27). (paragraphs 19-22)

V. ACCESS TO JUSTICE: INDEPENDENT AND IMPARTIAL COURTS

38) 27.02.18, C-64/16 (EU:C:2018: 117) Associaçao Sindical dos Juizes Portugueses. Salary of judges as guarantee of their indepdnece. Art. 19 TUE

The guarantee of independence, which is inherent in the task of adjudication (see, to that effect, judgments of 19 September 2006, Wilson, C-506/04, EU:C:2006:587, paragraph 49; of 14 June 2017, Online Games and Others, C-685/15, EU:C:2017:452, paragraph 60; and of 13 December 2017, El Hassani, C-403/16, EU:C:2017:960, paragraph 40), is required not only at EU level as regards the Judges of the Union and the Advocates-General of the Court of Justice, as provided for in the third subparagraph of Article 19(2) TEU, but also at the level of the Member States as regards national courts.

The independence of national courts and tribunals is, in particular, essential to the proper working of the judicial cooperation system embodied by the preliminary ruling mechanism under Article 267 TFEU, in that, in accordance with the settled case-law, that mechanism may be activated only by a body responsible for applying EU law which satisfies, inter alia, that criterion of independence.

The concept of independence presupposes, in particular, that the body concerned exercises its judicial 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, and that it is thus **protected against external interventions or pressure** liable to impair the independent judgment of its members and to influence their decisions (see, to that effect, judgments of 19 September 2006, Wilson, C-506/04, EU:C:2006:587, paragraph 51, and of 16 February 2017, Margarit Panicello, C-503/15, EU:C:2017:126, paragraph 37 and the case-law cited).

Like the protection against removal from office of the members of the body concerned (see, in particular, judgment of 19 September 2006, Wilson, C-506/04, EU:C:2006:587, paragraph 51), **the receipt by those members of a level of remuneration commensurate with the importance of the functions they carry out constitutes a guarantee essential to judicial independence.**

39) 25.7.18, C-216/18 PPU (EU:C:2018: 586) Minister for Justice and Equality, (Deficiencies in the system of justice)

It is only if the European Council were to adopt a decision determining, as provided for in Article 7(2) TEU, that there is a serious and persistent breach in the issuing Member State of the principles set out in Article 2 TEU, such as those inherent in the rule of law, and the Council were then to suspend Framework Decision 2002/584 in respect of that Member State that the executing judicial authority would be required to refuse automatically to execute any European arrest warrant issued by it, without having to carry out any specific assessment of whether the individual concerned runs a real risk that the essence of his fundamental right to a fair trial will be affected.

Accordingly, as long as such a decision has not been adopted by the European Council, the executing judicial authority may refrain, on the basis of Article 1(3) of Framework Decision 2002/584, to give effect to a European arrest warrant issued by a Member State which is the subject of a reasoned proposal as referred to in Article 7(1) TEU only in exceptional circumstances where that authority finds, after carrying out a specific and precise assessment of the particular case, that there are substantial grounds for believing that the person in respect of whom that European arrest warrant has been issued will, following his surrender to the issuing judicial authority, run a real risk of breach of his

fundamental right to an independent tribunal and, therefore, of the essence of his fundamental right to a fair trial.

In the course of such an assessment, the executing judicial authority must, in particular, examine to what extent the systemic or generalised deficiencies, as regards the independence of the issuing Member State's courts, to which the material available to it attests are liable to have an impact at the level of that State's courts with jurisdiction over the proceedings to which the requested person will be subject.

40) 24.6.19, C-619/18 (EU:C:2019: 531), COM/PL (independence of the Supreme Court)

The requirement that courts be independent, a requirement which the Member States must — under the second subparagraph of Article 19(1) of the TEU— ensure is observed in respect of national courts which, like the Sąd Najwyższy (Supreme Court), are called upon to rule on issues linked to the interpretation and application of EU law, 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 (judgment of 27 February 2018, Associação Sindical dos Juízes Portugueses, C-64/16, EU:C:2018:117, paragraph 44 and the case-law cited).

The second aspect, which is **internal** in nature, is for its part 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 (judgment of 25 July 2018, Minister for Justice and Equality (Deficiencies in the system of justice), C-216/18 PPU, EU:C:2018:586, paragraph 65 and the case-law cited).

Those guarantees of independence and impartiality require rules, particularly as regards the composition of the body and the appointment, length of service and grounds for abstention, rejection and dismissal of its members, that are such as to dispel any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it (judgments of 19 September 2006, Wilson, C-506/04, EU:C:2006:587, paragraph 53 and the case-law cited, and of 25 July 2018, Minister for Justice and Equality (Deficiencies in the system of justice), C-216/18 PPU, EU:C:2018:586, paragraph 66 and the case-law cited).

