Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

26 September 2024*

(Reference for a preliminary ruling – Social policy – Protection of the safety and health of workers – Directive 89/391/EEC – General obligations relating to the protection of safety and health – Parallel national proceedings – Judgment of an administrative court having force of *res judicata* before the criminal court – Classification of an event as an 'accident at work' – Effectiveness of the protection of the rights guaranteed by Directive 89/391 – Article 47 of the Charter of Fundamental Rights of the European Union – Right to be heard – Disciplinary proceedings against a judge of an ordinary court in the event of failure to comply with a decision of a constitutional court that is contrary to EU law – Primacy of EU law)

In Case C-792/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Braşov (Court of Appeal, Braşov, Romania), made by decision of 21 December 2022, received at the Court on 23 December 2022, in the criminal proceedings against

MG,

intervening parties:

Parchetul de pe lângă Judecătoria Rupea,

LV,

CRA,

LCM,

SC Energotehnica SRL Sibiu,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, L. Bay Larsen (Rapporteur), Vice-President of the Court, T. von Danwitz, P.G. Xuereb and A. Kumin, Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

* Language of the case: Romanian.

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Parchetul de pe lângă Judecătoria Rupea, by D. Câmpean, acting as Agent,

– the Romanian Government, by R. Antonie, E. Gane, and A. Rotăreanu, acting as Agents,

– the European Commission, by A. Armenia and D. Recchia, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 April 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 1(1) and (2) and Article 5(1) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1), and of Article 31(1) of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in the context of criminal proceedings brought against MG on charges of non-compliance with the legal measures on safety and health at work and of manslaughter.

Legal context

European Union law

3 The tenth recital of Directive 89/391 states:

'Whereas the incidence of accidents at work and occupational diseases is still too high; whereas preventive measures must be introduced or improved without delay in order to safeguard the safety and health of workers and ensure a higher degree of protection'.

4 Article 1(1) and (2) of that directive provides:

'1. The object of this Directive is to introduce measures to encourage improvements in the safety and health of workers at work.

2. To that end it contains general principles concerning the prevention of occupational risks, the protection of safety and health, the elimination of risk and accident factors, the informing, consultation, balanced participation in accordance with national laws and/or practices and training of workers and their representatives, as well as general guidelines for the implementation of the said principles.'

5 Article 4(1) of Directive 89/391 reads as follows:

'Member States shall take the necessary steps to ensure that employers, workers and workers' representatives are subject to the legal provisions necessary for the implementation of this Directive.'

6 Entitled 'General provision', Article 5 of that directive provides, in paragraph 1:

'The employer shall have a duty to ensure the safety and health of workers in every aspect related to the work.'

Romanian law

The Criminal Code and the Code of Criminal Procedure

7 Article 350 of the Codul penal (Criminal Code), entitled 'Failure to comply with legal measures concerning safety and health at work', provides:

'(1) Failure by any person to comply with obligations and measures established concerning safety and health at work, if it creates an imminent danger of an accident at work or occupational disease, shall be punishable by no less than six months and no more than three years of imprisonment or by a fine.

…

(3) The acts referred to in paragraphs 1 and 2 shall be punishable by no less than three months and no more than one year of imprisonment or by a fine where they are committed out of negligence.'

8 Article 192 of that code, entitled 'Manslaughter', provides, in paragraph 2 thereof:

'Manslaughter resulting from failure to comply with the legal provisions or precautionary measures established for the practice of a profession or trade or for the performance of a specific activity shall be punishable by no less than two years and no more than seven years of imprisonment. When a breach of the legal provisions or precautionary measures constitutes a criminal offence in itself, the rules on the concurrence of criminal offences shall apply.'

9 Article 52 of the Codul de procedură penală (Code of Criminal Procedure) provides, in paragraphs 1 and 2:

'(1) The criminal court shall have jurisdiction to hear any preliminary question for the determination of the case, even if, by its nature, the question falls within the jurisdiction of another court, except in situations where jurisdiction does not lie with the judiciary.

(2) The preliminary question shall be decided by the criminal court in accordance with the rules and means of proof relating to the subject matter of the question.'

