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INDIVIDUAL ACCESS TO CONSTITUTIONAL JUSTICE IN THE EU LEGAL ORDER

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I am delighted to be here today and to deliver the keynote speech before such a distinguished audience. I welcome the initiative of creating the 'Balkan Constitutional Courts Forum', since it provides the right venue for constitutional courts from Southeast Europe to engage in fruitful discussions. As a patron of the first edition of this forum, I feel deeply honoured.

I am happy to see that the Balkan Constitutional Courts Forum is open to European constitutional courts from non-EU Member States. This openness allows those courts to become acquainted with 'EU constitutionalism', the respect of which is a *conditio sine qua non* for accession.

I would also like to congratulate the organisers of this Forum for having chosen a topic that is so vital for democratic societies at present. Respect for democracy, the rule of law and fundamental rights requires individual access to constitutional justice. *Without that*

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access, democracy would become tantamount to the tyranny of the majority, since a sphere of individual freedom would not be protected. *Without that access*, the rule of law would become no more than an empty promise, since the enforcement of the law would be subject to political considerations. *Without that access*, individuals would be deprived of any means of standing for the rights that EU law confers upon them.

Individual access to constitutional justice is therefore integral to the values on which the EU is founded. It forms part of the constitutional traditions common to the Member States and is part of our heritage as Europeans.

In the EU legal order, individual access to constitutional justice may be seen from two, albeit interrelated, perspectives. Those two perspectives are interrelated because they both seek to uphold the rule of law within the EU.

On the one hand, the EU institutions must comply with primary EU law, including the Charter of Fundamental Rights of the EU (the 'Charter'). This means, in essence, that individuals must have access to justice in cases of judicial review of EU measures. On the other hand, since the application of EU law is largely decentralised, it is for national authorities to apply that law. In doing so, those authorities must respect the rights that EU law confers on individuals. It follows that individuals must therefore have access to justice in cases where

the Member States adversely affect the exercise of those rights. I shall therefore divide my speech into two parts, mirroring those two perspectives.

However, when examining those two perspectives, one must bear in mind that the EU judiciary is vertically integrated. Within the EU, judicial power is shared between the Court of Justice and national courts.[1] Whilst it is for the Court of Justice to say what the law of the EU is, it is for the national court to apply that law to the case before it. This means that the Court of Justice and national courts are called upon to cooperate, notably by means of the preliminary ruling mechanism. This also means that the EU system of judicial protection, in general, and access to justice, in particular, must be examined in the light of that judicial cooperation.

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[1] Judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, para. 32 (holding that ‘ Article 19 TEU, which gives concrete expression to the value of the rule of law stated in Article 2 TEU, entrusts the responsibility for ensuring judicial review in the EU legal order not only to the Court of Justice but also to national courts and tribunals’).

I. Access to Justice and Judicial Review of EU Measures

When it comes to the judicial review of EU measures, the EU Courts – the Court of Justice and the General Court – enjoy exclusive jurisdiction. In order to safeguard the uniformity of EU law, national courts lack the power to annul or declare invalid EU measures.[2]

Before the General Court – and on appeal before the Court of Justice –, individuals may therefore bring an action for annulment against any EU acts that are intended to produce legal effects *vis-à-vis* third parties, provided that they enjoy standing to do so.[3]

In that regard, the authors of the Treaties have laid down three types of acts in relation to which individuals may enjoy standing. Broadly speaking, those three types of acts relate to EU measures that are either addressed to the applicant or that are of direct and individual concern to him or her. Applicants may also enjoy standing to challenge regulatory acts – which may be defined as non-legislative

[2] See, e.g., judgment of 22 October 1987, *Foto-Frost*, 314/85, EU:C:1987:452, para. 20; of of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, para. 96, and of judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, para. 71.

[3] The fourth paragraph of Article 263 TFEU provides that '[a]ny natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures'.

acts of general application – that are of direct concern to them and do not entail implementing measures.[4]

This means that it is very difficult for individuals to challenge EU legislative acts before the EU Courts, since it will be very likely that they lack standing to do so. This does not mean, however, that individuals do not have access to justice. It is for national courts to provide that access.[5] In that regard, individuals may challenge before national courts national measures which implement the EU legislative act in question. Allow me to illustrate this point by looking at an example taken from the case law of the Court of Justice.

