



PRESS RELEASE No 129/23

Luxembourg, 24 July 2023

Judgment of the Court in Case C-107/23 PPU | Lin¹

Combating fraud against the European Union's financial interests: national rules on limitation periods for criminal liability must allow effective prevention and punishment

National courts are required, in principle, to disregard national rules or case-law which create a systemic risk of such offences going unpunished

Several Romanian nationals sentenced to terms of imprisonment for tax evasion, concerning inter alia value added tax (VAT), lodged an appeal before the Court of Appeal of Braşov (Romania) challenging their final convictions on the basis that the limitation period for their criminal liability had expired.

In support of their position, those convicted persons relied, inter alia, on two judgments of the Romanian Constitutional Court (delivered in 2018 and 2022), which had invalidated a national provision governing the grounds for interrupting the limitation period in criminal matters, that is to say procedural acts or decisions which interrupt the limitation period for criminal liability. Following those judgments, during a period of almost four years, Romanian law did not provide for any ground for interrupting that limitation period. In practical terms, that meant that, during that period, and in accordance with the Romanian conception of the principle that offences and penalties must be defined by law including rules on limitation periods, no procedural act could interrupt the limitation period. In addition, the convicted persons argue that that absence of grounds for interrupting the limitation period constitutes a more lenient criminal law (*lex mitior*), which they claim should be applied retroactively in order to preclude the interruption of the limitation period by procedural acts carried out in 2018. In view of the date of the offending acts, the convicted persons thus submit that the limitation period expired before their convictions became final, which entails the discontinuation of the criminal proceedings and renders impossible their conviction.

The Court of Appeal of Braşov has doubts as to the compatibility of that interpretation with EU law. It would result in the convicted persons in question – and a considerable number of other persons – being absolved of their criminal liability for tax evasion offences liable to harm the financial interests of the European Union. Moreover, the Court of Appeal of Braşov highlights that, in order to comply with EU law, it might be required to disapply the case-law of the national Constitutional Court and/or Supreme Court. However, the new disciplinary regime in Romania allows for the imposition of penalties on judges who disregard that case-law. The Romanian court asks, in that context, whether the primacy of EU law precludes the disciplinary liability of the judges who compose that court in the dispute in the main proceedings being incurred. It therefore decided to refer questions to the Court of Justice concerning each of those matters.

¹ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

Breach of the obligation to lay down effective criminal penalties in order to protect the financial interests of the European Union infringes EU law

The Member States are required under EU law to counter fraud and any other illegal activities affecting the financial interests of the European Union through effective deterrent measures. **In that respect, the Court states that the Member States must ensure that the limitation rules laid down by national law allow effective punishment of infringements linked to such fraud.** The approaches adopted in the Romanian case-law, from which it follows that Romanian law did not provide for any ground for interrupting the limitation period during a period of almost four years, creates a systemic risk of the offences in question going unpunished, which is not compatible with the requirements of EU law. That risk is exacerbated by the possible retroactive application of that lack of grounds for interruption to a previous period, on the basis of the principle of the more lenient criminal law (*lex mitior*).

Obligations of national courts tasked with applying EU law and the necessary protection of fundamental rights

The Court notes that national courts must disapply national legislation and case-law if they have the effect that criminal liability is time-barred in such a large number of cases of serious fraud affecting the financial interests of the European Union that it creates a systemic risk of such offences going unpunished.

Nevertheless, that obligation may conflict with the protection of fundamental rights. In that regard, the Court considers that, where a court of a Member State is called upon to review whether fundamental rights are complied with by a national provision or measure which, in a situation where the action of the Member States is not entirely determined by EU law, implements the latter, **national authorities and courts remain free to apply national standards of protection of those rights**, provided that the level of protection provided for by the Charter of Fundamental Rights of the European Union and the primacy, unity and effectiveness of EU law are not thereby compromised.

Applying that case-law in the present case, the Court draws a distinction between the principle that offences and penalties must be defined by law, as applied and interpreted in the national case-law at issue, and the principle of the retroactive application of the more lenient criminal law (*lex mitior*). In so far as that case-law is based on the principle that offences and penalties must be defined by law, as to its requirements relating to the foreseeability and precision of criminal law, the Court, after highlighting the importance of that principle in both the EU legal system and in national legal systems, concludes that **national courts, notwithstanding their obligation to give full effect to EU law, are not required to disapply that case-law.**

However, national courts may not apply a national standard of protection relating to the principle of the retroactive application of the more favourable criminal law (*lex mitior*), in circumstances such as those at the origin of the present preliminary ruling proceedings. In that regard, the Court emphasised that, in the light of the need to weigh that standard against the requirements of EU law, national courts cannot call into question the interruption of the limitation period for criminal liability by procedural acts which took place before the relevant national provisions were found to be invalid. To do so would increase the systemic risk of offences harming the financial interests of the European Union going unpunished solely as a result of the absence of grounds for interrupting the limitation period for almost four years in Romania.

Disapplying national case-law of the national court's own motion and disciplinary liability of judges

Under the principle of the primacy of EU law, a judgment in which the Court of Justice gives a preliminary ruling is binding on the national court as regards the interpretation of EU law for the purposes of the decision to be given in the specific dispute. Consequently, that court cannot be prevented from forthwith applying EU law in accordance with the decision or the case-law of the Court of Justice, if necessary by disregarding national case-law which prevents EU law from having full force and effect. Moreover, such conduct by a national court cannot be treated as a disciplinary offence on the part of the judges sitting in that court.

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.

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

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

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