The Law on safety and health at work

10 Article 5(g) of Legea nr. 319/2006 a securității și sănătății în muncă (Law No 319/2006 on safety and health at work) of 14 July 2006 (*Monitorul Oficial al României*, Part I, No 646 of 26 July 2006; 'the Law on safety and health at work'), which transposes Directive 89/391, provides:

'For the purposes of the present law:

…

(g) "accident at work" means serious injury to the body or acute occupational poisoning, sustained in the course of work or in the performance of work duties, which results in temporary incapacity to work for at least three calendar days, disability or death;

…'

11 Article 20(1) of that law provides:

'The employer shall ensure such conditions as to enable each worker to receive sufficient and adequate training in safety and health at work, in particular in the form of information and instructions specific to his or her workplace and job:

…

(b) in the event of a change of job …;

…'

12 Article 22 of that law is worded as follows:

'Each worker shall perform his or her work in accordance with his or her training and preparation and the instructions issued by his or her employer such as not to expose himself or herself or other persons who could be affected by his or her actions or failure to act in the context of work to risks of accident or occupational disease.'

13 In accordance with Article 29(1) of the Law on safety and health at work, regional labour inspectorates must conduct an inquiry where an event has resulted, in particular, in the death of a victim. According to Article 29(2) of that law, the result of the inquiry is to be documented in a report.

Minimum safety and health requirements

14 The cerințele minime de securitate și sănătate pentru utilizarea în muncă de către lucrători a echipamentelor de muncă (minimum safety and health requirements for the use of work equipment by workers at work), established by Hotărârea Guvernului nr. 1146/2006 (Government Decision No 1146/2006) of 30 August 2006 (*Monitorul Oficial al României*, Part I, No 815 of 3 October 2006), contain the following passages:

'3.3.2.1. In electrical installations and work equipment, protection against electrocution by direct contact shall be ensured by technical measures, supplemented by organisational measures.

…

3.3.2.3. Protection against electrocution by direct contact shall be ensured by means of the following organisational measures:

(a) operations on electrical installations (troubleshooting, repairs, connections, and so on) shall be carried out only by electricians who are qualified, authorised and trained for the work in question;

(b) operations must be based on one of the forms of work;

…

(e) work instructions shall be drawn up for each operation on electrical installations.

3.3.2.4. Operations on installations, machinery, equipment and appliances which use electricity shall be authorised only on the basis of the following forms of work:

…

(d) verbal instructions (VI);

…

3.3.23.1. In the case of electrical installations or work equipment on which work is carried out with or without interrupting the power, electro-insulating means of protection shall be used.

…

3.3.23.4. Work on electrical installations or equipment carried out without interrupting the power shall be carried out by personnel authorised to work on live systems.'

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

15 On 5 September 2017, an electrician employed by SC Energotehnica SRL Sibiu ('Energotehnica') died by electrocution during an operation on an outdoor light fixture on a low-voltage pylon on a farm.

16 It is apparent from the order for reference that MG, who was also employed by Energotehnica, was responsible for organising work, training staff and adopting measures to ensure safety at work and the provision of protective equipment.

17 Following that death, two procedures were conducted concerning the event at issue in the main proceedings, namely, first, an administrative inquiry procedure instituted by the Inspecția Muncii (Labour Inspectorate, Romania) against Energotehnica and, secondly, criminal proceedings against MG for failure to comply with the legal measures concerning safety at work and for manslaughter.

18 As regards, first, the administrative inquiry, the Labour Inspectorate, by an inquiry report of 9 September 2019, classified the event as an 'accident at work', within the meaning of the national legislation.

19 Energotehnica then brought administrative proceedings before the Tribunalul Sibiu (Regional Court, Sibiu, Romania) for the annulment of that report.

20 By judgment of 10 February 2021, that court annulled that report in part, holding, contrary to the classification adopted by the Labour Inspectorate, that the event at issue in the main proceedings did not constitute an accident at work.

21 The appeal brought by the Labour Inspectorate against that judgment was dismissed by a judgment of the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia, Romania) of 14 June 2021.

22 Secondly, as regards the criminal proceedings brought against MG, he was, following a bill of indictment issued by the Parchetul de pe lângă Judecătoria Rupea (Public Prosecutor's Office attached to the Court of First Instance, Rupea, Romania) on 31 July 2020, committed for trial before the Judecătoria Rupea (Court of First Instance, Rupea, Romania).

