"DIALOGUE" OF THE HIGH COURTS CJEU – CCR – HCCJ, REGARDING THE PRESCRIPTION OF CRIMINAL LIABILITY*

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Abstract

The constitutional order is ensured by the jurisprudence of the constitutional court. The Court of Justice of the European Union cannot call for violation of the balance between state powers, nor for non-compliance with the principle of legality.

The Supreme Court cannot disregard the case-law of the the Constitutional Court of Romania, it cannot establish the existence of a systemic risk, it cannot violate the principle of legality. The competences of the three High Courts are complementary without any collision.

Keywords: *prescription of criminal liability; systemic risk analysis; the binding effect of the CCR's decisions; the request for a preliminary ruling; the effects of the CJEU decisions*

One of the current themes of justice in Romania refers to the relations between the Constitutional Court of Romania decisions, the The Court of Justice of the European Union judgments and the jurisprudence of the High Court of Cassation and Justice.

In our opinion, the three high courts have complementary competences, and dialogue and loyal cooperation contribute to strengthening the rule of law, at raising the level of protection of fundamental rights and freedoms, ensuring the necessary compatibilities between the national constitutional order and the European legal order.

In the normative system, the legal effects of the decisions of the respective courts sometimes receive different interpretations in the specialized doctrine, but also different solutions in the judicial practice.

From this perspective, Decision no. 685 of November 7, 2018[1] bears relevance, by which ***CCR*** found the existence of a legal conflict of a constitutional nature between the Parliament, on the one hand, and the High Court of Cassation and Justice, on the other hand, conflict generated by the decisions of the Management Board of

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the HCCJ, starting with Decision no. 3/2014, on the basis of which only 4 of the 5 members of the Panels of 5 judges were appointed by drawing lot, contrary to those provided by art.32 of the Law no. 304/2004 on the judicial organization. The management board of the HCCJ, from the moment of application of the provisions of art. 32 of Law no. 304/2004, as amended by Law no. 255/2013 and Law no. 207/2018, was meant to be an expression of this guarantee and to remove any possibility for all the members of the panel of not being drawn by lot, thus avoiding the establishment of the "*de jure*" introduction of a judge with a leading position within the HCCJ, as a member of the Panel of 5 judges, which, in this way, also becomes president of the Panel.

In the same sense, numerous are the judgments by which ***ECHR*** has held that, in principle, a violation by a court of the national legal provisions relating to the establishment and jurisdiction of the judicial bodies is contrary to Art. 6 par.1 of the Convention (as an example, see Judgment of 5 October 2010, delivered in *DMD GROUP, A.S. v. Slovakia*[2]*,* paragraphs 60 and 61].

CJEU has held that if the national court were thus led to consider that the obligation to leave the relevant provisions of the Criminal Code unapplied is contrary to the principle of the legality of criminal offences and penalties, it would not have to comply with that obligation, even if said compliance would make it possible to rectify a national situation incompatible with EU law (see, by analogy, Judgment of 10 July 2014, Impresa Pizzarotti, C-213/13, EU:C:2014:2067, paragraphs 58 and 59[3]. It is therefore for the national legislature to take the necessary measures, as stated in paragraphs 41) and 42). Paragraphs 41 and 42 of M.A.S. Judgment[4] are worded as follows:

„It is primarily for the national legislature to lay down rules on limitation that enable compliance with the obligations under Article 325 TFEU, in the light of the considerations set out by the Court in paragraph 58 of the Taricco judgment. It is that legislature's task to ensure that the national rules on limitation in criminal matters do not lead to impunity in a significant number of cases of serious VAT fraud, or are more severe for accused persons in cases of fraud affecting the financial interests of the Member State concerned than in those affecting the financial interests of the European Union.

It should be recalled here that an extension of a limitation period by the national legislature and its immediate application, including to alleged offences that are not yet time-barred, do not, in principle, infringe the principle that offences and penalties

[2] ECDH, Judgment of 5 October 2010, delivered in *DMD GROUP*, A.S. v. Slovakia, available on the internet page https://www.legal-tools.org/doc/6ab7cb/pdf/.

[3] Judgment of 10 July 2014, Impresa Pizzarotti, C-213/13, EU:C:2014:2067, available on the internet page https://curia.europa.eu/juris/document/document.jsf?text=&docid=154821&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=520056.

