



Court of Justice of the European Union

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Judgment in Joined Cases

C-83/19 Asociația 'Forumul Judecătorilor Din România' v Inspekția Judiciară, C-127/19 Asociația 'Forumul Judecătorilor Din România' and Asociația 'Mișcarea Pentru Apărarea Statutului Procurorilor' v Consiliul Superior al Magistraturii and C-195/19 PJ v QK and in Cases C-291/19 SO v TP and Others, C-355/19 Asociația 'Forumul Judecătorilor din România', Asociația 'Mișcarea Pentru Apărarea Statutului Procurorilor' and OL v Parchetul de pe lângă Înalta Curte de Casație și Justiție - Procurorul General al României and C-397/19 AX v Statul Român - Ministerul Finanțelor Publice

Press and Information

The Court of Justice rules on a series of Romanian reforms in the areas of judicial organisation, the disciplinary regime applicable to judges, and the financial liability of the State and the personal liability of judges as a result of judicial error

Six requests for a preliminary ruling have been brought before the Court of Justice by Romanian courts in proceedings between legal persons or natural persons and authorities or bodies such as the Romanian Judicial Inspectorate, the Supreme Council of the Judiciary and the prosecutor's office attached to the High Court of Cassation and Justice.

The disputes in the main proceedings follow on from a wide-ranging reform in the field of justice and the fight against corruption in Romania, a reform which has been monitored at EU level since 2007 under the cooperation and verification mechanism established by Decision 2006/928¹ on the occasion of Romania's accession to the European Union ('the CVM').

In the context of the negotiations for its accession to the European Union, Romania had, in the course of 2004, adopted three laws, known as 'the Justice Laws', on the rules governing judges and prosecutors, on the organisation of the judicial system and on the Supreme Council of the Judiciary, with the aim of improving the independence and effectiveness of the judicial system. Between 2017 and 2019, amendments were made to those laws by laws and government emergency ordinances adopted on the basis of the Romanian Constitution. The applicants in the main proceedings dispute whether certain of those legislative amendments are compatible with EU law. In support of their actions, they refer to certain opinions and reports drawn up by the European Commission on progress in Romania under the CVM, which in their view, are critical of the provisions adopted by Romania in the years 2017 to 2019 in the light of the requirements of the effectiveness of the fight against corruption and the guarantee of the independence of the judiciary.

In that context, the referring courts are uncertain as to the legal nature and effects of the CVM and the scope of the reports drawn up by the Commission under it. According to those courts, the content, nature and duration of that mechanism should be regarded as falling within the scope of the Treaty of Accession and the requirements set out in those reports should be binding on Romania. In that regard, however, the referring courts mention national case-law according to which EU law would not take precedence over the Romanian constitutional order and Decision 2006/928 could not constitute a reference provision in the context of a review of constitutionality, since that decision was adopted before Romania's accession to the European Union and has not been interpreted by the Court in terms of whether its content, nature and duration fall within the scope of the Treaty of Accession.

¹ Commission Decision 2006/928/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (OJ 2006 L 354, p. 56).

Findings of the Court

In the first place, the Court, sitting as the Grand Chamber, finds that Decision 2006/928 and the reports drawn up by the Commission on the basis of that decision constitute acts of an EU institution, which are amenable to interpretation under Article 267 TFEU. The Court holds, next, that as regards its legal nature, content and temporal effects, Decision 2006/928 falls within the scope of the Treaty of Accession, because that decision is a measure adopted on the basis of the Act of Accession which has been binding on Romania since the date of its accession to the European Union.

As regards the legal effects of Decision 2006/928, the Court holds that that decision is binding in its entirety on Romania as from its accession to the European Union and obliges it to address the benchmarks, which are also binding, set out in the annex to the decision. Those benchmarks, defined on the basis of the deficiencies established by the Commission before Romania's accession to the European Union, seek in particular to ensure that that Member State complies with the value of the rule of law. Romania is, therefore, required to take appropriate measures to meet the benchmarks and to refrain from implementing any measure which could jeopardise their being met.

As regards the legal effects of the reports drawn up by the Commission on the basis of Decision 2006/928, the Court makes clear that those reports formulate requirements with regard to Romania and address 'recommendations' to it with a view to the benchmarks being met. In accordance with the principle of sincere cooperation, Romania must take due account of those requirements and recommendations, and must refrain from adopting or maintaining measures in the areas covered by the benchmarks which could jeopardise the result prescribed by those requirements and recommendations.

Interim appointments to management positions within the Judicial Inspectorate

In the second place, after finding that the legislation governing the organisation of justice in Romania falls within the scope of Decision 2006/928, the Court points out that the very existence of effective judicial review designed to ensure compliance with EU law is of the essence of the value of the rule of law, which is protected by the Treaty on European Union. The Court emphasises next that every Member State must ensure that the bodies which, as 'courts or tribunals', come within its judicial system in the fields covered by EU law meet the requirements of effective judicial protection. Since the national legislation at issue applies to the ordinary courts which are called upon to rule on questions relating to the application or interpretation of EU law, it must therefore meet those requirements. In that regard, maintaining the independence of the judges in question is essential, in order to protect them from external intervention or pressure, and thus preclude any direct influence but also types of influence which are more indirect and which are liable to have an effect on the decisions of the judges concerned.