23 In its bill of indictment, that public prosecutor's office argued that, on 5 September 2017, at around 18.00, MG instructed the victim to carry out an operation on the light fixture in question, without any occupational safety and health measures being taken, namely without intervention by authorised personnel remaining under the supervision of MG. Thus, the victim carried out that operation without disconnecting the power supply and without using electro-insulating gloves.

24 The victim's successors became civil parties in proceedings before that court, requesting that MG and Energotehnica, the latter being liable under civil law for MG, be ordered to pay compensation for their loss.

25 By judgment of 24 December 2021, the Judecătoria Rupea (Court of First Instance, Rupea) discontinued the criminal proceedings against MG and dismissed the civil claim brought by the victim's successors. That court held, first, that there was reasonable doubt that MG gave a work instruction to the victim and that, secondly, the event at issue in the main proceedings took place outside working hours, with the result that it could not be classified as an accident at work.

26 The Public Prosecutor's Office attached to the Court of First Instance, Rupea, and the victim's successors lodged an appeal against that judgment before the Curtea de Apel Brașov (Court of Appeal, Brașov, Romania), which is the referring court.

27 That court notes that, in accordance with Romanian law, as interpreted in the light of the case-law of the Curtea Constituțională (Constitutional Court, Romania), the decision of the administrative court is binding on the criminal court because it has acquired the force of *res judicata*. The referring court states that the question whether the event that gave rise to the death of the victim constitutes an 'accident at work', within the meaning of the Law on safety and health at work, is a preliminary question, within the meaning of Article 52 of the Code of Criminal Procedure.

28 In that regard, the referring court states that the Curtea Constituțională (Constitutional Court), by decision of 17 February 2021, acknowledged absolutely the force of *res judicata* of civil judgments (*lato sensu*) settling such preliminary questions.

29 The referring court observes that, consequently, it is bound by the findings of the administrative court, which refused to classify the event at issue in the main proceedings as an accident at work, within the meaning of Romanian law.

30 The force of *res judicata* of such a classification would prevent it from ruling on the criminal or civil liability of the parties against whom proceedings are brought, since that classification is a constituent element of the offence on which it is called upon to rule.

31 In that regard, the referring court adds that the civil parties in the criminal proceedings were not heard before the administrative court, since the administrative proceedings were only between Energotehnica and the Labour Inspectorate.

32 Such impossibility of deciding whether criminal or civil liability is incurred in the present case, even though the parties heard in the two sets of proceedings are not the same, would undermine the principle of responsibility of the employer and the principle of the protection of workers, enshrined in Article 1(1) and (2) and Article 5(1) of Directive 89/391, read in the light of Article 31(1) of the Charter.

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

‘(1) Do the principle of the protection of workers and the principle of employer responsibility, enshrined in Article 1(1) and (2) and Article 5(1) of [Directive 89/391], transposed into national law by [the Law on safety and health at work], read in the light of Article 31(1) of the [Charter], preclude rules such as those which apply in the case in the main proceedings, [as interpreted] by a decision of the national Constitutional Court, in accordance with which an administrative court may, at the request of an employer and in *inter partes* proceedings involving only the State administrative authority, give a final ruling that an event does not constitute an accident at work, within the meaning of that directive, and may thus prevent a criminal court – seised both by a prosecutor bringing criminal proceedings against the worker responsible and by a civil party bringing civil proceedings against the employer as the party liable under civil law in the criminal proceedings, on the one hand, and the worker employed by that employer, on the other – from reaching a different decision regarding the characterisation of the same event as an accident at work, that characterisation being a constituent element of the offences tried in the criminal proceedings (without which it is impossible to make a finding of either criminal liability or civil liability alongside criminal liability), regard being had to the force of *res judicata* of the final administrative judgment?

(2) If the first question is answered in the affirmative, is the principle of the primacy of EU law to be interpreted as precluding national legislation or a national practice pursuant to which the ordinary national courts are bound by decisions of the national Constitutional Court and may not, for that reason, without committing a disciplinary offence, of their own motion disapply the case-law resulting from those decisions, even if, in light of a judgment of the Court of Justice, they take the view that that case-law is contrary to Article 1(1) and (2) and Article 5(1) of [Directive 89/391], transposed into national law by [the Law on safety and health at work], read in the light of Article 31(1) of [the Charter]?’