[4] Judgment of 5 December 2017, M.A.S., C-42/17, ECLI:EU:C:2017:936, available on the internet page https://curia.europa.eu/juris/document/document.jsf?text=&docid=197423&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=435974.

must be defined by law (see, to that effect, the Taricco judgment, paragraph 57, and the case-law of the European Court of Human Rights cited in that paragraph)".

At the same time, the CCR established that "since in both criminal and extra-criminal matters, the sanction of the unlawful composition of the panel of judges is the unconditional and, therefore, absolute nullity of the acts performed by such a panel and taking into account the fact that its decisions produce effects only for the future, according to art.147 par. (4) of the Constitution, this Decision shall apply from the date of its publication, both to the pending situations, respectively in the cases pending before the court, as well as to those finalized to the extent that the litigants are still within the deadline for exercising the corresponding extraordinary remedies, as well as to the future situations" (par. 185 Decision no. 685/2018).

According to the settled case-law of the same Court, the obligation concerns both the recitals in the preamble and the operative part of the decision given (see, for example, Decision No. 392 of 6 June 2017[5]). It follows that the penalty for the unlawful composition of the formation which heard the case is „the unconditional and, therefore, absolute nullity of the acts performed by such a formation".

On the other hand, the assessment of the creation of a „systemic risk of impunity" through the application of a national rule or practice does not fall within the jurisdiction of the courts. The courts are not vested with overall assessments of the facts provided for by the criminal law and system assessments, but with individual facts in specific cases. The courts cannot establish criteria against which to assess whether or not there is a „systemic risk of impunity".

The prerequisite for the application of the judgment of the CJEU of 21 December 2021 is the direct application by the HCCJ of Article 325(1) TFEU, read in conjunction with Article 2 of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union. It is apparent from the reading of the operative part of the judgment of the CJEU that, in order to bring about a solution of the national court to remove a "national rule or a national practice under which judgments in matters of corruption and VAT fraud which were not delivered, at first instance, by panels specialized in such matters or, on appeal, by panels all the members of which were selected by drawing lots, are rendered absolutely null and void" (par. 154), it must consider „the application of those national rules or that national practice„ by „giving rise to a systemic risk of acts constituting serious fraud affecting the European Union's financial interests or corruption in general going unpunished" (par. 264-2).

Such an assessment is incompatible, *de plano*, with the role and competence of the courts as established by the Constitution of Romania and developed in the Romanian criminal and procedural regulations.

[5] Published in the Official Gazette no. 504 of 30.06.2017.

Making the delimitation between the judiciary and the legislating power, by decision no. 838/2009[6], CCR held that "the meaning of art. 124 par. (1) is that the bodies that carry out justice and which, according to art.126 par. (1) of the Constitution, are the courts shall respect the law, of material or procedural law, this being the one that determines the behavior of natural and legal persons in the civil circuit and in the public sphere. The order enshrines the principle of legality of the act of justice and must be correlated with the provision of Art. 16 par. (2) of the Constitution which provides that "*No one is above the law*" and with that of art. 124 par. (3) of the Constitution, which provides for two other constitutional principles: the independence of the judge and his submission only to the law. These provisions govern the activity of the courts and fix their position vis-à-vis the law».

Therefore, the courts do not create laws or rules through the interpretation of the law, but only apply the law in the individual cases in which they are vested. It is forbidden for the judge to make general, global, overall apreciations, and therefore to carry out 'systemic' assessments. The judge makes neither philosophy of law, nor studies of impact on the legal or social system, nor statistics or probabilistics, but a judgment that is limited to deed and person. That is why, establishing the content of the court decision, the provisions of art.404 of the Code of Criminal Procedure provide that the operative part of the decision must include data on the person of the defendant, the act committed by him, the solution given with regard to the punctual offense, analyzed in that case, and not on facts of the same nature, in general, and their systemic effect in a certain context. However, the "systemic risk of impunity" as it is made circumstantial in the CJEU judgment implies an overall assessment, with reference to parameters that go beyond the assessment of a court of law and the achievement of justice by the courts established by the law of the Romanian.

That is why the recitals and the operative part of the CJEU decision are very carefully formulated, in order to prevent any interpretation thereof capable of accrediting the possibility of the courts exceeding the limits of their competence established by the Constitution and the internal laws. The CJEU clearly delineates itself from the idea of defending the national judge for disciplinary liability in the event of such violations of its own competence established by domestic law, making careful use of its expression and paving the Charter of Fundamental Rights of the European Union to protect the right to a fair trial of individuals.

