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## PRESS RELEASE No 17/23

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Advocate General's Opinion in Case C-817/21 | Inspekția Judiciară

### **Judicial Disciplinary Bodies: according to Advocate General Collins, EU law precludes national legislation making the Deputy Chief Inspector responsible for overseeing the investigation of complaints against the Chief Inspector**

The Judicial Inspectorate of Romania is the judicial body responsible for the conduct of disciplinary investigations and the commencement of disciplinary proceedings against judges and prosecutors in Romania. Under the rules governing the Judicial Inspectorate, the Chief Inspector appoints the Deputy Chief Inspector at his or her sole discretion, the term of office of the Deputy Chief Inspector depends upon and coincides with that of the Chief Inspector, and all Judicial Inspectors are subordinate to the Chief Inspector upon whom the progress of their careers depends.

The Court of Appeal of Bucharest, Romania seeks to ascertain whether a body, such as the Judicial Inspectorate, must offer the same guarantees of independence and impartiality as are required of courts under EU law. In particular, it asks whether EU law precludes national legislation or regulations that make the Deputy Chief Inspector of the Judicial Inspectorate responsible for overseeing the investigation of complaints made against its Chief Inspector and any disciplinary investigations and proceedings that might arise therefrom.

In his Opinion delivered today, Advocate General Collins confirms the Court's case-law<sup>1</sup> that while the organisation of justice falls within the competence of the Member States, the exercise of that power must comply with EU law. The disciplinary regime applicable to judges must thus provide the necessary guarantees in order to prevent any risk of it being used as a system of political control over their activities.

In its judgment *Asociația 'Forumul Judecătorilor din România'*,<sup>2</sup> the Court held that Romanian legislation on interim appointments to management positions in the Judicial Inspectorate must comply with EU law requirements, in particular, with the rule of law. Given the extent of the Judicial Inspectorate's powers to conduct disciplinary investigations and to bring disciplinary proceedings against judges and prosecutors, those requirements equally apply to the interim appointment of its Chief Inspector and to the organisation and operation of the Judicial Inspectorate. Since the law confers extensive powers and prerogatives on the Chief Inspector, he or she is also obliged to meet those requirements.

The Advocate General observes that the Judicial Inspectorate's decisions to dismiss a complaint against a judge or prosecutor may be appealed to the Court of Appeal of Bucharest and in turn to the High Court of Cassation and

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<sup>1</sup> Judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, [C-83/19](#), [C-127/19](#), [C-195/19](#), [C-291/19](#), [C-355/19](#) and [C-397/19](#) (see also [Press Release 82/21](#)).

<sup>2</sup> *Idem*, paragraphs 182 and 184.

Justice. The availability of legal proceedings by complainants to challenge the decisions of a disciplinary body is essential but may nevertheless be insufficient to address systemic concerns raised in the context of the operation of that disciplinary regime.

Given the Chief Inspector's extensive powers, his or her decisive role within the Judicial Inspectorate and the absence of any internal mechanism to restrain an inappropriate use of those powers, the Judicial Inspectorate must treat disciplinary complaints against that individual with the utmost professionalism and impartiality in order to ensure public confidence in that body and in the entire judiciary. The fact that the Chief Inspector of the Judicial Inspectorate appoints the Deputy Chief Inspector at his or her sole discretion may be of concern since the latter is responsible for deciding whether to investigate complaints and to bring disciplinary proceedings against the Chief Inspector.

The Advocate General observes that, prior to the adoption of national legislation in 2018<sup>3</sup>, the Supreme Council of the Judiciary appointed both the Chief Inspector and the Deputy Chief Inspector following a similar procedure and the Deputy Chief Inspector's term of office was independent of that of the Chief Inspector. Since then, it appears that the Deputy Chief Inspector is appointed at the sole discretion of the Chief Inspector and that his or her term of office depends upon, and coincides with, that of the Chief Inspector. The laws and the regulations governing the Judicial Inspectorate do not provide any internal mechanism to review allegations of an inappropriate use of the Chief Inspector's extensive powers, other than by way of disciplinary procedures.

The Advocate General concludes that **the legislation adopted in 2018 may undermine considerably the public perception that the Deputy Chief Inspector can oversee disciplinary investigations and proceedings on complaints against the Chief Inspector in an objective and impartial manner. Its adoption thus appears to amount to a regression in the protection of the rule of law in Romania.**

Despite the duty on the Deputy Chief Inspector to act in an independent and impartial manner, he or she may be perceived as having a personal interest in the outcome of any disciplinary investigations and/or proceedings against the Chief Inspector. It is, moreover, evident that all Judicial Inspectors within the Judicial Inspectorate are subordinate to the Chief Inspector and that their career progression depends upon who holds that office. This may also undermine the public perception that Judicial Inspectors investigate complaints against the Chief Inspector in a professional and impartial manner.

Advocate General Collins concludes that in the light of such circumstances, **EU law precludes national legislation or regulations that, inter alia, make the Deputy Chief Inspector of the Judicial Inspectorate responsible for overseeing disciplinary investigations and proceedings against its Chief Inspector.**

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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<sup>3</sup> Legea nr. 234/2018 (Law No 234/2018) of 4 October 2018, Monitorul Oficial al României, Part I, No 850 of 8 October 2018.

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