Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

13 June 2017*

(Reference for a preliminary ruling — Article 143 TFEU — Difficulties as regards the balance of payments of a Member State — Financial assistance from the European Union — Memorandum of Understanding concluded between the European Union and the Member State in receipt of the assistance — Social policy — Principle of equal treatment — National legislation prohibiting the combining of a public retirement pension with employment income from a professional activity carried out in a public institution — Different treatment of persons occupying posts whose term is laid down in the Constitution and of professional judges and law officers)

In Case C-258/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia, Romania), made by decision of 3 April 2014, received at the Court on 26 May 2014, in the proceedings

Eugenia Florescu,

Ioan Poiană,

Cosmina Diaconu, acting in her capacity as an heir of Mircea Bădilă,

Anca Vidrighin, acting in her capacity as an heir of Mircea Bădilă,

Eugenia Elena Bădilă, acting in her capacity as an heir of Mircea Bădilă,

v

Casa Județeană de Pensii Sibiu,

Casa Națională de Pensii și alte Drepturi de Asigurări Sociale,

Ministerul Muncii, Familiei și Protecției Sociale,

Statul roman,

Ministerul Finanțelor Publice,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, J.L. da Cruz Vilaça, E. Juhász, M. Berger, A. Prechal and E. Regan, Presidents of Chambers, A. Rosas, A. Borg Barthet (Rapporteur), M. Safjan, D. Šváby and E. Jarašiūnas, Judges,

* Language of the case: Romanian.

Advocate General: Y. Bot,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 11 October 2016,

after considering the observations submitted on behalf of:

— E. Florescu and I. Poiană and of C. Diaconu, A. Vidrighin and E. Bădilă, acting in their capacity as heirs of M. Bădilă, by D. Târşia, lawyer,

— the Casa Județeană de Pensii Sibiu, by D. Aldea and I. Stan, acting as Agents,

— the Romanian Government, by R.H. Radu, A. Wellman and M. Bejenar, acting as Agents,

— the Greek Government, by K. Georgiadis and S. Papaioannou, acting as Agents,

— the Hungarian Government, by Z. Fehér, acting as Agent,

— the European Commission, by J.-P. Keppenne, H. Krämer, I. Rogalski, and L. Nicolae, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 December 2016,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 6 TEU, 110 and 267 TFEU, Articles 17, 20, 21 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), of the Memorandum of Understanding between the European Community and Romania, concluded in Bucharest and Brussels on 23 June 2009 ('the Memorandum of Understanding'), of the principle of legal certainty, of the principles of effectiveness and equivalence, and of Article 2(2)(b) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

2 The reference has been made in proceedings between Eugenia Florescu and Ioan Poiană and Cosmina Diaconu, Anca Vidrighin and Eugenia Elena Bădilă, acting in their capacity as heirs of Mircea Bădilă, of the one part, and the Casa Județeană de Pensii Sibiu (Regional Pensions Office, Sibiu, Romania), the Casa Națională de Pensii și alte Drepturi de Asigurări Sociale (National Office of Pensions and Other Social Security Entitlements, Romania), the Ministerul Muncii, Familiei și Protecției Sociale (Ministry of Work, Family, and Social Protection, Romania), the Statul român (the Romanian State) and the Ministerul Finanțelor Publice (Ministry of Finance, Romania), of the other, in respect of retirement pension entitlements.

Legal context

EU law

Regulation (EC) No 332/2002

3 Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balance of payments (OJ 2002 L 53, p. 1), as amended by Council Regulation (EC) No 431/2009 of 18 May 2009 (OJ 2009 L 128, p. 1) ('Regulation No 332/2002'), establishes the procedures applicable to the mutual assistance facility provided for in Article 143 TFEU.

4 Article 1 of that regulation provides:

'1. A Community medium-term financial assistance facility enabling loans to be granted to one or more Member States which are experiencing, or are seriously threatened with, difficulties in their balance of current payments or capital movements shall be established. Only Member States which have not adopted the euro may benefit from this Community facility.

The outstanding amount of loans to be granted to Member States under this facility shall be limited to EUR 50 billion in principal.

2. To this end, in accordance with a decision adopted by the Council pursuant to Article 3 and after consulting the Economic and Financial Committee, the Commission shall be empowered on behalf of the European Community to contract borrowings on the capital markets or with financial institutions.'