The operative part of the judgment of the CJEU must thus be read and interpreted in the light of the recitals on which it is based, starting from the analysis of the admissibility of the application to the CJEU and continuing with the considerations reflected in the operative part.

[6] Published in the Official Gazette of Romania, Part I, no. 461 of 03 July 2009.

Thus, looking at the admissibility of the application, the CJEU points out that *„the national court alone has jurisdiction to find and assess the facts in the case before it and to interpret and apply national law*" and it is for the Court just *„to provide the national court that made a reference for a preliminary ruling with guidance on the interpretation of EU law that may be necessary for the outcome of the case in the main proceedings*" (par. 134).

Nothing therefore imperative, nothing intrusive or protectively unjustified for the judge who applies the rule of law in the individual case with which he is vested. As a result, the national court is bound and must interpret and apply national law in the dispute before it, appealing 'if necessary', in the sense of directly affecting the case, EU law as interpreted by the CJEU.

In analyzing the questions referred for a preliminary ruling, the CJEU is consistent with the same abstract register, while stressing with caution that the area of justice goes beyond EU law. Thus, „at the present stage of EU law, that law does not lay down rules governing the organization of justice in the Member States and, in particular, the composition of formations of the courts in the field of corruption and fraud. Those rules therefore fall, in principle, within the competence of the Member States. However, in the exercise of that power, those States are required to comply with the obligations arising for them under EU law." (par.180)

Consequently, in the area of justice, jurisdiction lies exclusively at national level. Only national authorities, within the limits of their constitutional competence, may order the adoption of measures establishing the organization and delivery of justice. There is no doubt, however, that the 'obligations arising for them under EU law' in the field under consideration, within the meaning of the judgment cited, can only be those of the constitution of formations of the court with full and strict observance of the law.

As a result, the judgment of the CJEU does not establish, nor can it establish that the way in which the composition of the formations of the courts is regulated or the regulation of the appeals for this composition is contrary to EU law. It determines whether such rules or practices, by reference to other rules (limitation), in the conditions of a procedural slowness determined, *inter alia*, by the general set of rules governing the settlement of trials, could be contrary to EU law, i.e. where all of them together are *„capable of giving rise to a systemic risk of acts constituting serious fraud affecting the European Union's financial interests or corruption in general*".

The assessment of 'systemic risk' in the context of the incidence of all the above mentioned factors is also not within the competence of the CJEU, but of the national authorities, which are themselves bound by the principles and rules imposed by their constitutions, whose corollary is the rule of law, both in the national and supranational legal systems.

Outlining an approach in this regard, the CJEU further notes that:

– *"in order to ensure the protection of the financial interests of the European Union, it is for the Member States, inter alia, to adopt the measures necessary to guarantee the effective and comprehensive collection of own resources, namely the revenue from the application of a uniform rate to the harmonised VAT assessment bases (see, to that effect, judgments of 5 December 2017, M.A.S. and M.B., C-42/17, EU:C:2017:936, paragraphs 31 and 32 and the case-law cited, and of 5 June 2018, Kolev and Others, C-612/15, EU:C:2018:392, paragraphs 51 and 52). Similarly, Member States are required to take effective measures to recover sums wrongly paid to the beneficiary of a subsidy funded in part from the budget of the European Union (judgment of 1 October 2020, Úrad špeciálnej prokuratúry, C-603/19, EU:C:2020:774, par. 55)" (par. 182).*

– *"it follows, first, from the requirements of Article 325(1) TFEU, under which fraud and any other illegal activities affecting the financial interests of the Union must be countered, and, second, from the requirements of Decision 2006/928, under which corruption must be prevented and combatted in general, that Romania must provide for the application of penalties that are effective and that act as a deterrent in case of such offences (see, to that effect, judgment of 5 June 2018, Kolev and Others, C-612/15, EU:C:2018:392, par. 53)" (par. 190).*

– *„while the member state has in that regard a freedom to choose the applicable penalties, which may take the form of administrative penalties, criminal penalties or a combination of the two, it must nonetheless ensure, pursuant to Article 325(1) TFEU, that cases of serious fraud and corruption affecting the financial interests of the Union are punishable by criminal penalties that are effective and that act as a deterrent (par. 191)".*

– *„it is for Romania to ensure that its rules of criminal law and of criminal procedure allow for the effective prosecution of offences of fraud affecting the financial interests of the European Union and of corruption in general. Thus, even though the penalties provided and criminal procedures initiated in order to counter such infringements fall within the competence of Romania, that competence is limited not only by the principles of proportionality and equivalence, but also by the principle of effectiveness, which requires that those penalties are effective and act as a deterrent (par. 192)".*

This whole structure of considerations undoubtedly refers to the policies and regulations in the field under consideration, which fall within the competence of the national legislature and not of the courts.