Consideration of the questions referred

Admissibility

34 The Romanian Government submits that the questions referred for a preliminary ruling are inadmissible.

35 In that regard, as far as the first question is concerned, that government submits that the appeal before the referring court was lodged in the context of proceedings seeking to establish the criminal liability of a worker and not of an employer, since the latter has only the status of a party liable under civil law in the criminal case. Directive 89/391 relates only to the obligation on employers to ensure the safety and health of workers in every aspect related to the work, and to the responsibility of employers in the event of failure to comply with that obligation. Thus, the legal relationship on which the referring court is called to rule does not fall within the scope *ratione materiae* of that directive. In those circumstances, the first question referred for a preliminary ruling is inadmissible.

36 As regards the second question, the Romanian Government submits that it is related, since it is dependent on the answer to the first question, with the result that it should also be dismissed as inadmissible.

37 In that regard, it should be borne in mind at the outset that it is solely for the national court before which the dispute in the main proceedings has been brought to assess the need for a preliminary ruling and the relevance of the questions which it submits to the Court, which enjoy a presumption of relevance. Thus, the Court is, in principle, bound to give a ruling where the question submitted concerns the interpretation or the validity of a rule of EU law, unless it is quite obvious that the interpretation sought bears no relation to the actual facts of the main proceedings or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to that question (judgment of 22 February 2024, *Unedic*, C-125/23, EU:C:2024:163, paragraph 35 and the case-law cited).

38 In the present case, it is apparent from the order for reference that the victim's successors became civil parties before the criminal court and claimed that the defendant and the employer should be ordered to pay compensation for their loss. Therefore, it cannot be considered that the dispute in the main proceedings does not concern the employer and that the problem raised by the first question is hypothetical. Furthermore, the question whether EU law precludes an administrative court from being able to rule, in a manner binding on a criminal court, on the classification of an event as an 'accident at work', within the meaning of Romanian law, is decisive for the outcome of the proceedings before the referring court.

39 Accordingly, the questions referred are admissible.

Substance

The first question

40 By its first question, the referring court asks, in essence, whether Article 1(1) and (2) and Article 5(1) of Directive 89/391, read in conjunction with Article 31 of the Charter and the principle of effectiveness, must be interpreted as precluding legislation of a Member State, as interpreted by the constitutional court of that Member State, under which the final judgment of an administrative court concerning the classification of an event as an 'accident at work' has the force of *res judicata* before the criminal court, where that legislation does not allow the successors of the worker who was the victim of that event to be heard in any of the proceedings ruling on the existence of such an accident at work.

41 It should be noted as a preliminary point that, according to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it (judgment of 13 June 2024, *Dyrektor Izby Administracji Skarbowej w Bydgoszczy (Actual cost of energy)*, C-266/23, EU:C:2024:506, paragraph 22 and the case-law cited).

42 To those ends, the Court may extract from all the information provided by the national court, in particular from the reasons in the order for reference, the points of EU law which require interpretation in view of the subject matter of the dispute in the main proceedings. The Court may also decide to take into consideration rules of EU law to which the national court has made no reference in the wording of its question (judgment of 25 April 2024, *PAN Europe (Closer)*, C-308/22, EU:C:2024:350, paragraph 86 and the case-law cited).

43 Thus, in the present case, it should be noted that the right to effective judicial protection, guaranteed under Article 47 of the Charter, is also relevant to the answer to be given to the questions referred.

44 As regards Directive 89/391, it is apparent from Article 1(1) thereof, read in the light of the tenth recital of that directive, that its purpose is to introduce preventive measures to encourage improvements in the safety and health of workers at work so as to ensure a higher degree of protection.

45 As stated in Article 1(2) thereof, that directive contains, in particular, general principles concerning the prevention of occupational risks, the protection of safety and health, the elimination of risk and accident factors and general guidelines for the implementation of those principles.

46 Moreover, Article 5(1) of Directive 89/391 states that the employer is to have a duty to ensure the safety and health of workers in every aspect related to the work.

47 As the Court stated in paragraph 41 of the judgment of 14 June 2007, *Commission* v *United Kingdom* (C-127/05, EU:C:2007:338), that provision makes the employer subject to the duty to ensure that workers have a safe working environment, a duty the meaning of which is specified in Articles 6 to 12 of that directive and by various individual directives which lay down the preventive measures to be adopted in certain specific industrial sectors.