In *Schwarz*,[6] a German citizen applied for a German passport but refused to have his fingerprints taken. His application was rejected by German authorities, on the basis of an EU regulation requiring Member States to provide for passports and travel documents that contain a chip in which a facial image and two fingerprints had to be stored.[7]

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[4] Judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, para. 61.

[5] *Ibid*., para. 93 (holding that 'natural or legal persons who cannot, by reason of the conditions of admissibility stated in the fourth paragraph of Article 263 TFEU, challenge directly European Union acts of general application do have protection against the application to them of those acts. … Where that implementation is a matter for the Member States, such persons may plead the invalidity of the European Union act at issue before the national courts and tribunals and cause the latter to request a preliminary ruling from the Court of Justice, pursuant to Article 267 TFEU').

[6] Judgment of 17 October 2013, *Schwarz*, C-291/12, EU:C:2013:670.

[7] Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (OJ 2004

It seems to me that Mr Schwarz would not have standing to challenge that EU regulation, a legislative act, before the EU Courts. He could nevertheless challenge the decision adopted by the German authorities rejecting his application, which he did. Before the competent German court, he argued that the EU regulation in question was not adopted under the appropriate legal basis. He also argued that the requirement of having his fingerprints taken was a disproportionate limitation on the exercise of his fundamental rights to privacy and data protection. Having doubts as to whether those arguments were well-founded, the German court was obliged to refer the matter to the Court of Justice, since it lacked jurisdiction to possibly declare invalid the EU Regulation in question.

Therefore, it is the cooperation between national courts and the Court of Justice, via the preliminary reference mechanism, that ensures individual access to justice in cases of judicial review of EU legislative acts.

As to the merits of the case, the Court of Justice reasoned that the EU regulation in question was adopted under the appropriate legal basis. Whilst the wording of the relevant Treaty provision did not explicitly refer to issues relating to passports, it did authorise the EU legislator to adopt 'Measures … which shall establish … standards and procedures to be followed by Member States in carrying out checks

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L 385, p. 1), as amended by Regulation (EC) No 444/2009 of the European Parliament and of the Council of 6 May 2009 (OJ 2009 L 142, p. 1; corrigendum: OJ 2009 L 188, p. 127).

on persons at [the external] borders [of the EU]'. Those checks necessarily concern documents that must be presented at those borders, such as passports. Moreover, the Court of Justice acknowledged that the EU Regulation at issue imposed a limitation on the exercise of the fundamental rights of privacy and data protection of passport holders. However, that limitation – the requirement of obtaining the two fingerprints – pursued two legitimate objectives, namely first, to prevent the falsification of passports and second, to prevent fraudulent use thereof (i.e. use by persons other than their genuine holders). It was also proportionate, since the data stored was not accessible to everyone and the EU legislator had provided for specific and effective guarantees that sought to prevent the personal data stored in the passports from being misused and abused.

Cases like *Schwarz* are not isolated events, but point towards the procedural path that individuals must follow when calling into question the validity of EU legislative measures. Similarly, cases like *Test-Achats*,[8] *Digital Rights Ireland*,[9] *Schrems*,[10] *VYSOČINA WIND*,[11] and *Orde van Vlaamse Balies*[12] show that individuals, companies and associations which represent collective interests (e.g. consumer and

[8] Judgment of 1 March 2011, *Association belge des Consommateurs Test-Achats and Others*, C-236/09, EU:C:2011:100.

[9] Judgment of 8 April 2014, *Digital Rights Ireland and Others*, C-293/12 and C-594/12, EU:C:2014:238.

[10] Judgment of 6 October 2015, *Schrems*, C-362/14, EU:C:2015:650.

[11] Judgment of 25 January 2022, *VYSOČINA WIND*, C-181/20, EU:C:2022:51.

[12] Judgment of 8 December 2022, *Orde van Vlaamse Balies and Others*, C-694/20, EU:C:2022:963.

professional associations) can be successful on the merits of their claims.

Individuals play a pivotal role in securing the respect of the rule of law within the EU. This is because individuals seek not only to protect their fundamental rights but also to uphold the allocation of competences sought by the authors of the Treaties.

II. Access to justice before national courts: the environment

A. Right to effective remedies

As the Court of Justice famously held in *van Gend en Loos*,[13] the judicial protection of EU rights is based on a system of 'dual vigilance': in addition to the supervision carried out by the European Commission and the Member States, individuals are entitled to defend their EU rights in the Member State courts.