This idea is reinforced in particular by the following considerations, which relate to the action of the legislator and that of the courts, in a natural succession, corresponding to their constitutional and legal role:

„It follows that, if the referring court in Cases C-357/19, C-811/19 and C-840/19 were to conclude that the application of the case-law of the Constitutional Court (Constitutional Court) established in Decisions Nos 685/2018 and 417/2019, in conjunction with the implementation of the national rules on limitation and, in particular, the absolute limitation period laid down in Art. 155(4) of the Criminal Code, entails a systemic risk of acts constituting serious fraud affecting the European Union's financial interests or corruption in general going unpunished, the penalties provided for in national law to counter such offences could not be regarded as effective and acting as a deterrent, which would be incompatible with Art. 325(1) TFEU, read in conjunction with Art. 2 of the PFI Convention and with Decision 2006/928". (par. 203)

It therefore follows that in the CJEU judgment it establishes and retains a succession of the intervention of the Romanian authorities in order to give full effect to the EU reference law, which presupposes, firstly, an analysis and reaction/measure of the legislature ('first and foremost'). The court's action can only be a subsequent one, since according to their jurisdiction they only apply the regulatory established framework.

In order for the court's action of removing from application the CCR's decisions to be a legitimate one, circumscribed to the CJEU decision, the court should comply exactly with par. 203 cited, i.e.:

In relation to the number of situations thus found, it should assess, entirely discretionary, whether or not that number has the meaning of a 'systemic risk of impunity' created by the CCR for the facts in question in the context of the current regulation of the limitation rules and the rules governing the settlement of lawsuits and, noting this, to ignore one of the decisions of the CCR, which, admittedly, is in no way unraveled on the basis of Art. 325(1) TFEU, read in conjunction with Article 2 of the PFI Convention, but on the basis of a rule of criminal procedure, from the exclusive competence of the Romanian legislature.

We consider that, to the extent that it would carry out this approach, of establishing the "systemic risk of impunity", **a genuine impact study of the CCR decisions** mentioned in the CJEU Judgment in the context of the Romanian substantive and procedural law regulations and of the factual situation existing in Romania (the possible slowness of solving the cases), the court would arrogate itself a competence that does not belong to it, in violation of Art. 1 par. (4) of the Constitution which enshrines the principle of separation of powers in the state, of Art. 1 par. (5) of the Constitution which enshrines the principle of legality, and of Art. 1 par. (3) enshrining the rule of law.

We remind that, according to the Law no. 24/2000 on the rules of legislative technique for the elaboration of normative acts, the performance of impact studies is a competence strictly of the legislator and precedes the elaboration of normative acts (art. 7). The court cannot make a direct application of the CJEU Judgment in an

individual case, in the absence of an intervention of the legislator to establish what the "systemic risk of impunity" means and when it is incident, and whether the CCR decision no. 685/2018, as well as other decisions mentioned in the context of national regulations and the activity of national courts, created such a risk. In the absence of fulfilling this premise, i.e. the "systemic risk of impunity", the justification based on the CJEU's decision to remove the CCR's decision does not subsist.

In support of the same conclusion, the very case-law which the CJEU itself invokes as a precedent, namely case M. A. S. și M. B., C-42/17, where the Court (Grand Chamber) stated that:

„Article 325 (1) and (2) TFEU must be interpreted as requiring the national court, in criminal proceedings for infringements relating to VAT, to disapply national provisions on limitation, forming part of national substantive law, which prevent the application of effective and deterrent criminal penalties in a significant number of cases of serious fraud affecting the financial interests of the Union, or which lay down shorter limitation periods for cases of serious fraud affecting those interests than for those affecting the financial interests of the Member State concerned, unless that disapplication entails a breach of the principle that offences and penalties must be defined by law because of the lack of precision of the applicable law or because of the retroactive application of legislation imposing conditions of criminal liability stricter than those in force at the time the infringement was committed". (par. 65)