5 Article 3 of that regulation is worded as follows:

'1. The medium-term financial assistance facility may be implemented by the Council on the initiative of:

(a) the Commission, acting pursuant to Article 119 of the Treaty in agreement with the Member State seeking Community financing;

(b) a Member State experiencing, or seriously threatened with, difficulties as regards its balance of current payments or capital movements.

2. The Member State seeking medium-term financial assistance shall discuss with the Commission an assessment of its financial needs and submit a draft adjustment programme to the Commission and the Economic and Financial Committee. The Council, after examining the situation in the Member State concerned and the adjustment programme presented in support of its application, shall decide, as a rule during the same meeting:

(a) whether to grant a loan or appropriate financing facility, its amount and its average duration;

(b) the economic policy conditions attached to the medium-term financial assistance with a view to re-establishing or ensuring a sustainable balance of payments situation;

(c) the techniques for disbursing the loan or financing facility, the release or drawing-down of which shall, as a rule, be by successive instalments, the release of each instalment being subject to verification of the results achieved in implementing the programme in terms of the objectives set.'

6 Article 3a of Regulation No 332/2002 provides:

‘The Commission and the Member State concerned shall conclude a Memorandum of Understanding setting out in detail the conditions laid down by the Council pursuant to Article 3. The Commission shall communicate the Memorandum of Understanding to the European Parliament and the Council.’

Decisions 2009/458/EC and 2009/459/EC

7 Under Article 1 of Council Decision 2009/458/EC of 6 May 2009 granting mutual assistance for Romania (OJ 2009 L 150, p. 6), the European Union granted mutual assistance for Romania pursuant to Article 143 TFEU. Furthermore, by Council Decision 2009/459/EC of 6 May 2009 providing Community medium-term financial assistance for Romania (OJ 2009 L 150, p. 8), the European Union made available to Romania a medium-term loan amounting to a maximum of EUR 5 billion.

8 Article 2(1) and (2) of Decision 2009/459 provides:

‘1. The assistance shall be managed by the Commission in a manner consistent with Romania’s undertakings and recommendations by the Council, in particular the Country Specific Recommendations in the context of the implementation of the National Reform Programme as well as of the convergence programme.

2. The Commission shall agree with the authorities of Romania, after consulting the [Economic and Financial Committee], the specific economic policy conditions attached to the financial assistance as laid down in Article 3(5). Those conditions shall be laid down in a Memorandum of Understanding consistent with the undertakings and recommendations referred to in paragraph 1. …’

9 Under Article 3(5) of Decision 2009/459:

‘The disbursement of each further instalment shall be made on the basis of a satisfactory implementation of the new economic programme of the Government of Romania to be included in the Convergence Programme of Romania, in the National Reform Programme and, more particularly, the specific economic policy conditions laid down in the Memorandum of Understanding. These shall include, inter alia,

(a) adopting a clearly-set medium-term fiscal programme designed to lower by 2011 the general government deficit to not more than the Treaty reference level of 3% of [gross domestic product (GDP)];

(b) adopting and executing an amended budget for 2009 (by the second quarter of 2009), targeting a general government deficit of no higher than 5.1% of GDP in [European system of national and regional accounts (ESA 95)] terms;

(c) reducing the public sector wage bill in nominal terms compared to the 2008 outcome by foregoing public sector wage increases (totalling 5% in nominal terms) scheduled for 2009 (or equivalent further cuts in employment) and by reducing public employment, including by replacing only one of seven departing employees;

(d) additional reductions in spending on goods and services and in subsidies to public enterprises;

(e) improving the budgetary management by the adoption and implementation of a binding medium-term fiscal framework, establishing limits on budget revisions during the year, including fiscal rules and creating a fiscal council to provide independent and expert scrutiny;

(f) reforming the public compensation system, including by unifying and simplifying the pay scales and reforming the bonus system;

(g) reforming key parameters of the pension system by moving towards indexation of pensions to consumer prices rather than wages, gradually adjusting retirement age beyond the currently agreed plans, especially for women, and phasing in pension contributions of groups of public employees currently excluded from such contributions;

…'

The Memorandum of Understanding

10 Under point 5 of the Memorandum of Understanding, the disbursement of every instalment of the financial assistance granted by the European Union to Romania is to be carried out subject to the satisfactory implementation of the economic programme of the Government of Romania. Point 5(a) of the Memorandum of Understanding provides, among the conditions attached to that assistance, for a '[reduction of] the public sector wage bill', while the fourth paragraph of point 5(b) provides that, 'to help improve the long-term sustainability of public finances, key parameters of the pension system will be reformed'.