It is, first and foremost, for national courts to afford effective judicial protection to the rights that EU law confers on individuals. With the entry into force of the Treaty of Lisbon in 2009, this obligation was codified in the second subparagraph of Article 19(1) TEU, which reads as follows: 'Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.' This provision gives concrete expression to the rule of law within the

[13] Judgment of 5 February 1963, *van Gend & Loos*, 26/62, EU:C:1963:1.

EU,[14] and reaffirms the fundamental right to effective judicial protection enshrined in Article 47 of the Charter.[15]

Article 19(1)TEU also preserves the vertical allocation of powers sought by the authors of the Treaties. This is because, in the absence of EU harmonisation, it is for the domestic legal system of each Member State to determine the remedies in accordance with the principle of procedural autonomy, provided that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the EU legal order (principle of effectiveness).[16]

The entire European enterprise revolves around granting rights which are always accompanied by effective remedies. The EU system of judicial protection may, in my view, be summarised by the maxim '*Ubi ius ibi remedium*'.

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[14] Judgments of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C‑216/18 PPU, EU:C:2018:586, para. 50; of 24 June 2019, *Commission v Poland (Independence of the Supreme Court)*, C‑619/18, EU:C:2019:531, para. 47; and of 5 November 2019, *Commission v Poland (Independence of ordinary courts)*, C‑192/18, EU:C:2019:924, para. 98.

[15] Judgments of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C‑64/16, EU:C:2018:117, para. 35 and of 24 June 2019, *Commission v Poland (Independence of the Supreme Court)*, C‑619/18, EU:C:2019:531, para. 49 (holding that 'the principle of the effective judicial protection of individuals' rights under EU law, thus referred to in the second subparagraph of Article 19(1) TEU,… is now reaffirmed by Article 47 of the Charter').

[16] Judgments of 16 December 1976, *Rewe-Zentralfinanz and Rewe-Zentral*, 33/76, EU:C:1976:188, para. 5; and of 16 December 1976, *Comet*, 45/76, EU:C:1976:191, paras 13 to 16. More recently, see, e.g., judgment of 8 November 2016, *Lesoochranárske zoskupenie VLK*, C‑243/15, EU:C:2016:838, para. 65.

Allow me to illustrate this point by looking at the way in which EU law has guaranteed access to justice, by having a positive impact on national rules of procedure. To that end, I shall look at three types of rules. First, those on standing, second, those on access to information and, last but not least, those on the cost of judicial proceedings. I have decided to examine three cases relating to environmental law, since it is an area where EU law, as interpreted by the Court of Justice, has significantly improved access to justice at the national level.

In the field of environmental law, standing rules are essential in order to guarantee an appropriate access to justice, since 'members of the public and associations are naturally required to play an active role in defending the environment'.[17] In the seminal case *Deutsche Umwelthilfe* (*Approval of motor vehicles*) (2022) ,[18] one of the questions that arose was whether German law could preclude an environmental NGO from challenging an administrative decision authorising Volkswagen to use a software that was allegedly prohibited by an EU regulation,[19] since it reduced, in view of the applicant, the effectiveness of emission control systems.

[17] Judgment of 11 April 2013, *Edwards and Pallikaropoulos*, C-260/11, EU:C:2013:221, para. 40.

[18] Judgment of 8 November 2022, *Deutsche Umwelthilfe (Approval of motor vehicles)*, C-873/19, EU:C:2022:857.

[19] Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ 2007 L 171, p. 1).

In order to answer that question, the Court of Justice had to interpret the Aarhus Convention, an international agreement, adopted under the auspices of the UN, to which the EU and all 27 Member States are parties.[20] The Aarhus Convention seeks to facilitate access to justice in environmental matters. In particular, Article 9(3) of that Convention states that members of the public that meet the criteria, if any, laid down in national law, have access to administrative or judicial procedures to challenge acts by public authorities which contravene provisions of national law relating to the environment.

The crux of the case was, first, determining whether that provision of the Aarhus Convention applied to the case at hand, despite the fact that the EU legislation at issue concerned car manufacturing and that German law precluded administrative decisions implementing that EU legislation from being challenged by environmental NGOs. Second, if German standing rules did not comply with the Aarhus Convention, the question was what the national court could do about it, bearing in mind that Article 9(3) of that Convention does not produce direct effect.[21]

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[20] Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus (Denmark) on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1; 'the Aarhus Convention').