We remind here that the nuanced solution in the case M. A. S. and M. B., C-42/17 was determined by the initial ruling by the CJEU in another case, through the Taricco Decision[7], where "the Court ruled that the last paragraph of Art. 160 of the Criminal Code in conjunction with Art. 161 of it (hereinafter referred to as "the relevant provisions of the Criminal Code"), to the extent that these provisions provide that an act of interruption that intervenes in criminal proceedings regarding serious VAT fraud has the effect of extending the limitation period by only a quarter of its initial duration, could prejudice the obligations imposed on Member States by Art. 325 par. (1) and (2) TFEU, in the event that the mentioned national provisions would prevent the application of effective and dissuasive sanctions in a considerable number of fraud cases seriously affecting the financial interests of the Union or would provide for longer limitation periods for cases of fraud affecting the financial interests of the Member State concerned except for cases that affect the financial interests of the Union.

The Court also ruled that it was up to the competent national court to ensure the full effect of Art. 325 par. (1) and (2) TFEU, leaving inapplicable, if necessary, the provisions of national law which would have the effect of preventing the Member

[7] Judgment of 8 September 2015, Taricco and Others, C-105/14, EU:C:2015:555, available on the internet page https://curia.europa.eu/juris/document/document.jsf?text=&docid=167061&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=522959.

State concerned from complies with the obligations imposed on it by the provisions of the FEU Treaty".

Corte suprema di cassazione (Court of Cassation) and Corte d'appello di Milano (Milan Court of Appeal) considered that, in accordance with the rule set out in the Taricco judgment, they should leave the limitation period provided for in the provisions of the Criminal Code in question unapplied and give a ruling on the substance. Corte costituzionale (Constitutional Court) had doubts about the compatibility of such a solution with the supreme principles of the Italian constitutional order and with respect for the inalienable rights of the person. In particular, according to this court, the said solution could undermine the principle of the legality of crimes and punishments, which requires, among other things, that criminal provisions are to be precisely determined and cannot be retroactive.

In this regard, Corte costituzionale (Constitutional Court) pointed out that, in the Italian legal order, the prescription regime in criminal matters is material in nature and therefore falls within the scope of the principle of legality, referred to in Article 25 of the Italian Constitution. This system should therefore be provided for by specific rules in force when the infringement is committed. Under these circumstances, Corte costituzionale (Curtea Constituțională) considered that he was asked by the national courts concerned to rule on whether the rule set out in the Taricco judgment complied with the requirement of "precision", which, according to the Constitution, must characterize the substantive criminal regulation.

In Case M. A. S. and M. B., C-42/17, the referring court set up to clarify this problem created by the CJEU judgment found precisely that the Taricco Judgment did not sufficiently specify the elements that the national court must take into account in order to establish the "considerable number of cases" to which the application of the rule that follows from this judgment and therefore sets no limit to the discretionary power of the courts. (par. 17). It is a situation similar to the one where a global assessment is discussed, namely the establishment of a "systemic risk" by the national court.

As long as the CJEU itself relies in its judgment of 21 December 2021 Case M. A. S. and M. B., C-42/17, and, moreover, in the Decision of December 21, 2021, establishes an order of intervention by the authorities – "first and foremost" the legislator, it is obvious that a direct application of the measure resulting from the CJEU Decision in an individual case, regarding determined facts, is not in question, as long as its application requires as a premise, first the establishment of whether a regulation or practice causes "a systemic risk of impunity".

We consider that the CJEU decision is clarifying in this aspect, and, to the extent that there is uncertainty, the court has the possibility of formulating a new request for a preliminary ruling, for the reasons cited in the case M. A. S. and M. B., C-42/17, enforceable *mutatis mutandis* to other cases. From this perspective, other Romanian

courts have also faced difficulties in interpreting and applying CJEU decisions in the context of assessing the incidence in their own cases of the competing jurisprudence of the CCR and the CJEU. Recently, by judgment of the Court (Grand Chamber) of 22 February 2022, in case C-430/21, having as its object a request for a preliminary decision made on the basis of Art. 267 TFEU by the Craiova Court of Appeal (Romania), the CJEU answered some questions submitted by a Romanian court by invoking part of the considerations contained in its Decision of December 21, 2022. However, the rulings have referred to other issues, as follows from the operative part of the Decision of February 22, 2022 according to which:

„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, must be interpreted as precluding national rules or a national practice under which the ordinary courts of a Member State have no jurisdiction to examine the compatibility with EU law of national legislation which the constitutional court of that Member State has found to be consistent with a national constitutional provision that requires compliance with the principle of the primacy of EU law".