11 Point 5(d) of that Memorandum of Understanding, entitled 'Structural reform', contains recommendations relating to measures intended to improve the efficiency and effectiveness of public administration, enhance the quality of the public administration in several areas, in particular with respect to decision-making structures, the division of responsibilities among institutions, the internal organisation of key ministries, the oversight and accountability for implementation and the adequacy of staffing levels and human resource management.

Directive 2000/78

12 Under Article 1 of Directive 2000/78, the purpose of the directive is to lay down a general framework for combating discrimination on grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.

13 Article 2(1) and (2) of that directive provides as follows:

'1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:
(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary …

…'

Romanian Law

14 Article 83 of Legea No 303/2004 privind statutul judecătorilor și procurorilor (Law No 303/2004 on the status of judges and prosecutors) of 28 June 2004 (*Monitorul Oficial al României*, Part I, No 826, of 13 September 2005) allowed the office of judge to be combined only with a higher education teaching position. In addition, that law provided that judges and prosecutors who have taken retirement could combine their retirement pension with the income from a professional activity, regardless of the level of that income.

15 On 5 November 2009 Legea No 329/2009 privind reorganizarea unor autorități și instituții publice, raționalizarea cheltuielilor publice, susținerea mediului de afaceri și respectarea acordurilor-cadru cu Comisia Europeană și Fondul Monetar Internațional (Law No 329/2009 on the reorganisation of certain public authorities and institutions, on streamlining public spending, on supporting businesses and on complying with the framework agreements with the European Commission and the International Monetary Fund, *Monitorul Oficial al României*, Part I, No 761, of 9 November 2009) was adopted.

16 Article 2 of that law provides that the measures which it introduces are of an exceptional nature and are intended to reduce the effects of the economic crisis and to fulfil the obligations arising under the Memorandum of Understanding and the stand-by agreement concluded between Romania and the Commission as well as the Commission and the International Monetary Fund ('the IMF').

17 That law, inter alia, imposed a reduction of salaries, a measure which was applied in university education. Pursuant to Article 3 of that law, the measures adopted in accordance with the Memorandum of Understanding were designed to overcome the financial crisis. They consist in the reduction of staff expenditure in the public administration through the reduction of salaries and the reorganisation or abolishing of public authorities or institutions, following their regrouping by take-over, merger, separation or reduction of staff.

18 Articles 17 to 26 of Law No 329/2009 prohibit the combining of the net pension with income from activities carried out in public institutions if the amount of the pension exceeds the amount of the national gross average salary, on the basis of which the State social security budget was drawn up.

19 Article 18 of that Law provides that the pensioners referred to in Article 17 are to be required to opt in writing either for payment of their pension to be suspended for the duration of that activity or for termination of the employment relationship, the service relationship or the instrument of appointment if the net pension paid to them is higher than the national gross average income. Finally, Article 20 of Law No 329/2009 provides that failure to fulfil that obligation to opt for one of the alternatives within the prescribed period constitutes grounds for automatic termination of the employment relationship established on the basis of the individual contract of employment or the instrument of appointment, and of the service relationship.

20 According to Article 21 of Legea No 554/2004 contenciosului administrativ (Law No 554/2004 on administrative proceedings) of 2 December 2004 (*Monitorul Oficial al României*, Part I, No 1154, of 7 December 2004), the delivery of a final irrevocable judgment, in breach of the principle of the primacy of EU law, constitutes grounds for revision in addition to those laid down in the Code of Civil Procedure.

The dispute in the main proceedings and the questions referred for a preliminary ruling

21 Ms Florescu, Mr Poiană and Mr Bădilă exercised the profession of judge. After their admission to the judiciary, they entered into permanent individual employment contracts in respect of teaching positions at the law faculty of Sibiu awarded on the basis of competitions. Thus, in parallel with their activity as judges, they taught at university.

22 In 2009, those applicants claimed their pension entitlements from their duties as judges, after more than 30 years of service. At the time of their retirement, in accordance with Law No 303/2004, they could combine their retirement pension with the income derived from their university teaching activity.

23 Following the adoption of Law No 329/2009, prohibiting a combination of income in that way from then on, Ms Florescu, Mr Poiană and Mr Bădilă opted for the suspension of the payment of their pensions from 1 January 2010. In consequence, on 28 December 2009, the Regional Pensions Office of Sibiu decided to suspend the payment of those pensions.