[21] Judgment of 8 November 2022, *Deutsche Umwelthilfe (Approval of motor vehicles)*, C-873/19, EU:C:2022:857, para. 66 (holding that 'Article 9(3) of the Aarhus Convention does not have direct effect in EU law and cannot, therefore, be relied on, as such, in a dispute falling within the scope of EU law, in order to disapply a provision of national law which is contrary to it').

To begin with, the Court of Justice held that the Aarhus Convention applied to the case at hand, since the EU regulation in question, whilst laying down rules on car manufacturing, sought to protect the environment. That was so, regardless of the fact that the legal basis of that regulation pertained to the internal market. Next, since the applicant in the main proceedings was, under German law, an environmental NGO which met the criteria to be considered a 'member of the public', within the meaning of the Aarhus Convention, it enjoyed standing to challenge the administrative decision in question. Moreover, the Court held that the Member States may not deny such standing to the applicant, given that such denial would amount to reducing unilaterally the scope *ratione materiae* of the Aarhus Convention. Lastly, the Court of Justice observed that when adopting the administrative decision at issue, German authorities were implementing EU law for the purposes of the Charter. This meant, in essence, that Article 47 applied to the case at hand. The national court could therefore rely on this Charter provision, which may produce direct effect, in order to set aside conflicting national rules on standing.

From the perspective of individual access to constitutional justice, *Deutsche Umwelthilfe* (*Approval of motor vehicles*) is an interesting case showing that international law obligations may facilitate access to justice and may bring about change on national rules of procedure. It also shows how the Charter gives impetus to those international law

obligations, which may benefit from the normative force of EU law and notably, from the principle of direct effect. This case also demonstrates how the dialogue between national courts and the Court of Justice serves to clarify that a Member State may not unilaterally modify the scope *ratione materiae* of an international agreement entered into by the EU and the Member States. Last, but not least, it is worth noting that countries such as Albania, Bosnia and Herzegovina, Montenegro and Northern Macedonia are also parties to the Aarhus Convention.[22] Their courts can therefore draw inspiration from the judgments of the Court of Justice in interpreting that Convention, thereby aligning their findings with the EU *acquis*, which, needless to say, contributes to smoothing the path towards accession.

Furthermore, access to justice means that individuals must be sufficiently informed in order to defend their rights effectively. In *Flausch and Others*,[23] for example, the Greek regional authorities launched a public participation procedure concerning the creation of a tourist resort that would transform the small island of Ios completely (≈100 km^2). The problem was that the notice inviting the public to participate was published in the local newspaper of a another island, that of Syros, where the regional administrative authority has its seat. It is worth nothing that the two islands are quite apart. It takes several hours by high-speed vessels, which do not operate on a daily basis.

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[22] This information is available at the following hyperlink: UNTC.

[23] Judgment of 7 November 2019, *Flausch and Others*, C-280/18, EU:C:2019:928.

Subsequently, the Minister for the Environment gave his consent to the project and published the decision on the website of the Ministry. Under Greek law, that publication set running a period of 60 days for bringing proceedings. However, the applicants – who were three individuals who own property on the island of Ios and three associations – only brought proceedings when the works to develop the resort started, that is to say, one and a half years after the Minister gave his consent.

The referring court asked, in essence, the Court of Justice two questions. First, whether the notice of invitation complied with EU law. Second, whether the period of 60 days ensured sufficient judicial protection of EU rights. The Court found that, unless the local newspaper of the island of Syros had a wide circulation on the island of Ios, which did not appear to be the case but was for the referring court to verify, the public concerned was not sufficiently informed. Unless it constituted a disproportionate effort, Greek authorities should have informed the public concerned at the level of the municipal unit within which the site of the project fell, that is to say, that of the island of Ios. As to the time limit of 60 days, the Court found that, since the public had not been sufficiently informed about the launch of the public participation procedure, no one could be deemed informed of the publication of the corresponding final decision.

It follows from *Flausch and Others* that, in the EU legal order, access to information in a timely fashion is vital for ensuring access to justice.