48 The Court nevertheless held that that provision simply embodies a general duty of safety to which the employer is subject, without specifying any form of liability (judgment of 14 June 2007, *Commission* v *United Kingdom*, C-127/05, EU:C:2007:338, paragraph 42).

49 Consequently, as the Advocate General observed in point 39 of his Opinion and as the European Commission maintains, although Directive 89/391 refers to the principle of the responsibility of the employer and establishes general obligations relating to the protection of the safety and health of workers at work in every aspect related to the work, it does not contain any specific provisions concerning the detailed procedural rules for bringing proceedings to hold an employer liable for failure to comply with those obligations.

50 Similarly, although Article 31 of the Charter, to which the referring court makes reference in its first question referred for a preliminary ruling, provides, in paragraph 1 thereof, that 'every worker has the right to working conditions which respect his or her health, safety and dignity', it does not detail any procedural rules for seeking remedies where the protection of the safety and health of workers has not been ensured.

51 Since EU law does not harmonise the procedures applicable to the liability of the employer in the event of non-compliance with the requirements of Article 4(1) and Article 5(1) of Directive 89/391, those procedures fall within the domestic legal system of the Member States, by virtue of the principle of procedural autonomy of those States; nevertheless, those procedures must be no less favourable than those governing similar domestic actions (principle of equivalence) and not make it impossible in practice or excessively difficult to exercise the rights conferred by EU law (principle of effectiveness) (see, by analogy, judgment of 11 April 2024, *Air Europa Líneas Aéreas*, C-173/23, EU:C:2024:295, paragraph 31 and the case-law cited).

52 Furthermore, the Court has also held that, in the absence of EU legislation in this area, the rules implementing the principle of *res judicata* are also a matter for the national legal order, in accordance with the principle of the procedural autonomy of the Member States, but must be consistent with the principles of equivalence and effectiveness (judgment of 24 October 2018, *XC and Others*, C-234/17, EU:C:2018:853, paragraph 21 and the case-law cited).

53 In particular, when the Member States set out detailed procedural rules for legal actions intended to ensure the protection of rights conferred by Directive 89/391, they must ensure compliance with the right to an effective remedy and to a fair trial, enshrined in Article 47 of the Charter, which constitutes a reaffirmation of the principle of effective judicial protection. Thus, the Member States must ensure that the practical arrangements for the exercise of the remedies on account of a breach of the duties provided for by that directive do not disproportionately affect the right to an effective remedy before a court or tribunal referred to in Article 47 of the Charter (see, by analogy, judgment of 12 January 2023, *Nemzeti Adatvédelmi és Információszabadság Hatóság*, C-132/21, EU:C:2023:2, paragraphs 50 and 51).

54 That right comprises various elements, including, in particular, the right to be heard. In that regard, the Court has already held that it would be incompatible with the fundamental right to an effective legal remedy if a judicial decision were founded on facts and documents which the parties themselves, or one of them, have not had an opportunity to examine and on which they have therefore been unable to state their views (see, to that effect, judgment of 25 April 2024, *NW and PQ (Classified information)*, C-420/22 and C-528/22, EU:C:2024:344, paragraph 106 and the case-law cited).

55 Where a criminal court is called upon to rule on the civil liability arising from acts of which the defendant is accused, the right to be heard of the parties seeking to establish that liability would be infringed if it were not possible for them to adopt a position on a condition necessary for that liability to be incurred, before that condition is definitively decided by the court seised. In that case, the fact that those parties may take a position before a court on the employer's liability would be devoid of any practical effect.

56 The same would be true if the solution to be adopted as regards such a condition were decided, by a decision binding on the court called upon to rule on that liability, by another court before which the parties could not appear and did not, at the very least, have a genuine opportunity to present their arguments.

57 By contrast, where the parties did have such a right and, in particular, had the genuine opportunity to present their arguments, the fact that they did not exercise that right is irrelevant.

58 In the present case, it falls to the national court to ascertain whether the victim's successors, who were civil parties in the proceedings before the criminal court, had the right to be heard before the administrative court regarding, in particular, the definitive classification of the event at issue in the main proceedings as an 'accident at work'.