24 It follows from the judgment of 4 November 2009 of the Curtea Constituțională (Constitutional Court, Romania), in which that court declared Law 329/2009 compatible with the Constitution since Articles 17 to 26 of that law do not concern persons occupying posts whose term is expressly laid down in the Constitution, that, in particular, the holders of legislative or executive office, as well as the members of the Curtea de Conturi (Court of Auditors, Romania), of the Curtea Constituțională (Constitutional Court), of the Consiliul Superior al Magistraturii (High Council of the Judiciary, Romania) and of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania) are excluded from the scope of the prohibition on combining a retirement pension with a public-sector salary.

25 On 1 March 2010, the applicants in the main proceedings brought an action before the Tribunalul Sibiu (Regional Court, Sibiu, Romania) for the annulment of the decisions, made under Law No 329/2009, suspending their pensions and for an order that the defendants in the main proceedings pay them their monthly retirement pensions as from January 2010. They argued in support of their action that Articles 17 to 26 of Law No 329/2009, relating to the rules on combining a pension with employment income, are contrary to EU law, in particular the provisions of the EU Treaty and the Charter, notwithstanding the fact that that law was adopted in order to comply with the Memorandum of Understanding.

26 The action was dismissed by a judgment of 3 May 2012. The appeal brought against that judgment before the Curtea de Apel Alba Iulia Secția pentru conflicte de muncăși asigurări sociale, (Court of Appeal, Alba Iulia, Employment and Social Security Chamber, Romania) was dismissed by judgment of 9 November 2012.

27 Ms Florescu, Mr Poiană and Mr Bădilă then brought an application before the referring court for revision of that judgment, requesting that the latter be withdrawn in full and that a new ruling be given in respect of their application. Following Mr Bădilă's death, the latter's heirs, Ms Diaconu, Ms Vidrighin and Ms Bădilă, intervened in the main proceedings. In support of that application for revision, the applicants in the main proceedings asked the referring court to refer a number of questions to the Court of Justice for a preliminary ruling.

28 In those circumstances, the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) May [the Memorandum of Understanding] be regarded as an act, decision or communication having legal force within the meaning defined by the Court (judgments of 3 February 1976, *Manghera and Others*, 59/75, EU:C:1976:14, and of 20 March 1997, *France* v *Commission*, C-57/95, EU:C:1997:164) and may it be interpreted by the Court?

(2) If the answer is in the affirmative, is [the Memorandum of Understanding] to be interpreted as allowing the European Commission to require, for the purposes of reducing the effects of the economic crisis by reducing staff costs, the adoption of a national law which withdraws a person’s right to receive a contributory pension accrued in respect of over 30 years of contributions, which was legally established and received before that law came into force, on the ground that the person in question receives a salary for activity, carried out on the basis of an employment contract, other than the activity in respect of which he receives the pension?

(3) Is [the Memorandum of Understanding] to be interpreted as allowing the European Commission to require, for the purposes of reducing the effects of the economic crisis, the adoption of a national law which completely and indefinitely withdraws a person’s right to receive a contributory pension accrued in respect of over 30 years of contributions, which was legally established and received before that law came into force, on the ground that the person in question receives a salary for activity, carried out on the basis of an employment contract, other than the activity in respect of which he receives the pension?

(4) On a proper construction of the Memorandum [of Understanding] as a whole, and specifically of section (d) of point 5 thereof, which concerns reforming and improving the efficiency of the public administration, was it lawful for the European Commission to require, for the purposes of reducing the effects of the economic crisis, the adoption of a national law which barred retired officials of the public institutions from receiving a salary in addition to the pension?

(5) Can Articles 17, 20, 21 and 47 of the Charter, Article 6 TEU, 110 TFEU, the principle of legal certainty derived from EU law and the case-law of the Court be interpreted as precluding a rule such as that set out in Article 21(2) of Law No 554/2004, which provides that, in the event of failure to observe the principle of the primacy of EU law, it is possible to revise decisions of national courts only in the context of administrative law proceedings and which does not allow decisions of national courts made in other areas (civil, criminal, commercial, and so on) to be revised in the event that [those] decisions are inconsistent with that principle?

(6) Does Article 6 TEU preclude legislation of a Member State under which the payment of a professional judge’s pension, established on the basis of contributions made by that judge over more than 30 years of judicial service, is to be conditional upon the termination of his employment contract to teach law at university level?

(7) Do Article 6 TEU, Article 17(1) of the Charter and the case-law of the Court preclude legislation which divests a magistrate pension holder of his right to receive a pension, even though that pension has been established on the basis of contributions made over more than 30 years, where judges have made and continue to make separate pension contributions in respect of their university teaching activities?