„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, must be interpreted as precluding national rules or a national practice under which a national judge may incur disciplinary liability on the ground that he or she has applied EU law, as interpreted by the Court, thereby departing from case-law of the constitutional court of the Member State concerned that is incompatible with the principle of the primacy of EU law".

The scope of the HCCJ's competence in resolving an extraordinary appeal is called into question and, from this perspective, respect for the principle of legality inherent both to the national and supranational legal order, possibly the competence of the HCCJ in relation to the legislator, in accordance with the national constitutional framework and respect for the principle of legality and the rule of law.

The CJEU invocation of the M.A.S. case provides the High Court and the national legislator with the necessary benchmarks for the application of the CJEU judgment of 21 December 2022 in compliance with both the Constitution and the national legislation. Nothing prevents the legislator from evaluating the impact of the CCR decisions mentioned in the CJEU Decision and, based on the results found, to establish whether a systemic risk of impunity has been created for the facts falling within the scope of EU law, and, based on the existence of this risk, to proceed to take measures as the CJEU itself shows, referring to the case of MAS and others. It is a complex assessment, of a set of material and procedural law rules, the requirements stemming from the CJEU decision, through the prism of art. 148 of the Constitution, imposing a necessary adaptation if this systemic risk of impunity is real.

The solution is therefore in the hands of the legislator, who can take quick and firm measures in this regard, and not of a court that resolves an individual case, applying the law to a specific case. At this moment, it has not been determined whether that risk exists, nor whether the risk was created by the decisions of the CCR. The CJEU solution is a principled and rational one for the situation in which the risk occurred.

As a result, in the absence of an establishment of the impact of decision no. 685/2018 (possibly corroborated with the other decisions mentioned by the CJEU), the possible action of the HCCJ to remove from the application in this case Decision no. 685/2018 of the CCR remains exclusively a act of violation of the Constitution, respectively of Art. 147 par. (4) which enshrines the general binding character of CCR decisions and, thereby, of art. 1 par. (5) of the Constitution which consecrates the supremacy of the Constitution and compliance with the law. In doing so, the court would violate art. 147 of the Constitution, creating the premises for a legal conflict of a constitutional nature between the HCCJ and the CCR. With reference to the parties in the process, the HCCJ would violate the constitutional provisions of Art. 21 regarding free access to justice and the right to a fair trial and, through Art. 20 of the Constitution, which obliges an interpretation and application of the constitutional norms in the matter in consistency with the international treaties on human rights to which Romania is a party, of all the norms of such treaties that regulate the right to a fair trial. From this perspective, it would even violate the CJEU Decision of December 21, 2021, where the European court puts before the national court a roadblock for the parties, by invoking Art. 47 of the Charter of Fundamental Rights of the European Union, which guarantees access to justice and the right to a fair trial.

A possible assessment of the court, in the sense of establishing the "systemic" risk created by the CCR decision/decisions, would also violate the principle of legality.

In application of Art. 47 of the Charter, the CJEU pointed out, for example in its judgment of 19 November 2019, in Joined cases C 585/18, C 624/18, that the CJEU was bound by the obligation that „the Court must therefore ensure that the interpretation which it gives to the second paragraph of Art. 47 of the Charter safeguards a level of protection which does not fall below the level of protection established in Article 6 of the ECHR, as interpreted by the European Court of Human Rights (judgment of 29 July 2019, Gambino and Hyka, C 38/18, EU:C:2019:628, paragraph 39" (par. 118). In this matter, the European Court of Human Rights repeatedly emphasizes that, although the principle of separation of executive power and judicial authority tends to acquire increasing importance in its jurisprudence, neither Article 6 nor any other provision of the ECHR imposes on states a certain constitutional model that regulates in one way or another the relations and interaction between the various state powers and does not oblige these states to conform to one or another of the theoretical constitutional notions regarding the permissible limits of such interaction. The issue remains whether, in a given case, the requirements of the ECHR have been complied with (see in particular ECHR, Judgment of 6 May 2003,