In particular, that freedom of the judges from all external intervention or pressure, which is essential, requires, as the Court has held on several occasions, certain guarantees appropriate for protecting the individuals who have the task of adjudicating in a dispute, such as guarantees against removal from office (see, to that effect, judgment of 25 July 2018, Minister for Justice and Equality (Deficiencies in the system of justice), C-216/18 PPU, EU:C:2018:586, paragraph 64 and the case-law cited).

41) 5.11.19, C-192/18, (EU:C:2019:924) (Independence of ordinary courts)

Having regard to the cardinal importance of the **principle of irremovability**, an exception thereto is thus acceptable only if it is justified by a legitimate objective, it is proportionate in the light of that objective and inasmuch as it is not such as to raise reasonable doubt in the minds of individuals as to the imperviousness of the courts concerned to external factors and their neutrality with respect to the interests before them (see, to that effect, judgment of 24 June 2019, Commission v Poland (Independence of the Supreme Court), C-619/18, EU:C:2019:531, paragraph 79).

42) 19.11.19, C-585/18, C-624/18 y C-625/18 (EU:C:2019: 982) A K and others (Independence of the Disciplinary Chamber of the Supreme Court)

In accordance with the **principle of the separation of powers** which characterises the operation of the rule of law, the independence of the judiciary must be ensured in relation to the legislature and the executive (see, to that effect, judgment of 10 November 2016, Poltorak, C-452/16 PPU, EU:C:2016:858, paragraph 35).

In that regard, **it is necessary that judges are protected from external intervention or pressure** liable to jeopardise their independence. The rules set out in paragraph 123 above must, in particular, be such as to preclude not only any direct influence, in the form of instructions, but also types of influence which are more indirect and which are liable to have an effect on the decisions of the judges concerned (see, to that effect, judgment of 24 June 2019, Commission v Poland (Independence of the Supreme Court), C-619/18, EU:C:2019:531, paragraph 112 and the case-law cited).

(…) The **degree of independence enjoyed by the KRS** in respect of the legislature and the executive in exercising the responsibilities attributed to it under national legislation, as the body empowered, under Article 186 of the Constitution, to ensure the independence of the courts and of the judiciary, may become relevant when ascertaining whether the judges which it selects will be capable of meeting the requirements of independence and impartiality arising from Article 47 of the Charter.

43) 26.3.20, C-558/18 y C-563/18 (EU:C:2020: 234) Miasto Łowicz (disciplinary regime for magistrates)

It is important to note, as is clear from the Court's settled case-law, that the keystone of the judicial system established by the Treaties is the preliminary ruling procedure provided for in Article 267 TFEU, which, by setting up a dialogue between one court and another, between the Court of Justice and the courts and tribunals of the Member States, has the object of securing uniformity in the interpretation of EU law, thereby serving to ensure its consistency, its full effect and its autonomy as well as, ultimately, the particular nature of the law established by the Treaties (Opinion 2/13 of 18 December 2014, EU:C:2014:2454, paragraph 176, and judgment of 24 October 2018, XC and Others, C-234/17, EU:C:2018:853, paragraph 41).

In accordance with equally settled case-law, **Article 267 TFEU gives national courts the widest discretion in referring matters to the Court if they consider that a case pending before them raises questions involving the interpretation of provisions of EU law, or consideration of their validity, which are necessary for the resolution of the case before them.** National courts are, moreover, free to exercise that discretion at whatever stage of the proceedings they consider appropriate (judgments of 5 October 2010, Elchinov, C-173/09, EU:C:2010:581, paragraph 26, and of 24 October 2018, XC and Others, C-234/17, EU:C:2018:853, paragraph 42 and the case-law cited).

Therefore, **a rule of national law cannot prevent a national court from using that discretion,** which is an inherent part of the system of cooperation between the national courts and the Court of Justice established in Article 267 TFEU and of the functions of the court responsible for the application of EU law, entrusted by that provision to the national courts (judgment 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 103 and the case-law cited).

44) 16.7.20, C-658/18 (EU:C:2020: 572) Governo della Repubblica italiana (Status of Italian Magistrates)

It follows from the case-law that the fact that judges are subject to terms of service and that they might be regarded as workers in no way undermines the principle of the independence of the judiciary or the right of the Member States to provide for a particular status governing the judiciary (see, to that effect, judgment of 1 March 2012, O'Brien, C-393/10, EU:C:2012:110, paragraph 47).

In those circumstances, while the fact that, in the present case, magistrates are subject to the disciplinary authority of the Consiglio superiore della magistratura (Supreme Council of the Judiciary, Italy; 'SCJ') is not in itself sufficient for them to be regarded as being, vis-à-vis an employer, in a legal relationship of subordination (see, to that effect, judgment of 26 March 1987, Commission v Netherlands, 235/85, EU:C:1987:161,

paragraph 14), that fact should nonetheless be taken into account in the context of all the facts of the main proceedings. The way in which the magistrates' work is organised must, therefore, be taken into account.