(8) Do Article 6 TEU, and Article 2(2)(b) of Directive 2000/78, and the case-law of the Court preclude the Constitutional Court of a Member State from delivering a judgment by which, in exercise of its jurisdiction to review the constitutionality of a law, it establishes that only persons appointed for a fixed term have the right to combine a pension with a salary, thereby denying

that right to professional judges, who are barred from receiving their pension, established on the basis of personal contributions made over more than 30 years, because they have retained a position teaching law at university level?

(9) Do Article 6 TEU and the case-law of the Court preclude legislation which indefinitely makes the payment of a judge's pension, established on the basis of contributions made over more than 30 years, conditional upon termination of university employment?

(10) Do Article 6 TEU and the case-law of the Court preclude legislation which destroys the proper balance to be maintained between the protection of personal property, on the one hand, and general interest requirements, on the other, and which requires only one specific category of persons to lose their judicial pension by reason of the fact that they engage in university employment?'

Consideration of the questions referred

The first question

29 By its first question, the referring court asks in essence whether the Memorandum of Understanding whose interpretation is sought must be regarded as an act of an EU institution, within the meaning of Article 267 TFEU, which may be subject to interpretation by the Court.

30 In accordance with settled case-law, Article 267 TFEU confers on the Court jurisdiction to give a preliminary ruling on the validity and interpretation of all acts of the EU institutions without exception (judgments of 13 December 1989, *Grimaldi*, C-322/88, EU:C:1989:646, paragraph 8, and of 11 May 2006, *Friesland Coberco Dairy Foods*, C-11/05, EU:C:2006:312, paragraph 36).

31 In the present case, it should be noted that the Memorandum of Understanding was concluded between the European Community, represented by the Commission, and Romania. The memorandum is based in law on Article 143 TFEU, which gives the Union the power to grant mutual assistance to a Member State whose currency is not the euro and which faces difficulties or is seriously threatened with difficulties as regards its balance of payments. Pursuant to that provision, the Commission is to recommend to the Council, under certain conditions, the granting of such mutual assistance and the appropriate methods in that regard. It is for the Council to grant such mutual assistance and to lay down the terms and conditions for that assistance by the adoption of directives or decisions.

32 Regulation No 332/2002 establishes the procedures applicable to the mutual assistance facility provided for in Article 143 TFEU. Article 1(2) of that regulation states that the Commission, in accordance with a decision adopted by the Council pursuant to Article 3 of that regulation and after consulting the Economic and Financial Committee, is to be empowered on behalf of the European Union to contract borrowings on the capital markets or with financial institutions.

33 The first sentence of Article 3a of Regulation No 332/2002 provides that the Commission and the Member State concerned are to conclude a Memorandum of Understanding setting out in detail the conditions laid down by the Council, pursuant to Article 3 of that regulation. The Memorandum of Understanding concluded between the European Union and Romania, whose interpretation is sought by the referring court in the present case, was adopted in accordance with that procedure, the Council having successively adopted two decisions, namely Decision 2009/458 granting mutual assistance for Romania pursuant to Article 143 TFEU and Decision 2009/459, which makes available to Romania a medium-term loan amounting to a maximum of EUR 5 billion, Article 2(2) of which provides that the economic policy conditions attached to the financial assistance granted by the Union shall be laid down in a Memorandum of Understanding.

34 Accordingly, as noted by the Advocate General in point 52 of his Opinion, the Memorandum of Understanding gives concrete form to an agreement between the EU and a Member State on an economic programme, negotiated by those parties, whereby that Member State undertakes to comply with predefined economic objectives in order to be able, subject to fulfilling that agreement, to benefit from financial assistance from the EU.

35 As an act whose legal basis lies in the provisions of EU law mentioned in paragraphs 31 to 33 of the present judgment and concluded, in particular, by the European Union, represented by the Commission, the Memorandum of Understanding constitutes an act of an EU institution within the meaning of Article 267(b) TFEU.

36 In the light of the foregoing, the answer to the first question is that the Memorandum of Understanding must be regarded as an act of an EU institution, within the meaning of Article 267 TFEU, which may be subject to interpretation by the Court.

The second to fourth questions

37 By the second to fourth questions, which it is appropriate to examine together, the referring court seeks to ascertain, in essence, whether the Memorandum of Understanding must be interpreted as requiring the adoption of national legislation, such as that at issue in the main proceedings, which prohibits the combining of the net retirement pension with income from activities carried out in public institutions if the amount of the pension exceeds the amount of the national gross average salary on the basis of which the State social security budget was drawn up.