Last, but not least, the cost of judicial proceedings may not constitute a barrier to justice. Notably, it cannot operate as a deterrent which prevents individuals from seeking the judicial protection of their rights. The Aarhus Convention and EU environmental law implementing it state that 'judicial proceedings should not be prohibitively expensive'. The Court of Justice has interpreted the expression 'not prohibitively expensive' as preventing that deterrent effect. It has held – and I quote – that 'the persons [concerned] should not be prevented from seeking, or pursuing a claim for, a review by the courts that falls within the scope of [the Aarhus Convention] by reason of the financial burden that might arise as a result'.[24] However, if the person concerned does bring a claim, that does not automatically mean that the expenses involved in the judicial proceedings are reasonable. As the Court of Justice held in *Edwards and Pallikaropoulos*, 'the fact that a claimant has not been deterred, in practice, from asserting his claim is not of itself sufficient to establish that the proceedings are not prohibitively expensive for him'.[25] Most importantly, the Court has examined the criteria that national courts must take into account when interpreting the expression 'not

[24] Judgment of 11 April 2013, *Edwards and Pallikaropoulos*, C-260/11, EU:C:2013:221, para. 35.

[25] *Ibid.*, para. 47.

prohibitively expensive'. Notably, it has pointed out that 'the cost of proceedings must neither exceed the financial resources of the person concerned nor appear, in any event, to be objectively unreasonable'.[26]

B. Judicial Independence

Until recently, providing effective remedies was deemed sufficient in itself to secure the primacy, the unity and the effectiveness of EU law. With effective remedies, European integration was able to move forward, given that individual access to constitutional justice was secured. The case law of the Court of Justice focused on the effectiveness of the remedies to be provided by national courts rather than on protecting the independence of the national courts providing those remedies. The case law of the Court of Justice did not relate to concerns that the judicial independence of a national court was in doubt.[27]

Perhaps, given that the principle of judicial independence stems from the constitutional traditions common to the Member States as one of the founding tenets of any democratic system of governance, it was assumed that national governments would not threaten it. That principle was "uncontested and incontestable".[28] It was taken as read that national governments would encourage citizens to trust the courts

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[26] *Ibid*., para. 40.

[27] K Lenaerts, 'New Horizons for the Rule of Law Within the EU' (2020) 21 *German Law Journal*, 29-34.

[28] T. von Danwitz, 'Values and the Rule of Law: Foundations of the European Union – An Inside Perspective from the ECJ' (2018) 21 *PER /PELJ* 1-17.

as the ultimate arbiters of any legal dispute, including in situations where a court ruling opposed the political majority of the day. The motto "in courts we trust" also applied to matters falling within the scope of EU law. It was thus assumed, perhaps naively, that after taking up EU membership the new Member State will remain committed to defending liberal democracy, fundamental rights and a government of laws, not men.

However, recent developments show that this assumption cannot simply be taken for granted.[29] Those developments show that some Member States have adopted measures that may undermine the independence of national courts. Those measures may relate *inter alia* to the composition of a 'court or tribunal',[30] within the meaning of EU law, and the appointment, length of service and grounds for abstention, recusal and dismissal of its members. In particular, they may relate to disciplinary matters,[31] secondments,[32] and involuntary transfers.[33]

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[29] See D. Adamski, 'The social contract of democratic backsliding in the "new EU" countries' (2019) 56 *Common Market Law Review* 623–666.

[30] Both the Court of Justice and the ECtHR have ruled that the right to an independent judge or tribunal "established by the law" -- as provided for by Articles 6 ECHR and 47 of the Charter – "encompasses, by its very nature, the process of appointing judges." "[An] irregularity committed during the appointment of judges within the judicial system concerned entails an infringement of the first sentence of the second paragraph of Article 47 of the Charter." See judgment of 26 March 2020, *Review Simpson v Council and HG v Commission*, C-542/18 RX-II and C-543/18 RX-II, EU:C:2020:232, paras 73 - 75. As to the ECtHR, see *Guðmundur Andri Ástráðsson v. Iceland* [Grand Chamber], app. no. 26374/18, CE:ECHR:2020:1201JUD002637418, para. 98.

[31] See, *e.g.*, judgment of 15 July 2021, *Commission v Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, para. 1.

Judicial independence forms part of the essence of the right to a fair trial.[34] Without it, there cannot be effective remedies, let alone effective judicial protection. Individual access to constitutional justice means that individuals have access to an independent and impartial judge previously established by law. In the EU legal order, the independence of national courts is of vital importance for the establishment, functioning and survival of the EU system of judicial protection. National courts are the 'building blocks' of that system.[35] In the absence of national courts, that system would simply collapse. *Without judicial independence*, national courts no longer have access to the preliminary reference mechanism, thereby jeopardising the uniform application of EU law and the equality of individuals before the law. Trust amongst national courts is broken and the free movement of judicial decisions halted. *Without judicial independence*, there is simply no *justice* to which individuals may have access.