Lastly, as regards the rules governing the disciplinary regime of judges, the Court finds that the requirement of independence means that the necessary guarantees must be provided in order to prevent that regime being used as a system of political control of the content of judicial decisions. National legislation cannot, therefore, give rise to doubts, in the minds of individuals, that the powers of a judicial body responsible for conducting disciplinary investigations and bringing disciplinary proceedings against judges and prosecutors might be used as an instrument to exert pressure on, or political control over, the activity of those judges and prosecutors.

In the light of those general considerations, the Court holds that national legislation is likely to give rise to such doubts where, even temporarily, it has the effect of allowing the government of the Member State concerned to make appointments to the management positions of the body responsible for conducting disciplinary investigations and bringing disciplinary proceedings against judges and prosecutors, by disregarding the ordinary appointment procedure laid down by national law.

The creation of a special prosecution section with exclusive competence for offences committed by judges

In the third place, and again in the light of those same general considerations, the Court examines whether national legislation providing for the creation of a specialised section of the Public Prosecutor's Office with exclusive competence to investigate offences committed by judges and prosecutors is compatible with EU law. The Court clarifies that, in order to be compatible with EU law, such legislation must, first, be justified by objective and verifiable requirements relating to the sound administration of justice and, secondly, ensure that that section cannot be used as an instrument of political control over the activity of those judges and prosecutors and that the section exercises its competence in compliance with the requirements of the Charter of Fundamental Rights of the European Union ('the Charter'). If it fails to fulfil those requirements, that legislation could be perceived as seeking to establish an instrument of pressure and intimidation with regard to judges, which would prejudice the trust of individuals in justice. The Court adds that the national legislation at issue cannot have the effect of disregarding Romania's specific obligations under Decision 2006/928 in the area of the fight against corruption.

It is for the national court to ascertain that the reform which resulted, in Romania, in the creation of a specialised section of the Public Prosecutor's Office responsible for investigating judges and prosecutors and the rules relating to the appointment of prosecutors assigned to that section are not such as to make the section open to external influences. As regards the Charter, it is for the national court to ascertain that the national legislation at issue does not prevent the case of the judges and prosecutors concerned being heard within a reasonable time.

The State's financial liability and the personal liability of judges for a judicial error

In the fourth place, the Court holds that national legislation governing the financial liability of the State and the personal liability of judges in respect of the damage caused by a judicial error can be compatible with EU law only in so far as the putting in issue, in an action for indemnity, of a judge's personal liability for such a judicial error is limited to exceptional cases and is governed by objective and verifiable criteria, arising from requirements relating to the sound administration of justice, and also by guarantees designed to avoid any risk of external pressure on the content of judicial decisions. To that end, clear and precise rules defining the conduct which may give rise to the personal liability of judges are essential, in order to guarantee the independence inherent in their task and to avoid exposing them to the risk that their personal liability may be incurred solely because of their decision. The fact that a decision contains a judicial error cannot, in itself, suffice to render the judge concerned personally liable.

As regards the detailed rules for putting in issue the personal liability of judges, the national legislation must provide clearly and precisely the necessary guarantees ensuring that neither the investigation to determine whether the conditions and circumstances which may give rise to such liability are satisfied nor the action for indemnity appears capable of being converted into an instrument of pressure on judicial activity. In order to ensure that such detailed rules cannot have a chilling effect on judges in the performance of their duty to adjudicate with complete independence, the authorities empowered to initiate and conduct that investigation and bring that action must themselves be authorities which act objectively and impartially, and the substantive conditions and detailed procedural rules must be such as not to give rise to reasonable doubts concerning the impartiality of those authorities. Similarly, it is important that the rights enshrined in the Charter, in particular the rights of defence of a judge, should be fully respected and that the body with jurisdiction to rule on the personal liability of a judge should be a court. In particular, a finding of judicial error cannot be binding in the action for indemnity brought by the State against the judge concerned although that judge was not heard during the previous proceedings seeking to establish the financial liability of the State.

The principle of the primacy of EU law

In the fifth place, the Court holds that the principle of the primacy of EU law precludes national legislation with constitutional status which deprives a lower court of the right to disapply of its own

motion a national provision falling within the scope of Decision 2006/928 and which is contrary to EU law. The Court recalls that, in accordance with settled case-law, the effects of the principle of the primacy of EU law are binding on all the bodies of a Member State, without provisions of domestic law relating to the attribution of jurisdiction, including constitutional provisions, being able to prevent that. Recalling also that national courts are required, to the greatest extent possible, to interpret national law in conformity with the requirements of EU law, or to disapply of their own motion any conflicting provision of national law which could not be interpreted in conformity with EU law, the Court holds that, where it is proved that the EU Treaty or Decision 2006/928 has been infringed, the principle of the primacy of EU law will require the referring court to disapply the provisions at issue, whether they are of a legislative or constitutional origin.

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.

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