38 In that regard, as was pointed out in the reply to the first question, the Memorandum of Understanding gives concrete form to an agreement between the EU and a Member State on an economic programme enabling the latter to benefit from medium-term financial assistance for Member States' balance of payments, referred to in Article 143 TFEU and specified in Regulation No 332/2002. It contains a number of economic policy requirements, to which the granting of that financial assistance is subject and which were agreed by the Commission and the Romanian authorities in accordance with the provisions of Decision 2009/459.

39 The first paragraph of point 5 of that Memorandum of Understanding states, in that regard, that the disbursement of every instalment is to be made on the basis of the satisfactory implementation of the economic programme of the Romanian Government. For each instalment, specific economic policy criteria, of a budgetary or qualitative nature, were set out in Annex I to that Protocol, which Romania must fulfil as part of the objectives of that programme, namely fiscal consolidation, fiscal governance reform, monetary policy and financial sector regulation and supervision, and, finally, structural reform. Within the limits of the abovementioned criteria, it is for the Romanian authorities to implement the specific economic solutions which will enable them to achieve those objectives and to observe the timetable established with the EU institutions.

40 Moreover, the fourth subparagraph of point 5(b) of the Memorandum of Understanding states that the pension system must be reformed, in particular by means of measures such as increasing the retirement age or indexing the amount of those public sector pensions to consumer prices.

41 That being said, the Memorandum of Understanding, although mandatory, contains no specific provision requiring the adoption of the national legislation at issue in the main proceedings.

42 In the light of the foregoing, the answers to the second to fourth questions must be that the Memorandum of Understanding must be interpreted as meaning that it does not require the adoption of national legislation, such as that at issue in the main proceedings, which prohibits the combining of

a net public-sector retirement pension with income from activities carried out in public institutions if the amount of the pension exceeds the amount of the average gross national salary on the basis of which the State social security budget was drawn up.

The sixth, seventh, ninth and tenth questions

43 By its sixth, seventh, ninth and tenth questions, the referring court asks, in essence, whether Article 6 TEU and Article 17 of the Charter must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which prohibits the combining of a net public-sector retirement pension with income from activities carried out in public institutions if the amount of the pension exceeds a certain threshold.

44 It should be recalled that the Charter's scope, so far as action of the Member States is concerned, is defined in Article 51(1) of the Charter, according to which the provisions of the Charter are addressed to the Member States only when they are implementing EU law (judgment of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 17).

45 In the present case, as stated by the referring court, Law No 329/2009, on the 'reorganisation of certain public authorities and institutions, on streamlining public spending, on supporting businesses and on complying with the framework agreements with the [Commission] and the [IMF]', was adopted in order for Romania to be able to comply with the commitments it made to the European Union, which are set out in the Memorandum of Understanding. In accordance with Article 2 of that Law, the measures adopted by it are in particular intended to 'fulfil the obligations arising under the Memorandum of Understanding between the European Community and Romania'.

46 Among the conditions attached to the financial assistance, set out in the Memorandum of Understanding, point 5(a) thereof requires a reduction of the public sector wage bill, while the fourth subparagraph of point 5(b) states that, in order to improve the long-term sustainability of the public finances, the key parameters of the pension system are to be reformed.

47 It must therefore be held that the purpose of the measure at issue in the main proceedings, which simultaneously pursues the two objectives referred to in the previous paragraph of the present judgment, is to implement the undertakings given by Romania in the Memorandum of Understanding, which is part of EU law.

48 It is true that the Memorandum of Understanding leaves Romania some discretion in deciding what measures are most likely to lead to performance of those undertakings. However, on the one hand, where a Member State adopts measures in the exercise of the discretion conferred upon it by an act of EU law, it must be regarded as implementing that law, within the meaning of Article 51(1) of the Charter (see, to that effect, judgment of 21 December 2011, *N. S. and Others*, C-411/10 and C-493/10, EU:C:2011:865, paragraphs 65 to 68). On the other hand, the objectives set out in Article 3(5) of Decision 2009/459, as well as those set out in the Memorandum of Understanding, are sufficiently detailed and precise to permit the inference that the purpose of the prohibition on combining a public-sector retirement pension with income from activities carried out in public institutions, stemming from Law No 329/2009, is to implement both the memorandum and that decision, and thus EU law, within the meaning of Article 51(1) of the Charter. Consequently, the latter is applicable to the dispute in the main proceedings.