59 In the light of the foregoing, the answer to the first question is that Article 1(1) and (2) and Article 5(1) of Directive 89/391, read in conjunction with the principle of effectiveness and Article 47 of the Charter, must be interpreted as precluding legislation of a Member State, as interpreted by the constitutional court of that Member State, under which the final judgment of an administrative court concerning the classification of an event as an 'accident at work' has the force of *res judicata* before the criminal court called on to rule on the civil liability arising from the acts of which the defendant is accused, where that legislation does not allow the successors of the worker who was the victim of that event to be heard in any of the proceedings ruling on the existence of such an accident at work.

The second question

60 By its second question, the referring court asks, in essence, whether the principle of primacy of EU law must be interpreted as precluding the legislation of a Member State under which the ordinary national courts may not, on pain of disciplinary proceedings incurred by their members, refuse to apply of their own motion decisions of the constitutional court of that Member State, where they consider, in the light of the interpretation given by the Court of Justice, that those decisions infringe the rights that individuals derive from Directive 89/391.

61 At the outset, it should be noted that the national court, having exercised the discretion conferred on it by the second paragraph of Article 267 TFEU, must, if necessary, disregard the rulings of a higher national court if it considers, having regard to the interpretation provided by the Court, that they are not consistent with EU law, if necessary refusing to apply the national rule requiring it to comply with the decisions of that higher court (judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 75 and the case-law cited).

62 In that regard, that solution applies in particular where an ordinary court is bound by a decision of a national constitutional court that it considers to be contrary to EU law (see, to that effect, judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 76 and the case-law cited).

63 In that context, it is important to recall that the principle that national law must be interpreted in conformity with EU law requires national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by it, with a view to ensuring that the directive in question is fully effective and to achieving an outcome consistent with the objective pursued by it. That requirement to interpret national law in conformity with EU law entails, in particular, the obligation for national courts to change established case-law, where necessary, if it is based on an interpretation of national law that is incompatible with the objectives of a directive (judgment of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, C-684/16, EU:C:2018:874, paragraphs 59 and 60 and the case-law cited).

64 As regards the possible incurring of disciplinary liability on the part of a national judge, the Court has held that EU law precludes national rules or a national practice under which any failure to comply with the decisions of a national constitutional court by a national judge can trigger his or her disciplinary liability (see, to that effect, judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 87 and the case-law cited).

65 It is true that, as regards the disciplinary liability that the judges of ordinary courts may incur, in the event of failure to comply with the decisions of a national constitutional court, the safeguarding of the independence of the courts cannot, in particular, have the effect of totally excluding the possibility that the disciplinary liability of those judges may, in certain entirely exceptional cases, be triggered as a result of judicial decisions adopted by them, such as in the case of serious and totally inexcusable forms of conduct on the part of judges (see, to that effect, judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 83 and the case-law cited).

66 Nevertheless, it appears essential, in order to preserve that independence, not to expose the judges of ordinary courts to disciplinary proceedings or measures for having exercised the discretion to make a reference for a preliminary ruling to the Court under Article 267 TFEU, which is exclusively within their jurisdiction (see, to that effect, judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraphs 83 to 85 and the case-law cited).

67 In the light of the foregoing considerations, the answer to the second question is that the principle of primacy of EU law must be interpreted as precluding the legislation of a Member State under which the ordinary national courts may not, on pain of disciplinary proceedings incurred by their members, refuse to apply of their own motion decisions of the constitutional court of that Member State, where they consider, in the light of the interpretation given by the Court of Justice, that those decisions infringe the rights that individuals derive from Directive 89/391.

Costs

68 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (First Chamber) hereby rules:

1. **Article 1(1) and (2) and Article 5(1) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, read in conjunction with the principle of effectiveness and Article 47 of the Charter of Fundamental Rights of the European Union,**

   must be interpreted as precluding legislation of a Member State, as interpreted by the constitutional court of that Member State, under which the final judgment of an administrative court concerning the classification of an event as an 'accident at work' has the force of *res judicata* before the criminal court called on to rule on the civil liability arising from the acts of which the defendant is accused, where that legislation does not allow the successors of the worker who was the victim of that event to be heard in any of the proceedings ruling on the existence of such an accident at work.

2. **The principle of primacy of EU law**

   must be interpreted as precluding the legislation of a Member State under which the ordinary national courts may not, on pain of disciplinary proceedings incurred by their members, refuse to apply of their own motion decisions of the constitutional court of that Member State, where they consider, in the light of the interpretation given by the Court of Justice, that those decisions infringe the rights that individuals derive from Directive 89/391.

[Signatures]