On 24 September 2018, the applicant, ***Romanian Judges’ Forum***, brought an action before the Regional Court Olt against the defendant, the ***Judicial Inspection***. Romanian Judges’ Forum applied for an order requiring the defendant to disclose public information related to cases listed to the Judicial Inspection, but also information related to the conclusion of an agreement between the Judicial Inspection and Romanian Intelligence Service.

On 26 October 2018, the defendant contended in its defence that the applicant’s right to have access to information of public interest have not been infringed and that the application that the Judicial Inspection be ordered to give a reply containing the information requested was unfounded and should be dismissed.

By its reply, the applicant submitted an objection, alleging that it has not been proven that the signatory of the defence, Judge Lucian Netejoru, has powers of representation, on two counts:

- first, there is no administrative act issued by the authority competent to appoint the chief inspector of the Judicial Inspection, the general assembly of the Superior Council of Magistracy, which must record that the statutory requirements to act in that office *ad interim* have been complied with;

- secondly, the provisions of Government Emergency Ordinance No 77/2018 supplementing Article 67 of Law No 317/2004 on the Superior Council of Magistracy are **unconstitutional**, because they remove the powers of the Superior Council of Magistracy, arising from its constitutional role as guarantor of judicial independence, to implement the legislation by adopting an administrative act finding that a particular person is in the situation to which the legislation refers and can act ad interim.

On 13 November 2018, the European Commission’s **report on the CVM for Romania**, made public: ‘*The Superior Council of Magistracy (SCM) did not launch a competition to appoint a new management of the Judicial Inspection, although the mandate of the management team expired at the end of August 2018. This led the Government to address the situation by adopting an Emergency Ordinance to nominate the current team ad interim. The argument put forward for this was that the law regulating the competition has been challenged in court (by the Judicial Inspection, in 2016) and that there is therefore a legal vacuum. The SCM did not manage to take steps to ensure that an appropriate solution could be found in order for the competition to be organised in time. The fact that the Minister of Justice decided to intervene, prolonging the mandates of the incumbent, could be seen to cut across the powers of the SCM*.’

Questions reffered to CJUE (Case C-83/19):

1. Must the Cooperation and Verification Mechanism (CVM), established by Commission Decision 2006/928/EC of 13 December 2006, 1 be considered to be an act of an institution of the European Union, within the meaning of Article 267 TFEU, and therefore amenable to interpretation by the Court of Justice of the European Union?
2. Do the terms, nature and duration of the Cooperation and Verification Mechanism (CVM), established by Commission Decision 2006/928/EC of 13 December 2006, come within the scope of application of the Treaty concerning the accession of the Republic of Bulgaria and Romania to the European Union, signed by Romania in Luxembourg on 25 April 2005?
3. Are the requirements laid down in the reports prepared in the context of that mechanism binding on Romania? Must the second subparagraph of **Article 19(1) of the Treaty** on European Union be interpreted as meaning that it obliges the Member States to take the measures necessary to ensure effective legal protection in the fields covered by EU law, that is to say, guarantees of an independent disciplinary procedure for Romanian judges, by eliminating all risks of political influence over the conduct of those procedures, such as direct Government appointment of the management of the Inspecția Judiciară (Judicial Inspection, Romania), even on a provisional basis?
4. Must **Article 2** of the Treaty on European Union be interpreted as meaning that the Member States are obliged to comply with the rule of law criteria, also required in the reports prepared in the context of the cooperation and verification mechanism (CVM), established by Commission Decision 2006/928/EC of 13 December 2006, in the case of procedures whereby the Government directly appoints the management of the Inspecția Judiciară (Judicial Inspection, Romania), even on a provisional basis?

Try to predict the outcome of the ECJ judgement taking into account:

* the Court’s desire to have a say about the organisation of the European judicial system
* Member States are under an obligation, contained in primary EU law and supervised by the Court of Justice, to ensure that their courts and judges are independent *‘in the fields covered by EU law’*
* the organisation of the national judiciaries is not exclusively a matter for each of the Member States separately

**Romanian Constitutional Court – fluctuant approach:**

1. Judgments no 1 519 of 15 November and no 2 of 11 January 2012 – *Decision 2006/928/EC is relevant*

*The Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism of 20 November 2011 found in that respect that “Romania has not yet engaged in a thorough reform of the disciplinary system.” Membership of the European Union* ***imposes an obligation on Romania to apply that mechanism and to put into practice the recommendations made in that context, in accordance with Article 148(4) of the Constitution***

1. Judgment no 104 of 6 March 2018 :

*Decision 2006/928/EC is a ‘measure adopted before Romania became a member of the European Union, [which] has not been interpreted by the Court of Justice of the European Union as regards its content, nature and duration, or as regards whether those aspects implicitly fall within the scope of application of the Treaty of Accession, by means of Law No 157/2005’, and that* ***it cannot be ‘a reference provision for the purpose of reviewing constitutionality under Article 148*** *of the [Or. 22] Constitution’*

**CJUE approach**

***Judgment of 27 February 2018, Associação Sindical dos Juízes Portugueses, C-64/16***

*42. The guarantee of independence, which is inherent in the task of adjudication (…), 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.*

*43. 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 referred to in paragraph 38 above, that mechanism may be activated only by a body responsible for applying EU law which satisfies, inter alia, that criterion of independence.*

*44. 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 (..).*

***Judgment of 24 june 2019, Commission vs Poland, C-619/18***

54. It follows from all of the foregoing that the second subparagraph of Article 19(1) TEU requires Member States to provide remedies that are sufficient to ensure effective legal protection, within the meaning in particular of Article 47 of the Charter, in the fields covered by EU law (…).

55. More specifically, every Member State must, under the second subparagraph of Article 19(1) TEU, 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 (…).

56 In the present case, it is common ground that the Sąd Najwyższy (Supreme Court) may be called upon to rule on questions concerning the application or interpretation of EU law and that, as a ‘court or tribunal’, within the meaning of EU law, it comes within the Polish judicial system in the ‘fields covered by Union law’ within the meaning of the second subparagraph of Article 19(1) TEU, so that that court must meet the requirements of effective judicial protection (order of 17 December 2018, Commission v Poland, C-619/18 R, EU:C:2018:1021, paragraph 43).

57 To ensure that a body such as the Sąd Najwyższy (Supreme Court) is in a position to offer such protection, maintaining its 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 (…).

58 That requirement that courts be independent, which is inherent in the task of adjudication, forms part of the essence of the right to effective judicial protection and the fundamental right to a fair trial, which is of cardinal importance as a guarantee that all the rights which individuals derive from EU law will be protected and that the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law, will be safeguarded (…).

*However, the judgments not contain any rulings that can be relied upon in the specific situation here in question, which calls in particular for interpretation of the CVM and articles of the Treaty of Accession*

*Article 2 TUE*

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the **rule of law** and respect for **human rights**, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

*Article 19 (1) TUE*

The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed.

Member States shall provide remedies sufficient to ensure **effective legal protection in the fields covered by Union law**.

*Article 47 EU Charter*

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an **independent and impartial tribunal** previously established by law.

Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.