49 In those circumstances, it is necessary to examine whether Article 17 of the Charter, in particular paragraph 1 thereof, precludes national legislation such as that at issue in the case in the main proceedings. In order to determine the scope of the fundamental right to peaceful enjoyment of property, it is necessary, having regard to Article 52(3) of the Charter, to take account of Article 1 of Protocol No 1 to the European Convention for the Protection of Human Rights and Fundamental

Freedoms, signed in Rome on 4 November 1950, which enshrines that right (see, to that effect, judgment of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 356).

50 In that regard, where legislation provides for the automatic payment of a social benefit, it generates a proprietary interest for persons meeting the requirements thereof falling within the ambit of Article 1 of Protocol No 1 to that convention (ECtHR, 7 July 2011, *Stummer v. Austria*, CE:ECHR:2011:0707JUD003745202, § 82). The rights resulting from the payment of contributions to a social security scheme thus constitute rights of property for the purposes of that article (ECtHR, 12 October 2004, *Kjartan Ásmundsson v. Iceland*, CE:ECHR:2004:1012JUD006066900, § 39). However, the right to property enshrined in that article cannot be interpreted as entitling a person to a pension of a particular amount (ECtHR, 12 October 2004, *Kjartan Ásmundsson v. Iceland*, CE:ECHR:2004:1012JUD006066900, § 39).

51 With regard to Article 17 of the Charter, it is clear from the settled case-law of the Court that the right of property enshrined in that article is not absolute and that its exercise may be subject to restrictions justified by objectives of general interest pursued by the European Union (see, to that effect, judgment of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB*, Joined Cases C-8/15 P to C-10/15 P, EU:C:2016:701, paragraph 69 and the case-law cited).

52 In the case in the main proceedings, the national measure at issue does not, admittedly, entail an outright deprivation of the right to a pension of the persons in the situation of the applicants in the main proceedings in so far as they may continue to receive their pension if they relinquish the parallel pursuit of a paid professional activity with a public institution. However, such a measure restricts the use and enjoyment of the pension entitlement of the persons concerned, in that it entails a suspension of the payment of their pension when they have opted, instead, to pursue such an activity.

53 It should first be noted that Article 52(1) of the Charter provides that any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and must respect the essence of those rights and freedoms. In observance of the principle of proportionality, restrictions may be imposed on the exercise of those rights and freedoms only if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

54 It is therefore necessary to determine whether the restriction of the right to property, resulting from the prohibition laid down by Law No 329/2009 on the combining of a net public-sector retirement pension with income from an activity carried out in a public institution, is consistent with the essential content of the right to property, whether it fulfils an objective of general interest, and whether it is necessary for that purpose.

55 In that regard, it must be observed, first of all, that, as is apparent from the wording of Article 2 of Law No 329/2009, that law is of an exceptional nature and is intended to be temporary. In addition, it does not call into question the very principle of the right to a pension, but restricts its exercise in well-defined and limited circumstances, namely, when the pension is combined with a professional activity carried out in public institutions and when the amount of the pension exceeds a certain threshold. Thus, Law No 329/2009 is consistent with the essential content of the right to property enjoyed by the applicants in the main proceedings in respect of the pensions in question, as noted by the Advocate General in point 83 of his Opinion.

56 Next, it should be noted that the purpose of Law 329/2009 is to rationalise public spending in an exceptional context of global financial and economic crisis (see, to that effect, judgment of the ECtHR, 20 March 2012, *Ionel Panlife v. Romania*, CE:ECHR:2012:0320DEC001390211, § 21). As regards, in particular, the national legislation at issue in the main proceedings, it aims to achieve both the objective of reducing public sector wage costs and that of reforming the pension system, which

were laid down by Decision 2009/459 and by the Memorandum of Understanding with a view to reducing the balance of payments difficulties that led Romania to seek and to obtain financial assistance from the European Union. Such objectives are objectives of general interest.

57 As regards the suitability and necessity of the national legislation at issue in the main proceedings, it must be borne in mind that, given the particular economic context, Member States have broad discretion when adopting economic decisions and are in the best position to determine the measures likely to achieve the objective pursued.

58 Moreover, Law No 329/2009 does not impose a disproportionate and excessive burden on the persons concerned by the prohibition on combining a retirement pension with income from an activity carried out in a public institution given that, on the one hand, they have to choose between the payment of their pension or of that income only where the amount of their pension exceeds the national average gross wage which was the basis for drawing up the State's social security budget, and that, on the other, they may at any time decide to terminate their employment relationship and receive their pension again, as noted by the Advocate General in point 86 of his Opinion.