45) 17.12.20, L and P, 354/20 PPU y C-412/20 PPU (E: 1033) Openbaar Ministerie (independence of the judge issuing an EAW)

Where the executing judicial authority, which is called upon to decide whether a person in respect of whom a European arrest warrant has been issued is to be surrendered, has evidence of **systemic or generalised deficiencies concerning the independence of the judiciary in the Member State** that issues that arrest warrant which existed at the time of issue of that warrant or which arose after that issue, that authority cannot deny the status of 'issuing judicial authority' to the court which issued that arrest warrant and cannot presume that there are substantial grounds for believing that that person will, if he or she is surrendered to that Member State, run a real risk of breach of his or her fundamental right to a fair trial, guaranteed by the second paragraph of Article 47 of the Charter, without carrying out a **specific and precise verification** which takes account of, inter alia, his or her personal situation, the nature of the offence in question and the factual context in which that warrant was issued, such as statements by public authorities which are liable to interfere with how an individual case is handled.

46) 2.3.21, C-192/18 (EU:C:2021: 153), AB and others (Independence of ordinary courts)

In establishing a **different retirement age for men and women who are judges in the ordinary Polish courts and the Sąd Najwyższy (Supreme Court, Poland) or are public prosecutors in Poland**, the Republic of Poland has failed to fulfil its obligations under Article 157 TFEU and Articles 5(a) and 9(1)(f) of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation and in granting the Minister for Justice (Poland) the right to decide whether or not to authorise judges of the ordinary Polish courts to continue to carry out their duties beyond the new retirement age of those judgesthe Republic of Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU.

47) 20.4.21, C-896/19, (EU:C:2021: 311), Reppublika (Involvement of the Prime Minister in judicial appointments)

It should be noted, first, that the constitutional provisions relating to the appointment of members of the judiciary remained unchanged from their adoption in 1964 until the 2016

reform of the Constitution, which established the Judicial Appointments Committee referred to in Article 96A of the Constitution. Prior to that reform, the Prime Minister's power was limited only by the requirement that candidates for judicial office satisfy the conditions laid down by the Constitution in order to be eligible for such office. It was therefore **on the basis of the provisions of the Constitution in force prior to that reform that the Republic of Malta acceded to the European Union under Article 49 TEU**.

The second subparagraph of Article 19(1) TEU must be interpreted as meaning that it may be applied in a case in which a national court is seised of an action provided for by national law and seeking a ruling on the conformity with EU law of national provisions governing the procedure for the appointment of members of the judiciary of the Member State to which that court belongs. Article 47 of the Charter of Fundamental Rights of the European Union must be duly taken into consideration for the purposes of interpreting that provision. The second subparagraph of Article 19(1) TEU must be interpreted as not precluding national provisions which confer on the Prime Minister of the Member State concerned a decisive power in the process for appointing members of the judiciary, while providing for the involvement, in that process, of an independent body responsible for, inter alia, assessing candidates for judicial office and giving an opinion to that Prime Minister.

48) 15.7.21, C-791/19, (EU:C:2021 596), COM/PL (régimen disciplinario de los jueces)

By **allowing the content of judicial decisions to be treated as a disciplinary offence**; by failing to guarantee the independence and impartiality of the Disciplinary Chamber; by granting the President of the Disciplinary Chamber the power to designate the competent disciplinary court of first instance in cases concerning ordinary court judges; by granting, the Minister for Justice the power to appoint a Disciplinary Officer of the Minister for Justice and by providing that activities related to the appointment of ex officio defence counsel and that counsel's taking up of the defence do not have a suspensive effect on the course of the proceedings and that the disciplinary court is to conduct the proceedings despite the justified absence of the notified accused or his or her defence counsel, the Republic of Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU and by **allowing the right of national courts to make a reference for a preliminary ruling to be limited by the possibility of the initiation of disciplinary proceedings,** the Republic of Poland has failed to fulfil its obligations under the second and third paragraphs of Article 267 TFEU;

49) 22.2.22, C-562/21 PPU y C-563/21/PPU Openbaar Ministerie (EU:C:2022:100). Court established by law

Obligation of the executing judicial authority to determine, specifically and precisely, whether there are substantial grounds for believing that the person in respect of whom a European arrest warrant has been issued, if surrendered, runs a real risk of breach of his or her fundamental right to a fair trial before an independent and impartial tribunal previously established by law.

50) 11.5.23, C-817/21, Inspecţia Judiciară, (EU:C:2023:391). Inspectorate services in Romania

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, and 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**.