Those structural considerations compel EU law to protect judicial independence. By virtue of Article 19(1) TEU, a Treaty provision that

[32] See judgment of 16 November 2021, *Prokuratura Rejonowa w Mińsku Mazowieckim and Others*, C-748/19 to C-754/19, EU:C:2021:931.

[33] See judgment of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, C-487/19, EU:C:2021:798.

[34] Judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, para. 48. See, most recently, judgment of 7 September 2023, *Asociaţia "Forumul Judecătorilor din România"*, C-216/21, EU:C:2023:628, para. 62.

[35] K. Lenaerts, 'On Checks and Balances: the Rule of Law within the EU' (2023) 29(2) *Columbia Journal of European Law* 25.

produces direct effect,[36] any national measure that undermines judicial independence must be set aside.[37]

Very importantly for present purposes, the requirement of courts being independent applies not only to ordinary courts but also to constitutional courts. As the Court of Justice famously held in *Eurobox and Others* and subsequently in *RS*, EU law '[does] not preclude national rules or a national practice under which the decisions of the constitutional court are binding on the ordinary courts, provided that the national law guarantees the independence of that constitutional court in relation, in particular, to the legislature and the executive'. 'However', the Court of Justice stressed that 'if the national law does not guarantee such independence, EU law preclude[s] such national rules or such a national practice since such a constitutional court is not in a position to ensure the effective judicial protection required by the second subparagraph of Article 19(1) TEU'.[38]

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[36] Judgment of 22 March 2022, *Prokurator Generalny and Others (Disciplinary Chamber of the Supreme Court - Appointment)*, C-508/19, EU:C:2022:201, para. 74.

[37] See, e.g., Judgment of 13 July 2023, *YP and Others (Lifting of a judge's immunity and his or her suspension from duties)*, C-615/20 and C-671/20, EU:C:2023:562, para. 76 (holding that 'the direct effect attaching to the second subparagraph of Article 19(1) TEU means that the national courts must disapply a resolution which leads, in breach of that provision, to the suspension of a judge from his or her duties where that is essential in view of the procedural situation at issue in order to ensure the primacy of EU law').

[38] See, to that effect, judgments of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, para. 230 and of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, para. 44. See also order of 7 November 2022, *FX and Others (Effect of the decisions of a Constitutional Court III)*, C-859/19, C-926/19 and C-929/19, EU:C:2022:878, para.119.

III. Concluding remarks

Compliance with the rule of law not only requires access to justice and an independent and impartial tribunal previously established by law, but also requires all public authorities to uphold the principle of finality of judgments.

This means, in essence, that public authorities must not call into question the position taken by a court in a final decision. As the Court of Justice held in *Torubarov*, 'the right to an effective remedy would be illusory if a Member State's legal system were to allow a final, binding judicial decision to remain inoperative to the detriment of one party'.[39] In the same way, 'the fact that the public authorities do not comply with a final, enforceable judicial decision', the Court wrote in the seminal case *Deutsche Umwelthilfe* (2019), 'deprives [Article 47 of the Charter] of all useful effect'.[40] In the EU legal order, the principle of finality of judgments also applies to those issued by the Court of Justice. Accordingly, when it comes to the interpretation of EU law, the Court of Justice has the *final* say,[41] and when it comes to the validity of that law, it has the *only* say.[42] Otherwise, if public authorities, in general, and national courts, in particular, were to

[39] Judgment of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626, para. 57.

[40] Judgment of 19 December 2019, *Deutsche Umwelthilfe*, C-752/18, EU:C:2019:1114, para. 37.

[41] See, in this regard, judgments of 2 September 2021, *Republic of Moldova*, C-741/19, EU:C:2021:655, para. 45, and of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, para. 52.

[42] See judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, para. 71.

second-guess the interpretation of EU law put forward by the Court of Justice, the rule of law within the EU would become no more than the rule of lawlessness.

The principle of finality of judgments shows that courts in democratic societies do not have the power of the purse, or that of the sword, but must rely on the political branches of government for the enforcement of their judgments. They are, as Alexander Hamilton famously said in the *Federalist* No. 78, the 'least dangerous branch'. And yet, they are entrusted with the noblest of missions, that of pursuing justice by upholding the rule of law.

That is why, dear colleagues and friends, we have no choice but to continue working together in improving the quality of our decisions so that both public authorities and individuals know, without a shadow of a doubt, that we, judges, are fully committed to delivering justice for all.

Thank you very much