59 Accordingly, the national legislation at issue in the main proceedings is capable of attaining the general interest objective pursued and is necessary to attain that objective.

60 In the light of the foregoing, the answer to the sixth, seventh, ninth and tenth questions must be that Article 6 TEU and Article 17(1) of the Charter must be interpreted as meaning that they do not preclude national legislation, such as that at issue in the main proceedings, which prohibits the combining of a net public-sector retirement pension with income from activities carried out in public institutions if the amount of the pension exceeds a certain threshold.

The eighth question

61 By its eighth question, the referring court seeks to ascertain, in essence, whether Article 2(2)(b) of Directive 2000/78 is to be interpreted as precluding national legislation, such as that at issue in the main proceedings, being interpreted as meaning that the prohibition on the combining of the net retirement pension with income from activities carried out in public institutions, laid down by national legislation if the amount of the pension exceeds the amount of the national gross average salary on the basis of which the State's social security budget was drawn up, applies to professional judges but not to persons occupying a post whose term is laid down in the national Constitution.

62 It should be noted that the Court has already had occasion to rule on a similar issue in the case giving rise to the judgment of 21 May 2015, *SCMD* (C-262/14, not published, EU:C:2015:336), which concerned the interpretation of Article 2(2) and Article 3(1) of Directive 2000/78 in the context of the same provisions of Law No 329/2009.

63 In paragraph 29 of that judgment, the Court held that, inasmuch as, in accordance with Article 2(1) of Directive 2000/78, the principle of equal treatment enshrined in that directive is intended to combat any form of discrimination on any of the grounds exhaustively listed in Article 1 thereof, that directive does not cover discrimination on grounds of professional category or place of work.

64 In the present case, the referring court does not rely on any of the grounds listed in Article 1 and merely refers in its questions to a difference in treatment between professional judges and persons occupying a post whose term is laid down in the Romanian Constitution.

65 Consequently, a situation such as that at issue in the main proceedings does not fall within the general framework established by Article 2(2) of Directive 2000/78 in order to combat certain forms of discrimination (see judgment of 21 May 2015, *SCMD*, C-262/14, not published, EU:C:2015:336, paragraph 31).

66 In the light of the foregoing, the answer to the eighth question must be that Article 2(2)(b) of Directive 2000/78 is to be interpreted as not applying to national legislation, such as that at issue in the main proceedings, which is interpreted as meaning that the prohibition on the combining of a net retirement pension with income from activities carried out in public institutions, laid down by the national legislation if the amount of the pension exceeds the amount of the national gross average salary on the basis of which the State social security budget was drawn up, applies to professional judges but not to persons occupying a post whose term is laid down in the national Constitution.

The fifth question

67 By its fifth question, the referring court essentially asks whether EU law, in particular the principles of equivalence and effectiveness, must be interpreted as precluding a national provision, such as that at issue in the main proceedings, which provides that only judicial decisions in administrative proceedings that have the force of res judicata may be reviewed in the event of a breach of the principle of the primacy of EU law.

68 In view of the answer given to the other questions, there is no need to answer that question.

Costs

69 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **The Memorandum of Understanding between the European Community and Romania, concluded in Bucharest and Brussels on 23 June 2009, must be regarded as an act of an EU institution, within the meaning of Article 267 TFEU, which may be subject to interpretation by the Court of Justice of the European Union.**

2. **The Memorandum of Understanding between the European Community and Romania, concluded in Bucharest and Brussels on 23 June 2009, must be interpreted as meaning that it does not require the adoption of national legislation, such as that at issue in the main proceedings, which prohibits the combining of a net public-sector retirement pension with income from activities carried out in public institutions if the amount of the pension exceeds the amount of the average gross national salary on the basis of which the State social security budget was drawn up.**

3. **Article 6 TEU and Article 17 of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which prohibits the combining of a net public-sector retirement pension with income from activities carried out in public institutions if the amount of that pension exceeds a certain threshold.**

4. **Article 2(2)(b) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as not applying to national legislation, such as that at issue in the main proceedings, which is interpreted as meaning that the prohibition on the combining of a net retirement pension with income from activities carried out in public institutions, laid down by the national legislation if the amount of the pension exceeds the amount of the national gross average salary on the basis of which the State social security budget was drawn up, applies to professional judges but not to persons occupying a post whose term is laid down in the national Constitution.**

[Signatures]